

EX-EMPLOYEE v LILLY

Conduct of representatives and meeting arrangements

An ex-employee of Lilly complained about the conduct of representatives and the arrangements for various meetings in 2008 and 2009.

The detailed response from Lilly is given below.

The complainant noted that an endocrinologist from the US toured a Lilly sales manager's region and presented to diabetologists. The complainant alleged that the sales manager instructed representatives to encourage the doctor to speak about the off-licence use of Byetta in combination with glitazones.

The Panel noted that the slide set used by the doctor contained a slide which read 'Approved Clinical Uses of Byetta'. The second bullet point stated 'Byetta is not approved with glitazone drugs or insulin'. The Panel considered that it was confusing to state, under a heading of 'Approved Clinical Uses' what Byetta was not approved for. The Panel considered that it would have been preferable if the doctor had been given written guidance on how to respond to unsolicited questions about the unlicensed use of Byetta. Nonetheless, the Panel considered that there was no evidence to suggest that representatives had encouraged the doctor to speak about the off-licence use of Byetta in combination with glitazones as alleged. No breaches of the 2006 Code were ruled including Clause 2.

The complainant stated that the same sales manager instructed a representative to contact two diabetes specialist nurses (DSNs). The meeting, in 2008, was at a restaurant and attended by the sales manager, two representatives and the two nurses. The sales manager did not discuss business and made no presentation. The matter was investigated internally and Lilly decided that there was no case to answer.

The Panel noted that for any meeting, held by a pharmaceutical company and attended by health professionals, certain basic principles must apply including, inter alia, the meeting must have a clear educational content and the subsistence provided must be secondary to the nature of the meeting, must be appropriate and not out of proportion to the occasion.

The Panel noted that the meeting at the restaurant had two items for discussion on the agenda. No written agenda had been provided. Five people attended the meeting – three from Lilly and two local DSNs. One of the representatives recorded that the meeting had lasted four hours. The Panel queried the length of the meeting vs the content of the agenda and considered that with regard to

balance the meal was out of proportion to the occasion. The Panel was also concerned that the meeting took place in a part of the restaurant open to the public.

The receipt for the meal showed that the bill was paid at 11pm. The cost of the meal, including beverages, was £192 ie £38.40 person. The Panel noted with concern that in Lilly's initial response it had referred to a fixed price menu of between £10.90 and £22 per head. The actual cost was greatly in excess of that and was only provided to the Panel following a request for further information. The Panel considered that this was unacceptable; self regulation relied upon a full and frank disclosure of the facts.

The Panel queried whether the £38.40 per person exceeded that which the two nurses would have paid if they had paid for the meal themselves. The Panel further noted that the bill showed that the group had consumed seven pints of beer, two gins, two whiskies, seven whisky liqueurs and three large glasses of red wine. In the Panel's view this amount of alcohol was excessive and inconsistent with the aims of a business meeting.

The restaurant bill and two taxi fares (assumed to be for the nurses) had been submitted on the expenses of one of the representatives under the heading of 'Group Sells'. The expense account for the evening had been approved by the manager who had been at the meeting. In the Panel's view this was unacceptable; the meeting expenses should have been submitted by the most senior person present ie the manager, for approval by his manager.

The Panel considered that overall, the hospitality provided had been excessive and in that regard it ruled a breach of the Code. The Panel further considered that the manager had not maintained a high standard of ethical conduct. Breaches of the Code were ruled.

The Panel considered that the overall arrangements for the meeting were such as to bring discredit upon the industry. A breach of Clause 2 was ruled.

The complainant stated that in 2009 a Lilly representative left food at a general hospital diabetes department without any educational presentation. The representative spoke to one nurse and asked her to let the others know that she would put them down for a meeting that day if they should be asked.

The Panel noted that the representative had arrived at the hospital with sufficient food for her pre-

planned meeting. The meeting was a group sell event and the cost of the food was approximately £11 per head. Four nurses had previously confirmed their attendance but on the day only one turned up. The Panel noted that the representative had stayed as long as possible, waiting for the other three nurses to arrive. The Panel further noted Lilly's submission that during that time the representative had a product discussion with the one nurse using approved sales material. Eventually the representative had left, leaving the remainder of the food for the nurses who had not turned up.

