ANONYMOUS, NON-CONTACTABLE v ROCHE

Article on the BBC website

An anonymous, non-contactable complainant, who stated that he/she was a co-owner of a healthcare public relations company, submitted a complaint about an article which was posted on the BBC website on 22 December 2016 and extensively covered in broadcast media by the BBC.

The BBC article was entitled 'Multiple sclerosis drug "a landmark"'. The article outlined two trials of Roche's unlicensed medicine, ocrelizumab. One trial was in primary progressive multiple sclerosis (MS) and the other in relapsing remitting MS. The BBC website referred to trials published in the New England Journal of Medicine (NEJM) and included quotations from Professor Gavin Giovannoni from Barts and The London School of Medicine and Dentistry, Dr Aisling McMahon, from the MS Society and Dr Peter Calabresi, John Hopkins University, Baltimore.

The article stated that '... the percentage of patients that had deteriorated fell from 39% without treatment to 33% with ocrelizumab'. The complainant stated that this did not sound 'landmark'. The complainant referred to another statement 'the relapse rate with ocrelizumab was half that of those using another drug'. The complainant understood that some other MS medicines might have a greater effect on relapse rate so was not sure if this was 'landmark' either.

The complainant was confused as to how this promotion of a medicine to the public was permitted particularly before a licence was issued.

The detailed response from Roche is given below.

The Panel noted that when complaints were received about what an independent journalist had published in the press, its rulings were made upon the material released by the company that might have prompted the article and not the article itself.

The Panel noted that the article on the BBC website was headed 'Multiple sclerosis drug "a landmark"' and began by stating that ocrelizumab had been described as 'big news' and a 'landmark' in treating MS by doctors and charities. The 'big news' quotation had come independently from the MS Society and the NEJM editorial by Dr Calabresi had described the studies as 'landmark' studies. The article referred to the positive results for ocrelizumab in primary progressive MS and in relapsing remitting MS. It quoted Professor Giovannoni who co-operated with Roche to state that 'The results shown by these studies have the potential to change how we approach treating both relapsing and primary progressive MS' and 'It's very significant because this is the first time a phase three trial has been positive in primary progressive MS'. The BBC article also referred to Dr Calabresi warning doctors to stay vigilant because of the risk of side-effects. Weakening the immune system increased the risk of infection and of cancer emerging.

The Panel noted that the press release issued by Roche UK did not describe either ocrelizumab or the trial as 'landmark' nor did it contain reference to or quotations from Dr McMahon or Dr Calabresi. The Panel had no evidence about how ocrelizumab had been described verbally by Roche's spokespersons. The press release was headed 'Phase III results for Roche's investigational medicine ocrelizumab published in New England Journal of Medicine'. The press release referred to the role of B-cells in both early and more advanced MS. It included a quotation from Professor Giovannoni, a member of the scientific steering committee for the studies who stated that a significant reduction in disease activity and disability progression as a result of ocrelizumab treatment, compared with standard-of-care high-dose interferon was seen and that 'The consistency and robustness of the outcomes seen in these clinical studies, and the favourable safety profile and high-efficacy of ocrelizumab supports a growing consensus on the importance of early effective treatment in MS'. The press release referred to the consistent and clinically meaningful reductions in major markers of disease activity and progression compared with Rebif (interferon beta-1a) in relapsing remitting MS and with placebo in primary progressive MS.

The Panel noted that the editorial in the NEJM referred to the significance of the results and that ocrelizumab was the first medicine to show a significant effect in slowing disability progression in a phase three trial in primary progressive MS and therefore the trial represented a landmark study in the field. The editorial referred to the need to consider side-effects including the higher than normal risk of herpes reactivation and of neoplasms, especially breast cancer. The editorial concluded with the need to study these side-effects in future trials and the need for phase four monitoring in the community to understand the extent of the risk. Clinicians were urged to stay vigilant with regard to monitoring for side-effects that could be managed effectively if detected early.

The Panel noted that ocrelizumab was not licensed. It considered that there would understandably be much interest in this product and particularly in the results in treating primary progressive MS given Roche's submission that no other medicine had demonstrated a statistically significant treatment effect in primary progressive MS. The Panel considered that the BBC website went beyond the press release issued by Roche. It reflected some of the language used in the NEJM editorial.

