



British
Dental
Industry
Association

Memorandum, Articles of Association and **Code of Practice**

MEMORANDUM OF ASSOCIATION OF THE BRITISH DENTAL INDUSTRY ASSOCIATION

Company No: 3488299

1. The name of the Company is “THE BRITISH DENTAL INDUSTRY ASSOCIATION” hereinafter called the “Association”.
2. The Association’s registered office is to be situated in England and Wales.
3. The Association’s objects are:
 - i. To promote the establishment and maintenance of a viable dental industry and trade in the United Kingdom; to establish and operate a Code of Practice for the Members; to be represented on international bodies having similar aims; to maintain liaison with all appropriate Governmental public and professional organisations in the United Kingdom and elsewhere; through representation at national and international levels with recognised bodies to assist in the establishment and maintenance of proper standards for dental products; to assist members to maintain high standards in the supply of goods and services to their customers; to take part in the organisation of dental exhibitions; to apply for, utilise and distribute any educational/training funds, grants and other financial assistance that may be available; and generally to promote by all lawful means the interests of those engaged in the United Kingdom in the Dental Industry and Trade.
 - ii. To carry on any other trade or business whatever which can in the opinion of the Council be advantageously carried on in connection with or ancillary to any of the businesses of the Association.
 - iii. To purchase or by any other means acquire and take options over any property whatever, and any rights or privileges of any kind over or in respect of any property.
 - iv. To apply for, register, purchase, or by other means acquire and protect, prolong and renew, whether in the United Kingdom or elsewhere any patents, patents rights, brevets d’invention, licences, secret processes, trade marks, designs, protections and concessions and to disclaim, alter, modify, use and turn to account and to manufacture under or grant licences or privileges in respect of the same, and to expend money in experimenting upon, testing and improving any patents, inventions or rights which the Association may acquire or propose to acquire.
 - v. To acquire or undertake the whole or any part of the business, goodwill, and assets of any person, firm, or company carrying on or proposing to carry on any of the businesses which the Association is authorised to carry on and as part of the consideration for such acquisition to undertake all or any of the liabilities of such person, firm or company, or to acquire an interest in, amalgamate with, or enter into partnership or into any arrangement for sharing profits, or for co-operation, or for mutual assistance with any such person, firm or company, or for subsidising or otherwise assisting any such person, firm or company, and to give or accept, by way of consideration for any of the acts or things aforesaid or property acquired, any shares, debentures, debenture stock or securities that may be agreed upon, and to hold and retain, or sell, mortgage and deal with any shares, debentures, debenture stock or securities so received.
 - vi. To improve, manage, construct, repair, develop, exchange, let on lease or otherwise, mortgage, charge, sell, dispose of, turn to account, grant licences, options, rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Association.

Memorandum, Articles of Association and Code of Practice

- vii. To invest and deal with the monies of the Association not immediately required in such manner as may from time to time be determined and to hold or otherwise deal with any investments made.
- viii. To lend and advance money or give credit on any terms and with or without security to any person, firm or company (including without prejudice to the generality of the foregoing any holding company, subsidiary or fellow subsidiary of, or any other company associated in any way with, the Association), to enter into guarantees, contracts of indemnity and suretyships of all kinds, to receive money on deposit or loan upon any terms, and to secure or guarantee in any manner and upon any terms the payment of any sum of money or the performance of any obligation by any person, firm or company (including without prejudice to the generality of the foregoing any such holding company, subsidiary, fellow subsidiary or associated company as aforesaid).
- ix. To borrow and raise money in any manner and to secure the repayment of any money borrowed, raised or owing by mortgage, charge, standard security, lien or other security upon the whole or any part of the Association's property or assets (whether present or future) and also by a similar mortgage, charge, standard security, lien or other security to secure and guarantee the performance by the Association of any obligation or liability it may undertake or which may become binding on it.
- x. To draw, make, accept, endorse, discount, negotiate, execute and issue cheques, bills of exchange, promissory notes, bills of lading, warrants, debentures, and other negotiable or transferable instruments.
- xi. To apply for, promote, and obtain any Act of Parliament, order, or licence of the Department of Trade or other authority for enabling the Association to carry any of its objects into effect, or for effecting any modification of the Association's constitution, or for any other purpose which may seem calculated directly or indirectly to promote the Association's interests, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Association's interest.
- xii. To enter into any arrangements with any government or authority (supreme, municipal, local or otherwise) that may seem conducive to the attainment of the Association's objectives or any of them, and to obtain from any such government or authority any charters, decrees, rights, privileges or concessions which the Association may think desirable and to carry out, exercise and comply with any such charters, decrees, rights, privileges and concessions.
- xiii. To subscribe for, take, purchase, or otherwise acquire, hold, sell, deal with and dispose of, place and underwrite shares, stocks, debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any other company constituted or carrying on business in any part of the world, and debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any government or authority, municipal, local or otherwise, in any part of the world.
- xiv. To control, manage, finance, subsidise, co-ordinate or otherwise assist any company or companies in which the Association has a direct or indirect financial interest, to provide secretarial, administrative, technical, commercial and other services and facilities of all kinds for any such company or companies and to make payments by way of subvention or otherwise and any other arrangements which may seem desirable with respect to any business or operations of or generally with respect to any such company or companies.
- xv. To promote any other company for the purpose of acquiring the whole or any part of the business or property or undertaking or any of the liabilities of the Association, or of undertaking any business or operations which may appear likely to assist or benefit the Association or to enhance the value of any property or business of the Association, and to place or guarantee the placing of, underwrite, subscribe for, or otherwise acquire all or any part of the shares or securities of any such company as aforesaid.
- xvi. To sell or otherwise dispose of the whole or any part of the business or property of the Association, either together or in portions, for such consideration as the Association may think fit, and in particular for shares, debentures, or securities of any company purchasing the same.

xvii. To act as agents or brokers and as trustees for any person, firm, or company, and to undertake and perform subcontracts.

xviii. To remunerate any person, firm or company rendering services to the Association either by cash payment or otherwise as may be thought expedient.

xix. To pay all or any expense incurred in connection with the promotion, formation and incorporation of the Association, or to contract with any person, firm or company to pay the same.

xx. To support and subscribe to any charitable or public object and to support and subscribe to any institution, society, or club which may be for the benefit of the Association or its Councillors or employees, or may be connected with any town or place where the Association carries on business; to give or award pensions, annuities, gratuities, and superannuation or other allowances or benefits or charitable aid and generally to provide advantages, facilities and services for any persons who are or have been Councillors of, or who are or have been employed by, or who are serving or have served the Association, or any company which is a subsidiary of the Association or the holding company of the Association or a fellow subsidiary of the Association or the predecessors in business of the Association or of any such subsidiary, holding or fellow subsidiary company and to the wives, widows, children and other relatives and dependants of such persons; to make payments towards insurance; and to set up, establish, support and maintain superannuation and other funds or schemes (whether contributory or non-contributory) for the benefit of any of such persons and of their wives, widows, children and other relatives and dependants; and to set up, establish, support and maintain profit sharing schemes for the benefit of any of the employees of the Association or of any such subsidiary, holding or fellow subsidiary company.

xxi. To procure the Association to be registered or recognised in any part of the world.

xxii. To do all or any of the things or matters aforesaid in any part of the world, as principals, agents, contractors or otherwise, and by or through agents, brokers, sub-contractors or otherwise and either alone or in conjunction with others.

xxiii. To do all such other things as may be deemed incidental or conducive to the attainment of the Association's objects or any of them.

4. The liability of the members is limited.

5. Every member of the Association undertakes to contribute such amount as may be required (not exceeding the amount of the subscription, as determined by the Council) to the Association's assets, if the Association should be wound up while it is a member or within one year after it ceases to be a member, for payment of the Association's debts and liabilities contracted before it ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

6. If on the winding up of the Association there remains any surplus after the satisfaction of all its debts and liabilities, the surplus shall not be distributed among the members of the Association, but shall be given or transferred to some other body (whether or not it is a member of the Association) having objects similar to those of the Association, or to another body the objects of which are charitable.

Memorandum, Articles of Association and Code of Practice

We, the subscribers to this Memorandum of Association, wish to be formed into a Company pursuant to this Memorandum.

Names and addresses of subscribers.

Signed for and on behalf of 3M Healthcare Ltd., 3M House, Morley Street, Loughborough, Leicestershire LE 1EP.
By: J.D. Carroll

Signed for and on behalf of Henry Schein Rexodent Ltd., 25/27 Merrick Road, Southall, Middlesex UB2 4AU.
By: N. Freedman

Signed for and on behalf of Panadent Ltd., 15 Great Dover Street, London SE1 4YW.
By: P.Gowers

Signed for and on behalf of Colgate Oral Pharmaceuticals, Guildford Business Park, Middleston Road, Guildford, Surrey, GU2 5LZ.
By: A. Hodgson

Signed for and behalf of Heraeus Kulzer Ltd., Heraeus House, Albert Road, Northbrook Street, Newbury, Berkshire RG14 1DL.
By: M.D. Joy

Signed for and on behalf of Coltene Whaledent Ltd., The President Suite - C, Kendal House, Victoria Way, Burgess Hill, West Sussex RH15 9NF.
By: S. Lawry

Signed for and on behalf of Minerva Dental, Courtney House, Oxford Street, Cardiff, South Wales CF2 3DT.
By: R.P. Mather

Signed for and on behalf of The Dental Directory, Billericay Dental Supply Co. Ltd., 6 Perry Way, Witham, Essex CM8 3SX.
By: M. Mills

Signed for and on behalf of Davis Schottlander and Davis Ltd., Letchworth Point, Dunhams Lane, Letchworth, Hertfordshire SG6 1NS.
By: B.D. Schottlander

Signed for and on behalf of Davis Healthcare Services Ltd., Summit House, Summit Road, Potters Bar, Hertfordshire EN6 3EE.
By: D. Smith

Signed for and on behalf of Castellini UK Ltd., Castle House, Finch Close, Lenton Industrial Estate, Nottingham, Nottinghamshire NG7 2NN.
By: B. Whitby

Signed for and on behalf of Black Horse Finance - Medenta, Finance House, Stokes Croft, Bristol BS1 3QW.
By: J.N. Whitewood

¹ Name changed by deletion of the word "Limited" by written resolution on 1 April 1998.