The Panel considered that the circumstances were unfortunate but the fact that one nurse turned up supported the fact that a meeting had been planned. It also appeared that the representative and the one nurse discussed a product as planned, ate some of the food and the remainder was left for the other three.

The Panel considered that, although within the Lilly guidelines, the cost of the hospitality for a lunchtime meeting was on the outer limits of acceptability. Nonetheless the Panel considered that the arrangements were not unacceptable. It was unfortunate that only one of the intended audience had turned up. Nonetheless a product was discussed with that one nurse. The Panel considered that the representative had maintained a high standard of ethical conduct. Only the remainder of the food had been left. No breaches of the Code were ruled including Clause 2.

Upon appeal by the complainant the Appeal Board noted Lilly's submissions that in advance of the pre-planned meeting, the sales representative had entered the names of the four nurses who she had expected to attend, into the customer relations management (CRM) system. On the day of the meeting, the representative had arrived with sufficient food for the meeting. Of the four nurses expected, one turned up. Whilst waiting as long as possible for the others to arrive, and before she had to leave for another meeting, the representative had discussed a product with the one nurse using approved sales material.

The Appeal Board was very concerned to note that it was revealed in Lilly's response to the appeal, that before leaving the meeting, the representative had asked the one nurse that attended whether it would be acceptable for her to include the other nurses' names on the CRM system as attendees, as a way to justify the food expenditure to Lilly.

The Appeal Board noted that the complainant had submitted that the senior DSN had contacted him after the meeting because she was furious about the representative's conduct and because the DSN who had attended the meeting was new and inexperienced. The complainant further alleged that there had been no product discussion at the meeting.

Lilly had submitted that in subsequent email correspondence between the sales representative

and the senior DSN, the senior DSN had accepted the representative's apology. Nonetheless, the Appeal Board noted that the names of the three nurses (including the senior DSN) that had not attended the meeting had remained on the CRM system.

The Appeal Board was concerned to note from Lilly's representative at the appeal that, in the course of the representative's disciplinary procedure, further details about the meeting had emerged including that the senior DSN had been at least upset, if not furious as alleged by the complainant. This was in contrast to Lilly's statement in response to the appeal that the nature of the senior DSN's reaction was new information, not previously available to Lilly. It appeared that some people in Lilly knew that the senior DSN had been at the least upset before the Panel had made its ruling in this case, but the information had not been given to those within the company dealing with the complaint. The Appeal Board was concerned that lack of communication within Lilly meant that it had not provided more complete information to the Panel; self regulation relied on full and frank disclosure. The Appeal Board asked that Lilly be advised of its concerns in this regard.

The Appeal Board noted that both parties agreed that the senior DSN had been upset, albeit to a greater or lesser extent, by the representative's conduct. The Appeal Board considered that the representative's actions in asking the one nurse who had attended to collude with her in recording the attendance of the three other nurses in order to justify the expenditure on the food was entirely inappropriate. The Appeal Board considered that the representative had failed to maintain a high standard of ethical conduct and a breach of the Code was ruled. The appeal on this point was successful.

The Appeal Board was concerned that the senior DSN had been upset by the representative. The Appeal Board ruled that high standards had not been maintained in a breach of the Code. The appeal on this point was successful.

The Appeal Board noted that the complainant and Lilly differed as to whether a product discussion had taken place between the representative and the nurse. There was insufficient evidence to support either party and thus the Appeal Board considered that the complainant had not proved this part of his complaint on the balance of probabilities. The Appeal Board considered that, although within the Lilly guidelines, the cost of the hospitality for a lunchtime meeting was on the outer limits of acceptability. Further, the Appeal Board considered that the food had been purchased on the basis of the reasonable expectation that four nurses would attend. The representative had not been informed beforehand that three of the nurses would not attend. This was most unfortunate and left the representative to decide what to do with the excess food; on the particular facts of this case, including the relatively small amount involved, the

Appeal Board decided that the arrangements were not unacceptable. The Appeal Board upheld the Panel's ruling of no breach of the Code. The appeal on this point was unsuccessful.

