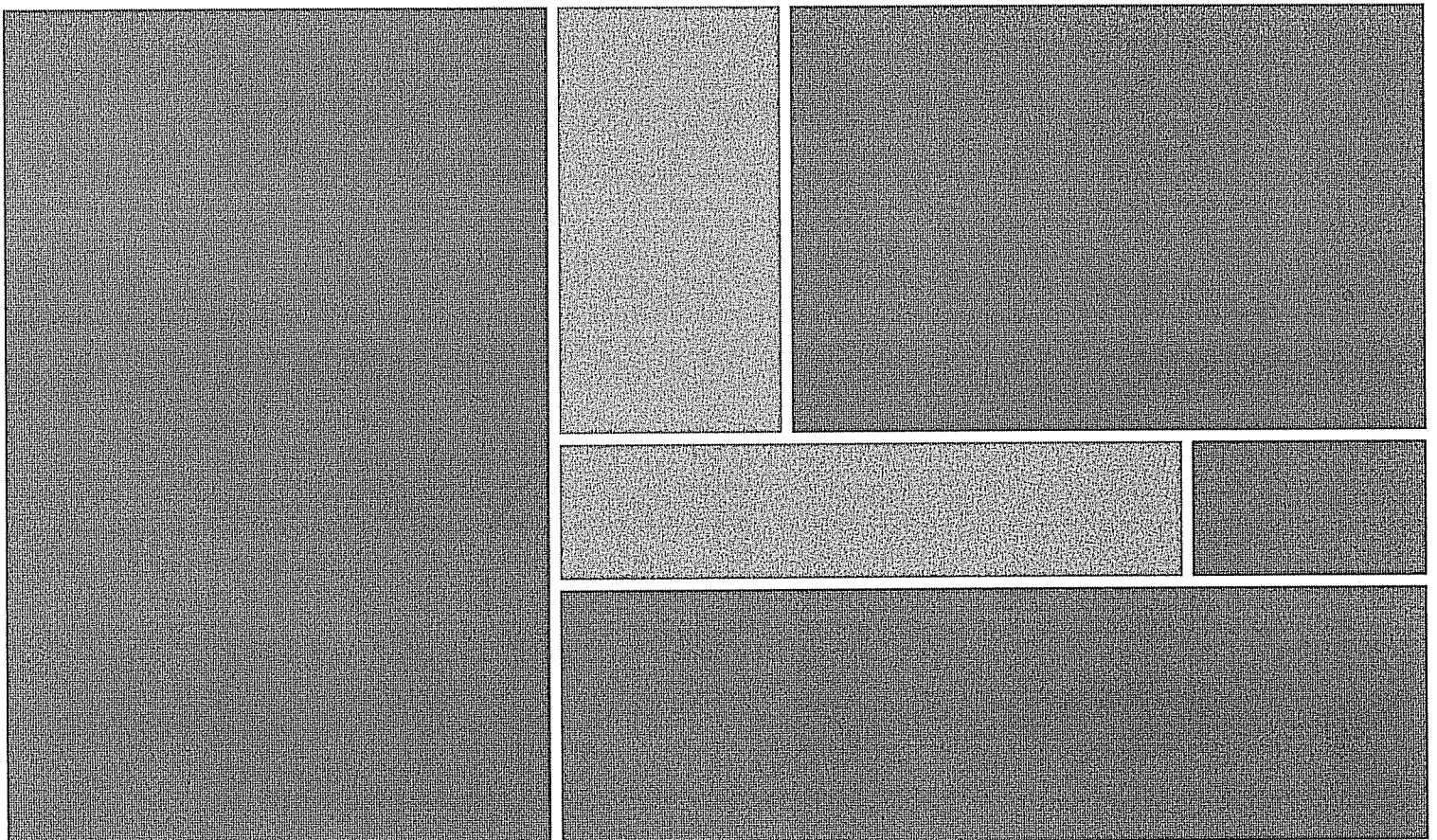


CODE OF PRACTICE FOR THE PROMOTION OF NHS-FUNDED SERVICES

- *Response to the consultation*
- *Promotion Code*



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Contents

Foreword from the Secretary of State for Health	1
Executive summary	3
1. Introduction	5
2. Response to the consultation	7
How the Code relates to the Advertising Codes administered by the Advertising Standards Authority	8
Structure and governance of the self-regulatory system as originally proposed	9
Scope	11
Complaints and enforcement	12
3. Point-by-point analysis of responses to the Code	14
Section A: General principles	14
Section B: Protecting the reputation and brand policy of the NHS	18
Section C: Direct marketing to the public and referring clinicians	19
Section D: Information, claims and comparisons	20
Section E: Provider representatives	23
Section F: Expenditure	23
Section G: Gifts, inducements and promotional aids to referring clinicians and commissioners	25
Section H: Inducements to the public	26
Section I: Testimonials and endorsements	26
Section J: Sponsorship	29
Section K: Compliance with undertakings	30
Code of Practice for the promotion of NHS-funded services	31
Annex A: Links and useful information	38
Annex B: Answers to consultation questions	41



Foreword from the Secretary of State for Health



Code of Practice for the promotion of NHS-funded services

Choice is fundamental to the delivery of a truly patient-centred NHS. Our overall aim is to create a health system that is responsive to what patients want and need; a service that treats people with more respect and greater dignity. The culture we are creating will transform the NHS into a personal health service where individuals' needs and preferences are respected. Empowering people to

choose the services that best suit them will lead to improved health and well-being, and the reduction of health inequalities.

We are already well on the way to ensuring that all patients can exercise choice in the care that they receive. *The Operating Framework for the NHS in England 2008/09*, published on 13 December 2007, confirmed that 'free choice' will be fully introduced from April 2008 for all patients requiring an elective referral. Patients will be able to choose services from any hospital provider that meets NHS standards and costs. Choice, however, is not just about elective hospital care. As choice develops, it will expand to include primary care and the treatment of long-term conditions.

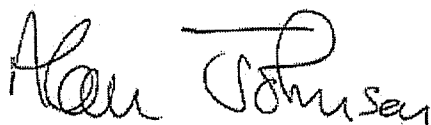
Choice is only one of the ways in which we are driving up quality. The new Care Quality Commission, which is to be established in April 2009, will assess both public and private providers of services to ensure that wherever patients are treated, services meet the high standards that the NHS expects. Money will follow patients, meaning that providers will compete on the quality of services they offer (rather than on the price of those services) to best meet the needs of patients.

For patients to exercise their choice effectively, and to ensure that they receive the treatment that best fits their needs, they need to have accurate information about services available to them. We are trying to make information more accessible, for example through the NHS Choices website. This is designed to help people make choices about their health and lifestyle, as well as give information on the various services that are available to them.

In addition to these sources of information, providers of NHS services may well wish to make additional information available to patients and the public, as well as to referring clinicians, about the services that they provide. The publication of information on the quality of services will increase transparency, and will provide an incentive for service improvement. Access to high-quality information on which to base choices will help drive up the quality of services, as patients will choose the service that best meets their needs.

In order to support this high-quality information, it is important that there are rules governing the types of promotional material that providers of NHS services produce. This Code of Practice therefore sets out rules that providers of NHS-funded services must follow when promoting their services. These rules are intended to ensure that material is accurate and fair, and to protect patients, the public and referring clinicians from offensive or misleading material. They are also intended to ensure that promotional material does not damage the brand or reputation of the NHS.

This is an important step towards making choice a reality in the NHS, giving patients the material they need to choose services that suit their needs, and encouraging providers to make their services more responsive to patients.

A handwritten signature in black ink that reads "Alan Johnson". The signature is written in a cursive style with a large, stylized initial 'A'.

Alan Johnson
Secretary of State for Health

Executive summary

Choice is fundamental to the delivery of a truly patient-centred NHS. We wish to empower people to get the health and social care services they want and need – leading to improved health and well-being. Choice also gives providers the incentive to tailor services to the needs and preferences of patients, in turn leading to better outcomes and the reduction of health inequalities.