ARTICLES OF ASSOCIATION OF THE BRITISH DENTAL INDUSTRY ASSOCIATION

1. Interpretation

In these regulations:

“Act”	the Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force.
“Articles”	the articles of the Association.
“Clear Days”	in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.
“Councillor”	means Councillor of the Association for the time being as defined in the Act.
“Council”	means the governing body of the Association for the time being and where the context so requires references to it shall mean “the Board” as referred to in the Act.
“Dental Business”	any person, partnership, firm or company engaged in the UK in the business of:- i) manufacturing or supplying products for use in the practice of dentistry by dentists, dental laboratories, dental hospitals and schools and Government Departments and/or consumer dental health care products; and/or ii) offering a specialised service or product to dentists, dental laboratories, dental hospitals and schools and Government Departments.
“Executed”	includes any mode of execution.
“Office”	the registered office of the Association.
“Ordinary Business”	the following matters which require an ordinary resolution to be passed:- i) appointment of Councillors; ii) removal of Councillors; and iii) appointment of auditors;
“President”	means President of the Association for the time being and where the context so requires shall include “the Chairman” as referred to in the Act.
“Secretary”	the Secretary of the Association or any other person appointed to perform the duties of the Secretary of the Association, including a joint, assistant or deputy Secretary.
“United Kingdom”	Great Britain and Northern Ireland.

Unless the context otherwise requires, words or expressions contained in these regulations bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these regulations become binding on the Association.

Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and reference to any gender shall include all other genders.

2. Membership

The subscribers to the of association of the Association and such other persons as are admitted to membership in accordance with the Articles shall be members of the Association. No person shall be admitted as a member of the Association unless approved by the Council. Every person who wishes to become a member shall deliver to the Association a duly executed application for Membership in such form as the Council shall require. Membership shall not be transferable.

2.1 There shall be the following classes of membership as set out below with the qualifying criteria:-

- a) Full Membership;
- b) Provisional Membership;
- c) Affiliated Membership;
- d) Group Membership.

2.2 The Council shall have power at its discretion to introduce other classes of membership and to make such Rules or Bye-laws as it shall think fit in relation thereto.

2.3 An applicant when applying for membership must satisfy the relevant criteria set out in Articles 4 to 7 below. An applicant shall also indicate its main business activities.

3. (Item deleted)

4. Full Membership

In order to qualify for Full Membership:-

- a) an applicant must show that its Dental business has adequate resources to meet its obligations as evidenced by accounts showing three years' trading figures.
- b) the Council must be satisfied:
 - i) as to the level of service of the applicant as evidenced by compliance with relevant standards such as ISO/EN.
 - ii) that the applicant's business is of sufficient size and has adequate financial backing to perform its function efficiently and without undue risk of going out of business to the detriment of its suppliers and, by the discontinuance of necessary services, of its customers;
 - iii) that the business also has the necessary management, staff, experience, skills, capability, premises, equipment and other facilities to enable it to perform its function efficiently and with all the supporting services necessary to do so.

5. Provisional Membership

- a) The Council may, at its discretion, admit to Provisional Membership, without the right to vote, a Dental Business which meets the requirements and criteria of Articles 4(b)(i) and 4(b)(iii) and has been in business for fewer than three years.
- b) Provisional Membership shall normally last not more than three years from the applicant's commencement of trading. Provisional Membership may, exceptionally, be extended for a further period or periods of one year.
- c) The Council may at its discretion permit a Provisional Member to become a Full Member at the

- expiry of three years' membership or earlier.
- d) Before being admitted to Provisional Membership, the applicant must agree not to state or imply during its period of Provisional Membership that it is a Full Member of the Association.

6. Affiliated Membership

The Council may, at its discretion, grant Affiliated Membership, without the right to vote, to suitable applicants. The Council may thereafter, at its discretion, permit an Affiliated Member to become a Full Member in accordance with Article 4.

7. Group Membership

- a) The principal company of any group of companies or other businesses comprising a Dental Group (as defined below) (the "Principal Group Company") may:-
- i) treat the Dental Group as a whole and apply for a single Group Membership pursuant to these Articles to cover all companies forming part of the Dental Group, although a supplemental payment of an amount to be determined by the Council from time to time will be payable by the Principal Group Company for each company or business associated with the Dental Industry and Trade forming part of the Dental Group which trades with a totally different name and operates independently; or
 - ii) apply for separate Full, Provisional or Affiliated Membership as appropriate pursuant to these Articles for every company forming part of the Dental Group which trades under a totally different name and operates independently.

A Dental Group shall be any interconnected group of companies or businesses which the Council, in its absolute discretion, may deem to be a Dental Group. The applicable membership declaration for subscription purposes shall include a statement of turnover of each company within the Dental Group.

- b) The Council may at its discretion, admit to Group Membership without the right to vote a Dental Group which meets the requirements and criteria of Articles 5 and 6.
8. In Articles 4 to 7 above, the standards to be applied by the Council in determining suitability for Membership shall be determined by them but shall not be lower than those required by any legislation or government regulations which are applicable to the Dental Industry and Trade.
9. Names of applicants for membership (other than those who in the opinion of the Council do not qualify) shall be circulated to all Members so that any comments they may wish to make can be available to the Council when the application is considered.
10. Full, Affiliated, Provisional and Group Members are required to notify the Association of any change in their main business activities within 21 days of such change coming into effect.

11. Entrance Fees and Subscriptions

- a) Entrance fees for membership and the annual subscriptions shall be fixed by the Council and approved by the membership in General Meeting.
- b) The Council shall prepare each year a budget of expenditure for the ensuing year and shall fix subscriptions for membership to meet the needs of the budget. Should the Council in its sole discretion consider it necessary during the year the Council may also impose a levy on members upon such terms as it sees fit provided that no member shall be required to pay under this article a sum more than equal to the current subscription level applicable to it.
- c) Should it be considered appropriate to raise revenue by way of levy to fund matters or activities

different to a significant extent from the provisions in the annual budget, such levy shall not be approved by the Council prior to an Ordinary Resolution being passed at an Annual or an Extraordinary General Meeting of all members entitled to vote.

- d) The Membership year shall be from the 1st day of January to the 31st day of December. Subscriptions shall be due in advance on the 1st day of January of each year.

12.

- a) Full Members shall annually provide a declaration of their subscription category. The subscription category shall be determined by reference to all sales in, into or from the UK dental markets including laboratories, dentists and distributors. Such declarations must reach the Association by the first day of September preceding the commencement of the membership year.

Any Full Member who fails or declines to provide the required information by the due date may at the discretion of the Council be deemed to have declared a subscription category of up to the highest rate.

- b) For the purposes of evaluating the subscription due from a Group Member, the principal company of a Dental Group shall make an annual declaration of the composition of the Group by the first day of September preceding the commencement of the membership year.

13. If a member's subscription or levy imposed by the Council in accordance with Articles 11 and 12 shall remain unpaid:-

- a) for 28 days after same became due, the Council may by resolution impose an interest charge of 10% of the value of the subscription; or
- b) two calendar months after the same became due, Council may by resolution terminate membership without further notice or suspend membership in accordance with Article 15.

14. Cessation of Membership

A member shall ipso facto cease to be a member:

- a) if the member resigns. A member may resign by giving three calendar months' notice in writing to the Secretary. Provided the member has paid or will pay all subscriptions due to the end of the period of notice the resignation shall take effect on the expiration of such notice;
- b) if the member becomes bankrupt;
- c) if the member makes an assignment or enters into an arrangement for the benefit of its creditors and the Council resolves that its membership be terminated;
- d) if the member being a Corporation be wound up (not being a Member's voluntary winding up for the purpose of reconstruction);
- e) if the member ceases to fulfil the conditions, criteria or standards required by Articles 4 to 7 as the necessary qualification for membership and if the Council resolves that its membership be terminated. In such cases a warning in writing shall be sent to the member at least three calendar months before the Council meeting at which the Resolution to terminate its membership is put and the member shall be given a reasonable opportunity to be heard.
- f) if the member shall be expelled in accordance with the provisions of the Articles or any Code of Practice, Rules or Bye Laws in force from time to time pursuant to Article 66.

15. Suspension of Membership

- a) The Council may by resolution, suspend a member in accordance with the provisions of Article 13. The Council may also suspend membership for failing to pay a subscription or levy imposed in accordance with Articles to 13 or otherwise in accordance with the Articles or any Code of Practice, Rules or Bye Laws in force from time to time pursuant to Article 66.
- b) During a period of suspension a member shall be deprived of all the benefits of membership and deemed a non-member.

16. Expulsion

- a) A majority of members present and voting at any General Meeting of the Association may by Resolution expel any member who acts in breach of these Articles or of any lawful Resolution of members duly passed or whose conduct renders it in their opinion unfit to be a member of the Association.
- b) On any such motion the member concerned shall be given reasonable opportunity to be heard and/or submit written comments.
- c) Any member so expelled shall be eligible for re-election subject to such undertakings as regards its future conduct and payment of such fines or entrance fees as the Council shall require.

17. General Meetings

- a) All general meetings other than Annual General Meetings shall be called Extraordinary General Meetings.
- b) The annual general meeting of the Association shall be held each year on such date and at such time as shall be fixed by the Council.
- c) The Councillors may call general meetings and, on the requisition of members representing not less than 10% of the total voting rights of all the members entitled to vote, and pursuant to the provisions of the Act, shall forthwith proceed to convene an extraordinary general meeting for a date not earlier than 14 days nor later than eight weeks after receipt of the requisition. If there are not within the United Kingdom sufficient Councillors to call a general meeting, any Councillor or any member of the Association may call a general meeting.

18. Notice of General Meetings

- a) An Annual General Meeting and an Extraordinary General Meeting called for the passing of a special resolution or a resolution appointing a person as a Councillor shall be called by at least twenty-one Clear Days' notice. All other Extraordinary General Meetings shall be called by at least fourteen Clear Days' notice but a general meeting may be called by shorter notice if it is so agreed:-
 - i) in the case of an Annual General Meeting, by all the members entitled to attend and vote thereat; and
 - ii) in the case of any other meeting by a majority in number of the members having a right to attend and vote being a majority together holding not less than ninety-five per cent. of the total voting rights at the meeting of all the members.

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an Annual General Meeting, shall specify the meeting as such. The notice shall be given to all the members and to the

Councillors and auditors.

- b) All matters to be considered at a general meeting other than Ordinary Business shall be deemed to be extraordinary and require a special resolution to be passed.
- c) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

19. Proceedings at General Meetings

No business shall be transacted at any meeting unless a quorum is present. Twenty persons present or by proxy entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.

