

ABHI Code of Business Practice

Overview of Historical Complaints 2008-2016

To date there have been no complaints requiring the panel to meet, although there have been nearly thirty in all (around three of four per year). These complaints can be grouped as below and have been progressed in various ways.

Advertising & Promotional Material

This has been the most common type of complaint and usually involves advertising or promotional material where claims are made about one company's product in relation to another's. All these have been resolved through mediation between the companies by the ABHI secretariat and the Complaints Panel Chairman.

The issue is usually technical in nature and tends to relate to a specific claim or comparison which rests on reference to a particular scientific study or studies. Such complaints are typically quite time-consuming as the companies have usually become deadlocked in their discussions before looking to ABHI for a resolution. A complicating factor is that a complaint by one company sometimes results in a related counter-claim by the other which can compound the issue.

Conference Venues & Programmes

Another fairly common complaint, but not against member companies, relates to events being run by third party organisations which member companies might attend. There have been a number of cases of conferences, sometimes run by professional societies, either being hosted in inappropriate locations or including inappropriate activities (often golf – though not in recent years) in the overall programme.

In such cases ABHI has written to the organisers pointing out where the event location or the programme is at variance to what is permitted under the ABHI code and suggesting that they should take this into consideration when planning future events. It has often been too late in the day to make major changes to large conferences, particularly where the venue is concerned.

Conference organisers are encouraged to familiarise themselves with the ABHI Code and also, if they are running international events, to register with the MedTech Europe Conference Vetting System.

Inappropriate Sales Promotion

One of the earliest complaints brought to our attention concerned a company which was running a 'points system' as part of its promotional activities. Surgeons in a particular speciality area could build up points to be redeemed to enable them to race cars at a circuit. Clearly this was a major breach of the code but the complainant was unwilling to name the company concerned, nor the hospital involved for fear that this would allow his own company to be identified and they might find themselves commercially disadvantaged as this was a niche product area. ABHI has no investigatory powers under the code and therefore no further action could be taken.

Since publication of the Bribery Act this type of case would have been referred to the relevant authorities to deal with – even before the Bribery Act this was of questionable. It would also fall foul of the NHS England Conflicts of Interest Rules published in 2017.

One other notable case of this type was brought to ABHI's attention by an employee at a company that was planning a promotional campaign where the level of inducement to purchase was such that it was almost certainly illegal. Due to the nature of the situation the employee took legal advice and decided to take the matter to the police. The outcome is unknown.

These are extreme and rare cases and would be dealt with by law rather than under the ABHI code.

Inappropriate Social Events for Healthcare Professionals

In one case ABHI was sent a photograph of a hospital notice where a company representative had affixed details of a social event he planned to run and to which staff from a particular department were invited – essentially drinks at a local pub.

Since the identity of the representative was known this was brought to the attention of the company concerned and the compliance officer provided assurance that the matter would be dealt with internally and the staff member reprimanded. As the compliance officer at the company that raised the complaint knew her counterpart at the other organisation she was happy that the appropriate action had been taken and that no further steps were necessary.

Appropriation of Intellectual Property

A healthcare professional (HCP) had developed a comprehensive suite of training materials in her speciality area and had approached a company with a view to their helping to promote this to the NHS. She did not see it as a commercial venture and was not expecting to be paid, the aim was simply to provide education and training. Following some initial discussions not much happened until sometime later she found that the company was using the material without having sought her permission nor making any acknowledgement of the material's origin.

Strictly speaking, this wasn't a direct breach of the code; however, it was clearly the type of behaviour that should not be encouraged. ABHI was able to put the HCP in contact with the company's chief executive who was able to arrange a satisfactory resolution once the matter was brought to his attention.

From 1st January 2017 any complaints that are raised but which are resolved without the need for formal Panel adjudication will be published in summary form. Details of the companies and other identifying information will be withheld for reasons of confidentiality.