Choice is now becoming a reality for many more patients who use the NHS. By 1 April 2008, patients will be able to choose to receive routine elective services from any hospital provider in England that meets NHS standards and costs. Patients and referrers need accessible, reliable and relevant information on services, their quality and how they compare, to make informed choices about their care and treatment. Clinical quality information, as well as informing choice, should help to drive up quality standards across the NHS.

Healthcare providers are also likely to want to supplement national sources of information, like the NHS Choices website, with more specific or customised information about their services available to patients. It will be essential, however, that such information is accurate, truthful and presented straightforwardly, and does not damage the reputation of other providers, nor that of the NHS as a whole.

In November 2006, the Department of Health published a consultation on a Code of Practice for the promotion of NHS services. It was originally intended that this Code would regulate the promotional activity of organisations providing services to NHS patients, to ensure that promotional activity is fair and accurate, and also that the brand and reputation of the NHS are protected.

Over 70 responses to the consultation were received, and this document sets out the Government response to the consultation, as well as publishing the final Promotion Code itself. It also describes the way in which the Promotion Code will relate to the existing Advertising Codes administered by the Advertising Standards Authority (ASA). The Advertising Codes apply to all advertisements in broadcast and non-broadcast media, including sales promotions and direct marketing. The Promotion Code requires that those areas that are already covered by the Advertising Codes should be taken forward through the ASA regime, and sets out additional NHS-specific rules that are outside the ASA's remit.

The principles set out in the Promotion Code will give useful guidance to all providers of NHS services. The Promotion Code will take immediate effect and will apply equally to all providers of NHS-commissioned services, whether they are from the independent sector, NHS providers or charities. Adherence to the Code will be enforced by primary care trusts (PCTs) through their contracts, and overseen by strategic health authorities (SHAs). However, regardless of the type of contract, where disputes cannot be resolved at the local level, SHAs will be able to refer them to the ASA or the Cooperation and Competition Panel ('the Panel') (depending on the nature of the complaint). Where there is not yet a contractual enforcement route in place, for example in the case of GP-provided services, the Promotion Code will still apply. SHAs will be able to refer matters to the Panel or the ASA, and the reputational damage of such a referral will act as an incentive to all providers to comply with the provisions of the Promotion Code.

In addition, members of the public and organisations will be able to complain directly to the ASA about advertisements that appear to breach the Advertising Codes.

The final Code is set out at page 31. It is largely based on the text of the draft Code that was published for consultation. Changes have been made in response to consultation, as well as to the proposed route for enforcing the Code. The final Code also clarifies those areas that are already regulated by the ASA and those new rules that are NHS-specific.

1. Introduction

Promotional activity in a patient choice environment

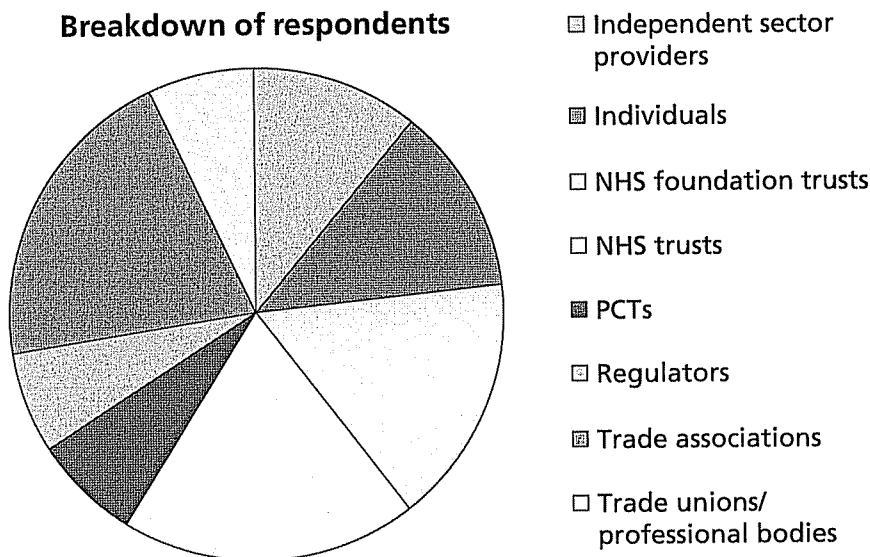
- 1.1 Choice is fundamental to the delivery of a truly patient-centred NHS. We wish to empower people to get the health and social care services they want and need – leading to improved health and well-being. Choice also gives providers the incentive to tailor services to the needs and preferences of patients, in turn leading to better outcomes and the reduction of health inequalities.
- 1.2 Choice is now becoming a reality for many more patients who use the NHS. By 1 April 2008, patients will be able to choose routine elective services from any provider in England that meets NHS standards and costs. Patients and referrers need accessible, reliable and relevant information on services, their quality and how they compare, to make informed choices about their care and treatment.
- 1.3 Providers may want to make more information about their services available to patients in order to help them make these choices. Clinical quality information, as well as patients exercising choice, should help to drive up quality standards across the NHS. Appropriate levels of promotional activity by providers are a way of making this information more easily available.
- 1.4 However, it is important that there are safeguards in place to protect referring clinicians, patients and the public from misleading or offensive promotional activity. It is important that these safeguards cover the full range of promotional activity that may be undertaken, including advertising, direct marketing to patients, and information directed at referring clinicians.
- 1.5 In November 2006, the Department of Health published a consultation on a Code of Practice for promotion of NHS services. This was the product of collaborative work between the Department of Health, NHS providers and bodies representing NHS providers and professionals.
- 1.6 It was originally intended that the Code of Practice would regulate the promotional activity of organisations providing services to NHS patients. While there are already rules that cover all advertising, such as the Codes administered by the ASA, the introduction of choice

and competition within the NHS has necessitated the production of guidelines that deal with issues specific to those providing NHS services.

- 1.7 The Code seeks to achieve a balance between the needs of patients, health professionals and the public, bearing in mind the social and political environment in which the industry operates.
- 1.8 This document sets out the responses to the consultation questions at Annex B, as well as a final Code of Practice on the promotion of NHS-funded services at page 31.

2. Response to the consultation

- 2.1 The draft Code of Practice that was consulted on was drawn up through collaboration with a number of key stakeholders, including the NHS Confederation, the ASA and NHS bodies. In addition, a number of workshops were run that looked at key aspects of promotional activity. Their findings were fed into the consultation document.
- 2.2 The consultation on the draft Code finished on 28 February 2007. Over 70 responses to the consultation were received. These came from a wide range of organisations, including NHS trusts, NHS foundation trusts, independent sector providers, PCTs, regulators and professional bodies, and individuals.
- 2.3 The figure below shows the breakdown of respondents.



- 2.4 All the responses received are published in Annex B.
- 2.5 Respondents were broadly supportive of the move to encourage the promotion of NHS-funded services, while putting certain safeguards in place through a Code of Practice. Several key themes emerged, which are dealt with in the remainder of this chapter.

How the Code relates to the Advertising Codes administered by the Advertising Standards Authority

- 2.6 One of the key issues raised during the consultation was the question of how the provisions of the Code would relate to the existing Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) Advertising Standards Codes.
- 2.7 It is important to note that the existing Advertising Standards Codes apply equally to all advertisements, sales promotions and direct marketing in the UK. Therefore, any promotional material produced by a provider of services (whatever sector they come from) will need to conform with the Advertising Standards Codes. Further information about the ASA and the Advertising Codes can be found at: www.asa.org.uk
- 2.8 The ASA administers three main Codes:
- **the British Code of Advertising, Sales Promotion and Direct Marketing ('the CAP Code')** – written and maintained by CAP, this Code covers all non-broadcast advertising;
 - **the BCAP TV Advertising Standards Code** – written and maintained by BCAP; and
 - **the BCAP Radio Advertising Standards Code** – written and maintained by BCAP.¹
- 2.9 The Promotion Code is intended to set out additional rules to protect users of NHS services, as well as the brand and reputation of the NHS. Some of the provisions in the draft Code that was published for consultation covered ground that is already regulated by the ASA. Responses to the consultation suggested that we simplify the system, that those areas already covered by the ASA should be taken forward through that existing route, and that the Promotion Code should cover only NHS-specific areas that are outside the ASA's remit.
- 2.10 We consider that it would be beneficial for the Promotion Code to be a piece of guidance that sets out all the rules (whether set down by the ASA or NHS-specific) that providers need to be aware of when undertaking promotional activity. In Chapter 3 we go through the Code we consulted on and state whether each rule is covered by the CAP and BCAP Codes, and, if it is not, whether we intend to take

¹ Details about the CAP and the BCAP, as well as all of the Advertising Codes, can be found at www.bcap.org.uk

it forward in the final Code as an NHS-specific rule. Where a rule is covered by the CAP and BCAP Codes, the relevant sections of those Codes is given. A link to the Codes can be found on page 38.