The Appeal Board noted its rulings above, however it considered that the circumstances did not warrant a ruling of a breach of Clause 2. The Appeal Board upheld the Panel's ruling of no breach of Clause 2. The appeal on this point was unsuccessful.

An ex-employee of Eli Lilly and Company Limited complained about the conduct of representatives and the arrangements for various meetings in 2008 and 2009.

1 Alleged off-licence promotion

COMPLAINT

The complainant noted that an endocrinologist from the US toured a Lilly district sales manager's region and presented to diabetologists. The complainant alleged that the district sales manager instructed representatives to encourage the doctor to speak about the off-licence use of Byetta in combination with glitazones. The complainant noted that it was not in the representatives' interests to admit to this.

The Authority asked Lilly to respond in relation to Clauses 2, 3.2 and 15.2 of the 2008 Code for meetings on and after 1 July. For meetings prior to 1 July, the company was asked to consider the same clauses in the 2006 Code.

RESPONSE

Lilly stated that it invited an endocrinologist to conduct a speaker tour in June 2008.

Lilly's standard practice was for US speaker tours to be organised from the US through a third party with representatives in the local affiliate co-ordinating the local meetings.

The speaker tour comprised five promotional meetings and the endocrinologist was invited to share her experiences of treating patients with Byetta with the invited health professionals. The endocrinologist attended meetings in June. Between four and ten health professionals attended each meeting; the costs ranged from £250 to £1,380. Lilly provided a spreadsheet with information taken from its customer relations management (CRM) system in relation to these three meetings.

At each meeting, the endocrinologist presented on the topic of 'Using Byetta in Family Practice' and copies of her slides together with the current Byetta summary of product characteristics (SPC) were provided. Slide 5 made it clear that 'Byetta [was] approved for use with metformin and sulfonylurea' as per its licence and '... not approved with glitazone drugs or insulin'. These slides were reviewed and approved on email by a Lilly clinical research physician, before any presentation was given.

In order to respond to the complaint about its district sales manager, Lilly had spoken to him and a representative and asked both for their recollection of events. The representative advised that:

'When I briefed [the endocrinologist] pre-tour ... I also mentioned that there could well be off-label questions, certainly around use with insulin, and that whilst she should feel free to respond as she would with any other medical audience, she must re-enforce that it was off-label.'

With regard to the allegation that Lilly's district sales manager encouraged his representatives to encourage the endocrinologist to speak off-licence, Lilly's representative responded that:

'... at no time in the long planning process did John ever touch upon or allude to the benefits of guiding/encouraging [the endocrinologist]' focus upon her experience of patients using Byetta off-label. Nor indeed was there any intimation from [the endocrinologist] that health professionals be encouraged to post questions addressing this same thing'.

A supporting email was provided.

The district sales manager also denied the allegation, and had advised that he did not attend any of the meetings at which the endocrinologist presented.

The facts had been further corroborated by four other members of the district sales manager's team who were all present at the time of the doctor's speaker tour.

For these reasons, Lilly denied any breach of Clauses 2, 3.2 and 15.2 of the 2006 Code in relation to this speaker tour or the sales manager's conduct in connection with it. There was no off-label promotion of Byetta.

PANEL RULING

The Panel noted that the slide set used by the endocrinologist contained a slide which read 'Approved Clinical Uses of Byetta'. The second bullet point stated 'Byetta is not approved with glitazone drugs or insulin'. The Panel considered that it was confusing to state, under a heading of 'Approved Clinical Uses' what Byetta was not approved for. The Panel considered that it would have been preferable if the endocrinologist had been given written guidance on how to respond to unsolicited questions about the unlicensed use of Byetta. Nonetheless, the Panel considered that there was no evidence to suggest that representatives had encouraged the endocrinologist to speak about the off-licence use of Byetta in combination with glitazones as alleged. No breach of Clauses 3.2 and 15.2 of the 2006 Code was ruled.