- 20. If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Chairman of the meeting may determine.
- 21. The President, if any, of the Council or in his absence the Vice-President, if any, thereof, or in the absence of both some other Councillor nominated by the Councillors shall preside as Chairman of the meeting, but if neither the President nor such other Councillor (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the Councillors present shall elect one of their number to be Chairman and, if there is only one Councillor present and willing to act, he shall be Chairman.
- 22. If no Councillor is willing to act as Chairman, or if no Councillor is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be Chairman.
- 23. The Chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven Clear Days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
- 24. On a show of hands every Full Member present in person or proxy shall have one vote. On a poll every member present in person or by proxy shall have one vote. In the case of equality of votes, the Chairman shall have a casting vote.
- 25. Voting on any Resolution (unless otherwise required by these Articles) shall be by a show of hands, one vote per Full Member present (in person or proxy), but notwithstanding that any Resolution may have been carried or defeated on a show of hands the Chairman or any Full Members entitled to vote thereon (present in person or by proxy) shall have the right to require that a ballot of members entitled to vote thereon (present in person or by proxy) be taken forthwith.
- 26. Unless a poll is duly demanded a declaration by the Chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 27. The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the Chairman and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.

28. A poll shall be taken as the Chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
29. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such time and place as the Chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
30. No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven Clear Days' notice shall be given specifying the time and place at which the poll is to be taken.
31. A resolution in writing Executed by or on behalf of each member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each Executed by or on behalf of one or more members.
32. A member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his receiver, curator bonis or other person authorised in that behalf appointed by that court, and any such receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the Councillors of the authority of the person claiming to exercise the right to vote shall be deposited at the Office, or at such other place as is specified in accordance with the Articles for the deposit of instruments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.
33. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the President whose decision shall be final and conclusive.
34. An instrument appointing a proxy shall be in such form as the Council may approve.
35. The instrument appointing a proxy and any authority under which it is Executed or a copy of such authority certified notarially or in some other way approved by the Councillors may:-
 - a) be deposited at the Office or at such place as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Association in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - b) in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or
 - c) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the President or to the Secretary or to any Councillor; and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.
36. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding

a poll unless notice of the determination was received by the Association at the Office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

37. No member shall be entitled to vote if after demand he shall not have paid his current year's subscription.

38. Number of Councillors

Unless otherwise determined by ordinary resolution, the Council shall consist of not more than 12 Full Members who shall, as far as reasonably practicable, be representative of the Association's Full Members in respect of their business activities and size.

39. Appointment and Retirement of Councillors

- a) To be eligible for membership of the Council a person shall be a Full Member or a representative of a Full Member. For the purpose of these Articles a representative of a Full Member shall mean a partner or Director of or a person holding a responsible position in the business of such member. A company or commonly owned group of companies may not have more than one Councillor.
- b) The election of Councillors shall take place at each Annual General Meeting of the Association.
- c)
 - i) The two Councillors with the longest service since election or re election shall retire annually.
 - ii) If a Councillor selected under Article 39(c)(i) is President or Vice-President or is the Council elected nominee standing for election as an Officer of the Association, the Councillor to retire will be the one with the next longest service since election or re-election.
 - iii) In the case of equality in length of service, the retiring Councillor shall be decided by lot.
 - iv) A retiring Councillor may stand for re election.
- d) Nominations for election as Councillors must be made in writing by two Members. Such nominations together with the nominee's written consent to serve shall be delivered to the Secretary at least 28 days before the Annual General Meeting and, providing the nominations are acceptable under the conditions in (a) above, shall be notified to members 14 days before that meeting.
- e) If insufficient candidates be nominated in advance under paragraph (e) above, members who will be present at the Annual General Meeting may make further nominations (which must have the nominee's written consent) which shall be duly proposed, seconded and handed to the Secretary prior to the Annual General Meeting.
- f) If the total number of nominations under Article 39(d) and 39(e) exceeds the total number of vacancies, those nominated under 39(d) shall be deemed to have been elected by ballot.
- g) If a ballot is necessary, all votes shall be recorded on a printed ballot paper and the candidates securing the most votes on the ballot papers shall be deemed to have been elected. The election of candidates receiving an equality of votes shall be decided by lot.
- h) At each annual general meeting the Members shall, after the election of Councillors as aforesaid, elect from among the members of the Council a President, a Vice President and an Honorary Treasurer. The election of such officers shall be by ballot. If there is not more than one nomination for any such Office then the nominee shall be deemed to have been elected without a ballot taking place.
- i) The Council shall elect one of their number to fill any vacancy occurring in any of such offices

between two Annual General Meetings and a Councillor so elected shall hold office until the next Annual General Meeting, when he shall be eligible for re-election.

- j) A Councillor shall ipso facto cease to be a Councillor if he ceases to be eligible for membership of the Council; gives notice in writing of his resignation; becomes of unsound mind; becomes bankrupt; or makes a composition with his creditors.
- k) The Council may elect a person eligible for membership of the Council to fill any vacancy in the Council. Such a new Councillor shall hold office until the next Annual General Meeting, when he shall be eligible for re election.
- l) The Council shall have power at any time to co opt any person to be a Councillor to serve upon the Council for such time as it shall think fit, but in an advisory capacity only and without the right to vote.

40. Disqualification and Removal of Councillors

The Office of a Councillor shall be vacated if -

- a) he ceases to be eligible for membership of the Council; or
- b) (Deleted at AGM - 3 June 2004)
- c) he ceases to be a Councillor by virtue of any provision of the Act or he becomes prohibited by law from being a Director; or
- d) he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- e) he is, or may be, suffering from mental disorder and either-
 - i) he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960, or
 - ii) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs; or
- f) he resigns his office by notice to the Association; or
- g) he shall for more than three consecutive meetings have been absent without permission of the Councillors from meetings of Councillors and the Councillors resolve that his office be vacated.

41. Councillors' Expenses

The Councillors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of Councillors or committees of Councillors or general meetings or separate meetings of the holders of debentures of the Association or otherwise in connection with the discharge of their duties.

42. Councillors' Interests

Subject to the provisions of the Act, and provided that he has disclosed to the Councillors the nature and extent of any material interest of his, a Councillor notwithstanding his office:-

- a) may vote and count in the quorum on a matter of material interest to him; and

Memorandum, Articles of Association and Code of Practice

- b)
 - i) may be a party to, or otherwise interested in, any transaction or arrangement with the Association or in which the Association is otherwise interested; and/or
 - ii) may be a Director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Association or in which the Association is otherwise interested; and/or
 - iii) shall not, by reason of his office, be accountable to the Association for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

43. For the purposes of Article 42:-

- a) a general notice given to the Councillors that a Councillor is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Councillor has an interest in any such transaction of the nature and extent so specified; and
- b) an interest of which a Councillor has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

44. Proceedings of Councillors

Subject to the provisions of the articles, the Councillors may regulate their proceedings as they think fit.

- 45. Two Councillors may, and the Secretary shall, on the requisition of two Councillors, at any time, but no later than 14 days from such request, summon a meeting of the Council. At that time the Councillors shall provide written details (an“Agenda”) of the matters to be discussed. It shall not be necessary to give notice of a meeting to a Councillor who is absent from the United Kingdom.
- 46. The President or in his absence the Vice President of the Association shall act as President of the Council. In the absence of both, the Councillors shall elect one of their number to act as Chairman.
- 47. The Agenda shall state the matters to be discussed in sufficient detail to make clear the full purpose of the discussion.
- 48. Questions arising at any meeting of the Council shall be decided by a majority of the votes of the Councillors present and voting. On all matters put to the vote at a Council meeting all Councillors shall have one vote. In case of an equality of votes the Chairman shall have a casting vote.
- 49. At all meetings of the Council the quorum shall be six.
- 50. The proceedings of the Council shall not be invalidated by reason of any vacancy for the time being in the number of its members.
- 51. The continuing Councillors or a sole continuing Councillor may act notwithstanding any vacancies in their number, but, if the number of Councillors is less than the number fixed as the quorum, the continuing Councillors or Councillor may act only for the purpose of filling vacancies or of calling a general meeting.
- 52. If there is no Councillor holding that office, or if the Councillor holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the Councillors present may appoint one of their number to be Chairman of the meeting.
- 53. All acts done by a meeting of Councillors, or of a committee appointed by the Council, or by a person

acting as a Councillor shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Councillor or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Councillor and had been entitled to vote.

54. A resolution in writing signed by all the Councillors entitled to receive notice of a meeting of Councillors or of a committee of Councillors shall be as valid and effectual as if it had been passed at a meeting of Councillors or (as the case may be) a committee of Councillors duly convened and held and may consist of several documents in the like form each signed by one or more Councillors.
55. If a question arises at a meeting of Councillors or of a committee of Councillors as to the right of a Councillor to vote, the question may, before the conclusion of the meeting, be referred to the Chairman of the meeting and his ruling in relation to any Councillor other than himself shall be final and conclusive.

56. Powers of the Council

Subject to the provisions of the Act, the memorandum and the Articles and to any directions given by special resolution, the business of the Association and the general management of the Association and the election of members shall be vested in the Council who shall have power in addition to any powers expressed in or implied by these Articles to do all such things as it may deem necessary or expedient to promote the objects of the Association.

57. No alteration of the memorandum or Articles and no such direction shall invalidate any prior act of the Councillors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this regulation shall not be limited by any special power given to the Councillors by the Articles and a meeting of Councillors at which a quorum is present may exercise all powers exercisable by the Councillors.
58. Without prejudice to Article 57 the following powers shall be vested in the Council:
- a) The Council shall appoint Committees for such purposes, for such periods and upon such terms as it may from time to time prescribe and may delegate thereto all or any of its powers under these Articles, and the acts and Resolutions of any such Committee shall, to the extent of such delegation; be deemed to be those of the Council. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by the Articles regulating the proceedings of Councillors so far as they are capable of applying. The Council may appoint any accredited representatives of members, or other persons, to serve on any such Committee, but at least one Councillor shall be a Member thereof. In addition, the President, the Vice President and the Honorary Treasurer shall be ex officio Members of any such Committee.
 - b) The Council shall appoint (and shall have power to remove) a Secretary of the Association and may appoint such other officers and staff at such salaries, on such conditions and with such duties as it may deem expedient.
 - c) The Council may also take such action as it considers necessary, including the preparation and maintenance of lists and registers, to meet the conditions created by national and international legislation, regulations, etc. dealing with the control of dental products, and for that purpose shall be entitled to the co operation of all Members.

59. Council's Power of Investigation

- a) If the Council has reasonable evidence (not being evidence received anonymously) that a member has committed a breach of these Articles or of the Code of Practice, it may investigate. In such cases the procedure will be as set out in the Code of Practice.
- b) Following investigation of a complaint in accordance with the procedure set out in the Code of Practice the Council shall be empowered at its discretion to impose an appropriate penalty (if any)

on the member in breach of these Articles or the Code of Practice. Such penalty may include a warning, a fine, suspension of a member for a period determined by the Council, expulsion from the Association or a combination of any of these as is deemed appropriate.