- 2.11 The final Code (Annex A) sets out the rules providers need to be aware of, and states if they are to be enforced by the ASA or through the NHS-specific route.
- 2.12 Providers should note that, while the final Promotion Code draws their attention to some key areas that are covered by the ASA, it is not an exhaustive list of all the provisions in the Advertising Codes. Providers must comply with the CAP and BCAP Codes in their entirety and should therefore refer to their website where these are set out in full.
- 2.13 The ASA will enforce issues that fall within its remit. Where a breach of the Promotion Code is outside the ASA's remit, it will be dealt with by PCTs and SHAs with expert advice from the Cooperation and Competition Panel (see page 10 for more details).

Structure and governance of the self-regulatory system as originally proposed

What the consultation document proposed

- 2.14 The consultation document proposed a draft governance structure. It suggested that providers of NHS services should sign up to the Code in the contract they hold with PCTs to provide services. It also proposed that the Code should be a self-regulatory scheme that would be administered through a secretariat and an expert panel. In addition, it suggested that the regulator should have reserve power to make alternative arrangements, which would be used if self-regulation were not effective.
- 2.15 The consultation document also proposed that the Code should be policed through rulings on complaints, which could be made by providers, GPs, PCTs and patients. A number of sanctions were envisaged, such as verbal warnings and written reprimands. If a complaint were upheld and escalated, then ultimately the contracting PCT would use the contract it held with the offending provider to take enforcement action.

Responses to the consultation

- 2.16 Many of the responses received on the proposed method of enforcement were concerned that it would be necessary to establish an entirely new system for policing the Code. These respondents suggested a heavier reliance on Advertising Codes enforced by the ASA.
- 2.17 The consultation document proposed a self-regulatory system, and there was considerable support from respondents for this idea rather than for the alternative of a regulated system which would be overseen by the Care Quality Commission.

Taking this forward

- 2.18 Those parts of the original Code that are covered by the CAP and BCAP Codes will be enforced by the ASA. However, an enforcement route is still required for the NHS-specific parts of the Code.
- 2.19 Since the consultation document was published, the Government has decided not to assign the additional role of regulating competition to the new regulator. Instead, competition issues are to be dealt with through the management of the contractual relationships between commissioners and providers, and assuring compliance with the Department's published *Principles and Rules for Cooperation and Competition*. In addition, a Cooperation and Competition Panel is to be established to provide advice to the Secretary of State for Health and SHAs and to oversee these principles and rules. Further details regarding the operation of this Panel will be published shortly.
- 2.20 The promotion of services is an aspect of competition policy. It is therefore appropriate that issues around enforcing the Promotion Code should be dealt with through the same mechanism. The Cooperation and Competition Panel ('the Panel') will be well placed to provide advice to SHAs on promotion issues, and to adjudicate on any disputes relating to possible breaches of the Promotion Code. In establishing the Panel, we will ensure that it has the expertise necessary to enable it to make judgements on promotional activity and enforce the Promotion Code fairly.
- 2.21 Adherence to the Code will be enforced by PCTs, and overseen by SHAs, with support from the Panel when required. All parties, both commissioners and providers, will be expected to abide by the Panel's adjudications on the Promotion Code.**

Scope

What the consultation document proposed

- 2.22 The consultation document suggested that the Code would be relevant to all promotional material relating to NHS services, but that in the first instance it is likely to be most applicable to providers of acute healthcare services. It asked a number of consultation questions about what type of services should be directly signed up to the Code.
- 2.23 While the Code is intended to apply to all providers of NHS services – no matter whether they are NHS, independent sector or charities – the consultation asked questions about how the Code should apply to providers who undertake both NHS and non-NHS work.

Responses to the consultation

- 2.24 Responses to the consultation were generally supportive of the idea that the Code would be relevant to providers of all NHS services. Many respondents agreed that if the Code were to apply to secondary care providers, then this would target the sector where the Code would initially be most relevant and important. Some respondents thought that the Code should apply equally to all sectors, fearing that if it applied initially only to secondary care, some services, such as mental health services, which fall somewhere between primary and secondary care, could be left out.
- 2.25 Consultation responses varied on the issue of providers who undertake work for NHS as well as non-NHS patients. There was a general understanding that in many cases it would be difficult to distinguish between promotion aimed at NHS and non-NHS patients.

Taking this forward

- 2.26 **The Promotion Code will apply equally to all providers of NHS-commissioned services, whether they are from the independent sector, NHS providers or charities. This includes providers of acute secondary care, GPs, community-based services, etc.** Although the Promotion Code applies to all providers of NHS-funded care, the enforcement routes for different types of providers may vary – see the Enforcement section on page 13 for more details.
- 2.27 In practice, there will of course be occasions when it is difficult to distinguish between promotional material aimed at NHS and non-NHS patients, and, indeed, this material may influence patients whatever sector they are treated in. As the NHS logo is protected by trade mark law, it can be used only on material that promotes NHS services.

Therefore, the Code would certainly apply to any material carrying the NHS logo. The Cooperation and Competition Panel will have a role in adjudicating on any disputes as to whether the Code should apply to any particular promotional material.

- 2.28 The provisions of the Promotion Code are intended only to cover material that promotes a particular service provider. They are not intended to cover general health improvement campaigns, run either nationally or locally, that do not aim to promote a specific provider of services.

Complaints and enforcement

Referrals

- 2.29 If an individual or organisation feels that a provider has breached part of the Promotion Code that is enforced by the ASA, then a complaint should be directed to the ASA. This can be done via the ASA's website: www.asa.org.uk/asa/how_to_complain/
- 2.30 If an individual or organisation feels that a provider has breached the NHS-specific parts of the Promotion Code, then a complaint should be made to the PCT that commissioned the services from the provider. In many cases, a number of different PCTs may have commissioned a provider of services; if this is the case, a complaint should be made to the PCT that covers the region in which the complainant lives.
- 2.31 If there is a more appropriate body to deal with the complaint, for example another PCT or the ASA, then the PCT that receives the complaint will pass it on. If the ASA receives a complaint that is outside its remit, it will forward this to the relevant SHA, which will work with the local PCT to investigate the complaint and resolve the issue.
- 2.32 PCTs may be able to resolve complaints locally, through discussion with the providers, and with the support of their SHA. In some cases, the PCT or SHA may feel that it needs to seek expert advice from the Cooperation and Competition Panel. In cases where resolution cannot be found, the PCT or SHA may refer the issue to the Panel.
- 2.33 The Cooperation and Competition Panel is expected to be operational from October 2008. This means that there will be a short interim period after the Promotion Code comes into force and before the appointment of the Panel. During this interim period, SHAs and PCTs will deal with issues and can seek advice from the Department of Health and key stakeholders, including the NHS Confederation, NHS

Partners, the Foundation Trust Network, the Mental Health Network and the PCT Network.

Enforcement

- 2.34 Adherence to the Code will be required in all contracts for NHS-funded services. The NHS contract for hospital care already contains the provision that signatories to the contract must comply with the provisions of the Code. This provision will be incorporated in all future standard national contracts such as those for mental health or community health services. In some cases, for example GPs, the Promotion Code will not be a contractual requirement.
- 2.35 Regardless of the type of contract, where disputes cannot be resolved at the local level, SHAs will be able to refer them to the ASA or the Panel (depending on the nature of the complaint).
- 2.36 It will be the responsibility of the PCT and SHA to enforce the Panel's adjudications relating to the Promotion Code. PCTs will do this through the contracts they hold with the providers. A contractual breach of this kind could lead to loss of payment or even termination of the contract. Whether or not a contract is in place, other enforcement levers will be available to PCTs, including:
- removal of the provider from the NHS Choices website (by agreement with the Department, through the SHA);
 - a letter sent from the Secretary of State for Health to the provider or its professional body (by agreement with the Department, through the SHA); and
 - negative publicity associated with a breach of the Code.