The Panel noted its rulings above and ruled no breach of Clause 2.

2 Alleged excessive hospitality

COMPLAINT

The complainant stated that the Lilly's district sales manager instructed a Lilly sales representative to contact two diabetes specialist nurses (DSNs). The meeting was at an Indian restaurant in October 2008. In attendance were the district sales manager, two Lilly sales representatives and the two nurses. The sales manager did not discuss business and made no presentation. The matter was investigated internally and Lilly decided that there was no case to answer.

The Authority asked Lilly to respond in relation to Clauses 2, 9.1, 15.2 and 19.1 of the 2008 Code.

RESPONSE

Lilly submitted that in 2008, its district sales manager attended an evening meeting with two Lilly sales representatives and two nurses. Lilly's sales manager had asked one of its sales representatives to set up this meeting on a number of occasions before the meeting. The evening meeting was conducted over a meal at an Indian restaurant. There were two items on the agenda for discussion. The first was the suitability of a service that Lilly provided to general practice ('Enhanced Management of Type 2 Diabetes') for which the two nurses would have responsibility for utilising as community DSNs. The second was Lilly's local and national representative training programmes, which both nurses assisted with, and to seek feedback on the curriculum development and training methods deployed. There was no product discussion or promotion at this meeting, indeed it was not set up as a promotional meeting. The meeting took place downstairs in a discreet alcove of the restaurant and currently the fixed price menu at this restaurant varied from £10.90 to £22 per head.

In a disciplinary meeting in December 2008, following which he was dismissed, one of Lilly's sales representatives expressed reservations about the meeting; he believed that taking customers for a meal which was to be paid for by Lilly breached Lilly standard operating procedures (SOPs) and as such was a breach of the Code. He claimed that he had refused to pay for the meal as a result of these concerns. Given the seriousness of the allegation of misconduct that the representative made against his manager, and a sales representative colleague the matter was investigated with Lilly's disciplinary process.

A senior Lilly manager investigated and chaired the disciplinary hearings. He found the allegations to be unsubstantiated, that there was a legitimate business need to meet with the nurses and that with regard to the content of the conversation there was nothing to answer. The meeting was therefore deemed to comply with Lilly's SOPs and therefore the Code. Lilly provided notes from its district sales manager's disciplinary hearing and the letter confirming the outcome.

Lilly denied breaches of Clauses 2, 9.1, 15.2 or 19.1 of the 2008 Code.

In response to a request for further information Lilly submitted that its representative's entry for the meeting indicated that it started at 7.30pm and lasted four hours, with a total cost of £192 for 5 attendees, a copy of the receipt was provided. Such hospitality as was provided was secondary to the purpose of the meeting.

Lilly further submitted that there was no hospitality associated with this meeting before or afterwards as demonstrated through the expense reports submitted by the three Lilly attendees (copies were provided). Its district sales manager and its representative making the above allegations met earlier that day at a hotel, however this was not in connection with the meeting held later that evening.

As to the content of the meeting, the discussion focussed on two areas; service development within the local health board and, more specifically, how Lilly's Enhanced Management of Type 2 Diabetes service could assist the NHS with the implementation of this service redesign, and secondly, training support for Lilly sales representatives.

Regarding service development within the local health board, the purpose of this discussion was to understand the timelines, processes and roles and responsibilities of key stakeholders (clinicians and payers) in the transfer of diabetes services from the acute setting into the community. As community DSNs the two nurses were ideally placed to help Lilly understand how this service redesign impacted the local healthcare community.

Lilly noted that its Enhanced Management of Type 2 Diabetes service had been developed in conjunction with, and was delivered by, a third party, National Services for Health Improvements ('NSHI'). The service was a non-promotional therapeutic and clinical review service and was available to GPs to help enhance their management of patients with type 2 diabetes. It had run since April 2008 and over 900 practices had used the service since launch. Lilly provided a copy of the booklet available to GPs giving precise details of this service. This booklet was not referred to or used during the course of the discussion.

