

CODE OF PRACTICE

**for the healthcare & assistive
technology products and services
industry**



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for the Healthcare & Assistive Technology
Products and Services Industry**

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Code of Practice for the Healthcare & Assistive Technology Products and Services Industry

Introduction

BHTA's aim is to achieve recognition of this Code by the Office of Fair Trading, which has introduced a new approvals system for Consumer Codes. Consumers are private individuals buying goods or services other than for business purposes.

In addition to requirements for contracts with such consumers, this Code also covers business to business contracts, which are outside the scope of the OFT's approval system. They have been included herein because of the nature of the business carried out. Most of the companies signed up to the Code will sell to a mixture of customers, some private consumers, some businesses, and some public bodies (such as the NHS and Social Services) but the principles involved, particularly in regard to assessment of the users of products and to the need for good after sales support are similar. The clauses in section 14 "Relating to Commercial Business/Relationships" are specifically outside the remit of the OFT's Code Regime.

The Code will be reviewed annually, with input from external organisations, to ensure its effectiveness.

1. General Scope/Principle/Purpose of the Code

- 1.1 This Code of Practice governs the behaviour of companies (Code members) that have registered to abide by the criteria herein. It operates for sales conducted in the United Kingdom.
- 1.2 In examining a company's behaviour against this Code, only the clauses relevant to that company and its products, the goods that it sells, and its services will be taken into account.
- 1.3 The Code is intended to reflect a philosophy of care and support for customers. Code Members will make themselves aware of pertinent legislation, to ensure they do not offer, stipulate or infer anything in their terms and conditions of contract which provides the customer with less protection or a worse deal than that provided by law, and to ensure that the terms in their consumer contracts comply with the Unfair Terms in Consumer Contracts Regulations 1999.
- 1.4 Individual persons working in the industry may be registered as competent individuals with a relevant body, such as the Health Professions Council (for qualified occupational therapists, physiotherapists, orthotists, prosthetists), or the BHTA Registration Scheme. Such registrants will be required to follow a personal Code of Conduct, which will be available on application to the relevant organisation (see useful contacts). As a minimum, this Code expects that individuals will adhere to the Code of Conduct of the BHTA Registration Scheme.
- 1.5 An undertaking to abide by this Code is currently restricted to, and mandatory for, members of the British Healthcare Trades Association (BHTA). In considering applications for membership, BHTA takes into account the past history of any directors/partners and will not allow entry by any company where a director, partner or major stakeholder has been involved, within the previous 12 months, in the winding up of a company in such a manner that customers

have been disadvantaged. Such companies will therefore be barred from signing up to this Code.

2. Definitions/Terminology

➤ **Healthcare Industry**

2.1 Companies in the healthcare industry, as defined for the purposes of this Code of Practice, will be involved in one or more of the following:

- Supply of assistive technologies, particularly those for elderly and/or disabled consumers
- Supply of externally applied medical devices, and/or services relating to the fitting of those devices
- Supply of equipment and related services necessary for medical and health professionals to carry out their various specialist functions
- Training in the use of assistive technologies
- Training relating to health and safety, such as first aid at work, and manual handling.

2.2 The industry (for the purposes of this Code of Practice) does **not** include:

- Pharmaceuticals
- Alternative medicines or therapies
- Dentistry
- GP practice
- Ophthalmology
- Audiology
- Implants
- Telecare
- Telehealth

➤ **Assistive Technology**

2.3 An assistive technology is a product or service that enhances independent living.

➤ **Company**

2.4 The term “company” includes:

- Limited companies
- Partnerships
- Sole traders
- Franchises
- Wholly-owned subsidiaries
- Trading arms of charities

ie, organisations or firms with a commercial, profit-making, interest.

➤ **Customer**

2.5 Customers may be private individuals, businesses, charities or authorities/agencies such as the NHS. The OFT's approval of this Code (if forthcoming) will only apply to situations/contracts involving private consumers.