The Panel noted the complainant's concerns about the use of the word 'landmark' in the BBC article with regard to two quotations in particular. 'Landmark', however, was not used in the Roche press release. It was clear from the press release that the product was investigational and that the marketing applications were under review. The Panel considered that the tone of the Roche press release was different to that of the article and the positive language used in the NEJM and did not appear to have led to the 'landmark' claim in the BBC article. Although the use of 'landmark' might encourage members of the public to ask their health professionals to prescribe a specific prescription only medicine, the Panel did not consider this would be a consequence of the Roche press release at issue. The Panel ruled no breaches of the Code including Clause 2 on the narrow ground alleged.

An anonymous, non-contactable complainant, who stated that he/she was a co-owner of a healthcare public relations company with nearly 30 years' experience, submitted a complaint about an article which was posted on the BBC website on 22 December 2016 and extensively covered in broadcast media by the BBC.

The BBC article was entitled 'Multiple sclerosis drug "a landmark"'. The article outlined two trials of Roche Products Limited's unlicensed medicine, ocrelizumab. One trial was in primary progressive multiple sclerosis (MS) and the other in relapsing remitting MS. The BBC website referred to trials published in the New England Journal of Medicine (NEJM) and included quotations from Professor Gavin Giovannoni, Chair of Neurology, Barts and The London School of Medicine and Dentistry, Dr Aisling McMahon, Head of Clinical Trials at the MS Society and Dr Peter Calabresi, John Hopkins University, Baltimore.

COMPLAINT

The complainant referred to a statement in the BBC article '... the percentage of patients that had deteriorated fell from 39% without treatment to 33% with ocrelizumab'. The complainant stated that whilst his/her and his/her colleagues' knowledge of MS was not extensive, this did not sound 'landmark' to them. The complainant referred to another statement 'the relapse rate with ocrelizumab was half that of using another drug'. The complainant understood that some other MS medicines might have an even greater effect on relapse rate so was not sure if this was 'landmark' either.

The complainant and his/her colleagues had been trained by clients on the Code and had also attended seminars run by the PMCPA and were confused as to how this promotion of a medicine to the public was permitted particularly before a licence was issued. In the complainant's experience, where company sponsored trials of a medicine were being communicated via broadcast media, the company's UK affiliate or parent company was always extensively involved in the content, language and tone. The agencies, as directed by the manufacturer, then tended to brief the media, charities and physicians. It might be that the parent company was responsible for this article placement but it would be good to know if this therefore made it acceptable.

The complainant stated that the reason that he/she had brought this to the PMCPA's attention was to request an assessment of the article and associated media of this story in the UK and for some clarity of whether or not a breach of the Code had occurred. In addition, the healthcare communications field would welcome some guidance – issued by the PMCPA – on the dos and don'ts of communicating medicines to the public within the UK. Companies often called this a grey area; some took a conservative line and others had very few limitations.

When writing to Roche the Authority asked it to bear in mind the requirements of Clauses 26.2, 9.1 and 2 of the Code.

RESPONSE

Roche submitted that all activities had been in accordance with the letter and spirit of the Code and in particular, Clauses 26.2, 9.1 and 2.

Roche submitted that on 21 December 2016, phase three clinical trial results from the ocrelizumab clinical trial programme in primary progressive MS and relapsing remitting MS were published in the prestigious NEJM (Hauser *et al* 2016 and Montalban *et al* 2016 and an associated editorial by Calabresi).

No other medicine had demonstrated a statistically significant treatment effect in primary progressive MS, a disease area with a high unmet medical need. In relapsing remitting MS, ocrelizumab was shown to be a high efficacy medicine with a favourable safety profile. Safety concerns plagued most high efficacy options and typically led to complex and burdensome patient monitoring algorithms as a result. Ocrelizumab appeared to be positively different in that respect.

Given that ocrelizumab was the first and only medicine to have compelling clinical data in both primary progressive MS and relapsing remitting MS, Roche considered publication of these clinical trial results was newsworthy.

Being aware of the anticipated publication of these important and newsworthy results in the NEJM, Roche Products Ltd (the UK trading company for Roche's pharmaceutical operations) drafted and approved a press release to coincide with the publication. Whilst the Code required examination of press releases, Roche certified the final version which was completed in a timely manner by one medical final signatory and one senior employee (non-medical). Particular care and attention was given to ensure adherence to all previously published PMCPA guidance in relation to press releases and guidance contained in Clause 26 and its supplementary information.

