

ANONYMOUS NON CONTACTABLE v MERCK SERONO

Conduct of a representative

An anonymous, non-contactable complainant, who described him/herself as an oncology nurse specialist in a large regional oncology centre, complained about the conduct of a representative from Merck Serono in the course of promoting Erbitux (cetuximab). Erbitux was for the treatment of metastatic colorectal cancer and squamous cell cancer of the head and neck.

The complainant stated that over the last six months or so the representative had focussed on trying to sign him/her up to the company's electronic communication system. This involved the complainant giving his/her consent to be contacted by email and text messages. The complainant repeatedly told the representative that he/she did not want to be contacted in that way. This had not stopped the representative from asking every time he/she was in the unit and being quite forceful about it. The complainant felt under a lot of pressure to agree and was not the only member of staff who had experienced this problem and felt the same way.

The complainant queried whether pharmaceutical companies were allowed to do this, as he/she considered that contacting people by their email and text messages was very invasive and unwelcome. Also, if someone said 'No' to this type of electronic communication once, then they should not be asked again and again.

The detailed response from Merck is given below.

The Panel noted that the complainant was anonymous and non-contactable and had not provided sufficient information so that the particular circumstances could be identified.

The Panel noted that Merck Serono had a process in place regarding how its representatives could approach health professionals to gain their consent to receive items by email and/or text. Representatives were trained on the process in 2016 and the company had several briefing documents regarding the collection of consent. The Panel noted that whilst representatives were not specifically briefed about what to do if a customer refused to be contacted by email or text, instructions had been issued by the company following notification of this complaint. The Panel further noted that Merck Serono representatives were not incentivised for collecting consents from health professionals. There was no evidence that any of its representatives had repeatedly asked for consent as alleged.

The Panel did not consider that the complainant had provided evidence to demonstrate on the balance of probabilities that a Merck Serono representative had acted as alleged. No breaches of the Code were ruled.

An anonymous, non-contactable complainant, who described him/herself as an oncology nurse specialist, complained about the conduct of a representative from Merck Serono Limited in the course of promoting Erbitux (cetuximab). Erbitux was for the treatment of metastatic colorectal cancer and squamous cell cancer of the head and neck.

COMPLAINT

The complainant stated that he/she worked as a specialist in a large regional oncology centre and for several years the Merck representative had visited his/her unit to promote Erbitux to the medical and nursing teams. In general, the complainant found these sales calls to be quite useful and the representative very pleasant.

The complainant stated, however, that over the last six months or so things had changed and the representative had focussed on trying to sign him/her up to the company's electronic communication system. This involved the complainant giving his/her consent to be contacted by email and text messages. The complainant repeatedly told the representative that he/she did not want to be contacted in that way and that he/she only had a personal mobile. This had not stopped the representative from asking every time he/she was in the unit and being quite forceful about it. The complainant felt under a lot of pressure to agree and was not the only member of staff who had experienced this problem and felt the same way.

The complainant queried whether pharmaceutical companies were allowed to do this, as he/she considered that contacting people by their email and text messages was very invasive and unwelcome. Also, if someone said 'No' to this type of electronic communication once, then they should not be asked again and again.

In writing to Merck Serono the Authority asked the company to respond in relation to Clauses 15.2 and 15.9 of the Code.

RESPONSE

Merck stated that it took any allegation of inappropriate conduct of its staff very seriously. On receipt of the complaint, it immediately launched an internal investigation and on 1 March the compliance manager sent a communication to all field staff to reinforce principles that had been previously communicated as detailed below.

Merck stated that it had a clearly defined and approved process describing how its representatives could approach health professionals to gain their consent to receive both promotional and non-promotional items by email and/or text. Representatives were trained twice in 2016 on the correct collection of emails and text consent.

Merck stated that its representatives were well-trained and all understood their obligations under the Code and that they must always maintain a high standard when dealing with health professionals and other decision makers. The job description for a representative clearly outlined obligations about integrity and compliance with company and industry guidelines. Merck submitted that it had found no evidence that any of its sales representatives had not acted in line with their job description nor had been in breach of Clause 15.2.

Merck had several clear and specific briefing documents regarding the collection of consent. The collection of written (hard copy) and electronic consent was dealt with and explained for representatives in these documents. Representatives were specifically trained on these briefing documents and the process for obtaining written consent on 20 April 2016. An agenda of the training session was provided. A follow up training session was conducted on 21 September 2016 with the oncology sales team where the company introduced the collection of electronic consent. A copy of the training record was provided. Merck denied a breach of Clause 15.9.

Merck stated that whilst its briefing documents did not specifically detail what a representative should do if a customer refused to be contacted by email or text, it would expect a professional sales representative to know not to repeatedly ask a health professional for consent when that individual had made it clear that they did not want to receive electronic communications. Although, Merck had no evidence that any of its representatives had repeatedly asked for consent in the alleged way, it had taken this on board and included further guidance in its communication to field staff on 1 March 2017.

Merck noted that representatives were not rewarded nor did they receive bonuses for collecting any form of written or electronic consent. In addition, representatives were not set any key performance indicators/targets regarding the collection of consent.

Merck hoped that its explanation and supporting documentation provided clear reasons as to why the Code had not been breached with regards to the allegations relating to Clauses 15.2 and 15.9.

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 complaints, the complainant had the burden of proving his/her complaint on the balance of probabilities. The complainant had not provided sufficient information so that the particular circumstances could be identified. The complainant could not be contacted for further information.

The Panel noted that Merck Serono had a process in place regarding how its representatives could approach health professionals to gain their consent to receive items by email and/or text. Representatives were trained on the process in 2016 and the company had several briefing documents regarding the collection of consent. The Panel noted that whilst representatives were not specifically briefed about what to do if a customer refused to be contacted by email or text, instructions had been issued by the company following notification of this complaint. The Panel further noted that Merck Serono representatives were not incentivised for collecting consents from health professionals. There was no evidence that any of its representatives had repeatedly asked for consent as alleged.

The Panel did not consider that the complainant had provided evidence to demonstrate on the balance of probabilities that a Merck Serono representative had acted as alleged. No breach of Clauses 15.2 and 15.9 were ruled.

Complaint received	16 February 2017
Case completed	17 March 2017