60. Minutes

The Councillors shall cause minutes to be made in books kept for the purpose:-

- a) of all appointments of officers made by the Councillors; and
- b) of all proceedings at meetings of the Association and of the Councillors, and of committees of Councillors, including the names of the Councillors present at each such meeting.

61. Accounts

- a) The Council shall lay before the Annual General Meeting a report of its proceedings and audited Accounts of Income and Expenditure at the end of the financial year, together with a Balance Sheet as at that date.
- b) The said Accounts and Balance Sheet shall have been audited by a firm of accountants who shall have been appointed at the previous Annual General Meeting (or in the event of their resigning since that date, by the Council) and whose remuneration shall be agreed by the Council.

62. Property and Funds

- a) The property and funds of the Association shall be under the control of the Council which shall have power to deal with them or convert or otherwise dispose of them on behalf of the Association as it shall think fit provided that such power shall only be exercised in accordance with the provisions of s30 of the Act, namely that:
 - i) the Association's profits (if any) or other income shall be applied in promoting its objects as specified in clause 3 of the Association's Memorandum of Association; and
 - ii) no payment of dividend shall be made to any member.
- b) The Council may exercise all the powers of the Association to borrow money, whether as primary or collateral security for any debt, liability or obligation of the Association or any third party.

63. Notices

- a) Save as otherwise provided notice may be given to any member either personally or by first class post to the last address supplied by the member to the Association or (if the Member be a Corporation) to the registered Office as the Secretary shall elect.
- b) When sent by first class post, service of the notice shall be deemed to be effected by properly addressing prepaying and posting the notice, and the notice shall be deemed to have been served 48 hours after posting.

64. Dissolution

- a) The Association shall not be dissolved except by Resolution of three fourths of the votes of members present in person or by representative (but not by proxy) and voting at an Extraordinary General meeting convened for the purpose.
- b) On a Resolution for dissolution being duly carried the Council shall take such steps necessary to carry such dissolution into effect as it shall deem expedient in accordance with the provisions of the Insolvency Act 1986.

65. Indemnity

Subject to the provisions of the Act but without prejudice to any indemnity to which a Councillor may otherwise be entitled, every Councillor or other officer or auditor of the Association shall be indemnified out of the assets of the Association against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Association.

66. Codes of Practice, Rules or Bye Laws

The Councillors may from time to time make such Codes of Practice, Rules or Bye Laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Association and for the purposes of prescribing the classes of and conditions of membership.

67. The members agree to be bound by the terms of the Code of Practice, as determined by the Council from time to time.

Names addresses and descriptions of subscribers.

Signed for and on behalf of 3M Healthcare Ltd., 3M House, Morley Street, Loughborough, Leicestershire LE 1EP.
By: J.D. Carroll

Signed for and on behalf of Henry Schein Rexodent Ltd., 25/27 Merrick Road, Southhall, Middlesex UB2 4AU.
By: N. Freedman

Signed for and on behalf of Panadent Ltd., 15 Great Dover Street, London SE1 4YW.
By: P. Gowers

Signed for and on behalf of Colgate Oral Pharmaceuticals, Guildford Business Park, Middleston Road, Guildford, Surrey GU2 5LZ.
By: A Hodgson

Signed for and on behalf of Heraeus Kulzer Ltd., Heraeus House, Albert Road, Northbrook Street, Newbury, Berkshire RG14 1DL.,
By: M.D. Joy

Signed for and on behalf of Coltène Whaledent Ltd., The President Suite - C, Kendal House, Victoria Way, Burgess Hill, West Sussex RH15 9NF.
By: S. Lawry

Signed for and on behalf of Minerva Dental Ltd., Courtney House, Oxford Street, Cardiff, South Wales CF2 3DT.
By: R.P. Mather

Signed for and on behalf of The Dental Directory, Billericay Dental Supply Co. Ltd., 6 Perry Way, Witham, Essex CM8 3SX.
By: M. Mills

Signed for and on behalf of Davis Schottlander and Davis Ltd., Letchworth Point, Dunhams Lane, Letchworth, Hertfordshire SG6 1NS.
By: B.D. Schottlander

Signed for and on behalf of Davis Healthcare Services Ltd., Summit House, Summit Road, Potters Bar, Hertfordshire EN6 3EE.
By: D. Smith

Signed for and on behalf of Castellini UK Ltd., Castle House, Finch Close, Lenton Industrial Estate, Nottingham, Nottinghamshire NG7 2NN.
By: B. Whitby

Signed for and on behalf of Black Horse Finance - Medenta, Finance House, Stokes Croft, Bristol BS1 3QW.
By: J.N. Whitewood

CODE OF PRACTICE OF THE BRITISH DENTAL INDUSTRY ASSOCIATION

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Code of Practice

Introduction

The British Dental Industry Association (the Association) is the body which represents manufacturers, wholesalers, distributors and providers of products and services to the dental profession in the United Kingdom. It was formed in 1923 and has in excess of one hundred members.

This Code of Practice has been developed to ensure that the highest standards of self-discipline are enshrined in the conduct of Members of the Association. The Code is considered to be highly desirable because Members believe that their commitment to providing high quality, effective products and services brings major benefits to the dental health of the nation and the country's economy. Members are thus required to operate a Quality Assurance system which complies with the appropriate standards where this is not already a legal requirement.

The free choice of products and services within the market place should be based not only upon the highest possible standards of quality, but also on accurate, fair and objective information. The Code is intended to foster an ethical, orderly, competent and reliable supply network embracing all sections of the industry for the common good.

Adherence to the Code of Practice is an obligation upon Members of the Association and there is a disciplinary procedure to deal with breaches of the Code. It is appreciated that some provisions of this Code are inappropriate for consumer dental health-care products and services which are already covered by that industry's own Codes of Practice.

The Code

1. Quality and Regulatory Compliance

Members are committed to the production and supply of high quality products and services to the dental profession (hereinafter referred to as "products and services") in the interest of patient and customer safety and well-being.

1.1 Members must comply with the legal and regulatory requirements of the countries where they do business. These include both regulations specific to dental devices and general legal requirements applicable to all products and services provided.

1.2 Where products are not subject to specific control, those responsible for their manufacture or importation should ensure that they are manufactured and conform to internationally accepted standards and that the products are distributed by a responsible person/organisation.

2. Customer Service

2.1 Members should ensure that products offered for sale are supported by adequate stocks and technical information. In addition, they must satisfy themselves that diagnostic aids, equipment repair facilities and spare parts will be available to support the customers for at least the normal expected life of the product.

2.2 Members should not terminate distribution or agency agreements in such a manner as

to prejudice the end user. This is particularly relevant to those products involving warranty work or maintenance. In the event of an agency agreement or a distribution agreement ceasing for whatever reason, members should use their best endeavours to make provision to maintain essential supplies and service.

3. Staff and Training

3.1 Members are responsible for ensuring that their staff have the ongoing experience, product knowledge and ability necessary to perform their duties properly and effectively. This includes effective and timely response to customers' queries. BDIA Training Courses are available to assist in this process.

3.2 Members' staff should possess or be given sufficient dental and/or technical knowledge to be competent to provide information, on the products and services they are selling or promoting, in an efficient manner. As a minimum, all customer-facing staff of Full and Provisional Member companies should have attained the BDIA Certificate: Introduction to Dentistry or equivalent training before completion of two years of employment with a Member.

3.3 Details of the training records of relevant personnel shall be provided to the Association on request.

4. Advertising and Promotions, Information and Claims

This section refers to all material directed at Healthcare Professionals, to those engaged in professions supplementary to dentistry, and to other persons concerned with the purchasing of professional dental products and services. (See also Appendix 1 - BDIA Guidelines on Advertisements and Promotions addressed solely or primarily to Healthcare Professionals).

4.1 Members should ensure that all promotional presentations, including product claims and comparisons, are accurate, balanced, fair, objective and unambiguous. They should be justified by appropriate evidence. Statements should not mislead the intended audience. Advertisements should always be clearly recognisable as such.

4.2 Methods of advertising, promotion and activities at exhibitions should not bring the Association or its members into disrepute.

4.3 All advertising matter should recognise the professional standing of the recipients and should therefore be in good taste as regards both text and illustrations. Suppressed zeros and unusual scales and differences, which do not reach statistical significance, must not be presented in such a way as to mislead.

4.4 In the health sector, the main objective of advertising must be to promote the use of a product by providing correct information about it, and make only such claims as can be satisfactorily substantiated. Methods of promotion should never be such as to bring discredit upon, or reduce confidence in, the Association or the dental industry.

4.5 References may be given in advertising matter to already published literature (including theses) directly relevant to the dental use of a product. However, the rights of the copyright owner must be acknowledged and direct quotations or the reproduction of illustrations from published literature must not be included without the consent of

the copyright owner of the original article and/or illustrations. Testimonials from members of the dental profession or other scientific disciplines must be attributed.

4.6 Promotional material should not imitate the devices, copy, slogans or general layout used by others in a way that is likely to mislead or confuse.

4.7 Disparagement, direct or implied, of competitive products or services is considered unethical and unacceptable. The names of other manufacturers and competitors and the brand names of their products or services should not be stated except when making exact reference to already published scientific material or the relevant manufacturer's published data.

(Requirement for peer-reviewed dropped).

5. Free Distribution of Products

5.1 The amount of free or trial samples given to an individual user should be no more than is adequate to allow the user to appropriately assess the product.

6. Information to Individuals and the General Public

This includes the passing of information regarding dental products and services by the dental industry direct to the general public.

6.1 When information on professional dental matters is requested by the public;

- requests for information on dental products and services may be dealt with by providing factual information concerning the product or service as allowed by law;
- requests for clinical information should be declined and the enquirer recommended to consult their own dentist or other relevant Healthcare Professional, the British Dental Association, or the Oral Health Foundation

7. General Conduct

7.1 Trading Between Members

Members are required to maintain the highest standards in their dealings with other Members.

7.2 Interactions with Healthcare Professionals

Compliance with applicable laws and adherence to ethical standards are important to the dental industry's ability to continue to collaborate effectively with Healthcare Professionals and all customers. Such collaboration can take the form of:

- developing dental technologies;
- providing training, education, service and support to enable the safe and effective use of dental technologies; and
- supporting dental research, education, and enhancement of professional skills.

To ensure ethical interactions with individuals or entities that purchase, lease, recommend

or use members' products or services, members should duly consider the BDIA Guidelines on Interactions with Healthcare Professionals (Appendix 2).