3. Point-by-point analysis of responses to the Code

This section deals with the provisions of the draft Code, as they appear in the consultation document *Code of Practice for promotion of NHS services* (Department of Health, November 2006). Text in a box is from the original Code that was consulted on. Points are dealt with in turn, and issues such as the consultation responses and any relationship with existing ASA Advertising Codes are discussed where necessary. Text indented as a bullet point is the text of the rules to be taken forward in the final Code.

Section A: General principles

3.1 Promotional activity must follow applicable laws and industry codes of practice.

The text of 3.1 has been taken forward at point 1 in the new Code.

3.2 Promotional activity must respect the ethical guidance and professional codes of conduct of clinicians and other health professionals.

The text of 3.2 has been taken forward at point 2 in the new Code.

3.3 Promotional activity should not cause widespread alarm, anxiety, distress or offence.

This is covered by the ASA's Codes:

CAP Code:	Clauses 5.1 and 9.1
BCAP TV Code:	Rules 6.1, 6.4 and 8.2.11
BCAP Radio Code:	Section 2, Rules 9 and 10

The text of the ASA Codes will be taken forward in the final Code. The substance of 3.3 will be covered by the following rules at points 3 and 4 of the final Code:

- Marketing communications should contain nothing that is likely to cause serious or widespread offence.
- No marketing communication should cause fear or distress without good reason.

These rules will be overseen by the ASA, and further details of these rules can be found in the CAP and BCAP Codes listed above.

3.4 Promotional activity must respect the age, possible disability, gender, ethnicity, religion or belief and sexual orientation of the audience and must comply with all relevant anti-discriminatory legislation. Providers should consider accessibility by different sectors of the population.

This rule is partially covered by the ASA's Codes:

CAP Code:	Clauses 4.1 and 5.1
BCAP TV Code:	Rules 1.1, 6.1 and 6.6
BCAP Radio Code:	Section 2, Rules 9, 12 and 13

This issue will be taken forward at point 5 of the final Code using the ASA's text:

- Particular care should be taken to avoid causing offence on the grounds of race, religion, sex, sexual orientation or disability.

This rule will be overseen by the ASA, and further details of this rule can be found in the CAP and BCAP Codes listed above.

In addition, the following NHS-specific rule is included at point 6 in the final Code to capture all aspects of 3.4:

- Providers should consider accessibility by different sectors of the population.

3.5 Promotional activity should not be directed at children under the age of 16.

Responses to the consultation on this issue were varied. Some supported an outright ban on any promotional activity directed at children. Others were concerned that this could put in place bars to their communication and engagement with children.

This issue is covered by the ASA's Codes:

CAP Code:	Rule 47
BCAP TV Code:	Rule 7
BCAP Radio Code:	Section 2, Rule 11

This issue will be taken forward at point 7 of the final Code using the ASA's text:

- Marketing communications addressed to, targeted at or featuring children should not exploit their credulity, loyalty, vulnerability or lack of experience.

3.6 Promotional activity must be clearly identifiable as such, in particular when written in an editorial style.

This rule is already covered by the ASA's Codes:

CAP Code:	Clauses 22.1, 22.2, 23.1 and 23.2
BCAP TV Code:	Rule 2.1
BCAP Radio Code:	Section 2, Rule 1

This issue will be taken forward at point 8 in the final Code using the ASA's text:

- Marketers, publishers and owners of other media should ensure that marketing communications are designed and presented in such a way that it is clear that they are marketing communications.

This rule will be overseen by the ASA, and further details of this rule can be found in the CAP and BCAP Codes listed above.

3.7 Promotional activity should be appropriate for the intended audience, for example communications aimed at patients should avoid medical jargon.

This rule is partially covered by the ASA's Codes:

CAP Code:	Clauses 7.1 and 50.9
BCAP TV Code:	Rule 5 (in particular 5.1(4))
BCAP Radio Code:	Section 2, Rule 3

These Codes state that no marketing communication should mislead, and that marketers should not use unfamiliar scientific words for common conditions. This, however, does not capture the full meaning of 3.7. The issue will therefore be taken forward at point 9 in the final Code as an NHS-specific rule using the original text:

- Promotional activity should be appropriate for the intended audience, for example communications aimed at patients should avoid medical jargon.

3.8 Promotional activity should not encourage the public to undergo unnecessary treatment.

This rule is already covered by the ASA's Codes:

CAP Code: Clauses 2.1 and 50.4
BCAP TV Code: Rule 8.1.4
BCAP Radio Code: Section 3, Rules 4.24 and 4.9

This issue will be taken forward at point 10 in the final Code using the ASA's text:

- No advertisement may encourage indiscriminate, unnecessary or excessive use of products.

This rule will be overseen by the ASA, and further details of this rule can be found in the CAP and BCAP Codes listed above.

3.9 Promotional material must not imitate the copy, slogans or general layout adopted by other providers in a way that is likely to mislead or confuse.

This rule is already covered by the ASA's Codes:

CAP Code: Clauses 7.1, 18.4, 21.1 and 21.2
BCAP TV Code: Rules 5.4.6 and 5.4.7
BCAP Radio Code: Section 2, Rules 3 and 2.6

This issue will be taken forward at point 11 of the final Code using the ASA's text:

- Promotional material should not create confusion between marketers and competitors or between marketers' products, trade marks, trade names or other distinguishing marks and those of competitors or official documents.

This rule will be overseen by the ASA, and further details of this rule can be found in the CAP and BCAP Codes listed above.

3.10 Reproductions of official documents must not be used for promotional activity unless permission has been given in writing by the appropriate body.

This is covered by the ASA Codes that also cover 3.9, and will therefore be taken forward in the new rule 11 above.

3.11 All providers must appoint a senior employee to be responsible for ensuring that their promotional activity meets the requirements of this Code. The name of this employee should be provided to the secretariat.

All providers of NHS services will have to adhere to the provisions of the Promotion Code. It is up to NHS providers how they ensure that they do this. Therefore, it is not thought necessary that the Code should stipulate which employees will be required to achieve this. This provision is therefore not taken forward in the final Code.

Section B: Protecting the reputation and brand policy of the NHS

Consultation responses showed broad support for the proposed rules to protect the brand and reputation of the NHS in Section B. Many respondents felt that these rules were sufficient when taken in conjunction with the existing guidelines on the use of the NHS logo and brand.

3.12 Promotional activity must not contravene the values and brand policy of the NHS.

The text of 3.12 has been taken forward at point 12 in the new Code.

3.13 No promotional activity should be undertaken that undermines the reputation of the NHS, NHS logos or trade marks (or services supplied under those logos or trade marks) or otherwise brings the same into disrepute.

In addition to this, it is important that no promotional activity should undermine public confidence in the NHS. This will therefore be added to the above rule, which will be taken forward at point 13 in the final Code using the following text:

- No promotional activity should be undertaken that undermines the reputation of the NHS, NHS logos or trade marks (or services supplied under those logos or trade marks) or otherwise brings the same into disrepute. Promotional activity should not undermine public confidence in the NHS. The logo is trademarked and may not be used by providers to promote non-NHS services or products.

3.14 No promotional activity by providers of NHS services should be undertaken that contravenes the use of the NHS logo as defined by the NHS brand policy. The logo is trademarked and may not be used by providers to promote non-NHS services or products.

Some consultation respondents thought it should be made clearer how these rules relate to promotional material relating to a provider who undertakes both NHS-funded and privately funded care. There was recognition among respondents that in some circumstances it may be difficult to distinguish between material aimed at NHS and private patients. However, the provision that the NHS logo may not be used to promote non-NHS services may help to clarify this – where the NHS logo is used, the Promotion Code will apply. Further guidance on this point is provided by the NHS brand policy.