➤ **Code Member**

2.6 Any BHTA member company undertaking to abide by this Code of Practice.

➤ **Code Administrator (BHTA)**

2.7 The British Healthcare Trades Association (BHTA) is the Administrator for this Code.

3. Over-riding Principles Underpinning this Code

3.1 All Code members registered against this Code will adhere to the following principles:

- a) Compliance with all relevant legislation relating to advertising and marketing, the sale of goods, relevant European Directives/Regulations, consumer rights, disability rights, and data protection.
- b) They will make themselves aware of pertinent legislation to ensure they do not offer, stipulate or infer anything in their terms and conditions of contract which provides the customer with less protection or a worse deal than that provided by law.
- c) Where selling products, they will ensure that these are of satisfactory quality and fit for the purpose specified. Their selling techniques will be ethical and they will deliver high standards of service.
- d) Any claims made by the company and its employees will be honest and truthful, and will not give rise to false expectations. Information, claims and comparisons must be accurate, balanced, fair, objective and unambiguous. They must not mislead either directly or by implication.
- e) They will act at all times in such a manner as to justify public trust and confidence, to uphold the good standing and reputation of the healthcare industry, to serve the best interests of society, and above all, to safeguard the interests of individual customers. They will respect the confidentiality of information obtained and not disclose such information without the consent of the customer concerned or a person entitled to act on their behalf, except where such disclosure is required by law. They will be honest and truthful in all their dealings with consumers.
- f) Products and services will only be supplied where they fulfil a genuine need.
- g) All communications, verbal and written, will be made in plain language.
- h) At all times, the vulnerable nature of the customer will be respected. Vulnerable customers, such as those who are elderly and/or disabled, will not be coerced in any way, will be given information in an appropriate format, and will have their particular needs taken into account.

- i) A copy of this Code will be given to anyone who requests it and, where complaints cannot be resolved direct with the company, complainants will be made aware of their right to arbitration in accordance with this Code and how to initiate such proceedings.

4. Advertising and Marketing

- 4.1 In marketing and promotional activities, in addition to having due regard for current legislation, care must be taken to ensure any gifts related to purchase of a product or service are directly relevant to that purchase and of a nature that cannot be construed as inappropriate or disproportionate.
- 4.2 Advertisements must comply with the codes and standards set and enforced by the Committee of Advertising Practice, including the British Code of Advertising and Sales Promotion and all other relevant statutory requirements, such as the Control of Misleading Advertisements Regulations 1988 (as amended).
- 4.3 Advertisements must not give misleading indications about price, value or quality, nor about the organisation placing the advertisement, nor about any benefit that may be derived from the product or service offered. The consequence of responding to the advertisement should be clear.

5. Conduct of Staff

- 5.1 Staff must always clearly identify themselves and (when away from the office/company premises) their reason for calling.
- 5.2 Staff must never purport to have medical training where this is not the case, nor claim that their product is endorsed by a trusted body unless this can be evidenced in writing.
- 5.3 As a minimum, staff should be expected to adhere to the provisions of the BHTA Registration Scheme Code of Conduct, which states that they will:
 - i) act at all times in such a manner as to justify public trust and confidence, to uphold and enhance the good standing and reputation of the healthcare industry, to serve the best interests of society and, above all, to safeguard the interests of individual customers.
 - ii) be accountable for his/her own working practices and, in the exercise of such accountability, to:
 - iii) act, at all times, within the law of the land and in a manner befitting a professional worker in the healthcare field.
 - iv) act, at all times, in such a way as to promote and safeguard the well-being and interests of customers.
 - v) ensure that no action or omission under his/her control is detrimental to the condition or general safety of a customer.
 - vi) take every reasonable opportunity to maintain and enhance knowledge and competence within his/her field of work.

- vii) acknowledge any limitations of competence and refuse in such cases to accept delegated functions without first having received instruction in regard to those functions and having been assessed as competent.
- viii) work in a collaborative manner with healthcare professionals (such as doctors, consultants, occupational therapists, physiotherapists etc) and recognise and respect the contribution of all within the healthcare team.
- ix) take account of the customs, values and spiritual beliefs of customers.
- x) make known to an appropriate person or authority any conscientious objection that may be relevant to the performance of his/her duties.
- xi) ensure that the customer is fully informed (in this context, this means that the terms and conditions of contract, options available and any other pre-contractual and point of sale requirements set out herein have been explained), and this is recorded, before seeking his/her consent to an intervention, or to a purchase.
- xii) ensure that there is no abuse of the privileged relationship that exists with customers or of the privileged access allowed to their property, residence or workplace.
- xiii) respect the confidentiality of information obtained during the course of his/her work and not disclose such information without the consent of the customer concerned or a person entitled to act on their behalf, except where such disclosure is required by law.
- xiv) assist colleagues, wherever possible, to develop competence in relation to the needs of their work.
- xv) refuse to accept any gift, favour or hospitality that is intended to exert undue influence to obtain preferential consideration. Whilst it may be appropriate, on occasions, to accept small gifts or tokens of thanks from customers, these should always be disclosed to relevant senior staff and, where necessary, advice sought.
- xvi) to abide by any additional Code(s) of Practice covering particular sectors or functions within the healthcare field relevant to his/her employment.