8. Powers of Investigation

8.1 Qualifying Complaint

Any complaint under the terms of this Code of Practice must be made in writing to: The Chief Executive, The British Dental Industry Association, Mineral Lane, Chesham, Bucks HP5 1NL. It should be accompanied by any necessary documentary evidence.

8.2 Procedure

Any complaint under the terms of this Code of Practice should be dealt with as per the Association's complaints procedure set out in Appendix 4.

9. Unlawful Payments and Practices

9.1 Members should not offer, make, or authorise payment of money or anything of material value, to unlawfully;

- influence the judgment or conduct of any individual, customer, or company;
- win or retain business; influence any act or decision of any governmental official, or gain an advantage.

This requirement extends not only to direct inducements, but also to indirect inducements made by a member in any form through agents, consultants or other third parties. Members should have particular regard to laws and regulations prohibiting or restricting inducements aimed at influencing clinicians or customers.

10. Competition/Antitrust and Procurement Laws

10.1 Members should conduct their business activities in accordance with the requirements of applicable competition and public procurement laws. Prohibited activities may consist of;

- agreements or understandings with competitors to fix prices, allocate customers or territories or restrict sales;
- exchange of pricing or other confidential information with competitors; and
- price discrimination or refusals to sell. Members should duly consider the BDIA's Guidelines on Competition Law.

11. Compliance and Enforcement

11.1 Members should take measures to ensure compliance with the principles of this Code and its appendices by their employees, agents and representatives.

APPENDIX 1

BDIA Guidelines on Advertisements and Promotions addressed solely or primarily to Healthcare Professionals

(These Guidelines are provided for the guidance of members as part of the BDIA Code of Practice and, at all times, applicable laws take precedence).

A. Introduction

1.1 Introduction

Consumer advertising is governed both by legislation and by the codes of advertising practice issued by the Committee of Advertising Practice and the Broadcast Committee of Advertising Practice and administered by the Advertising Standards Authority. Advertising directed at Healthcare Professionals is not clearly caught by these provisions, however, Article 7 of EU Regulation 2017/745 on Medical Devices covers 'Claims', including advertising, as set out below:

Article 7 - Claims

In the labelling, instructions for use, making available, putting into service and advertising of devices, it shall be prohibited to use text, names, trademarks, pictures and figurative or other signs that may mislead the user or the patient with regard to the device's intended purpose, safety and performance by:

- (a) ascribing functions and properties to the device which the device does not have;
- (b) creating a false impression regarding treatment or diagnosis, functions or properties which the device does not have;
- (c) failing to inform the user or the patient of a likely risk associated with the use of the device in line with its intended purpose;
- (d) suggesting uses for the device other than those stated to form part of the intended purpose for which the conformity assessment was carried out.

The intention of these Guidelines is to set out principles to be applied to advertising directed solely or primarily at Healthcare Professionals. These principles will be part of the BDIA Code of Practice with which all BDIA Members agree to comply. The principles apply to all such advertising issued by or on behalf of BDIA Members where it is directed at Healthcare Professionals in the UK. The principles set out in these Guidelines are based upon the general principles contained in existing laws and codes of practice. The BDIA therefore encourages all persons advertising dental products and services, not just BDIA Members, to ensure that advertising published by them or on their behalf complies with these Guidelines.

Complaints that any BDIA Member has failed to comply with these Guidelines will be handled in accordance with the established Complaints Procedure set out in the BDIA Code of Practice Complaints Procedure. (Appendix 4).

1.2 Interpretation

The singular includes the plural.

Reference to any “commissioned” article, study or material is a reference to work done at the request or on behalf of an advertiser, often in return for payment or some reward or other support. It may include the work of a journalist or opinion leader carried out directly or indirectly as a result of such request. However, reports on collected product clinical data that are written by or at the direction of the clinical investigator (“investigator-initiated reports”) shall not be considered to be “commissioned” whether or not payments have been made in respect of the investigators’ services or expenses reimbursed or other in-kind support has been provided if they meet the conditions below. Equally, reports on collected product clinical data that are written by or at the direction of the advertiser pursuant to an agreement to conduct the clinical data collection (“Advertiser-initiated reports”) shall not be regarded as “commissioned”, always provided that such investigator-initiated or advertiser-initiated reports relate to clinical data collection and evaluation processes which are:

- performed according to scientifically valid standards;
- subjected to ethical review independent of the advertiser, e.g. hospital ethics committee; and
- initiated and conducted for scientifically and/or clinically legitimate purposes.

B. Guidelines

1. Scope of Guidelines

1.1 These Guidelines apply to all advertisements produced by or on behalf of advertisers. Advertising directed wholly or mainly at consumers, patients or others who are not Healthcare Professionals is not covered by these Guidelines. However, such advertising is subject to general UK advertising law as well as to the industry regulatory codes administered by the Advertising Standards Authority, and it should consequently comply with the law and with those rules.

BDIA and its Members encourage all persons advertising products and services, not just BDIA Members, to ensure that advertising directed at non-Healthcare Professionals which is published by them or on their behalf complies with these Guidelines.

1.2 An advertisement should be readily recognisable by the intended audience as an advertisement and its commercial intent must be made clear if that is not obvious from the context.

2. Accuracy and Substantiation of Claims and Information

2.1 Information, claims and comparisons included in or as part of any advertisement must be accurate, balanced, fair, objective and unambiguous and must be based on a fair evaluation of appropriate evidence and reflect that evidence clearly. They must not mislead the intended audience either directly or by implication, by distortion, exaggeration or undue emphasis. All reasonable efforts must be used to ensure that the substantiation for all information, claims and/or comparisons in an advertisement is in

accordance with an up to date evaluation of all the relevant clinical and scientific evidence.

Material used in or as part of any advertisement must be sufficiently complete to enable the intended audience to form their own opinion of the therapeutic value of the device.

2.2 Different types of evidence are permissible to support claims in advertisements. The evidence may include clinical data (which could be pre or post-market data, including registry data); the results of a clinical investigation; laboratory data and testing, including in vitro test data; engineering data; and historical post-market experience.

All evidence must be relevant, balanced, comprehensive and credible, as must the overall impression created by the advertisement, including any graphics or artwork. Advertisers must in all cases hold documentary evidence (which includes equivalent recorded evidence) to substantiate all claims (direct or implied). This documentary evidence must be in existence before or at the time of the publication of the advertisement.

2.3 Claims or comparisons made, or information included, in advertisements must accurately reflect the balance of all available evidence. If justification for the content of an advertisement relies on any selection from the available evidence, that selection must be fair and balanced so that the advertisement does not mislead or give a false impression.

Evidence should be scientifically robust. If there is a significant division of scientific, dental or other expert opinion about any claims made in an advertisement, those claims must not be presented as being generally agreed and it should be clear from the advertisement that there is a division of opinion on the relevant matter.

Advertisers must make clear whether the evidence relied upon to substantiate claims used in an advertisement is clinical or some other type of evidence or a combination. If the advertisement includes claims that rely on a particular clinical investigation that investigation must have been carried out to a standard equivalent to that required for clinical evaluation of a device under relevant and applicable legislation, as at the date of the publication of the advertisement. Advertisers must not imply that claims are based upon peer-reviewed clinical investigation evidence where this is not the case as this will create a misleading impression.

2.4 Testimonial evidence on its own is not sufficient substantiation for objective claims.

For testimonials and/or endorsements to be used in or in support of any advertisement, the advertiser must ensure that the testimonials or endorsements are documented, genuine, not misleading and illustrate typical examples only.

In this context “typical” means something that is experienced by the great majority of patients or users, as applicable. If a testimonial or endorsement refers to a condition or situation experienced by only one or very few patients or users, this must be made clear. Also in this context “suitably qualified Healthcare Professionals” means persons who can provide suitable credentials evidencing relevant professional expertise or qualifications and accreditation by a professional or regulatory body that has systems for dealing with complaints and taking disciplinary action and has registration based on minimum standards for training and qualifications.

If a testimonial or endorsement is used in or in support of any Advertisement, the Advertiser must hold signed and dated documentary evidence, including contact details, for the provider of the testimonial or endorsement in question. The Advertiser must also ensure that he has the consent of the person providing the testimonial or endorsement both to use it in connection with advertising and (if necessary) to disclose it in connection with the substantiation of any claim.

Testimonials or endorsements taken from published articles should be treated in the same way as quotations and in accordance with any other relevant provisions in these Guidelines.

2.5 If engineering data or in vitro or other laboratory test data is used to substantiate claims made in Advertisements, it must be directly relevant to, and significant for, the product being advertised. Particular care must be taken in extrapolating from such data to avoid any misleading impression as to the significance of the data.

2.6 The word 'new' must not be used for more than twelve months from the date on which a product or an intended purpose of that device or any related service has been generally available in the UK in the form referred to in the advertisement.

Where a product or related service has been available in the UK in only one sector but subsequently becomes available in additional sectors it is still not possible to claim the device or related service (or new indication or feature) is 'new' though it is allowable to refer to the fact that the device or related service (or new indication or feature) is, for example, "new to the NHS" provided the overall impression this creates is not misleading.

3. Comparative Advertising

3.1 A comparison used in or as part of any advertisement is only permitted if:

- it is not misleading;
- devices or services for the same needs or for the same intended purpose are compared;
- one or more material, relevant, substantiable and representative features are compared;
- no confusion is created between the device or service advertised and that of a competitor or between the advertiser's trademarks, trade names, other distinguishing marks and those of a competitor;
- the trademarks, trade names, other distinguishing marks, products, services, activities or circumstances of a competitor are not discredited or denigrated;
- no unfair advantage is taken of the reputation of a trade mark, trade name or other distinguishing marks of a competitor, and
- the advertiser's devices or services are not presented as imitations or replicas of goods or services bearing a competitor's trade mark or trade name;
- any comparative testing refer only to products or services subjected to the same

and appropriate testing;

- the outcomes of any comparative testing are reporting in a fair and balanced manner; and each outcome is referenced and consistent with the body of evidence;
- hanging comparisons whereby a device or related service is described as being better or stronger or such like are not made without stating that with which the device is compared.

3.2 Where comparative claims are made there should be clear evidence to support the claim bearing in mind the potential commercial impact of comparative claims. The intent of any comparison should be that it provides valuable, objective and accurate information comparing products and/or associated services for the benefit of Healthcare professionals and their patients. Disparagement, direct or implied, of competitive products or services is considered unethical and unacceptable. The names of other manufacturers and competitors and the brand names of their products or services should not be stated except when making exact reference to already published scientific material or the relevant manufacturer's published data.

