

ANONYMOUS, NON-CONTACTABLE EX-EMPLOYEE V UCB

Representatives' call rates

An anonymous, non-contactable ex-employee complained about UCB's representatives' call rates and stated that he/she had left the company because of constant pressure to carry out an excessive number of calls. The complainant understood that the Code allowed only three unsolicited calls on a doctor or other prescriber per year. However, representatives were told by their managers to get around that by either not recording calls or by recording them incorrectly. The complainant was sure that records for the last three years would confirm that representatives were asked to only report calls as solicited. The complainant asked the Authority to request the briefing material that distinguished between expected call rates and contact rates as well as a copy of the call recording and reporting procedure because whilst at UCB he/she never received written instructions on the application of the Code as required.

The complainant alleged that by asking representatives to pursue a course of action that was contrary to the Code, UCB had failed to maintain high standards and if not checked, such practices could potentially bring disrepute to the pharmaceutical industry.

The detailed response from UCB is given below.

The Panel noted that the complainant was anonymous and non-contactable. Like all complaints, anonymous complaints were judged on the evidence provided. The complainant bore the burden of proving his/her complaint on the balance of probabilities.

The Panel noted that an email dated 29 April 2016 from a regional sales manager instructed recipients to 'As a "rule of thumb" consider an average of 2 face to face calls with these [target] customers in [tertia] two ie May' (tertia two was a four month period starting in May). The email referred to planning to see some target customers more than that, and others less but that the author would envisage recipients seeing 10-20% of customers with only one call in that time and would expect to see a percentage that the recipient would plan to see more than twice. A supplementary email exchange clarified that the field force needed to plan at least two calls per tertial (4 month period) and that for most target customers that would mean there would be four calls planned for the remainder (8 months) of the year.

The Panel disagreed with UCB's submission that 'calls' referred to in the email correspondence encompassed solicited and unsolicited calls; calls solicited by a health professional could not be planned by a representative. In the Panel's view, planned face-to-face calls implied unsolicited 1:1 calls initiated by the representative. The Panel further noted that representatives were asked to

'think of the emphasis of the detailing around each indication' for each planned call. In that regard the Panel thus did not consider that 'calls' in the emails referred to group meetings and the like; in the Panel's view 'detailing' implied 1:1 interactions. The Panel considered that as the email correspondence encouraged representatives to plan to call on some customers at least four times over the next 8 months, it advocated a course of action which was likely to lead to a breach of the Code. A breach of the Code was ruled.

The Panel noted UCB's submission that mandatory induction training for representatives covered call rates and that frequent and regular briefings on call rates were unnecessary as call rates did not feature on the UCB UK agenda. A pre-results awareness campaign briefing for Exxelerate, approved in March 2016, referred to iKAMs delivering a slide deck in 60 customer calls by the end of April (35 working days). A footnote on the same slide stated that call frequency must comply with the Code but gave no further indication that if a health professional had only recently been called upon, another call within a short time period might not be appropriate. The training slides provided did not refer to call frequency. The Panel further noted that one representative per region would be rewarded with a generous amount to spend on a meal if they, *inter alia*, recorded 60 customer calls associated with this campaign. In the Panel's view this might encourage representatives to book calls with health professionals, even if those individuals had only been seen recently, just so they could reach the target of 60 calls.

The Panel noted UCB's submission that a recent internal report identified that individuals had called more than three times on a particular customer over a given period (unspecified). The Panel noted UCB submitted that in most cases there was a misunderstanding and lack of clarity on interpreting the definitions of unsolicited calls. The Panel queried this noting UCB's submission that for those that chose to classify the calls a definition of 'solicited' and 'unsolicited' calls appeared on the screen. The Panel considered that there was evidence to show that, on the balance of probabilities, some representatives had called on some customers more than three times in a year. The Panel ruled a breach of the Code.

The Panel noted its comments and rulings above and considered that UCB had failed to maintain high standards. A breach of the Code was ruled. The Panel did not consider that in the circumstances a breach of Clause 2, which was a sign of particular censure and reserved for such, was warranted and no breach of that clause was ruled.

An anonymous, non-contactable complainant who described him/herself as a former UCB

representative, complained about UCB's representatives' call rates.