6. Training of Staff/Ongoing Development

- 6.1 All staff must be made aware of any legislation pertinent to their role, especially in relation to health and safety, disability discrimination, and consumer rights. They must give due regard to infection control issues, where relevant.
- 6.2 They must also be informed of any regulations to which they must give due regard in the course of their work, such as building regulations and LOLER (Lifting Operations and Lifting Equipment Regulations).
- 6.3 Staff should not work unsupervised until they are considered competent to do so. They should not be asked to carry out tasks for which they have not received training. It is recommended that regular refresher sessions are held in-house, as a minimum. Registered professionals, such as occupational therapists, physiotherapists, nurses, orthotists and prosthetists, and any individual registered with the BHTA Registration Scheme are required to

receive on-going training to keep their knowledge up-to-date and such registration is an indicator of competence. On-going training must be facilitated.

- 6.4 Companies must maintain a record of training for each member of staff.
- 6.5 Where clinical advice and training is to be given by staff, they must be appropriately qualified.
- 6.6 All staff, in particular those in direct contact with the customer, must be given a copy of this Code and be made aware that the company is required to adhere to the provisions herein.

7. Representation at Point of Sale

- 7.1 Staff must have the appropriate product knowledge to advise and assist purchasers.
- 7.2 A copy of this Code will be made available, free of charge, on request and the leaflet on “How to Complain” will be given to every consumer. In addition businesses will display the BHTA Code of Practice poster and the BHTA Code logo.

8. Pre-Contractual and Point of Sale Information

- 8.1 Inappropriate selling tactics must not be used. (Examples of what might be high pressure selling/mis-selling tactics include: unreasonably long stay (for sales in the home); high initial price followed by the offer of a discount (often followed by a telephone call to the “manager”); discount on the condition that the consumer agrees to the sale that day; withholding price information until the end of the sales discussion/visit; alleged limited availability of a product; misrepresentation of the product, price or contract.)
- 8.2 Where a customer’s ability, well-being, environment, and/or activities have an effect on the safe use and suitability of a product for the customer’s stated purpose, a full assessment of these factors must be carried out, so that an appropriate product can be identified. A record of the assessment must be retained by the company and a copy be made available to the customer on request.
- 8.3 Potential customers should be made aware, where appropriate, of services offered by the Local Authority, NHS, the Employment Service, major charities and other agencies.
- 8.4 Where professional / medical advice should be considered by the customer before purchasing, details of where this assistance might be obtained should be given. If a practitioner is recommended who is contracted to the advising vendor/salesperson, this should be made explicit.
- 8.5 Where VAT relief can apply it should be brought to the attention of the customer, as should details of how this can be obtained.
- 8.6 Terms and conditions of contract must be legible, comprehensive and written in plain language; the font used should be a minimum of size 12, with large bold print for particularly important terms such as cancellation instructions. Due regard must be given to the Unfair Terms in Consumer Contracts Regulations

1999. Where a customer has indicated they have poor eyesight or are confused by paperwork, the salesperson should go through the paperwork with them. A version in large print, Braille, or on audio tape must be provided if requested, within a reasonable timescale. Customers with poor eyesight, or who become easily confused, should consider having a relative, friend or other advisor/carer with them.

- 8.7 Any limitations of the product/service should be made clear, and any clear disparity between the goods and/or services for sale and usual consumer expectations must be explained in writing.
- 8.8 Any clear disparity between a customer's stated requirements and the nature of the goods/and or services to be purchased must be pointed out and explained in writing.
- 8.9 Where a product will need to be modified in a way that is not achievable with accessories and where additional fabrication outside routine manufacture is required, the customer must be made aware of this, as the product will be "bespoke" and any changes to terms and conditions as a result of this must be notified to them in writing.
- 8.10 All verbal claims or promises made by the salesperson must be put in writing, either on the contract, or on a separate form.
- 8.11 Pricing information showing the total price and providing a breakdown, where appropriate, of that total showing eg delivery, VAT, credit charges, discount applied, part exchange applied, must be given in writing.
- 8.12 Details of any finance agreement and APR should be explained in such a way that the customer understands how much they will be paying and what the terms of the contract are. Pre-contract information must be sent/presented on its own, allowing time for the consumer to pause and reflect on affordability and to compare credit, before being presented with the agreement to be signed. Consumers must be given the option of paying for Payment Protection Insurance and other insurances up front, rather than these being automatically offered on credit. It must further be made clear that customers have the right to cancel hire purchase and conditional sale agreements and only pay 50%. This does not extend to the insurances mentioned above.
- 8.13 Details of delivery, installation, training, after-sales support, service and warranty should be made available prior to sale.
- 8.14 Delivery and completion dates should be discussed with the customer in advance of ordering/making the purchase and a choice of delivery dates and times should be offered. For mail order and Internet orders, normal delivery times should be indicated. Should it become clear these can not be met, the customer must be informed as soon as practicable, with an honest explanation of the reason for the delay. The customer should have the right to cancel without penalty if the order is not delivered within the stipulated time.
- 8.15 Where tuition/training is necessary for safe use of a product, reasonable and fair tuition/training for its use under the conditions which the purchaser best describes as "normal" for his / her purposes must be offered prior to conclusion of a sale. If such tuition/training is declined, record must be made of that fact and the reasons given.