Roche submitted that the press release was factual and accurate; it commented on the results of the study within the context of the regulatory process in a balanced manner. There were no superlative statements or claims of any description with a

brief passing commentary on the key primary and secondary endpoints that were met in the studies. There was no use of the word 'landmark' which appeared in the BBC article in question and which the anonymous complainant had particularly commented upon. Importantly, the press release was not intended to raise unfounded hopes or to encourage members of the public to ask their health professionals for the medicine.

The Roche press release included a quotation from Professor Giovannoni which Roche had proactively sought. The email exchange with Professor Giovannoni and approval of the quotation on this topic was provided. Roche recognised that it was responsible for all aspects of the press release including any quotations within. Professor Giovannoni's quotation was fair, balanced and appropriate within the context of the press release.

For additional background information, in November 2016, Roche was asked by the MS Society for the anticipated publication of this data in the NEJM. Accordingly, the MS Society was informed of the NEJM publications reactively.

Roche stated that before it proactively distributed the press release to appropriate health journalists, it was approached by a BBC health journalist, James Gallagher, for more information about the NEJM publication. Having previously submitted his name to the NEJM database and mailing list, he was independently notified of the impending publication of the ocrelizumab clinical trial programme by the NEJM a week before publication. Upon this notification, Mr Gallagher contacted the MS Society, which then referred him to Roche as documented in the email exchange. This email exchange was initiated by the MS Society to Mr Gallagher and included a quotation from Dr Aisling McMahon, at the society. Roche had no input into this quotation, nor awareness of it until a member of its public relations team was copied into the email. The quotation was not used in Roche's press release.

Upon his request, Roche provided James Gallagher with the embargoed Roche press release and facilitated access to Professor Giovannoni.

Roche did not approach Dr Calabresi for either a quotation or to facilitate an interview at any time. Roche noted that the NEJM editorial, written by Dr Calabresi, stated that the data was 'landmark'. Given James Gallagher's awareness of the NEJM editorial therefore, Roche submitted that he might have used this language as a result of reading this editorial.

In summary, Roche submitted that the press release was factual, accurate and presented in a balanced manner with no potential to either raise unfounded hopes or to encourage members of the public to ask their health professionals to prescribe a specific prescription only medicine. It therefore submitted that the press release was in accordance with the requirements of Clause 26.2.

Roche submitted that high standards were maintained throughout the creation, review, approval and dissemination of the press release in accordance with the requirements of the Code. Roche thus did not believe the activities were in breach of Clause 9.1.

Finally, given its position with regard to Clauses 26.2 and 9.1, Roche did not believe any of these activities had brought discredit upon or reduced confidence within the pharmaceutical industry and therefore it denied a breach of Clause 2.

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 Panel noted that Clause 26.1 prohibited the advertising of prescription only medicines to the public. Clause 26.2 permitted information about prescription only medicines to be supplied directly or indirectly to the public but such information had to be factual and presented in a balanced way. It must not raise unfounded hopes of successful treatment or be misleading with respect to the safety of the product. Statements must not be made for the purpose of encouraging members of the public to ask their doctor to prescribe a specific prescription only medicine.

The supplementary information to Clause 26.2 made it clear that companies could provide non-promotional information about prescription only medicines to the press and others. The Panel noted that the material at issue had appeared on the BBC website.

The press release was issued by Roche UK but in response to the point raised by the complainant about the possible involvement of the parent company, it was a well-established principle that the UK company was responsible under the Code for the activities of overseas companies in the UK. The Panel noted that when complaints were received about what an independent journalist had published in the press, its rulings were made upon the material released by the company that might have prompted the article and not the article itself.

The Panel noted that the article on the BBC website was headed 'Multiple sclerosis drug "a landmark"' and began by stating that the medicine had been described as 'big news' and a 'landmark' in treating MS by doctors and charities. The 'big news' quotation had come independently from the MS Society and the NEJM editorial had described the studies as 'landmark' studies. The article referred to the positive results for ocrelizumab in primary progressive MS and in relapsing remitting MS. It quoted Professor Giovannoni who co-operated with Roche to state that 'The results shown by these studies have the potential to change how we approach treating both relapsing and primary progressive MS' and 'It's very significant because this is the first time a phase three trial has been positive in primary progressive MS'. The article quoted Dr McMahon from the MS Society who stated that 'This is really big news for

people with the primary progressive form of [MS]' and Dr Calabresi was quoted as stating that 'This is the first drug to show a significant effect in slowing disability progression in a phase three trial in primary progressive [MS] and therefore represents a landmark study in the field'. This statement was also in the editorial in the NEJM which he had written. The BBC article also referred to Dr Calabresi warning doctors to stay vigilant because of the risk of side-effects. Weakening the immune system increased the risk of infection and of cancer emerging.