Regarding training support for Lilly representatives, Lilly noted that the two nurses had been involved in the development and implementation of Lilly's internal training curriculum through Lilly's 'Selling Capability Workshops'. One of the nurses advised on the content of the training curriculum and assessed the workshops, and the other nurse played the role of an assessor during the training workshops in the Summer of 2008. The purpose of the training discussion at this meeting was to gain greater insight into the workshops and how they could be improved. No materials were used during the course of the discussion.

Lilly acknowledged that its representative's entry in the customer relations management (CRM) system described the meeting as 'Discussion service development within the local health board with regards to moving Byetta into community in conjunction with 2 new cons posts'. Lilly had confirmed with its sales manager and its representative that there was no product discussion or promotion at this meeting, and the reference to 'Byetta' in the entry should, in fact, be to 'diabetes' given that the discussion was about moving diabetes services into the community. Lilly's representative had been fully trained on the CRM system and knew that this was not how Lilly expected a meeting of this nature to be recorded.

Lilly noted that it had recently refreshed its sales force training on 'Sales vs Service', which included information on how service calls could not be combined with any reference to product, as well as how to accurately record these two distinct calls in the system.

PANEL RULING

The Panel noted that for any meeting, held by a pharmaceutical company and attended by health professionals, certain basic principals must apply including, inter alia, the meeting must have a clear educational content and the subsistence provided must be secondary to the nature of the meeting, must be appropriate and not out of proportion to the occasion.

The Panel noted that the meeting at the Indian restaurant had two items for discussion on the agenda. No written agenda had been provided. Five people attended the meeting – three from Lilly and two local diabetes specialist nurses. One of the representatives who attended the meeting recorded on the CRM system that the meeting had lasted four hours. The Panel queried the length of the meeting vs the content of the agenda and considered that with regard to balance the meal was out of proportion to the occasion. The Panel was also concerned that the meeting took place in a part of the restaurant which was open to the public, albeit in an alcove.

The receipt for the meal showed that the bill was paid at 11pm. The cost of the meal, including beverages, was £192 ie £38.40 person. The Panel noted with concern that in Lilly's initial response it had referred to a fixed price menu of between £10.90 and £22 per head. The actual cost was greatly in excess of that and was only provided to the Panel following a request for further information. The Panel considered that this was unacceptable; self regulation relied upon a full and frank disclosure of the facts.

The Panel queried whether the £38.40 per person exceeded that which the two nurses would have paid if they had paid for the meal themselves. The Panel further noted that the bill showed that the group had consumed seven pints of beer, two gins, two whiskies, seven whisky liqueurs and three large

glasses of red wine. In the Panel's view this amount of alcohol was excessive and inconsistent with the aims of a business meeting.

The restaurant bill had been submitted on the expenses of one of the representatives under the heading of 'Group Sells'. The representative had also submitted two taxi fares from that evening which the Panel assumed were for the two nurses. The taxi fares totalled £35. The expense account for the evening had been approved by the manager who had been at the meeting. In the Panel's view this was unacceptable; the meeting expenses should have been submitted by the most senior person present ie the district sales manager, for approval by his manager.

The Panel considered that overall, the hospitality provided had been excessive and in that regard it ruled a breach of Clause 19.1.

The Panel noted that two months' later, at his own disciplinary hearing, one of the representatives had expressed reservations about the meeting and claimed to have refused to pay for the meal because of those concerns. The Panel considered that on the balance of probabilities on the evening in question and with regard to the submission of expenses, the representatives would have followed instructions from their manager. The Panel considered that the manager had not maintained a high standard of ethical conduct. Breaches of Clauses 15.2 and 9.1 were ruled.

The Panel considered that the overall arrangements for the meeting were such as to bring discredit upon the industry. A breach of Clause 2 was ruled.

