

ANONYMOUS, NON-CONTACTABLE v JANSSEN

Conduct of representative

An anonymous, non-contactable complainant, who stated he/she was a general practitioner submitted a complaint about a named Janssen representative.

The complainant alleged that the representative was appointed based on the roles of his/her family members in primary care. The representative's parent was the local clinical commissioning group (CCG) clinical lead and diabetic lead and the representative was married to a local general practitioner (GP) and the in-law of another.

The complainant stated that the representative and Janssen manager recently saw a colleague and the representative had since bragged about how this manager informed the complainant's colleague that the representative's previous companies were foolish to let the representative go when the representative's parent was the clinical diabetic lead and could influence prescribing of the product promoted by his/her child.

The detailed response from Janssen is given below.

The Panel noted that there would be occasions when representatives had links with health professionals and other relevant decision makers which would be of potential concern. In such cases it might be prudent for companies to consider changing a representative's territory so they did not call upon such people. The external perception of the arrangements was important.

It appeared in this case that the representative had a number of close relatives in the territory who were either health professionals or relevant decision makers. That the representative's parent was a locum GP was disclosed to the hiring manager during initial conversations about the employment opportunity with Janssen. It appeared that the hiring manager had not probed for more detail in that regard. The parent's position as chair of the local diabetes network only came to light in an email from the representative late in 2016. Given that the representative's parent had an interest in diabetes (as noted on the CCG website), the Panel queried why Janssen did not previously know about this before engaging the representative. The Panel noted that Janssen appeared to have only recently discovered that other GPs called upon by their representative with the same surname, were related.

The Panel noted that Janssen had a policy to ensure that staff disclosed interest or relationships which conflicted with the interests of the company. The policy included examples of conflicts or the appearance of a conflict and specifically referred to family members. It was stated that any activity which even *appeared* (emphasis added) to present a conflict must be avoided or terminated unless an appropriate level of management deemed

otherwise. The representative had not informed the company of the close links he/she had with health professionals in one surgery and the role the representative's parent had as diabetes lead with the local CCG. In the Panel's view these close interests were a concern. There was no evidence that the representative had influenced the relatives but the company should have been informed so that it could take appropriate action to ensure there were no conflicts of interest be these actual or perceived. The Panel considered that the representative had not maintained a high standard of ethical conduct and therefore ruled a breach of the Code.

The Panel considered that although the company had a policy in place which the representative had not followed, it had also been presented with opportunities to follow-up on information provided by the representative. In that regard, the Panel disputed Janssen's submission that it had a rigorous process of reviewing potential conflicts of interest once identified. Further, having the representative call upon doctors with the same surname as the representative should have at least begged a question about possible relationships. Nonetheless, it appeared to the Panel that as Janssen did not know of the roles of the representative's family members then the representative could not have been appointed on that basis as alleged. The Panel therefore considered that the complainant had not proved his/her complaint on the balance of probabilities. In relation to the allegation, Janssen had not failed to maintain high standards and thus the Panel ruled no breach of the Code. The company had not brought discredit upon or reduced confidence in the industry and therefore the Panel ruled no breach of Clause 2.

An anonymous, non-contactable complainant, who stated he/she was a general practitioner complained about a local named representative who worked for Janssen-Cilag Ltd.

COMPLAINT

The complainant alleged that the representative was appointed purely on the basis of the roles of family members in primary care. The representative's parent was the local clinical commissioning group (CCG) clinical lead and diabetic lead and the representative was married to a local GP and the in-law of another.

The complainant named two other companies that the representative worked for and referred to two verbal complaints which the complainant alleged resulted in the representative leaving each company.

The complainant stated that the representative and Janssen manager recently went to see a colleague and the representative had since bragged about how

this manager informed the complainant's colleague that the representative's previous companies were foolish to let the representative go when the representative's parent was the clinical diabetic lead and could influence prescribing of the product promoted by his/her child.

The complainant stated that one of his/her colleagues had already asked Janssen to remove his/her name from the representative's list of GPs.

The complainant asked the PMCPA to investigate Janssen and to request transfer of the representative to an area where there was no clinical connection. The local GP had written to the NHS about the parent's alleged inappropriate use of his/her role.

The complainant did not want to disclose his/her identity as he/she had to work with the family.

In writing to Janssen the Authority asked the company to bear in mind Clauses 2, 9.1 and 15.2 of the Code.

RESPONSE

Janssen stated that it prided itself on upholding the highest standards of ethical business conduct and believed its recruitment process was both objective and rigorous. Furthermore, Janssen was confident that the representative's appointment was solely based on performance throughout the interview process and assessment centre, skills and ability to fulfil the appointment was further demonstrated by the subsequent validation scores (from the initial training course), thus the appointment was irrespective of any family connections as alleged.

Background

Following the internal promotion of the existing Janssen account manager for the territory in mid 2016. Janssen, following standard procedure, began the recruitment process. This position was for a temporary contract position promoting Invokana (canagliflozin).

The standard steps in the Janssen recruitment process were provided and included psychometric testing, CV screening, a screening interview and an assessment centre. The assessment centre day included a competency based interview and review of psychometric test, business simulation and presentation and roleplay.