9. Linked Goods and Services

- 9.1 If the product will need servicing regularly, an explanation must be given as to what is entailed, and the likely costs thereof should be outlined. It should be made clear whether maintenance is offered/available, or will have to be obtained elsewhere.
- 9.2 Where appropriate, arrangements for insuring the product should be discussed, or leaflets regarding such insurance should be made available. If insurance is discussed, it must be made clear that it is cancellable, the consumer must be given the option to pay for it up front rather than as part of a credit agreement, and it must be made clear to whom any refund will be paid in the event of cancellation.
- 9.3 Any optional guarantees/warranties must be explained, including who is offering them and what the benefits are, or leaflets that do this must be provided.
- 9.4 Clear, accurate information on the availability and price of all the above, and any other linked goods and services must be provided in writing.

10. Instructions for Use / Manuals

- 10.1 Any instructions for use and manuals should be written in clear language, and those responsible for their production should be aware that versions in large print, or on audio tape, may be requested, and this must be facilitated as swiftly as is practicable.
- 10.2 Such instructions/manual must be made available with all new products, and should, if feasible, be made available with second-hand products. The customer's attention should be drawn to user manuals and they should be informed of the need to read them thoroughly.
- 10.3 Depending on the nature of the product, the instructions/manual should cover all or some of the following (this is not an exhaustive list):
- Product name, description and intended purpose
 - Name of manufacturer and/or supplier
 - Illustration of the product
 - Reference to any variants or accessories
 - General, or detailed, dimensions
 - General, or detailed, description of construction
 - Explanation of how to use it safely
 - Any known limitations
 - Description of maintenance requirements including recommended frequency of servicing
 - Cleaning/decontamination instructions
 - Any specific warnings

11. Cooling Off Period / Cancellation Rights / Protection of Deposits

- 11.1 If a company offers a cooling off period other than that required by law, this should be explained to the customer and be clearly defined in the written terms and conditions of contract. For sales conducted in a customer's home, a 7 day cooling off period must be offered from the date the order is placed.

(It should be noted that there are different provisions in legislation depending on how and where the sale is conducted. For example:

Consumer Protection (Distance Selling) 2000 Regulations (as amended and E-Commerce Regulations 2002) – Goods purchased through distance selling means, such as telephone, mail order, fax, digital TV, the Internet. Consumers have the unconditional right to cancel an order 7 working days after receipt of the goods.

Consumer Credit Act 1974 – Consumers who enter into a credit agreement have a right to a 5 day cooling off period from the date the consumer receives a copy of the executed agreement regardless of whether the visit was pre-arranged.

Consumer Protection (Cancellation of Contracts Concluded Away From Business Premises) Regulations 1987 – Provides consumers with a 7 day cooling off period to cancel the contract by giving notice of cancellation.)

- 11.2 The customer must be informed under what circumstances they may cancel and these instructions should be plainly visible in the paperwork given to the customer, for example next to the signature box, and be in large bold type. Where a customer has indicated they have poor eyesight or are confused by paperwork, the salesperson should go through the paperwork with them. It should state:
- (if appropriate) that any cooling off period starts from the date the order is placed
 - (if appropriate) the length of the cooling off period
 - that cancellation must be in writing and that a telephone call is insufficient to cancel the order
- 11.3 For consumer contracts, companies must provide a form/card for the customer to complete and return if they do wish to cancel (within the specified timescale), preferably pre-paid, or with a pre-paid envelope.
- 11.4 Any deposit paid must normally be refunded in full within 30 days of the date of cancellation. If a deposit will not be refundable, or will be only part-refundable, this must be made clear when the customer places the order and the reasons for this must be described to them, in writing. If the customer cancels the contract properly full repayment should occur (unless, for example, the goods have been damaged after delivery), and in any circumstance moneys withheld should not amount to more than the net costs or net loss of profit incurred by the Code member. There are circumstances by law where consumers have the unconditional right to a refund; for example, goods purchased through distance selling means. In all other circumstances, if a product has clearly not been used and could be resold as new, then a full refund should be provided.
- 11.5 Where an order cannot be fulfilled and the customer does not wish to accept substitute goods or services, refund must be made speedily and in full. Vouchers/credit note to the equivalent value must not be offered unless the customer agrees this is acceptable.
- 11.6 Where refundable deposits/advance payments are taken, a protection mechanism such as placing these in a separate account, must be in place to ensure that consumers are returned their money without undue delay.