3 Alleged inappropriate hospitality

COMPLAINT

The complainant stated that in 2009 a Lilly sales representative, left food at a general hospital diabetes department without any educational presentation. The sales representative spoke to one nurse and asked her to let the others know that she would put them down for a meeting that day if they should be asked.

The Authority asked Lilly to respond in relation to Clauses 2, 9.1, 15.2 and 19.1 of the 2008 Code of Practice.

RESPONSE

Lilly stated that given that there was little detail in this allegation, it had examined its CRM system to identify when its sales representative attended the general hospital in 2009. Lilly had also spoken with its sales representative directly; she remembered this meeting well.

The meeting which Lilly believed the complainant referred to was a lunchtime group sell promotional meeting arranged for a date in May 2009. The

meeting was scheduled to start at 12:30pm and four nurses were confirmed to attend. The representative called the week before to confirm the start time and number of attendees to ensure that she brought the correct amount of food with her. The representative spent £56.54 on food for the meeting which was within Lilly's guidelines of £12 per head for hospitality at group sell meetings.

When the representative arrived to set up the lunch at the diabetes unit, only one of the four nurses joined her as the other three were with patients in other parts of the hospital. The representative had a product discussion with the nurse, using approved sales materials, and then waited for the others to arrive. By 1:40pm, when the representative had to leave the hospital for another appointment, the three other nurses had not returned to the diabetes unit. The representative therefore decided to leave the remainder of the food for them.

Lilly provided a copy of the relevant entry from its CRM system which showed the four nurses who the representative anticipated meeting that day.

Lilly thus disputed the complainant's version of events and accordingly denied all and any allegation that there had been a breach of Clauses 2, 9.1, 15.2 or 19.1 of the 2008 Code in relation to the meeting or the representative's conduct in connection with it.

In conclusion, Lilly was cognisant of its responsibilities with respect of the Code and considered its representatives to be at the core of its business in line with the Code. The company therefore expected each and every activity conducted by a representative to comply with the Code and to be of the highest standard and quality.

In response to a request for further information Lilly submitted that the representative set up the meeting in the CRM system before the meeting date. She had received verbal confirmation the week before the meeting that four of her key customers would attend and this is what she entered into the system. As the cost per head was under £12 and within Lilly's guidelines for hospitality provision at group sell meetings, the meeting did not need to be pre-approved by her line manager.

As explained above, the representative attended the diabetes unit at the hospital and set up the lunch but only one of the nurses joined her as the other three were busy elsewhere. The representative should have taken those three nurses out of the meeting entry in the CRM system before she submitted it; she did not and admitted that this was an error on her part. Disciplinary action was being taken in this respect.

PANEL RULING

The Panel noted that the representative had arrived at the hospital with sufficient food for her pre-planned meeting. The meeting was a group sell

event and the cost of the food was approximately £11 per head. Four nurses had previously confirmed their attendance but on the day only one turned up. The Panel noted that the representative had stayed as long as possible, waiting for the other three nurses to arrive. The Panel further noted Lilly's submission that during that time the representative had a product discussion with the one nurse using approved sales material. Eventually the representative had left, leaving the remainder of the food for the nurses who had not turned up.

The Panel considered that the circumstances were unfortunate but the fact that one nurse turned up supported the fact that a meeting had been planned. It also appeared that the representative and the one nurse discussed a product as planned, ate some of the food and the remainder was left for the other three.

The Panel considered that, although within the Lilly guidelines, the cost of the hospitality for a lunchtime meeting was on the outer limits of acceptability. Nonetheless the Panel considered that the arrangements were not unacceptable. It was unfortunate that only one of the intended audience had turned up. Nonetheless a product was discussed with that one nurse and so the Panel ruled no breach of Clause 19.1. The Panel considered that the representative had maintained a high standard of ethical conduct. Only the remainder of the food had been left. No breach of Clauses 15.2 and 9.1 was ruled. These rulings were appealed.

The Panel noted its rulings above and ruled no breach of Clause 2. This ruling was appealed.