COMPLAINT

The complainant stated that he/she had left UCB because he/she and other colleagues were always under pressure to carry out an excessive number of calls. The complainant understood that the Code allowed only three unsolicited calls on a doctor or other prescriber per year. However, representatives were told by their managers to get around that by either not recording calls or by incorrectly recording calls. The complainant asked the Authority to request call records for all representatives, including those that had left the company, for the last three years with a breakdown of solicited vs unsolicited calls per doctor or prescriber per year; the complainant was sure that there would be a higher number of unsolicited calls per year and the ratio of solicited to unsolicited calls for the same representative for a particular health professional would be high in many cases confirming his/her allegation that representatives were asked to only report calls as solicited. The complainant asked the Authority to also request the briefing material that distinguished between expected call rates and contact rates as stated in the Code as well as a copy of the call recording and reporting procedure because whilst at UCB he/she never received written instructions on the application of the Code as required.

The complainant alleged that by asking representatives to pursue a course of action that was contrary to the Code, UCB had failed to maintain high standards and if not checked, such practices could potentially bring disrepute to the pharmaceutical industry.

When writing to UCB, the Authority asked it to consider the requirements of Clauses 2, 9, 15.4 and 15.9 of the Code.

RESPONSE

UCB stated that its strategy was underpinned by providing and demonstrating patient benefits and value. Call rates for representatives formed no part of that strategy or its execution.

UCB submitted that throughout its organisation the component units, operations, functions and practices were all configured around the patient value objectives. The UK sales teams fell under one of the patient value units.

UCB submitted screenshots from its intranet which detailed its organisations, vision and priorities and patient values strategy that illustrated that underlying theme, its 'top down' endorsement and the permeation into all activities. As a further illustration, an internal document on 2015 objectives demonstrated that both strategically and operationally there was no component of call rates.

With respect to representatives' call rates, the emphasis was firmly on quality, content and prioritisation. UCB submitted that in the 2015 objectives document, although achieving target

sales was well represented, there was a well-documented objective of 'delivery of value to patients'. Additionally, under one of the objectives the ingredients of call/event monitoring (using the in-house customer relationship management (CRM) system implemented globally across UCB), ABPI compliance in all activities and training, were all in place. The elements of quality and content were specifically represented in another objective.

Another 2016 incentive plan in a different therapy area did not refer to call rates. It referred to alignment to patient value principles and had no eligibility related to call rates.

The approach for sales calls was defined periodically according to the prevailing campaign. Briefings to the sales team gave guidance on the feature above. An example was EXXELERATE: Pre-results Awareness Briefings for key account managers (iKAMs) and healthcare partnership managers (HPMs) a copy of which was provided. Objectives and contents for calls were set with a clear statement to comply with Clause 15.4.

UCB stated that given the above, it was implicit and actually the case that call rates were not part of representatives' incentives (both qualification and payment).

Achieving set objectives defined performance and formed a large part of the incentive payments. The 2015 objectives had no mention of call rates and in that regard UCB provided details of one representative's 2015 performance objectives. Moreover, the redacted 2016 performance objectives documents for a representative, his/her regional manager and business head consistently showed no inclusion of call rates. This consistency was continued across another therapy unit.

UCB submitted that there was no downward pressure or instruction from managers to achieve high call rates that would exceed limits set by the Code.

Briefing documents were generally produced by the sales managers or business heads alongside marketing. The lack of any manager or senior level endorsement of breaching the call rate limits set by the Code was generally supported by clear corporate strategy that was very visible for all employees.

Specific support for the same was from documents that were always endorsed by senior managers. Each territory produced a cycle plan to cover a four month period. Such plans were viewed, reviewed and approved by managers (screenshot of redacted cycle plan provided).

UCB submitted copies of the supporting documents.

UCB submitted that all representatives had mandatory, face-to-face Code training including on call rates, during the early induction period on joining UCB. There was additional mandatory training on modules provided by a third party. The training was tracked and training records were available for each representative.

When there were Code updates, the mandatory training was again implemented. The most recent of these was 'ABPI Code of Practice 2016: what's different?' In addition, all representatives were supplied with a printed copy of the latest version of the Code.