- 11.7 Where a cooling off period applies and a part exchange has occurred, the part exchanged product must not be broken up, disposed of, or sold on until after the cooling off period has been completed.

12. After-Sales Service Provisions

- 12.1 Code members are expected to provide a high standard of after sales service and to ensure a prompt and adequate service and repair policy.
- 12.2 Prompt will normally be taken to mean response and (where appropriate) visit within 3 working days of request, unless otherwise agreed. No customer should be without equipment on which they rely for mobility and/or daily living for more than 14 days. (Exceptions may occur, for example, where a customer has bespoke needs that cannot be met from normal stock held, or where a hospital/clinic appointments system must be followed, however every effort must be made to keep the period the customer is without mobility to a minimum.)
- 12.3 Guarantees/Warranties must be in writing, and be clear and unambiguous. They do not affect a consumer's statutory rights and all guarantees and warranties used by Code members should carry a statement making this clear. Distributors and retailers must pass on the individual parts and labour guarantee offered by the manufacturer, and abide by the terms contained in the guarantee during its currency.
- 12.4 There must be no high pressure selling of additional warranties, nor any misrepresentation of their costs, coverage and any benefits they provide.
- 12.5 A minimum 3 month guarantee must be offered in respect of all repair work carried out.
- 12.6 It must be explained to the purchaser that no claim will be met under guarantee if the product has been abused in any way, or damaged by neglect, improper use or failure to maintain in accordance with the manufacturer's recommendations, or has been damaged in any accident. Abnormal wear and tear will also be considered when assessing a guarantee claim.
- 12.7 If, after purchase, the customer wishes to sell the product to another consumer, the transfer of a valid guarantee/warranty should be possible and a mechanism should be in place to facilitate this.
- 12.8 Maintenance agreements must be clear and unambiguous and the covered duration must be stated.
- 12.9 If a company has a buy-back policy this must be clear and unambiguous, and be outlined to the customer in writing in advance of the sale taking place. Any reason for not buying back the product, for example because it is single-use, or bespoke, must be stated and the reason made clear. Companies that do not buy back product under any circumstances should be prepared to make available an advice sheet on how to sell the product and advise on the likely second-hand value.
- 12.10 Customers must be given a clear explanation of the basis for charging for repair work not covered by warranty/guarantee and, where practicable, a written estimate in advance, of the anticipated costs of such work. (Customers have

the legal right to repair or replacement free of charge for goods that are identified, within a reasonable timescale, as being faulty.)

- 12.11 When work has been carried out, a schedule of the work (labour, parts, etc) should accompany the invoice, detailing a breakdown of costs.
- 12.12 Adequate stocks of components/parts should be held to facilitate prompt service.
- 12.13 Customers should be given details of opening hours, contact telephone numbers and arrangements, if any, for emergencies out of hours.
- 12.14 Reasonable care should be exercised in protecting customers' property whilst in the company's possession and companies should not seek any disclaimers to avoid liability for loss or damage. Companies are advised to ensure they are adequately insured to cover such liability, as well as cover against any claims for death, personal injury and damage to property arising out of the demonstration of goods or their use after sale.
- 12.15 If a company is prepared to remove unwanted products, the terms under which they will do so must be made clear when this is requested, particularly in regard to disposal.

13. Specific Criteria for Particular Methods of Selling/Supply

➤ Sales Conducted in a Customer's Home

- 13.1 All cold calling is unacceptable and this includes cold calling by telephone. Salespersons and/or assessors must not visit without a mutually agreed appointment first being made. The purpose and intent of any visit must be made clear to the customer.
- 13.2 The customer must be provided with literature describing the products and services available, together with actual price examples, or where exact prices are not possible (for example with a bespoke product) with price ranges. This information must be provided in advance of the visit unless this is not feasible for practical reasons (for example if a visit is to be conducted the same day).
- 13.3 There should be no objection to the customer having a relative, friend or other advisor/carer with them when the salesperson/assessor visits. In certain circumstances this should be encouraged (for example if it is known that the customer has poor eyesight, or that they struggle with paperwork).
- 13.4 Salespersons must not use high pressure selling techniques, such as offering inducements to force a quick decision, or knowingly take advantage of vulnerable customers. (Examples of what might be high pressure selling tactics are listed in clause 8.1.)
- 13.5 Salespersons must comply with a customer's request that they leave and no assessment or sale should normally last longer than three hours, other than in exceptional circumstances (for example, if a health services professional is present and is responsible for leading the assessment).
- 13.6 Where a cooling off period applies, it may be advisable that no work commences to fulfil the contract until after that period has passed.