It appeared from email correspondence provided that it was the MS Society that referred the journalist to Roche; Roche in turn provided the journalist with an embargoed copy of the press release in response to his request for more information on the NEJM papers and facilitated contact with Professor Giovannoni. In the Panel's view the emails provided did not contain any inappropriate claims for ocrelizumab.

The Panel noted that the press release issued by Roche UK did not describe either ocrelizumab or the trial as 'landmark' nor did it contain reference to or quotations from Dr McMahon or Dr Calabresi. The Panel had no evidence about how ocrelizumab had been described verbally by Roche's spokespersons. The press release was headed 'Phase III results for Roche's investigational medicine ocrelizumab published in New England Journal of Medicine'. The press release referred to the role of B-cells in both early and more advanced MS. It included a quotation from Professor Giovannoni, a member of the scientific steering committee for the studies who stated that a significant reduction in disease activity and disability progression as a result of ocrelizumab treatment, compared with standard-of-care high-dose interferon was seen and that 'The consistency and robustness of the outcomes seen in these clinical studies, and the favourable safety profile and high-efficacy of ocrelizumab supports a growing consensus on the importance of early effective treatment in MS'. The press release referred to the consistent and clinically meaningful reductions in major markers of disease activity and progression compared with Rebif (interferon beta-1a) in relapsing remitting MS and with placebo in primary progressive MS. Emails showed that Roche had provided Professor Giovannoni with a suggested quotation which he had then amended slightly.

The press release also included a quotation from Roche UK referring to the potential impact ocrelizumab might have on improving patient outcomes, especially in primary progressive MS where there were no treatments currently available. Roche also referred to the work to address the unmet needs of and provide high-efficacy treatment options for the 100,000 people in the UK who had these forms of MS.

The press release concluded with information on the marketing applications submitted for relapsing remitting MS and primary progressive MS which had been validated and were currently under review by the European Medicines Agency (EMA) and the US Food and Drug Administration (FDA). The notes to editors section of the press release gave details about the studies and their outcomes including data for adverse events.

The Panel noted that the editorial in the NEJM referred to the significance of the results and that ocrelizumab was the first medicine to show a significant effect in slowing disability progression in a phase three trial in primary progressive MS and therefore the trial represented a landmark study in the field. The editorial referred to the need to consider side-effects including the higher than normal risk of herpes reactivation and of neoplasms, especially breast cancer. The editorial concluded with the need to study these side-effects in future trials and the need for phase four monitoring in the community to understand the extent of the risk. Clinicians were urged to stay vigilant with regard to monitoring for side-effects that could be managed effectively if detected early.

The Panel noted that ocrelizumab was not licensed. It considered that there would understandably be much interest in this product and particularly in the results in treating primary progressive MS given Roche's submission that no other medicine had demonstrated a statistically significant treatment effect in primary progressive MS. The Panel considered that the BBC website went beyond the press release issued by Roche. It reflected some of the language used in the NEJM editorial.

The Panel noted the complainant's concerns about the use of the word 'landmark' in the BBC article with regard to two quotations in particular. 'Landmark', however, was not used in the Roche press release. It was clear from the press release that the product was investigational and that the marketing applications were under review. The Panel considered that the tone of the Roche press release was different to that of the article and the positive language used in the NEJM and did not appear to have led to the 'landmark' claim in the article. Although the use of 'landmark' might encourage members of the public to ask their health professionals to prescribe specific prescription only medicine, the Panel did not consider this would be a consequence of the Roche press release at issue. The Panel therefore ruled no breach of Clause 26.2 on the narrow ground alleged.

The Panel noted that the complainant referred to the BBC article as promoting an unlicensed medicine. The case preparation manager had not asked the company to respond in relation to the requirements of Clause 26.1 or Clause 3.1 of the Code so the Panel was unable to consider those requirements.

The Panel noted its ruling above and considered that Roche had not failed to maintain high standards and therefore ruled no breach of Clause 9.1.

The Panel noted that a ruling of a breach of Clause 2 was a sign of particular censure, and was reserved for such circumstances. The Panel noted its rulings above and did not consider that the press release brought discredit upon or reduced confidence in the industry, and ruled no breach of Clause 2.

Complaint received **4 January 2017**

Case completed **7 February 2017**