UCB stated that it was mandatory to record calls and events in the CRM system which had functionality to collect call information and generate reports. Pertinent features related to call and contact rates were:

- All representatives were trained on the system during their induction. The user manual was online with no distribution of paper copies.
- Although a globally used system, there was a dedicated UK 'user champion' who representatives could call with any problems. The same dedicated resource was well versed with generating reports and metrics, alongside specific individuals who were able to train others.
- Logging of calls, contacts and events was mandatory. This was supported in the individual's objectives and the accompanying evaluation of performance
- In logging a call there was an optional field of classifying it as solicited, unsolicited or none. This field was not mandatory as the tool was global and not all UCB territories required that information.
- For those that chose to classify the calls a definition of solicited and unsolicited calls appeared on the screen. An unsolicited call was defined as 'one without any request from the customer and initiated by the representative'
- The system had functionality to highlight any customers who had more than 3 calls over a given period. This facility was routinely performed by a UCB employee who left the organisation. A report was generated recently and representatives were interviewed by a senior manager where there had been more than three calls on any particular customer. UCB submitted that in most cases there was a misunderstanding and lack of clarity on interpreting the definitions of unsolicited calls. Such a conclusion was derived only after discussing all calls individually and the associated background to each.

Alongside the CRM system, each sales territory had a cycle plan logged on the system that focused on the overall objectives for the territory. The planned calls for a customer to deliver on objectives were defined and viewed and approved by the manager. Any alarming call rates would precipitate necessary correction of plans.

In conclusion UCB stated that mandatory training at the outset once a representative joined UCB clearly covered call rates. However, call rates were not a feature in strategy or tactics throughout the organisation from a corporate standpoint down to a local level territory plan. Indeed, the overwhelming themes were patient value, call quality, content and prioritisation. Sales representatives' incentives had no reference to call rates. With those points taken both individually and collectively it would be entirely disingenuous for managers to drive call rates. The documentation cited wholly supported this view.

UCB submitted that, within the above context, frequent and regular briefings on call rates were unnecessary as call rates did not feature on the UCB UK agenda.

UCB therefore submitted that appropriately focussed high standards had been set and maintained, briefings and support provided as necessary and there had been no breaches of Clauses 9.1, 15.4 and 15.9. The organisation had developed and clearly communicated the strategy and implemented it in compliance of the Code without a breach of Clause 2.

FURTHER INFORMATION FROM UCB

UCB stated that the very comprehensive response above was compiled using information and documentation collated from across relevant UCB departments in the British Isles and Ireland. However, an email came to UCB's attention in preparing for an internal meeting in August. UCB submitted that the human resources department was reviewing material and documentation reviewed during the matter including the internal email communications (copies provided) which given the similarity to the subject of this case, UCB submitted for completeness and for consideration alongside the response above.

The email was between a regional sales manager (RSM) and the sales team reporting to him/her between April and June 2016. The RSM had sent an email including the team's target lists and asked the team to consider an average of 2 face-to-face calls per customer in T2 ie May which he/she stated would work out to 2 per tertial or once every two months. The RSM stated that he/she expected that there were some customers that the team would plan to see more and expected to see a percentage that the team planned to see more than twice. When a sales team member queried if the expectation was that they would have 4 calls planned for the majority of their target customers for the remainder of the year, the RSM replied 'Correct'.

UCB summarised the context and provided appropriate clarification as follows:

- Cycle plans (captured in the CRM system) were planning tools used by the field force to think ahead and document forthcoming territory activity.
- UCB used a term to describe a priority group of customers identified in terms of a perceived positioning on an adoption ladder priority for UCB products, in a particular therapy area. The term therefore defined a list of priority customers with whom the sales team should seek to have interactions; the representatives were directed to see both this priority group of customers and those not in the priority group. However, they should ensure that they saw a higher proportion of the priority customers than the non-priority ones.
- The term 'calls' in this email chain referred to all type of contact; solicited and unsolicited entered into cycle plans within the CRM system.
- For further clarity UCB submitted that 'calls' recorded in the CRM system were completed and could be categorised as solicited, unsolicited or none. 'Calls' planned in cycle plans (captured also

in the CRM system) were the numbers inserted for the total contacts planned/envisaged, taking into account the forthcoming activities in totality eg face-to-face calls, group meetings and speaker meetings

- After inserting the planned numbers of calls/contacts, the next step was for the manager to review individual plans submitted by each representative in the territory.

Given the email communication combined with the above explanatory notes, UCB acknowledged that the clarity in communication between the RSM and representative could have been better, but that the overall context was not intended to breach the Code. UCB therefore maintained its position from its original response.

PANEL RULING

The Panel noted that the complainant was anonymous and non-contactable. Like all complaints, anonymous complaints were judged on the evidence provided. The complainant bore the burden of proving his/her complaint on the balance of probabilities.