3.3 Care must be taken not to mislead when expressing data as percentages. Sample size must be declared.

4. Requests for Substantiating Data

4.1 If a bona fide request is made to an advertiser to substantiate any information, claim or comparison used in or as part of any advertisement, the enquiry must be acknowledged. The initial response should where relevant indicate when a full response will be provided.

A full response together with relevant substantiating data must be provided within thirty working days of an adequately clear request being received.

A bona fide request means one received from an independent Healthcare Professional or from another person (including from companies) having a legitimate interest in the substantiation requested. However, there is no requirement to respond to fishing expeditions by competitors or others that are simply designed to obtain confidential or commercially sensitive information about the advertiser's products or business.

5. No Disparagement

5.1 The products, services and activities of other companies must not be disparaged in an advertisement. Disparagement, direct or implied, of competitive products or services is considered unethical and unacceptable. The names of other manufacturers and competitors and the brand names of their products or services should not be stated except when making exact reference to already published scientific material or the relevant manufacturer's published data.

5.2 Healthcare Professionals and the clinical and scientific opinions of Healthcare Professionals must not be disparaged in any advertisement.

6. Quotations

6.1 Quotations from dental and scientific literature or from personal communications must be accurate and must reflect the meaning of the author. The precise source of the quotation must be identified.

6.2 Quotations relating to devices taken from private occasions, such as dental conferences or symposia, must not be used without the formal permission of the speaker.

6.3 Where references are made to dental and scientific literature or to personal communications these must accurately reflect the author's meaning.

6.4 All reasonable care must be taken to avoid ascribing claims or views to authors when these no longer represent the current views of the authors concerned.

7. Material Commissioned by the Advertiser

7.1 An article or piece of information that is commissioned by or on behalf of the Advertiser must be clearly identified as such on its face and the Advertiser must also be clearly identified.

General Advertising Law and Codes

The Business Protection from Misleading Marketing Regulations 2008

The Consumer Protection from Unfair Trading Regulations 2008

The UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code)

The UK Code of Broadcast Advertising (BCAP Code)

For Medical Devices

Article 7 of EU Regulation 2017/745 on Medical Devices.

APPENDIX 2

BDIA Guidelines on Interactions with Healthcare Professionals

(These Guidelines are provided for the guidance of members as part of the BDIA Code of Practice and at all times applicable laws take precedence).

1. Preamble

There are many forms of interactions between BDIA members and Healthcare Professionals that advance dental science or improve patient care. BDIA members recognise that adherence to ethical standards and compliance with applicable laws is critical to the dental technology/devices and associated industry's ability to continue its collaboration with Healthcare Professionals. Members must encourage ethical business practices and socially responsible industry conduct related to their interactions with Healthcare Professionals. Members must continue to respect the obligation of Healthcare Professionals to make independent decisions regarding treatment.

These guidelines set out the standards appropriate to various types of relationships with Healthcare Professionals. These guidelines are not intended to supplant or supersede national laws or regulations or professional codes (including company codes) that may impose more stringent requirements upon members or Healthcare Professionals who engage in certain activities in those countries.

2. Member-Sponsored Product Training and Education

Where appropriate, members should make product education and training available to Healthcare Professionals to facilitate the safe and effective use of products and services. Such education and training programmes should occur at appropriate locations taking account of the convenience of the attendees and the nature of the training. In particular:

- Programmes and events should be conducted in clinical, laboratory, educational, conference, or other appropriate settings, including members' own premises or commercially available meeting facilities that are conducive to effective transmission of knowledge and any required 'hands-on' training. The training staff should have the appropriate expertise to conduct such training. The event location and venue should not become the main attraction of the event.
- Members shall not organise events which include social, sporting and/or leisure activities or other forms of entertainment, nor support such elements where part of Third Party Organised Educational Events.
- Members may provide attendees with reasonably priced meals in connection with the programme, and for educational programmes necessitating overnight stays, additional hospitality may be appropriate. Any hospitality should be reasonable in value, subordinate in time and focus to the educational purpose of the training and in compliance with the regulations of the country where the Healthcare Professional is licensed to practise.
- Members may pay for reasonable travel and accommodation costs incurred by an attending Healthcare Professional. Members are not permitted to facilitate or

pay for meals, travel, accommodation or other expenses for spouses or guests of Healthcare Professionals, or for any other person who does not have a professional interest in the information being shared at the meeting.

3. Sales, Promotional and Other Business Meetings

Where it is appropriate, Member Companies may organise Sales, Promotional and Other Business Meetings where the objective is to discuss product and related services features and benefits, conduct contract negotiations, or discuss sales terms. In addition to the principles laid down in Section 2 (above). Sales, Promotional and Other Business Meetings should also comply with the following more stringent requirements:

- Such meetings should, as a general rule, occur at or close to the Healthcare Professionals' place of business.
- It is not appropriate for travel or accommodation support to be provided to Healthcare Professionals by Member Companies, except where demonstrations of non-portable equipment are necessary.

4. Supporting Third-Party Educational Conferences

Independent, educational, scientific or policy-making conferences promote scientific knowledge, dental advancement and assist in the delivery of effective healthcare. To these ends, members may support such events provided the educational conference content promotes scientific knowledge, dental advancement and the delivery of effective healthcare and is consistent with relevant guidelines established by professional societies or organisations for such meetings.

BDIA members may support such events as follows:

- **Sponsorship of Healthcare Professionals**
Member Companies shall not provide financial or in-kind support directly to individual Healthcare Professionals to cover costs of their attendance at Third Party Organised Educational Events, with the exception of Third Party Organised Procedure Training meetings or pursuant to a consulting agreement with a Healthcare Professional speaker engaged by a Member Company to speak at a satellite symposium. This means that direct support of individual Healthcare Professionals to attend Third Party Organised Educational Events shall no longer be permitted under the Code.
- **Conference Support**
Member Companies may provide financial or in-kind support to Third Party Organised Educational Events only through Educational Grants. Members may provide financial grants directly to the conference organiser to reduce the overall cost of attendance for participants and to cover reasonable honoraria, travel, meals and accommodation expenses of Healthcare Professionals who are conference faculty members. A written request must be made by the conference organiser, to the member and any sponsorship must be paid directly to the conference organiser or training institution. The conference organiser alone is responsible for the programme content and the faculty selection.

- **Promotional Activity**

Member Companies may purchase packages that may include promotional and advertising services, for example, advertisement space and booth space for company displays. Member Companies should ensure that the overall image projected by the promotional activity at Third Party Organised Educational Conferences is perceived as professional at all times. It should never bring discredit upon or reduce confidence in the dental industry.

- **Satellite Symposia & Webinars**

Members may sponsor satellite symposia at third-party conferences and provide presentations on subjects that are consistent with the overall content of the third-party conference provided that all information presented is fair, balanced and scientifically rigorous. Members may determine the content of these events and be responsible for faculty selection. The arrangement must be documented by written contract and the support of the member must be disclosed in all materials relating to the satellite event.

- **Scholarships**

Members may also provide educational grants to training institutions, healthcare institutions or professional societies for dental education programmes by providing financial support for fellowships and similar scholarship awards. The selection of the grantee should be within the discretion of the institution at which they are enrolled or the teaching institution at which they will be trained. Grants must be provided to the teaching or professional institution, not to individual fellows, save at the prior written request of the institution. In no way should the funding be tied to an institution's purchase of a company's products or services, or otherwise be based on an institution's past or potential future use of the company's products or services.

5. Arrangements with Consultants

Healthcare Professionals may serve as consultants to members, providing meaningful services, including research, participation on advisory boards, presentation at member-sponsored training or third-party educational conferences, and product development. It is appropriate to pay Healthcare Professionals reasonable compensation for performing these services. The following factors support the existence of a consulting arrangement between members and Healthcare Professionals:

- Consulting agreements must be entered into only where a legitimate purpose for the services is identified in advance.
- Selection of consultants must be on the basis of the consultant's qualifications and expertise to address the identified purpose and should not be on the basis of volume or value of business generated by the consultant.
- The compensation paid to Healthcare Professionals engaged as consultants must be the fair market value for the services provided and must not be tied in any way to the value of products or services which the consultants may use for their own practice. Members may pay for reasonable and actual expenses incurred by consultants in carrying out the subject of the engagement including reasonable and actual travel, meals and accommodation expenses incurred by consultants in

attending meetings with or on behalf of members. The written agreement should describe all expenses that can be claimed by the consultant in relation to the provision of the services.

- All consultancy arrangements with Healthcare Professionals must be documented in writing even where the Healthcare Professional does not require payment for services or where the arrangement involves a one-day event only.
- The venue and circumstances for member meetings with consultants should be appropriate to the subject matter of the consultation. The meetings should be conducted in clinical, educational, conference or other suitable settings, including hotel or other available meeting facilities, conducive to the effective exchange of information.
- Member-sponsored hospitality that occurs in conjunction with a consultant meeting should be modest in value and should be subordinate in time and focus for the primary purpose of the meeting.
- When a member contracts with a Healthcare Professional acting as a consultant for research services, the written agreement described above must reference a written research protocol or written schedule of work as appropriate and all required consents and approvals should be obtained.
- When a member contracts with a Healthcare Professional for the development of intellectual property, there must be a written agreement providing compensation at a fair market value.

5. Gifts

Member Companies exceptionally may provide inexpensive educational items and/or gifts, in accordance with national laws, regulations and industry and professional codes of conduct of the country where the Healthcare Professional is licensed to practise. Member Companies may only provide such educational items and/or gifts in accordance of the following principles:

- Educational items and/or gifts may be provided but these must relate to the Healthcare Professionals practice, or benefit patients, or serve a genuine educational function.
- No educational items and/or gifts should be provided in response to requests made by Healthcare Professionals.
- Educational items and/or gifts must not be given in the form of cash or cash equivalents.
- Educational items and/or gifts must be modest in value and can be branded or non-branded items. A Member Company may occasionally provide educational items of greater value to a Healthcare Organisation always provided that the item serves a genuine educational function for the Healthcare Professionals and is of benefit to patients. Such items shall not be provided to Healthcare Professionals for their personal use. The item shall also be related to the therapeutic areas in which the Member Company is interested and/or involved. For higher value educational items, Member Companies must maintain appropriate records of their

provision of such educational items.

- Provision of educational items and/or gifts must not improperly reward, incentivise and/or encourage Healthcare Professionals to purchase, lease, recommend, prescribe, use, supply or procure the Member Company's products or services.
- Prize draws and other competitions at Events are permissible if the prize awarded complies with the above. In addition, it must comply with national laws, regulations and industry and professional codes of conduct.

The above is not intended to address the legitimate practice of providing appropriate evaluation Products, Demonstration products or Samples.