The NHS brand policy includes guidelines on the correct use of the NHS brand. This point is therefore taken forward in the text of point 12 in the new Code.

3.15 No promotional activity should be undertaken that undermines the reputation of any individual providers, clinicians or other health professionals or otherwise brings the same into disrepute.

The text of 3.15 has been taken forward at point 14 in the new Code.

Section C: Direct marketing to the public and referring clinicians

3.16 Direct marketing to the public, their carers or advocates or to referring clinicians is only permissible where marketers comply with all relevant data protection legislation, the NHS Confidentiality Code of Practice and Mailing Preference Service requirements.

The original wording of this rule has been kept, and can be found at point 15.

3.17 Mailing lists must be kept up to date. Requests to be removed from promotional mailing lists must be complied with promptly and no name may be restored except at the addressee's request or with their permission.²

The original wording of this rule has been kept, and can be found at point 16.

² This paragraph covers all mailing lists and customer contact lists, including but not limited to telephone and email marketing lists.

Section D: Information, claims and comparisons

3.18 All information, claims and comparisons should present accurate, balanced and fair information about services and make clear any material exclusion, limitation or qualification. They should not mislead either directly or by implication, distortion, exaggeration or undue emphasis.

This rule is already covered by the ASA's Codes:

CAP Code:	Clauses 7.1, 18.1 and 19.1
BCAP TV Code:	Rules 5.1, 5.2 and 5.4.6
BCAP Radio Code:	Section 2, Rule 3

This issue will be taken forward at points 17 and 18 of the final Code using the ASA's text:

- No marketing communication should mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.
- Comparative claims are permitted in the interests of vigorous competition and public information. They should neither mislead nor be likely to mislead.³

These rules will be overseen by the ASA, and further details of these rules can be found in the CAP and BCAP Codes listed above.

3.19 Any information, claim or comparison made must be capable of independent verification. Providers should hold adequate, objective substantiation of claims prior to making those claims, and they should provide this evidence within 10 working days on request. Such evidence should be retained for 12 months after the end of the promotional campaign.

This rule is already covered by the ASA's Codes:

CAP Code:	Clauses 3.1, 3.2 and 3.4
BCAP TV Code:	Rule 5.2.1
BCAP Radio Code:	Section 2, Rule 3c

³ An example of a misleading comparison would be for a provider to state that patients being treated by them could expect to be home in half the time than if they were treated by a particular competitor, where the provider making that statement was treating a significantly less complicated case mix than their competitor.

This issue will be taken forward at point 19 of the final Code using the ASA's text:

- Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation.

This rule will be overseen by the ASA, and further details of this rule can be found in the CAP and BCAP Codes listed above.

3.20 Claims in promotional material must be capable of standing alone as regards accuracy, and, in general, claims should not be qualified by the use of footnotes and the like.

This issue is covered by the ASA's general rules on misleadingness, which are being taken forward in new rule 17 above. The ASA's Codes do not, however, specifically address this issue. Therefore, for clarity and guidance, the original text of 3.20 will be taken forward at point 20 of the new Code.

3.21 Comparative promotion is permissible where it complies with applicable laws and meets the requirements of this Code.⁴

This rule is covered by the ASA's existing Codes set out in the response to 3.18 above, and will be taken forward at point 18.

3.22 A direct comparison is only permitted in promotional material where:

- it is not misleading;⁵
- services for the same needs or intended for the same purpose are compared;
- one or more material, relevant, substantial and representative feature(s) are compared;
- no confusion is created between the service promoted and the services of a competitor.

4 The Code does not preclude the use of other providers' names when making comparisons. Provided that such critical references to another provider's services are accurate, fair and balanced, and can be substantiated, they are acceptable under this Code. Copy in which the services of a competitor are unfairly denigrated is prohibited.

5 An example of a misleading comparison would be for a provider to state that patients being treated by them could expect to be home in half the time than if they were treated by a particular competitor, where the provider making that statement was treating a significantly less complicated case mix than their competitor.

This rule is covered by the ASA's existing Codes set out in the response to 3.18 above, and will be taken forward at point 18.

3.23 Where promotional statements are based on data, all such statements must be an accurate and not misleading representation of the data.⁶

This rule is covered by the ASA's existing Codes set out in the response to 3.18 above, and will be taken forward at point 17.

3.24 Providers must be open about the source and date of the data used in any promotional activity.

This rule is covered by the ASA's existing Codes on data set out in the response to 3.18 above. The ASA's Codes do not, however, specifically address this issue. Therefore, for clarity and guidance, the original text of 3.24 will be taken forward at point 21 of the new Code.

3.25 Providers should use only the most recently available data if they wish to use statistical information or claims based on statistical information in their promotions.

This issue is covered by the ASA's general rules on misleadingness, which are being taken forward at point 18 above. The ASA's Codes do not, however, specifically address this issue. Therefore, for clarity and guidance, the original text of 3.25 will be taken forward at point 22 of the new Code.

3.26 Providers must make clear any significant limitations in the quality of the data used to make promotional claims.⁷

This rule is covered by the ASA's existing Codes set out in the response to 3.18 above, as it would be misleading for a marketer to present, in a

6 An example of a misleading use of data would be using proportions based on a small sample, such as reporting a day case rate of 50 per cent, where this is based on doing one day case out of a total of two. Another example would be to quote one figure from a wider study, where viewing that figure in isolation would lead to an interpretation at odds with the findings of the study as a whole. Differences that do not reach statistical significance should also not be presented in such a way as to mislead.

7 An example of this would be a provider using a survey where the sample size was small, or had a high non-response rate, or where loaded questions had been asked to elicit a certain preferred response.

marketing communication, information compiled from unreliable data. This will therefore be taken forward at point 17.

Section E: Provider representatives

3.27 Representatives of providers should be adequately trained and have sufficient knowledge to enable them to provide full and accurate information about the services they promote.

This rule relates to internal matters, eg staff training. This should be a matter for organisations to ensure internally, and it is therefore not thought that this level of detail should be included in the final Code. This rule is therefore not being taken forward.

3.28 Representatives of providers must act in accordance with high ethical standards, must not receive benefits based on referrals, and must make it clear that they are representatives of the provider. Their statements are promotional activity.

The original wording of this rule has been kept, and can be found at point 23.

3.29 All provisions in this Code relating to the need for accuracy, balance and fairness apply to oral representations as well as to printed material.

The original wording of this rule has been kept, and can be found at point 24.

Section F: Expenditure

3.30 Providers will be expected to recognise the potential effect on the reputation of the NHS of disproportionate expenditure on promotional activity. The cost of TV or cinema promotion is very unlikely to be justifiable.

The original wording of this rule has been kept, and can be found at point 25.

3.31 Responsibility for appropriate promotional expenditure lies with provider organisations' boards. In addition, organisations may be required to:

- record and disclose their annual spend on buying media space for promotional activity;⁸ or
- limit expenditure to a level determined by the secretariat and agreed by the members of the self-regulatory system and the Department of Health.

3.32 The expenditure figure should be published in the annual report, or other appropriate format when an annual report is not produced, and, for NHS organisations, should be a specific agenda item for discussion at the annual board meeting.

Responses to the consultation were reasonably split on this issue, with provider bodies tending to be more in favour of open disclosure of spending, while some professional groups tended to support a cap on expenditure.

While there was some support for the idea of either capping spending or insisting that organisations openly state the amount that they spend on promotional activity, the operation of tariff will provide its own limit on expenditure. That is, if all organisations are paid tariff for the services they provide, they should then be able to decide how to invest the money they are paid, and indeed it is unlikely that they would have excessive amounts of surplus to spend on marketing.

While some respondents were in favour of placing a cap on the amount of money organisations could spend on promoting their services, the Government has decided that this would be too restrictive, especially for independent sector organisations. On the other hand, the Government has also decided that it would be appropriate to require all providers of NHS services to publicly disclose the amounts they spend on promotional activity. This would ensure that there will be open scrutiny of practice, as well as providing a limit, because excessive spending could damage the reputation of the organisation undertaking the promotional activity.