Janssen stated that this process was followed in the representative's recruitment and provided details of critical aspects which it submitted clearly demonstrated that the representative was recruited solely based on skills and abilities irrespective of family members' roles in primary care. These included successful pharmaceutical sales experience in and around the locality. At no point in the recruitment process did Janssen look to recruit candidates with family connections. The representative was assessed in a competitive assessment centre against another candidate. The assessment centre was rigorous and was objectively scored by three other Janssen

managers in addition to an independent actor/assessor and the hiring manager. None of the assessors on the day, other than the recruiting manager who conducted the screening interview, knew of the representative before the assessment centre. At assessment the representative achieved a high pass score. In contrast the other candidate failed. Upon employment the representative completed the full initial training programme and final validation assessments. The representative achieved a pass in the written knowledge test and a 'Pass' in two observed role plays which were completed by two other regional business managers (not the representative's line manager).

Janssen addressed specific questions regarding the recruitment.

1 Were family connections discussed at interview?

Janssen stated that the representative's family connection was never discussed during the interview process.

The representative stated that a parent was a retiring locum GP, without disclosing his/her position in local diabetes care, at initial discussion about the opportunity. No further discussions were had as clearly documented in the pre-screening interview and assessment centre notes.

During both pre-screen and assessment centre interviews, the interviewers (hiring manager and one other manager at pre-screen and three other managers at assessment centre) confirmed this was not discussed as did the representative.

2 What was the role of the representative's parent and what was the prescribing influence?

Janssen stated that before the interview process began, it was informed by the representative that a parent was a locum GP about to reduce his/her workload significantly for personal reasons and in the process of semi-retiring.

Janssen became aware that the parent also had additional responsibility as the diabetes network chair following an email communication from the representative late last year and triggered an additional review of the representative's conflicts of interest.

Further to the outputs of the additional review into the representative's conflicts of interest which, was completed prior to the receipt of the complaint, an investigatory interview was conducted with the representative with regards to the complaint. Based on this information it was Janssen's current understanding that:

- As disclosed to the hiring manager, the representative's parent was currently reducing clinical practice time, for personal reasons, acting as a locum GP
- Details about the CCG clinical and educational lead role were provided including that the representative's parent expressed a desire to step down from this role before the representative was appointed.

Janssen understood that the representative's parent had no responsibility nor influence in development of local CCG formulary and prescribing guidelines. The individual had clearly identified the representative's role as a pharmaceutical industry representative in the CCG conflicts of interest declaration.

As a locum GP, the representative's parent was able to prescribe medicines deemed appropriate.

3 When did Janssen (and manager) become aware of the role of the representative's parent?

Janssen stated that the representative informed the hiring manager that his/her parent was a locum GP during an initial discussion regarding the role, however at the same time Janssen was made aware that the parent was fully expected to either retire/semi-retire as a locum GP in the very near future. At this time, the CCG role was not made clear.

The line manager became aware that the representative's parent was the chair of the diabetes network following receipt of an email from the representative in late 2016. This was immediately reported to senior management and initiated a process to further review the representative's conflicts of interest.

Janssen stressed that the additional conflicts of interest review process was initiated at the end of November and completed before it received this complaint. At the conclusion of this review the decision that the representative was not to call on family members in the future was communicated. Janssen was confident that the process and the actions taken were robust and that the fact that this process was completed before the receipt of this complaint further demonstrated its commitment to maintaining the highest standards.

4 Had the representative had any discussions with the manager or others about his/her parent's role/influence?

Janssen stated that after the initial discussion between the representative and the hiring manager during the informal, pre-interview conversation as outlined above, no other conversations regarding the representative's parent took place until Janssen initiated the additional review into the representative's conflicts of interest subsequent to becoming aware of the parent's additional responsibilities.

5 What was the position of the other relatives?

Janssen stated that the complainant referred to two additional relatives of the representative. For completeness a third relative had been identified within Janssen's internal conflicts of interest declaration. All three relatives worked together and details were provided.

6 What safeguards, policies and processes were in place to address such conflicts of interest?

Janssen stated that it had a clear Business Conduct Policy and every employee received mandatory

training and was required to sign confirmation of training both on hire and annually thereafter. This reinforced the importance of reporting and where possible avoiding conflicts of interest:

'Every employee has a duty to avoid business, financial or other direct or indirect interests or relationships which conflict with the interests of the Company or which divide his or her loyalty to the Company. Any activity which even appears to present such a conflict must be avoided or terminated unless, after disclosure to the appropriate level of management, it is determined that the activity is not harmful to the Company or otherwise improper.'

The representative's compliance record demonstrated that the representative completed and signed this policy in September 2016. Unfortunately, at this point the representative did not raise any additional conflicts of interest.

In addition, Janssen's supplier for contingency workers, through which the representative was employed also had a conflicts of interest declaration within the employment contract. Unfortunately, the representative did not raise any conflicts of interest when signing an employment contract. On detailed discussions after receipt of the complaint, the representative stated that the conflicts of interests were not registered immediately as the representative considered that they were minimal due the parent reducing his/her workload and stepping down from the CCG and the same was assumed about the three other relatives as they had low involvement in type 2 diabetes.