APPEAL BY THE COMPLAINANT

The complainant submitted that the senior diabetes specialist nurse (DSN) at the diabetes unit at the general hospital, contacted him after the meeting because she was furious about the representative's conduct. The senior DSN acknowledged that the representative had organised the meeting but that on the day the department was exceptionally busy. Only the newly in place (2 weeks) DSN was in the department and she explained that she was too busy to attend the meeting as were colleagues. The representative stated that that was not a problem, she would leave the food and just let the others know that she did so and that she could put their names down for the day. The senior DSN left the department with no product discussion because the nurse did not have time. The senior DSN was furious because the new nurse was inexperienced and did not know what to do and was concerned over the situation. The senior DSN felt that this was grossly unfair on her new colleague. Finally on this point, having worked at that time with Lilly's CRM, representatives did not add the attendees at a meeting until after the meeting, not as stated by the representative prior to the meeting and well Lilly knew that. The complainant was confident that the DSNs, if questioned, would confirm this. The complainant appealed all of the Panel's rulings.

COMMENTS FROM LILLY

Lilly noted that the fact that the senior DSN had contacted the complainant after the group sell lunchtime meeting in May 2009, 'furious about the sales representative's conduct', was new information which was not raised in the complaint and had not previously been made available to Lilly.

Lilly understood from the representative that the senior DSN did not raise any concerns with her about the group sell meeting at the time. In to respond to these new claims, the representative had been extensively questioned on the matters now raised and Lilly's understanding of the matter was:

- In early June 2009, several weeks after the group sell meeting, the representative emailed the senior DSN to determine whether it would be possible to meet the health professionals in the diabetes unit individually, rather than organising a group sell meeting; the department was clearly very busy and so it was difficult to get a group together. The senior DSN responded a couple of days later and told her that, in accordance with the department's policy, the representative must meet the health professionals in a group sell setting, not individually.
- The senior DSN went on to state that she felt the representative had compromised staff at the group sell meeting in May because the representative had asked the DSN with whom she had had a product discussion, when the other nurses were expected to return to the department, the DSN being 'new' to the department. The representative understood that the DSN to whom she spoke on that day had in fact worked in the diabetes unit for some time as a trainee DSN.
- Lilly submitted that as explained previously, the representative had expected four nurses to attend the meeting, and had entered their names into the CRM system in advance of the meeting. The CRM system allowed meeting details, including expected attendees, to be entered in the system before a meeting took place, not as the complainant alleged (viz: 'representatives did not add the attendees at a meeting until after the meeting ...'). As the representative had telephoned the diabetes unit the week before the meeting to confirm the arrangements, and expected attendees, it was appropriate for her to fill in the CRM record for that meeting. As it turned out, only one of the four nurses was able to attend as the other three were with patients in another part of the hospital. The representative was advised that the three other nurses would probably return after she was due to leave for another pre-arranged appointment. On this basis, and as previously explained, the representative decided to leave the remaining food for those nurses. As she was leaving the food, the sales representative asked the DSN whether it would be acceptable for her to include the other nurses' names in the CRM system as having attended, as a way to justify the food expenditure to Lilly. The

senior DSN felt that this question had been unfair of the representative and had compromised the DSN.

- On hearing of her concerns, the representative immediately apologised to the senior DSN. The senior DSN accepted the apology and offered to talk to Lilly's district sales manager, to explain why her staff had been busy on the day of the group sell meeting and unable to attend.
- Lilly submitted that, as explained previously, and following further discussions with the representative since, she acknowledged that it was not appropriate that the three nurses' names remained in the CRM system as attendees when they were not at the meeting. The names should have been removed as the CRM system allowed meeting details to be amended after the event. The representative had admitted that this was an error on her part and she now recognised that the question she asked the DSN was inappropriate.
- Disciplinary action had been taken against the representative in respect of the above, the outcome was communicated to her in December 2010.

FINAL COMMENTS FROM THE COMPLAINANT

The complainant submitted that he knew the truth but was unable to prove it. The complainant refuted Lilly's claims in its primary statements and noticed that in its revised statements the facts changed (ie original version of why names were included then revised which he noticed was closer to his own understanding). Lilly continued to have people believe that it was an ethical company.