⁸ The cost of buying media space for promotion, including advertorial (eg promotion presented as if it is editorial material), which has the primary purpose of influencing the choice of provider for NHS services, excluding activity such as creative work, research, wider public relations work, or any activity that forms part of a recruitment or health promotion campaign.

Therefore, this issue will be taken forward with the following NHS-specific rules found at points 26 and 27 in the final Code:

- Responsibility for appropriate promotional expenditure lies with provider organisations' boards.
- The expenditure figure should be published in the annual report, or other appropriate format when an annual report is not produced.

3.33 All providers are required to report these figures to the secretariat after the close of the relevant financial year. The secretariat will publish these figures on an annual basis.

This provision is not being taken forward in the final Promotion Code, as the secretariat that was proposed in the consultation document is not being taken forward (see page 9).

Section G: Gifts, inducements and promotional aids to referring clinicians and commissioners

3.34 No gift, benefit in kind or pecuniary advantage should be offered or given to clinicians, other health professionals, administrative staff or commissioners as an inducement to refer or commission services.

3.35 Promotional aids, whether related to a particular service or of general utility, may be distributed to members of the health professions, appropriate administrative staff and commissioners, provided that the promotional aids are inexpensive and relevant to the practice of their profession or employment.⁹

3.36 Items provided on long-term or permanent loan are regarded as gifts and subject to the requirements of this Code.

3.37 Items for the personal benefit of health professionals, commissioners or administrative staff must not be offered or provided.

⁹ Promotional aids must be inexpensive and relevant to the recipients' work and are more likely to be acceptable if they benefit patient care. An inexpensive promotional aid means one that has cost the donor no more than £6, excluding VAT. The perceived value to the recipient must be similar. Items of general utility that are acceptable promotional aids for health professionals, administrative staff and commissioners include stationery items, such as computer accessories for business use, pens, pads, diaries and calendars, and clinical items such as nail brushes, surgical gloves, tongue depressors, tissues and peak flow meters.

3.38 The offering of reasonable hospitality is permitted where this is offered at purely professional or scientific events where it is subordinate to the main scientific objective of the event and is offered only to clinicians, health professionals, commissioners or relevant administrative staff.

3.39 These events must be held in appropriate venues conducive to the main purpose of the event. The level of subsistence offered must be appropriate and not out of proportion to the occasion. The costs involved must not exceed the level that the recipients would normally choose when paying for themselves.

The original wording of rules 3.34 to 3.39 has been kept, and can be found at points 28 to 33 of the final Code.

3.40 Where appropriate, contracts for services must be consistent with the principles outlined in the Code of Conduct on Payment by Results.

While contracts must of course be consistent with the principles outlined in the Code of Conduct on Payment by Results, this does not need to be stated in the Promotion Code. This rule will therefore not be taken forward.

Section H: Inducements to the public

3.41 No financial inducements or benefits for treatment (including by way of sales promotions) shall be offered to the public, their carers or advocates, nor any inducements or benefits that could be perceived as damaging to their health.

The original wording of this rule has been kept, and can be found at point 34 of the final Code.

Section I: Testimonials and endorsements

The following ASA Codes relate to rules around testimonials:

CAP Code:	Rule 14
BCAP TV Code:	Rule 5.4.4
BCAP Radio Code:	Section 2, Rule 18 and Section 3, Rule 4.12

3.42 Testimonials and endorsements must be based on genuine experience, given freely without either financial payment or other inducement, and must not be used to denigrate another provider.

The ASA rules (CAP Code 14.4) state that: Fictitious testimonials should not be presented as though they are genuine.

However, for the advertising of NHS services, we wish to ensure that only testimonials that are based on genuine experience can be used, and that people should not be paid to provide testimonials. Therefore, the text of 3.42 will be kept and can be found at point 35 in the final Code.

3.43 Testimonials and endorsements must represent the current views of the individual concerned and providers must retain written, signed and dated evidence of consent from any individual providing a testimonial.

This is covered by the ASA and will be taken forward using the ASA's text at point 36:

- Marketers should hold signed and dated proof, including a contact address, for any testimonial they use. Unless they are genuine opinions taken from a published source, testimonials should be used only with the written permission of those giving them.

3.44 Testimonials and endorsements must be representative of patients' views generally as substantiated by patient surveys. They must also comply with the general principles set out in this Code.

The original wording of this rule has been kept, and can be found at point 37 of the final Code.

3.45 The above shall not prevent providers from paying individuals to be involved in general promotional campaigns.

Some responses to the consultation felt that this rule contradicted that set out at 3.42. However, while we do not wish people to be paid to provide testimonials, this does not mean that people cannot be paid for other types of involvement in general promotional campaigns – for example, designing artwork or opening new facilities. Therefore, the original text of this rule will be retained and can be found at point 38 in the final Code.

3.46 Public figures who are likely to be perceived by the general public as medical experts are not permitted to be involved in general promotional campaigns or to provide testimonials.

In the consultation document, questions were asked about whether public figures, medical experts or public figures who might be perceived as medical experts should be excluded from involvement in promotional campaigns and giving testimonials.

Consultation responses on this point were mixed. Some respondents were against the use of any kind of public figure in promotional campaigns. Others thought that as long as testimonials were based on genuine experience, and people were not paid to give them, then anyone, including public figures and medical experts, should be allowed to have their say. We think that the text of 3.42 gives sufficient protection, and that testimonials from anyone can be used as long as they are genuine and freely given. **Public figures and medical experts will not be prevented from giving testimonials.**

Responses to the question of whether public figures and medical experts should be allowed to be involved in general promotional campaigns were again varied. Some respondents were against it, while others pointed out that for a long time public figures have had a role in promoting and supporting local hospitals, and stated that this rule would damage these existing campaigns. We therefore think that the rule that testimonials cannot be paid for offers sufficient protection; public figures and medical experts will not be banned from involvement in promotional activity.

A consultation question was asked about whether there should be specific exclusions relating to testimonials from children. Again, consultation responses were mixed, but some felt that such a ban would prevent useful patient and public engagement work that could be done around services used by children. Allowing testimonials from children, with the added safeguard that these can only be given with a parent or guardian's consent, should provide the necessary safeguards to ensure that children are not manipulated into giving testimonials, but are also allowed to have their views heard. However, discretion needs to be used around seeking testimonials, particularly for services where young people strongly value confidentiality, such as sexual health and substance misuse services. Therefore, the following rule will be included at point 39 of the final Code:

- Testimonials from children may be used if they are given with the consent of a parent or guardian.

3.47 Quotations must be faithfully reproduced (except where adaptation or modification is required in order to comply with the Code) and must accurately reflect the meaning of the author. The precise source of the quotation must be identified.

The original wording of this rule has been kept, and can be found at point 40 of the final Code.

3.48 The utmost care must be taken to avoid ascribing claims or views to authors when these no longer represent the current views of the authors concerned.

The original wording of this rule has been kept, and can be found at point 41 of the final Code.

Section J: Sponsorship

3.49 Sponsorship is permitted where it is not associated with matters, and co-sponsors are not associated with matters, that are damaging to health or associated with gambling, alcohol, tobacco, weight control, politics or private healthcare.

The wording of this rule will be clarified, to make it plain that the rules on sponsorship relate to sponsorship undertaken by providers of NHS-funded services, for example sponsoring a 'get fit club'. These rules do not relate to the sponsorship of NHS facilities. Some respondents to the consultation expressed concern with the proposed wording of this rule, as it banned sponsorship that related to private healthcare. We have removed this restriction, as some providers of NHS-funded services will be providers of private healthcare themselves, and it would not be fair to prevent them from undertaking sponsorship activity. The following rule will be taken forward at point 42 in the final Code:

- Providers of NHS-funded services are permitted to undertake sponsorship where it is not associated with matters, and co-sponsors are not associated with matters, that are damaging to health or associated with gambling, alcohol, tobacco, weight control or politics.

3.50 All sponsorship should comply with relevant NHS guidance on the subject, NHS brand policy and guidelines, and any local NHS guidance.

3.51 Providers may sponsor materials relating to health or healthcare but must ensure that it is clear from the outset that those materials are so sponsored. Sponsored materials may be treated as promotional activity for the purposes of this Code.