Donations for Charitable and Philanthropic Purposes

Members may make donations for charitable or other philanthropic purposes. Donations may be made only to charitable organisations or other non-profit entities entitled to receive them under applicable national or local laws and regulations. Donations may be made to support the general activities of an organisation or may be made to support general fund-raising drives for projects undertaken by such an organisation.

Charitable donations must not be tied in any way to past, present or potential future use of the member's products or services.

6. Educational Grants

Members may provide funds to support genuine independent dental research, advancement of dental science or education, or patient and public education. However, it is important that support of these programmes and activities by members is not viewed as a price concession, reward to favoured customers or inducements to recommend, prescribe or purchase members' products or services. Therefore, members should ensure that they maintain appropriate documentation in respect of all educational grants made.

Educational grants must not be tied in any way to past, present or potential future use of the member's products or services. Educational grants may be made only to organisations or entities entitled to receive them under applicable national and local laws and regulations and should not be made to individual Healthcare Professionals.

APPENDIX 3 Definitions

BDIA: British Dental Industry Association

Advertiser: the BDIA Member by or on behalf of whom an Advertisement is placed and/or the BDIA Member supplying the relevant product or Related Service if they have approved the Advertisement or the Advertisement has been approved or placed by the Member's affiliated company which is not a Member of BDIA.

The BDIA Member shall be treated as the Advertiser where the BDIA Member, or the Member's affiliated company which is not a Member of BDIA, has approved Advertisements placed by a third party distributor or other service provider.

Advertisement or Advertising: any marketing communication or Advertorial issued by or on behalf of an Advertiser in whatever form (including but not limited to verbal communications) and through whatever media (including the world wide web) that is intended wholly or mainly to influence Healthcare Professionals or Health Institutions directly or indirectly in;

- their choice of product or service to be purchased, leased, used or supplied, or
- in any recommendation that they make to others about such purchase, lease, use or supply.

An example of Advertising intended to influence Healthcare Professionals or Health Institutions indirectly would be information provided by or on behalf of an Advertiser to journalists working for publications which are directed primarily at Healthcare Professionals or Health Institutions.

For the avoidance of doubt product labelling, packaging and instructions for use shall not in the ordinary course be treated as Advertising for the purpose of these Guidelines.

Advertorial: any communication, feature, announcement or promotion in a form that resembles independent editorial comment published by or on behalf of a BDIA Member, the content of which is controlled by the Advertiser, not the publisher, irrespective whether it is disseminated in return for a payment or other reciprocal arrangement, or free of charge.

Complainant: The instigator of the complaint.

Defendant: The member complained of.

CoBP or Code: the code of business practice published by BDIA as amended from time to time.

Healthcare Professionals includes:

- Qualified personnel including dentists, dental hygienists, dental nurses, dental technicians, dental therapists, orthodontic therapists, clinical dental technicians, doctors, physicians, psychiatrists, surgeons, nurses and other personnel authorised to treat human patients; and
- clinical or non-clinical personnel, including technicians and research co-ordinators who

work with or under the direction of such dental personnel; and

- persons qualified and permitted to prescribe devices or related services; and
- persons or entities, including hospitals or group purchasing organisations, that directly or indirectly buy, lease, recommend, use, supply or procure the purchase, lease, recommendation, use or supply of products or services for or on behalf of persons described in i-iii above.

The intention is to include any person or organisation that procures (or influences others to procure) products and services and the phrase “Healthcare Professional” should be interpreted accordingly. Thus, in addition to the persons described above, Healthcare Professional includes pharmacists, pharmacy assistants, optometrists, chiropodists, midwives and other ancillary health workers who are entitled to supply products and services directly to members of the public. It also includes persons who determine which product or service is in any manner acquired or supplied.

However, the definition of Healthcare Professional does not include intermediate suppliers of products and services, such as wholesalers and distributors and/or non-Healthcare Professional retailing entities or persons in the supply chain.

Health Institution: any institution, organisation body or practice (including dental and general practitioner practices) in which Healthcare Professionals are engaged in treating human patients.

Intended Purpose: the use for which the device is intended according to the data supplied by the manufacturer on the labelling, in the instructions and/or in promotional materials (Medical Devices Directive 93/42/EEC).

Medical Device Directives: means either or both of Directives 93/42/EEC and 90/385/EEC as the same may from time to time be amended.

Member: a member of BDIA or an organisation that has undertaken to comply with the provisions of the BDIA Code of Business Practice.

Peer-reviewed investigation evidence: Investigation evidence that has been subject to evaluation by one or more people of similar competence to the producers of the work.

APPENDIX 4

Complaints Procedure

1. Any Complainant wishing to make a complaint against a BDIA member, including other member companies, utilising this Complaints Procedure must initially attempt to reconcile any dispute with that company through conciliation or mediation procedures or mutual settlement first. A genuine attempt at mediation shall be a precondition before a complaint can be made utilising this procedure. If no resolution can be achieved, any complaint under the terms of this Code of Practice must be made in writing, as set out in Paragraph 8.1 of the Code, to:

The Chief Executive,
The British Dental Industry Association,
Mineral Lane,
Chesham,
Bucks
HP5 1NL

Any complaint should be accompanied by any necessary documentary evidence and an explanation as to why genuine attempts at mediation have been unsuccessful. Anonymous complaints will not be accepted and any Complainant making a complaint under this Procedure shall be required for a minimum of 18 months to undertake to abide by the provisions of the Code and of this Procedure as a precondition before a complaint can be made utilising this Procedure.

2. In the event of a complaint being received in accordance with Paragraph 8.1 of the BDIA Code of Practice, the following procedure will be followed, and a copy of this Complaints Procedure will be made available to the Complainant.

3. The Chief Executive will consider the Complaint and if it is felt a genuine complaint will attempt to reconcile any dispute by endeavouring to facilitate an agreed resolution of the complaint between the Defendant and Complainant.

4. If an agreed resolution cannot be reached within 28 days of the commencement of reconciliation negotiations (as per 3. above), or the Chief Executive deems that further enquiry is necessary, the complaint will be laid before a Complaints Panel.

5. The Complaints Panel shall be established by the Council and consist of not less than three individuals representing BDIA members with no conflicts of interest in the complaint. The Complaints Panel may obtain expert assistance in any field. Expert advisers who are consulted may be invited to attend a meeting of the Panel but have no voting rights. Each such expert shall also be required to confirm that they have no conflict of interest in providing expert assistance on any particular case. The Complaints Panel shall decide within twenty-eight days if the complaint merits further investigation.

6. If the Complaints Panel decides that the complaint merits further investigation it will authorise the Secretariat to investigate and if necessary to seek written submissions from the Defendant and Complainant and any other parties deemed appropriate who shall respond to such requests within 28 days. The Complaints Panel will then endeavour to negotiate an agreed resolution of the complaint with the Defendant and Complainant and any other

party concerned. If the matter is resolved a note to that effect will be kept by the Secretariat and sent to the relevant parties.

7. If the Complaints Panel cannot resolve the complaint through an agreed resolution, then the Secretariat will offer the Defendant and Complainant a formal hearing before an Appeal Panel either in person or by written representation. The Appeal Panel shall be established by the Council and consist of not less than three individuals representing BDIA members with no conflicts of interest in the complaint. The Appeal Panel may obtain expert assistance in any field. Expert advisers who are consulted may be invited to attend a meeting of the Panel but have no voting rights. Each such expert shall also be required to confirm that they have no conflict of interest in providing expert assistance on any particular case.

8. If the Complainant does not accept the offer of an Appeal Panel hearing within 14 days, it will be assumed that he/she is not proceeding with the complaint.

9. If the Defendant does not accept the offer of an Appeal Panel hearing within 14 days, the Appeal Panel may deal with the matter in his/her absence.

10. The Appeal Panel will determine the complaint by dismissing it or by issuing a reprimand or by suspending or expelling the Defendant or any combination of these. Rulings by the Appeal Panel are made on the basis that a Complainant has the burden of proving their complaint on the balance of probabilities. Suspension will entail the withdrawal of membership privileges and the withdrawal of the member's rate for Association exhibitions. The Appeal Panel will give written reasons for its decision and the decision will be communicated in writing to the Complainant and the Defendant. Appeal against the decision of the Appeal Panel lies to the Council as set out below.

11. If a written hearing is requested the Secretariat will ask the Complainant to submit a written statement of his/her case and the Defendant to respond within a time limit. The Appeal Panel may ask for more information from either party before making its determination.

12. If a formal hearing is requested, then the Appeal Panel procedure will be as follows:

12.1 The Appeal Panel will appoint a Chairman who will follow the procedure below but whose decision as to the conduct of the appeal will be final.

12.2 The Complainant may be accompanied by one other person (including a legal representative if required) to present his/her case. The Defendant will be required to notify the Secretariat in advance if any witnesses are to be called and to present in advance a written summary of evidence.

12.3 The Complainant will present his/her case.

12.4 The Defendant may ask questions.

12.5 The Appeal Panel may ask questions of the Complainant.

12.6 The Defendant will present his/her case.

12.7 The Complainant may ask questions.

12.8 The Appeal Panel may ask questions.

12.9 The Defendant may sum up his/her case.

12.10 The Complainant may sum up his/her case.

The Appeal Panel will determine the complaint as per 10. above, by dismissing it or by issuing a reprimand or by suspending or expelling the Defendant or any combination of these. Rulings by the Appeal Panel are made on the basis that a Complainant has the burden of proving their complaint on the balance of probabilities. Suspension will entail the withdrawal of membership privileges and the withdrawal of the member's rate for Association exhibitions. The Appeal Panel will give written reasons for its decision and the decision will be communicated in writing to the Complainant and the Defendant.

13. Appeal against the decision of the Appeal Panel lies to the Council as set out below.

14. Appeal to the Council may be in writing or by formal hearing. In either case the procedures will be as outlined below. The appeal will be by way of a re-hearing but the decision of the Appeal Panel and its reasons will be made available to the Council. Members of Council who have sat on the Complaints Panel or the Appeal Panel will not sit on any appeal to Council.

14.1 The Complainant may be accompanied by one other person (including a legal representative if required) to present his/her case. The Member will be required to notify the Secretariat in advance if any witnesses are to be called and to present in advance a written summary of evidence.

14.2 The Complainant will present his/her case.

14.3 The Defendant may ask questions.

14.4 The Council may ask questions of the Complainant.

14.5 The Defendant will present his/her case.

14.6 The Complainant may ask questions.

14.7 The Council may ask questions.

14.8 The Defendant may sum up his/her case.

14.9 The Complainant may sum up his/her case.

The Council may dismiss or uphold the Appeal Panel's decision. Rulings by the Council are made on the basis that a Complainant has the burden of proving their complaint on the balance of probabilities. If the Council upholds the complaint it may substitute other disciplinary measures (but within the range outlined above) for those imposed by the Appeals Panel. The Council's decision and its reasons shall be final and shall be communicated to the Defendant and the Complainant in writing.