The complainant referred to call record details over the past three years. Clause 15.4 of the 2016, 2015, 2014 and 2012 Codes required representatives to ensure that the frequency, timing and duration of calls on, *inter alia*, health professionals, together with the manner in which they were made, did not cause inconvenience. The supplementary information stated, *inter alia*, that companies should arrange that intervals between visits did not cause inconvenience. The number of calls made on a doctor or other prescriber by a representative each year should normally not exceed three on average excluding attendance at group meetings and the like, a visit requested by the doctor or other prescriber or a visit to follow up a report of an adverse reaction. The supplementary information also advised that when briefing representatives companies should distinguish clearly between expected call rates and expected contact rates. Targets must be realistic and not such that representatives breached the Code in order to meet them. Clause 15.9 in the above Codes stated that briefing material must not advocate directly or indirectly any course of action which would be likely to lead to a breach of the Code.

The Panel noted that an email dated 29 April 2016 from a senior employee instructed recipients to 'As a "rule of thumb" consider an average of 2 face to face calls with these [target] customers in [tertia] ie May' (tertia was a four month period starting in May). The email referred to planning to see some target customers more than that, and others less but that the author would envisage recipients seeing 10-20% of customers with only one call in that time and would expect to see a percentage that the recipient would plan to see more than twice. A supplementary email exchange clarified that the field force needed to plan at least two calls per tertial (4 month period) and that for most target customers that would mean there would be four calls planned for the remainder (8 months) of the year.

The Panel disagreed with UCB's submission that 'calls' referred to in the email correspondence encompassed solicited and unsolicited calls; calls solicited by a health professional could not be planned by a representative. In the Panel's view, planned face-to-face calls implied unsolicited 1:1 calls 'without any request from the customer and initiated by the representative' as defined in the CRM system. The Panel further noted that representatives were asked to 'think of the emphasis of the detailing around each indication' for each planned call. In that regard the Panel thus did not consider that 'calls' in the emails referred to group meetings and the like; in the Panel's view 'detailing' implied 1:1 interactions. The Panel considered that as the email correspondence encouraged representatives to plan to call on some customers at least four times over the next 8 months, it advocated a course of action which was likely to lead to a breach of the Code. A breach of Clause 15.9 was ruled.

The Panel noted UCB's submission that mandatory induction training for representatives covered call rates and that frequent and regular briefings on call rates were unnecessary as call rates did not feature on the UCB UK agenda. A pre-results awareness campaign briefing for Exxelerate (ref UK/16CI0037), approved 3 March 2016, referred to iKAMs delivering the slide deck in 60 customer calls by the end of April (35 working days). A footnote on the same slide stated that call frequency must comply with Clause 15.4 but gave no further indication that if a health professional had only recently been called upon, another call within a short time period might not be appropriate. The training slides provided did not refer to call frequency. The Panel further noted that one representative per region would be rewarded with a generous amount to spend on a meal if they, *inter alia*, recorded 60 customer calls in the CRM system. In the Panel's view this might encourage representatives to book calls with health professionals, even if those individuals had only been seen recently, just so they could reach the target of 60 calls.

The Panel noted UCB's submission that a recent CRM system report identified instances where individuals had called more than three times on a particular customer over a given period (unspecified). The Panel noted that UCB had interviewed those representatives involved and submitted that in most cases there was a misunderstanding and lack of clarity on interpreting the definitions of unsolicited calls. The Panel queried this noting UCB's submission that for those that chose to classify the calls a definition of 'solicited' and 'unsolicited' calls appeared on the screen. The Panel considered that there was evidence to show that, on the balance of probabilities, some representatives had called on some customers more than three times in a year. The Panel ruled a breach of Clause 15.4.

The Panel noted its comments and rulings above and considered that UCB had failed to maintain high standards. A breach of Clause 9.1 was ruled. The Panel did not consider that in the circumstances a breach of Clause 2, which was a sign of particular censure and reserved for such, was warranted and no breach of that clause was ruled.

During the consideration of this case, the Panel was very concerned to note that, although recording calls in the CRM system was mandatory, UK representatives could choose whether they recorded those calls as 'solicited', 'unsolicited' or 'none'. The Panel queried why, given the importance of complying with the relevant requirements of the Code, UCB did not make recording the call type mandatory. In the absence of such recording it was unclear how UCB could be confident that its representatives complied with the relevant requirements of the Code. The Panel

was also concerned to note that UCB considered that frequent and regular briefings on call rates were unnecessary because call rates did not feature on the UCB UK agenda. Irrespective of the UK agenda it was important for representatives to have clear instructions so as not to breach the Code. The Panel requested that UCB be advised of its concerns.

Complaint received

8 August 2016

Case completed

11 October 2016