3.52 Providers must not engage in 'product placement' activity, ie inclusion of, or reference to, them, their products or services within a film or programme in return for payment or other valuable consideration (whether the recipient of that payment or other valuable consideration is the programme- or film-maker or any other third party).

The rules on sponsorship set out at 3.50 to 3.52 will be taken forward in the final Code. These can be found at points 43 to 45 of the final Code.

Section K: Compliance with undertakings

3.53 When an undertaking has been given in relation to a ruling under this Code, the provider concerned must ensure that it complies with that undertaking.

The original wording of this rule has been kept, and can be found at point 46 of the final Code.

Code of Practice for the promotion of NHS-funded services

All marketing communications must comply with all of the Advertising Codes administered by the ASA. (See www.cap.org.uk for the CAP and BCAP Codes.)

The following rules apply to all promotional activity undertaken by providers of NHS-funded services. Where a complaint falls within the scope of the CAP and BCAP Codes, the ASA will adjudicate on the complaint. Where a complaint is outside the ASA's remit, PCTs and SHAs will adjudicate on the NHS Code with advice from the Cooperation and Competition Panel, where needed, and will enforce the NHS Code.

General principles

1. Promotional activity must follow applicable laws and industry codes of practice.
2. Promotional activity must respect the ethical guidance and professional codes of conduct of clinicians and other health professionals.
3. Marketing communications should contain nothing that is likely to cause serious or widespread offence.
4. No marketing communication should cause fear or distress without good reason.
5. Particular care should be taken to avoid causing offence on the grounds of race, religion, sex, sexual orientation or disability.
6. Providers should consider accessibility by different sectors of the population.
7. Marketing communications addressed to, targeted at or featuring children should not exploit their credulity, loyalty, vulnerability or lack of experience.
8. Marketers, publishers and owners of other media should ensure that marketing communications are designed and presented in such a way that it is clear that they are marketing communications.

9. Promotional activity should be appropriate for the intended audience, for example communications aimed at patients should avoid medical jargon.
10. No advertisement may encourage indiscriminate, unnecessary or excessive use of products.
11. Promotional material should not create confusion between marketers and competitors or between marketers' products, trade marks, trade names or other distinguishing marks and those of competitors or official documents.

Protecting the reputation and brand policy of the NHS

12. Promotional activity must not contravene the values and brand policy of the NHS, including the use of the NHS logo (please see www.nhsidentity.nhs.uk).
13. No promotional activity should be undertaken that undermines the reputation of the NHS, NHS logos or trade marks (or services supplied under those logos or trade marks) or otherwise brings the same into disrepute. Promotional activity should not undermine public confidence in the NHS. The logo is trademarked and may not be used by providers to promote non-NHS services or products.
14. No promotional activity should be undertaken that undermines the reputation of any individual providers, clinicians or other health professionals or otherwise brings the same into disrepute.

Direct marketing to the public and referring clinicians

15. Direct marketing to the public, their carers or advocates or to referring clinicians is only permissible where marketers comply with all relevant data protection legislation, the NHS Confidentiality Code of Practice and Mailing Preference Service requirements.
16. Mailing lists must be kept up to date. Requests to be removed from promotional mailing lists must be complied with promptly and no name may be restored except at the addressee's request or with their permission.¹⁰

¹⁰ This paragraph covers all mailing lists and customer contact lists, including but not limited to telephone and email marketing lists.

Information, claims and comparisons

17. No marketing communication should mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.
18. Comparative claims are permitted in the interests of vigorous competition and public information. They should neither mislead nor be likely to mislead.¹¹
19. Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation.
20. Claims in promotional material must be capable of standing alone as regards accuracy, and, in general, claims should not be qualified by the use of footnotes and the like.
21. Providers must be open about the source and date of the data used in any promotional activity.
22. Providers should use only the most recently available data if they wish to use statistical information or claims based on statistical information in their promotions.

Provider representatives

23. Representatives of providers must act in accordance with high ethical standards, must not receive benefits based on referrals, and must make it clear that they are representatives of the provider. Their statements are promotional activity.
24. All provisions in this Code relating to the need for accuracy, balance and fairness apply to oral representations as well as to printed material.

Expenditure

25. Providers will be expected to recognise the potential effect on the reputation of the NHS of disproportionate expenditure on promotional activity. The cost of TV or cinema promotion is very unlikely to be justifiable.

¹¹ An example of a misleading comparison would be for a provider to state that patients being treated by them could expect to be home in half the time than if they were treated by a particular competitor, where the provider making that statement was treating a significantly less complicated case mix than their competitor.

26. Responsibility for appropriate promotional expenditure lies with provider organisations' boards.
27. The expenditure figure should be published in the annual report, or other appropriate format when an annual report is not produced.

Gifts, inducements and promotional aids to referring clinicians and commissioners

28. No gift, benefit in kind or pecuniary advantage should be offered or given to clinicians, other health professionals, administrative staff or commissioners as an inducement to refer or commission services.
29. Promotional aids, whether related to a particular service or of general utility, may be distributed to members of the health professions, appropriate administrative staff and commissioners, provided that the promotional aids are inexpensive and relevant to the practice of their profession or employment.¹²
30. Items provided on long-term or permanent loan are regarded as gifts and subject to the requirements of this Code.
31. Items for the personal benefit of health professionals, commissioners or administrative staff must not be offered or provided.
32. The offering of reasonable hospitality is permitted where this is offered at purely professional or scientific events where it is subordinate to the main scientific objective of the event and is offered only to clinicians, health professionals, commissioners or relevant administrative staff.
33. These events must be held in appropriate venues conducive to the main purpose of the event. The level of subsistence offered must be appropriate and not out of proportion to the occasion. The costs involved must not exceed the level that the recipients would normally choose when paying for themselves.

¹² Promotional aids must be inexpensive and relevant to the recipients' work and are more likely to be acceptable if they benefit patient care. An inexpensive promotional aid means one that has cost the donor no more than £6, excluding VAT. The perceived value to the recipient must be similar. Items of general utility that are acceptable promotional aids for health professionals, administrative staff and commissioners include stationery items, such as computer accessories for business use, pens, pads, diaries and calendars, and clinical items such as nail brushes, surgical gloves, tongue depressors, tissues and peak flow meters.

Inducements to the public

34. No financial inducements or benefits for treatment (including by way of sales promotions) shall be offered to the public, their carers or advocates, nor any inducements or benefits that could be perceived as damaging to their health.

Testimonials and endorsements

35. Testimonials and endorsements must be based on genuine experience, given freely without either financial payment or other inducement, and must not be used to denigrate another provider.
36. Marketers should hold signed and dated proof, including a contact address, for any testimonial they use. Unless they are genuine opinions taken from a published source, testimonials should be used only with the written permission of those giving them.
37. Testimonials and endorsements must be representative of patients' views generally as substantiated by patient surveys. They must also comply with the general principles set out in this Code.
38. The above shall not prevent providers from paying individuals to be involved in general promotional campaigns.
39. Testimonials from children may be used if they are given with the consent of a parent or guardian.
40. Quotations must be faithfully reproduced (except where adaptation or modification is required in order to comply with the Code) and must accurately reflect the meaning of the author. The precise source of the quotation must be identified.
41. The utmost care must be taken to avoid ascribing claims or views to authors when these no longer represent the current views of the authors concerned.

Sponsorship

42. Providers of NHS-funded services are permitted to undertake sponsorship where it is not associated with matters, and co-sponsors are not associated with matters, that are damaging to health or associated with gambling, alcohol, tobacco, weight control or politics.

43. All sponsorship should comply with relevant NHS guidance on the subject, NHS brand policy and guidelines, and any local NHS guidance. (Please see Links and useful information.)
44. Providers may sponsor materials relating to health or healthcare but must ensure that it is clear from the outset that those materials are so sponsored. Sponsored materials may be treated as promotional activity for the purposes of this Code.
45. Providers must not engage in 'product placement' activity, ie inclusion of, or reference to, them, their products or services within a film or programme in return for payment or other valuable consideration (whether the recipient of that payment or other valuable consideration is the programme- or film-maker or any other third party).