15. For the avoidance of doubt, those that wish to utilise this Complaints Procedure to submit a complaint, and all applicable companies that have agreed to submit to the jurisdiction

of the Association (including the Secretariat, the Complaints Panel, the Appeal Panel and the Council) in respect of a Complaint, shall not, save in respect of fraud, fraudulent misrepresentation or gross negligence by the Association in respect of a complaint, in arriving at a Panel ruling, commence legal proceedings or any analogous contentious or complaint proceedings against the Association in respect of any loss or damage they may suffer as a consequence of any such rulings made.

16. The Association may order that either party, or a combination of the parties (Complainant or Defendant) pay all reasonable costs incurred by the Association, including the Secretariat, the Complaints Panel, the Appeal Panel and the Council in whole or part.

BDIA Competition Law Compliance Guidelines

(These Guidelines do not form part of the BDIA Code of Practice and are for guidance only).

The BDIA brings together suppliers and others involved in the UK dental sector to discuss issues of industry-wide importance. Our members may compete directly with each other as sellers or buyers. We should therefore ensure that we comply fully with UK competition law and any other equivalent provisions.

Competition law contains two basic prohibitions: one prohibiting anticompetitive agreements between two or more undertakings; and the other prohibiting abuses of a single or collective dominant position (which may apply both to unilateral conduct and to agreements involving a dominant party).

Infringement of competition law can lead to fines, civil liability for damages and in some countries even to criminal liability. It is the responsibility of the Association and each of our members individually to ensure compliance with these guidelines. Liability under the competition laws may be strict – a trade association member may be liable for infringement by the rest of the Association.

The following guidelines apply to the Association, any working group, individual members, and any subgroup within our Association, whether they are large or small.

The prohibition of anti-competitive agreements - general

Generally, no BDIA member should ever discuss or be involved in any of the following activities that will infringe the ban on anti-competitive agreements:

- Price-fixing, including the co-ordination of price ranges, discounts or any other element of pricing, and even discussing prices without actively fixing them.
- Market partitioning such as the allocation of customer groups or territories between competitors, or bid rigging.
- Agreements on investment levels or production quotas.
- The exchange of competitively sensitive information, for instance, on business plans, customer relations or ongoing or planned bids.
- Agreed restrictions on trade between EU Member States such as export bans, or prohibitions on sales to parallel traders.
- Joint negotiations, joint selling or (except after legal review) joint buying.
- Any other agreement restricting competition such as, for instance, a collective boycott, any arrangement to avoid direct competition, or joint action to exclude competitors or new entrants.

To be prohibited by competition law, an agreement need not be written down or binding. The same is true of the decision of an association of undertakings. A verbal information exchange or an informal agreement can be an infringement even if it is merely a “gentleman’s agreement”.

Specific rules for the BDIA as a trade association

There are three specific areas that require particular attention in the light of the competition rules: the Association's membership rules; the industry-wide standards we may set; and information exchanged at Association meetings.

1. Membership rules

We must not use access to our membership in order to reserve unfair competitive advantage to our members. Accordingly, our criteria for membership are precise, objective, and reasonably necessary for the purpose and efficient governance of our Association. We must apply them in a non-discriminatory manner. We must never base a decision on grounds of competition.

- Any proposed expulsion or rejection of a membership application should be based on objective criteria and may be referred for legal review.
- Membership or access to information must not be conditional upon a promise not to participate in competing associations (unless this is strictly necessary to ensure the viability of the Association, in which case legal advice will be sought).
- Restrictions on members or rules for discipline must be objective and reasonably necessary for the purposes and good governance of the Association. Members have the right to be heard in such cases and an appeal to an independent tribunal will be allowed.

2. Industry standards

The BDIA or working groups within the Association may develop and promote industry standards, codes of practice or standard terms and conditions for agreements. These standards are allowed where they improve the quality of our members' products or services; however, we are not allowed to use them to restrict competition. Accordingly:

- Standards must be related to specified legitimate objectives, and no more detailed or restrictive than reasonably necessary. Standards should not be used to raise barriers to entry to the market or to exclude competitors.
- Specifications for standards should be publicly accessible, also for non-members.
- Compliance should be voluntary (unless required by law). Standards must not prohibit use of competing technologies in compliant products.
- The award of certificates or seals of approval is allowed as long as criteria are objective and legitimate (for instance, based on verifiable quality levels), and applied on a non-discriminatory basis. Fees should be cost-based.
- The use of standard agreements should not be made compulsory, and standard terms and conditions should not attempt to harmonize 'price-related' clauses.
- A 'best practice' code must not be compulsory and must not limit the way in which participants are able to compete.

3. Information exchange

Members must never exchange competitively sensitive information on their own or their competitors' commercial strategy or anything which would be considered a business secret. We should take particular care in discussions with fellow-members who are or who may become competitors both at formal gatherings and at any informal meeting, even in a social context.

Subjects to avoid are:

- Prices and discounts, or price-related contractual terms (although you may discuss Government imposed prices and reimbursement policies).
- Client relations, ongoing bids or plans to bid for business.
- Business plans or commercial strategy.
- Competitive strengths/weaknesses in particular areas.
- Production planning or output levels.
- Product development or investment in research programs which is not yet widely known.
- Individualized market share data.

Benchmarking is allowed, so long as the entity collecting and processing the data is bound by confidentiality, and the data are not and cannot be linked to specific competitors. Market surveys are allowed, so long as results are presented in statistical form, individual price information is excluded and competitively sensitive information remains anonymous.

It is acceptable to discuss public policy, educational and scientific developments, regulatory matters of general interest (including Government-imposed prices or reimbursement policies), demographic trends, generally acknowledged industry trends, publicly available information and historical information that have no impact on future business. Members may display or demonstrate new or existing products or services, but not discuss non-public R&D or production plans.

The prohibition of abuse of a dominant position

Companies that have the economic power to act independently and set prices regardless of customers' or suppliers' demands or competitive pressure have a special duty to not to restrict competition and not to exploit their customers. Dominance is, in essence, the power to over price, which is assumed if a firm accounts for a dominant share of supply or demand (normally 40% or more).

Even if individual members may not be dominant, trade association members may be considered collectively dominant in a particular product market if four or fewer of them account for a large share (say, around 80%) of supply and if they have contacts with each other through the trade association. In such an oligopolistic market, parallel behaviour that restricts competition or exploits customers might be found abusive even if there is no evidence of active collusion.

As soon as a dominant undertaking's behaviour has an anti-competitive object or effect, without objective justification, it may result in fines and civil liability. There is no need to demonstrate the existence of an agreement or collusion. Examples of possible abuse of dominance include:

- Imposing excessive or discriminatory terms on customers or suppliers.
- Offering below-cost prices with a view to excluding competitors from the market.
- Limiting production or technical development.
- Refusing to supply parallel traders.
- Refusing to supply competitors or customers with products that they need and cannot buy elsewhere.
- Making supplies of a product a customer needs dependent on the purchase of a product or service that the customer does not want (tying).

What to do if you suspect a breach of these guidelines?

Presence at meetings where anticompetitive conduct is discussed can be enough to infringe the competition rules. Check the agenda, object in advance to impermissible discussion items and stay away if the agenda is not changed. As soon as you become aware of an infringement, contact your legal counsel, express your disagreement and ensure that a record is kept of your disagreement. If you miss an Association meeting, check the minutes upon receipt, and warn your legal counsel if these suggest an infringement. If there is a possibility that sensitive matters are discussed, consider having legal counsel present at meetings.

If you are uncertain whether a particular agreement, discussion or information exchange between competitors is allowed, immediately contact your company counsel, who will take appropriate steps.

Dos and Don'ts

DOs

1. Ensure you are familiar with the current BDIA Competition Law Compliance Guidelines.
2. Do discuss public policy, education, scientific developments, regulatory matters of general interest, general industry trends, non-individualized (statistical) market surveys or benchmarking projects, publicly available information and historical information, but be prepared to terminate the discussion and record your disagreement if anyone mentions any of the subjects listed in the 'Don't' list below.
3. Do inform the BDIA if you disagree with any of its decisions and keep a copy for your files of any such correspondence.
4. Do return commercially sensitive information you receive, without keeping copies, and explain in writing that you do not wish to obtain such information.

5. Do inform your company counsel and the BDIA of any approaches seeking to exchange non-public information or co-ordinate conduct in the market.
6. Do ask BDIA to have counsel attend meetings if you or your company have any doubts.

DON'Ts

1. Don't reach understandings or agreements or even hold discussions (especially with a competitor) on anything relating to commercially sensitive topics such as prices, credit terms and billing practices, production, inventory, sales, costs, future business plans, bids or matters relating to individual suppliers or customers.
2. Don't attend meetings without written agendas or clear indication of the purpose.
3. Don't attend unscheduled gatherings unless you know that they are for a bona fide purpose or purely social gatherings.
4. Don't accept written non-public information or agree to the exchange of oral non-public information with members who market competing products or services.
5. Don't participate in information exchanges, market surveys, or benchmarking exercises that allow access to individualized competitive information.
6. Don't engage in joint negotiations, joint sales or joint buying without legal advice.
7. Don't exclude competitors or engage in collective boycotts.

Exchanging Data and Information

Any discussions, whether in a formal or informal context including mere information exchanges, can constitute an anti-competitive agreement or practice.

If you are part of an information or benchmarking 'pool' or other market survey, ensure that individual manufacturers are not identifiable from the data and allow open and voluntary participation in the exchange.

Exchanging certain types of sensitive information may be more anti-competitive than is the case with other forms of information. Factors that could make for a high risk of infringement of the competition rules are set out in the table.

High Risk of Infringement	Low Risk of Infringement
Supply/accept/exchange of information with direct or potential competitors	Publication of information; exchange of information with customers or non-competitors
Supply/accept/exchange information on prices and discounts, individual bids, customer relations, costs, investment and general business strategy, production levels	Exchange information on public policy matters, educational and scientific developments, regulatory matters of general interest, demographic trends, generally acknowledged industry trends, publicly available information
Confidential information	Public domain information
Current information	Historic information
Individual company data	Aggregated industry data
Information exchange in an oligopolistic market structure	
Frequent exchanges	Infrequent exchanges
Implied or explicit recommendations or agreements accompanying the exchange	No further discussion of the information exchanged



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