➤ **Internet Sales**

- 13.7 When a customer selects any product over the Internet for which an assessment must be carried out to ensure it is appropriate to their need, and/or to their environment, a message must be displayed requiring them to make an appointment for someone to call and demonstrate it and carry out an assessment. It must not be possible for the customer to simply purchase without an assessment.
- 13.8 Information must be provided to the customer before they take the decision to buy, as required by, and set out in, the Consumer Protection (Distance Selling) Regulations and the E-Commerce Regulations.

➤ **Mail Order**

- 13.9 Information as to any facility or goods to be purchased on sale or return, and the conditions upon which goods may be returned, must be brought to the attention of customers in writing.
- 13.10 Alongside the entry for any product for which an assessment must be carried out to ensure it is appropriate to the customer's need, and/or to their environment, a message must be prominently displayed requiring them to make an appointment for someone to call and demonstrate it and carry out an assessment. It must not be possible for the customer to simply purchase without an assessment.
- 13.11 Information must be provided to the customer before they take the decision to buy, as required by, and set out in, the Consumer Protection (Distance Selling) Regulations.

➤ **Rental Products**

- 13.12 Where product is rented, the terms and conditions of the rental must be clear and unambiguous, including responsibility for any damage to the product, insurance requirements, and, where appropriate, the responsibilities for decontamination/cleaning of the product, and packaging for return.

14. Clauses Relating to Commercial Business/Relationships

➤ **Sponsorship**

- 14.1 Where a company sponsors part or all of the salary of a professional employed by the NHS or Social Services, they must have due regard to the employing body's rules regarding sponsorship. No pressure must be exerted on the sponsored individual to favour the sponsoring company's products over any other. At all times, the product supplied should be that which the professional considers is best suited to the client's needs.

➤ **Sub-Contractors / Third Parties**

- 14.2 Companies must ensure any sub-contractor, third party, or person carrying out work or representation on the company's behalf upholds the same standards as required herein.

➤ **Service/Product Support**

- 14.3 Retailers/distributors who sell into an area of the country where they cannot service/support the product themselves in a prompt and adequate manner, must have in place a third party agreement with an organisation in that area, which meets comparable standards, or there must be a return to manufacturer provision for the product concerned (ie there must be consistent support for the product/customer, whether the customer is local or geographically distant from the seller).

➤ **Manufacturers / Persons Responsible for Placing a Product on the Market in the EU**

- 14.4 Companies are reminded that they must accept responsibility for the quality, performance and safety of the products they place on the market In the EU and consider whether compliance with relevant safety and testing standards is appropriate. Statements and claims on performance and safety contained in their published literature must comply with any standards they claim to meet.
- 14.5 Such companies, where registered to abide by this Code, must be able to evidence to the Code Administrator, on request, that any of their products carrying a CE mark to indicate compliance with a European Directive, do meet the essential requirements of the relevant Directive. They must be able to provide (or provide access to) a technical file for inspection.
- 14.6 Companies that manufacture and/or import medical devices should ensure spare parts are available for at least five years from date of final manufacture. For all other products, companies must be mindful of their obligation to stock spare parts for a reasonable period of time from date of final manufacture.
- 14.7 Companies must provide technical training, spare parts lists, and preventative maintenance schedules to anyone requesting them, providing they are satisfied that the enquirer meets any objective criteria they have set for such provision.

➤ **Adverse Incident Reporting**

- 14.8 Where a company becomes aware of an incident involving a product that resulted in, or could have resulted in, serious injury or death of a customer, they must report that incident to the appropriate authority - either the Health & Safety Executive (HSE), or the Medicines & Healthcare products Regulatory Authority (MHRA). (See useful contacts.)

➤ **Product Recalls and Safety Warnings**

- 14.9 Each company must maintain records sufficient to identify to whom they have sold a product, to ensure it can be traced and recovered in the event of a recall for safety purposes, or given appropriate attention if a safety warning is issued necessitating preventive action.
- 14.10 Companies selling to agencies such as the NHS and local authorities should advise them of the need to track products, to ensure this can occur.

➤ **Selling Training**

- 14.11 Where training is booked by telephone via administrative staff, those staff must be given a checklist of the minimum information the trainer will require in order to proceed.

➤ **Selling/Providing Services to Authorities/Agencies such as the NHS, Social Services, and the Employment Agency**

- 14.12 Companies must give due respect to any codes, regulations, procedures operated by the Authority.
- 14.13 They should be aware of complaints procedures in these organisations, so they can advise customers accordingly should there be a problem.
- 14.14 No gift, benefit in kind or pecuniary advantage should be offered or given to any Local Authority, Social Services, or NHS Trust staff member, members of the health professions, or to administrative staff as an inducement to prescribe, supply, administer, recommend or buy any product, subject to the following:

Gifts in the form of promotional aids and prizes, whether related to a particular product or of general utility, may be distributed to members of the health professions and to appropriate administrative staff, provided that the gift or prize is inexpensive and relevant to the practice of their profession or employment.