APPEAL BOARD RULING

Upon appeal from the complainant the Appeal Board noted Lilly's submissions that in advance of the pre-planned meeting, the representative had entered the names of the four nurses who she had expected to attend, into the Lilly CRM system. On the day of the meeting, the representative had arrived at the hospital with sufficient food for the meeting. The meeting was a group sell event and the cost of the food was approximately £11 per head. Of the four nurses expected, one turned up. Whilst waiting as long as possible for the others to arrive, and before she had to leave for another meeting, the representative had discussed a product with the one nurse using approved sales material.

The Appeal Board was very concerned to note that it was revealed in Lilly's response to the appeal, that before leaving the meeting, the representative had asked the one nurse that attended whether it would be acceptable for her to include the other nurses' names on the CRM system as attendees, as a way to justify the food expenditure to Lilly.

The Appeal Board noted that the complainant had submitted that the senior DSN, the senior DSN, had contacted him after the meeting because she was furious about the representative's conduct and

because the DSN who had attended the meeting was a new and inexperienced nurse. The complainant further alleged that there had been no product discussion at the meeting. Lilly had submitted that in subsequent email correspondence between the representative and the senior DSN, the senior DSN had accepted the representative's apology. Nonetheless, the Appeal Board noted that the names of the three nurses (including the senior DSN) that had not attended the meeting had remained on the CRM system. The Appeal Board was concerned to note from Lilly's representative at the appeal that, in the course of the representative's disciplinary procedure, further details about the group sell meeting had emerged including the fact that the senior DSN had been at least upset, if not furious as alleged by the complainant. This was in contrast to Lilly's statement in response to the appeal that the nature of the senior DSN's reaction was new information, not previously available to Lilly. It appeared that some people in Lilly knew that the senior DSN had been at the least upset before the Panel had made its ruling in this case, but the information had not been given to those within the company dealing with the complaint. The Appeal Board was concerned that lack of communication within Lilly meant that it had not provided more complete information to the Panel; self regulation relied on full and frank disclosure. The Appeal Board asked that Lilly be advised of its concerns in this regard.

The Appeal Board noted that both parties agreed that the senior DSN had been upset, albeit to a greater or lesser extent, by the sales representative's conduct. The Appeal Board considered that the sales representative's actions in asking the one nurse who had attended the lunchtime meeting to collude with her in recording the attendance of the three other nurses in order to justify the expenditure on the food was entirely inappropriate. The Appeal Board considered that the representative had failed to maintain a high standard of ethical conduct and a

breach of Clause 15.2 was ruled. The appeal on this point was successful.

The Appeal Board was concerned that the senior DSN had been upset by the representative. The Appeal Board considered that high standards had not been maintained and it ruled a breach of Clause 9.1. The appeal on this point was successful.

The Appeal Board noted that there was a difference between the complainant and Lilly as to whether or not a product discussion had taken place between the representative and the nurse. There was insufficient evidence to support either party and thus the Appeal Board considered that the complainant had not proved this part of his complaint on the balance of probabilities. The Appeal Board considered that, although within the Lilly guidelines, the cost of the hospitality for a lunchtime meeting was on the outer limits of acceptability. Further, the Appeal Board considered that the food had been purchased on the basis of the reasonable expectation that four nurses would attend. The representative had not been informed beforehand that three of the nurses would not attend. This was most unfortunate and left the representative to decide what to do with the excess food; on the particular facts of this case, including the relatively small amount involved, the Appeal Board decided that the arrangements were not unacceptable. The Appeal Board upheld the Panel's ruling of no breach of Clause 19.1. The appeal on this point was unsuccessful.

The Appeal Board noted its rulings above, however it considered that the circumstances did not warrant a ruling of a breach of Clause 2. The Appeal Board upheld the Panel's ruling of no breach of Clause 2. The appeal on this point was unsuccessful.

Complaint received	21 October 2010
Case completed	8 April 2011