Conclusion

Janssen submitted that it demonstrated an objective, rigorous and unbiased process of recruitment and hence refuted the allegation by the anonymous complainant that an employee was appointed purely on the basis of his/her family members' roles in primary care.

The company acknowledged that despite the safeguards in place, including the Business Conduct Policy and the third party employer contract, the full extent of the conflict of interest was not disclosed by the representative. However, as soon as Janssen became aware of the full extent of conflict of interest it immediately took steps to investigate and subsequently mitigate by ensuring the representative no longer conducted sales calls on family members and instigating re-education of the representative with regards to the Business Conduct policy, with specific reference to the sections covering conflicts of interest.

Janssen regretted the representative's failure to fully disclose his/her conflicts of interest despite multiple formal opportunities to do so. As a consequence, and in addition to the immediate safeguards put in place, Janssen terminated the representative's third party contract. Due to the failure to disclose, Janssen accepted that the representative might not have maintained high standards stated by the Code.

Therefore, Janssen might potentially be in breach of Clause 15.2 as a result of this isolated case.

Janssen submitted that it had demonstrated that the competitive recruitment process was robust with multiple independent objective assessments made pertaining to candidate performance alone. In addition, Janssen's Business Conduct Policy clearly stated the importance of declaring conflicts where they existed. Furthermore, Janssen demonstrated a rigorous process of reviewing the potential conflicts of interest once identified, and acted promptly to mitigate any potential conflicts. Janssen had maintained a high standard and therefore it refuted a breach of Clause 9.1.

This was an isolated incident and Janssen submitted it had a robust process of recruitment for the declaration and management of conflicts of interest. As such Janssen did not believe it had brought the pharmaceutical industry into disrepute, and refuted a breach of Clause 2.

In addition to addressing the concerns raised regarding the appointment of the representative, Janssen noted its concern regarding the nature/intent of the complaint. Upon discussion with the representative the company was made aware that there were a number of statements that were wholly incorrect. The representative never received a verbal complaint when working at either of the companies named by the complainant. Nor was the representative asked to leave. Janssen submitted that these points should be taken in context when reviewing the complaint.

PANEL RULING

The Panel noted that the complainant was anonymous and non-contactable. The Constitution and Procedure stated that anonymous complaints would be accepted, but that like all other complaints, the complainant had the burden of proving his/her complaint on the balance of probabilities. All complaints were judged on the evidence provided by the parties. The complainant could not be contacted for more information.

The Panel noted Janssen's submission regarding the representative's previous companies.

The Panel noted that there would be occasions when representatives had links with health professionals and other relevant decision makers which would be of potential concern. In such cases it might be prudent for companies to consider changing a representative's territory so they did not call upon such people. The external perception of the arrangements was important.

It appeared in this case that the representative had a number of close relatives in the territory who were either health professionals or relevant decision makers. That the representative's parent was a locum GP was disclosed to the hiring manager during initial conversations about the employment

opportunity with Janssen. It appeared that the hiring manager had not probed further for more detail in that regard. The parent's position as chair of the local diabetes network only came to light in an email from the representative in November 2016. Given that the representative's parent had an interest in diabetes (as noted on the CCG website), the Panel queried why Janssen did not previously know about him/her before engaging the representative. The Panel noted that Janssen appeared to have only recently discovered that other GPs called upon by the representative with the same surname were related.

The Panel noted that Janssen had a policy to ensure that staff disclosed interest or relationships which conflicted with the interests of the company. The policy included examples of conflicts or the appearance of a conflict and specifically referred to family members. It was stated that any activity which even *appeared* (emphasis added) to present a conflict must be avoided or terminated unless an appropriate level of management deemed otherwise. The representative had not informed the company of the close links with health professionals in one surgery and the role the representative's parent had as diabetes lead with the local CCG. In the Panel's view these close interests were a concern. There was no evidence that the representative had influenced the relatives but the company should have been informed so that it could take appropriate action to ensure there were no conflicts of interest be these actual or perceived. The Panel considered that the representative had not maintained a high standard of ethical conduct and therefore ruled a breach of Clause 15.2. The Panel noted that the company instructed the representative not to call on family members and had since terminated the representative's contract.

The Panel considered that although the company had a policy in place which the representative had not followed, it had also been presented with opportunities to follow-up on information provided by the representative. In that regard, the Panel disputed Janssen's submission that it had a rigorous process of reviewing potential conflicts of interest once identified. Further, having the representative call upon doctors with the same surname as the representative should have at least begged a question about possible relationships. Nonetheless, it appeared to the Panel that as Janssen did not know of the roles of the representative's family members then the representative could not have been appointed on that basis as alleged. The Panel therefore considered that the complainant had not proved his/her complaint on the balance of probabilities. In relation to the allegation, Janssen had not failed to maintain high standards and thus the Panel ruled no breach of Clause 9.1. The company had not brought discredit upon or reduced confidence in the industry and therefore the Panel ruled no breach of Clause 2.

Complaint received **21 December 2016**

Case completed **31 January 2017**