➤ **Provision of Appliances on FP10 Prescription**

- 14.15 Care must be taken that the conditions of contract relating to premises, and to the criteria for reimbursement are given due regard. Prescriptions must not be passed from one entity to another to attract a higher level of reimbursement than would otherwise have applied.

15. Complaints Handling

➤ **Code Members**

- 15.1 All Code members must have in place a speedy, responsive and user friendly procedure for the resolution of complaints, ie any expression of dissatisfaction regarding the product and / or service supplied. Code members are normally expected to resolve complaints within one calendar month.
- 15.2 Customers wishing to make a complaint must be informed to whom within the company they should address their complaint, what information they are required to provide, and the timescales that will apply to dealing with the complaint. These must include targets for initial acknowledgement of notification of a complaint (with advice regarding procedure to be followed in addressing it), as follows:

Telephone call indicating there is a problem – within 2 working days
Letter, fax or email – within 5 working days

They must also be informed that should this process fail, they have the right to contact the Code Administrator, BHTA, who will follow the procedure outlined later in this document for conciliation and, if need be, independent arbitration.

- 15.3 Code members should offer maximum co-operation with consumer advisers or any other intermediary consulted by the consumer, such as a Citizens Advice Bureau, or Trading Standards Officer.
- 15.4 Staff must be advised to be professional, courteous, prompt and fair when dealing with a complainant.

➤ **Code Administrator (BHTA)**

15.5 When BHTA receives notification in writing of a complaint against a Code member, it will consider whether the company:

- has not complied with this Code of Practice
- has infringed the customer's legal rights
- has been guilty of maladministration (including inefficiency or undue delay)

in a way that has resulted in the customer losing money or suffering inconvenience.

15.6 It will first ensure the customer has attempted to resolve the matter direct with the company concerned.

15.7 If this has occurred, then it will:

- Request to see all the customer's documentation
- Ask the company to report within 7 working days, giving as much evidence as possible
- Look for evidence of any breaches of this Code
- Attempt to settle the dispute by agreement between the two parties

At every stage in this process BHTA will endeavour to respond/act within seven working days. There is no charge to the customer at any stage in the complaints conciliation or the arbitration process described below.

15.8 Where this does not work, the consumer has two options:

- To take up their own independent court action
- Referral by BHTA to the Independent Arbitrator (it should be noted that the Arbitrator's decision, to all intents and purposes, is binding)

Where referral to the Independent Arbitrator is chosen, BHTA will pass all the evidence gathered, including copies of all correspondence between the parties and BHTA, to the Independent Arbitrator within five working days. At this juncture, either party may make direct representation of further evidence to the Arbitrator.

➤ **Independent Arbitrator**

15.9 The objective of the Arbitrator is to arrive at a conclusion that is fair and reasonable in the circumstances, looking at all the evidence presented by both parties. The Arbitrator is an individual who is completely independent from the Code Administrator (BHTA) and from the industry. Technical expertise will be called upon for input as and when this should prove necessary. The Arbitrator's initial reaction will be notified to the parties concerned within seven working days and normally, a conclusion should be reached within fifteen working days. (If further evidence is presented by either party, this may prolong proceedings.)

15.10 The Arbitrator's findings (which may, for example, be that the company is not at fault, or that the customer has a valid complaint) will be issued in writing and will give a summary of the facts, the conclusions and reasons for reaching them. The Arbitrator's decision is binding on both parties.

15.11 Where a Code member is found to be in breach of this Code, the Independent Arbitrator may require them to do one or more of the following, depending on the circumstances:

- repay all money paid by the complainant
- replace or repair the product without charge
- pay any costs incurred by the Code Administrator and/or the Independent Arbitrator for technical advice or testing
- take all reasonable steps, including any specified actions, to prevent a recurrence of the breach
- pay compensation to the complainant (the amount to be decided by the Arbitrator based on the evidence and circumstances of the breach)

Each of the above should occur within 30 days, with the exception of specified actions to prevent a recurrence. For these, time limits will be determined on a case by case basis.