Compliance with undertakings

46. When an undertaking has been given in relation to a ruling under this Code, the provider concerned must ensure that it complies with that undertaking.

Complaints and enforcement

If an individual or organisation feels that a provider has breached part of the Promotion Code that is enforced by the ASA, then complaints should be directed to the ASA. This can be done via the ASA's website: www.asa.org.uk/asa/how_to_complain/

If an individual or organisation feels that a provider has breached the NHS-specific parts of the Promotion Code, then a complaint should be made to the PCT that commissioned the services from the provider. In many cases, a number of different PCTs may have commissioned a service provider; if this is the case, a complaint should be made to the PCT that covers the region in which the complainant lives.

If there is a more appropriate body to deal with the complaint, for example another PCT or the ASA, then the PCT that receives the complaint will pass it on. If the ASA receives a complaint that is outside its remit, it will forward this to the relevant SHA, which will work with the local PCT to investigate the complaint and resolve the issue.

PCTs may be able to resolve complaints locally, through discussion with the providers, and with the support of their SHA. In some cases, the PCT or SHA may feel that it needs to seek expert advice from the Cooperation and Competition Panel. In cases where resolution cannot be found, the PCT or SHA may refer the issue to the Panel.

The Panel is expected to be operational from October 2008. This means that there will be a short interim period after the Promotion Code comes into force and before the appointment of the Panel. During this interim period, SHAs and PCTs will deal with issues and can seek advice from the Department of Health and key stakeholders, including the NHS Confederation, NHS Partners, the Foundation Trust Network, the Mental Health Network and the PCT Network.

Annex A: Links and useful information

Applicable legislation

The following references are intended as a guide only, and are in no way intended to represent an exhaustive list of legislation that may affect promotional activity:

- The Control of Misleading Advertisements Regulations 1988
- The Trade Descriptions Act 1968
- The Consumer Protection Act 1987
- The Data Protection Act 1998
- The Privacy and Electronic Communications (EC Directive) Regulations 2003
- The Race Relations Act 1976 and the Race Relations (Amendment) Act 2000
- The Disability Discrimination Act 1995

Other industry codes of practice

Committee of Advertising Practice Codes, administered by the Advertising Standards Authority, *The British Code of Advertising, Sales Promotion and Direct Marketing*

www.asa.org.uk/asa/codes

Department of Health, *Standards of Business Conduct for NHS Staff*

www.dh.gov.uk/assetRoot/04/06/50/45/04065045.pdf

Association of the British Pharmaceutical Industry, *Code of Practice for the Pharmaceutical Industry*

www.abpi.org.uk/links/assoc/PMCPA/code06use.pdf

www.pmcpcpa.org.uk

Medicines and Healthcare products Regulatory Agency, *The Blue Guide: Advertising and Promotion of Medicines in the UK*

www.mhra.gov.uk/home/idcplg?IdcService=GET_FILE&dDocName=con007552&RevisionSelectionMethod=Latest

We would also encourage providers to comply with other relevant industry membership codes of practice, where appropriate, such as:

Chartered Institute of Marketing, *Code of Professional Standards, Ethics and Disciplinary Procedures*
www.cim.co.uk

Direct Marketing Association, *Code of Practice*
www.dma.org.uk/content/Pro-Code.asp

Email Marketing Council, *Best Practice Guidelines*
www.dma.org.uk/content/Pro-BestPractice.asp?grp=8

Market Research Society, *Code of Conduct*
www.mrs.org.uk/standards/codeconduct.htm

Chartered Institute of Public Relations, *Code of Conduct*
www.ipr.org.uk

Ethical guidance and professional codes of conduct for clinicians and other health professionals

Some of the key codes of conduct to consider are:

General Medical Council, *Good Medical Practice*
www.gmc-uk.org/guidance/good_medical_practice/index.asp

Royal College of Surgeons of England, *Good Surgical Practice*
www.rcseng.ac.uk/publications/docs/good_surgical_practice.html

Royal College of Physicians, *Good Medical Practice for Physicians*
www.rcplondon.ac.uk/college/pa/prof_gmpfp.htm

Nursing and Midwifery Council, *The NMC Code of Professional Conduct: Standards for Conduct, Performance and Ethics*
www.nmc-uk.org/aDisplayDocument.aspx?documentID=201

Health Professions Council, *Standards of Conduct, Performance and Ethics*
www.hpc-uk.org/publications/standards/index.asp?id=38

General Dental Council, *Standards for Dental Professionals*
www.gdc-uk.org/News+publications+and+events/Publications/Guidance+documents/Standards+for+dental+professionals.htm

Brand policy and values of the NHS

www.nhsidentity.nhs.uk

Data protection legislation and NHS Confidentiality Code of Practice

Data Protection Act 1998

www.opsi.gov.uk/acts/acts1998/19980029.htm

Department of Health guidance for the NHS on the Data Protection Act 1998

www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/RecordsManagement/DataProtectionAct1998Article/fs/en?CONTENT_ID=4000489&chk=VrXoGe

Department of Health, *Confidentiality: NHS Code of Practice*

www.dh.gov.uk/assetRoot/04/06/92/54/04069254.pdf

Mailing Preference Service

www.mpsonline.org.uk

NHS commercial sponsorship guidelines

Department of Health, *Commercial Sponsorship: Ethical Standards for the NHS*

www.dh.gov.uk/assetRoot/04/07/60/78/04076078.pdf

These URLs were correct at the time of publication. If the link is no longer working, please go to the organisation's home page and use the search facility.

Annex B: Answers to consultation questions

The references below relate to the draft Code of Practice for promotion of NHS services (DH, November 2006)

www.dh.gov.uk/en/consultations/closedconsultations/DH_063280

Consultation question	Page	Response
Which organisation should the secretariat be sited within?	10	No longer applicable
Do you have any views on the make-up of the Expert Panel?	10	No longer applicable
Should parties be allowed to be represented by lawyers?	11	There will be nothing in the Code to prevent this
Do you have any views on the suggested sanctions?	12	No longer applicable
In line with the approach to health reform, should the Code initially apply to secondary care providers, particularly in elective care?	13	No
Should the Code be rolled out to other areas of healthcare provision?	13	Yes
Should this include GPs, dentists, pharmacists, etc?	13	Yes
Should the Code apply to all promotion activity by providers that undertake both NHS and non-NHS work?	13	No – the Code will apply to the promotion of any NHS-funded service
Is it possible to distinguish between promotion aimed at NHS and non-NHS patients?	13	Not always simple – use of the NHS logo will be useful in this
Do you have any comments on these principles?	15	Not applicable

Consultation question	Page	Response
Does this section provide sufficient protection for the reputation and brand of the NHS and individual providers, clinicians and health professionals?	15	Yes – taken forward in the final Code
Do you have any comments on these principles regarding information, claims and comparisons?	17	Not applicable
Should expenditure be limited through transparent disclosure or a cap determined by the secretariat?	18	Transparent disclosure of expenditure
How would the level of the cap be determined?	18	Not applicable
Do you have any views on the definition provided in the footnote?	18	This definition is to be used
Is it possible to distinguish between expenditure on promotional activity aimed at NHS and non-NHS patients?	18	Not always – the use of the NHS logo will be useful in this
Do you have any comments on these principles?	19	Not applicable
Should this clause apply only to public figures who are not medical experts but are likely to be perceived as such (eg actors)?	20	The same rules will apply to everyone – people should not be paid to give testimonials
Should medical experts who are also public figures be permitted to be involved in promotional campaigns?	20	Testimonials must be based on genuine experience, whoever they come from
Should there be specific exclusions relating to testimonials from children?	20	No – providing they are given with a parent's/ guardian's consent

Consultation question	Page	Response
Should there be specific exclusions relating to testimonials from celebrities or others likely through their position or fame to influence consumers?	20	No – if testimonials are based on genuine experience and given freely
Do you have any comments on these principles?	21	Not applicable
Should the Code specifically cover sponsorship or promotion scheduled immediately prior to or following fictional or factual broadcast material with a medical content or theme?	21	No



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