15.12 BHTA, and the Independent Arbitrator, can not deal with a complaint if:

- the complaint is against a company that is not a Code member
- the complaint is being, or has been dealt with by a court or similar body
- the complaint relates to a point in time prior to the company becoming a Code member

16. Sanctions / Disciplinary Action

16.1 Where an identified breach of the Code is minor, the Code Administrator will issue a warning and suggest action, if appropriate, to prevent repetition. All serious, or repeated, breaches of the Code will result in the Code Administrator calling upon the Code member concerned to appear before a Disciplinary Committee which will consist of a panel of 6 people, 3 drawn from the relevant industry sector and 3 from appropriate external organisations, with a Chairperson drawn from the external organisations. The Chairperson will have a casting vote in the event of a hung decision.

16.2 The nature of the breach will be identified to the Code member in writing, and they will be given the opportunity to offer any evidence in writing in advance of the hearing, which will be on a date arranged/agreed with the Code member.

16.3 The Committee's decision may include one or more of the following:

- no further action be taken
- the Code member be required to undertake a specified course of remedial action (such as re-training of a particular salesperson)
- the Code member be issued with a formal warning
- a fine be issued, relating to the amount of work incurred by BHTA and the Independent Arbitrator regarding the complaint, the cost of the Disciplinary hearing, and/or the nature of the offence
- suspension, for a stated period, of the Code member from the register of companies signed up to the Code (and hence from BHTA)
- expulsion of the Code member from the register of companies signed up to the Code (and hence from BHTA)

16.4 Where expulsion occurs, a minimum period of twelve months must pass before any application to re-join the register of companies signed up to the Code, and

to re-join BHTA, will be considered. If any complaints against the company have been made to BHTA during that time, such application may be rejected for a further period of time.

- 16.5 From establishing that a serious breach has occurred through to final decision of the Disciplinary Committee and instigation of any action should take no more than 90 days.

17. Monitoring

- 17.1 Every Code member will be monitored by at least one of the following means every 12 months (the means will vary depending on the product/service provided - details can be made available on request and will be outlined in the Annual Report):

- mystery shopping exercises
- peer review
- independent compliance audits
- customer satisfaction survey cards

- 17.2 An Annual Report will be published, giving the results of these exercises, the number and nature of complaints received, the remedies recommended and implemented, and the results of any referrals to the Disciplinary Committee.

18. Useful Contacts

To check the status/credentials of a health professional or individual working in the industry:

Health Professions Council
Tel: 020 7582 0866 or visit www.hpc-uk.org

BHTA Registration Scheme
Tel: 01732 458868

Nursing & Midwifery Council
Tel: 020 7637 7181

To source a product:
Disabled Living Foundation
Tel: 0845 130 9177 (10am-1pm Mon-Fri)

To find a centre at which products can be tried out:
Assist UK (formerly the Disabled Living Centres Council)
Tel: 0161 834 1044 or visit www.dlcc.org.uk

UK Forum of Mobility Centres
Tel: (Secretary) 01842 753029 or visit www.justmobility.co.uk/forum/

For assistance relating to consumer rights:
Disability Rights Commission
Tel: 08457 622633

Disability Law Service (DLS)
Tel: 020 7791 9800

Citizens Advice Bureau

Look in your Yellow Pages for your local CAB or visit www.nacab.org.uk

Trading Standards

Look in your Yellow Pages under “local authority”

To make an adverse incident report:

For medical devices: Medicines & Healthcare products Regulatory Authority (MHRA)

Tel: 020 7972 8080

For machinery: Health & Safety Executive

Tel: 08701 545500

19. Pertinent Legislation

The following is not an exhaustive list of all the legislation that might apply to a given circumstance, but is a list of the legislation considered likely to be most pertinent to clauses within this Code of Practice.

Arbitration Act 1996: sets out rules for voluntary arbitration

Consumer Credit Act: requires certain credit and hire agreements to be provided in writing, set out in a particular way, and to contain certain information

- provides cancellation rights for sales in the customers home (five day cooling off period), regardless of whether the visit was pre-arranged

Consumer Credit (Disclosure of Information) Regulations 2004

Consumer Protection Act 1987

Consumer Protection (Cancellation of Contracts Concluded Away from Business Premises) Regulations 1987: set out how the cancellation notice should look

Consumer Protection (Distance Selling) Regulations: for sales conducted by Internet, Mail Order, digital TV, and by telephone - provides a seven day cooling off period

Control of Misleading Advertisement Regulations 1988

E-Commerce Regulations: for contracts concluded electronically

Sale of Goods Act 1979 (as amended)

Sale and Supply of Goods and Services Act 1982

Sale and Supply of Goods to Consumers Directive 2002

Trades Descriptions Act 1968

Limitation Act 1980

Unfair Contract Terms Act 1977

Unfair Terms in Consumer Contracts Regulations 1999: to ensure all business-to-consumer contracts drawn up are not unfair - see

<http://www.ofc.gov.uk/Business/Legal+Powers/unfair+guidance.htm>

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