

HEALTH PROFESSIONAL v FERRING

Conduct of a representative

A nurse specialist complained about the conduct of a named Ferring representative alleging that he/she was harassing his department's staff for appointments.

The complainant provided a copy of the complaint he/she had sent directly to Ferring.

The complainant explained that the main focus of the complaint was the representative's repeated calls and abuse of the patient telemedicine voicemail which clearly stated on the answerphone message that it was for patients only. All in all, the representative had upset 3 clinical members of the team.

The complainant further stated that Ferring had failed to come back to him/her by the date agreed.

The detailed response from Ferring is given below.

The Panel noted that the parties' accounts differed in this regard. The Panel noted the difficulty in dealing with complaints based on one party's word against the other; it was often impossible in such circumstances to determine precisely what had happened. The introduction to the Constitution and Procedure stated that a complainant had the burden of proving their complaint on the balance of probabilities. The Panel noted, however, that a high degree of dissatisfaction was usually required before an individual was moved to submit a formal complaint.

The Panel noted Ferring's submission that the representative called the complainant to arrange another appointment as he/she had not seen him when visiting the named hospital in July. According to Ferring the representative asked to speak to the complainant and was put through by the switchboard. The representative left a voice message but could not recall if this was on the IBD helpline or a personal telephone message. Ferring submitted that only one call was made to the hospital that day as reflected in the representative's call log and no calls were made directly to the patient helpline.

The Panel noted the complainant's submission that he/she carefully and specifically explained to the representative that the named sector which included a number of named hospitals could not facilitate a meeting with him/her until the new year and asked him/her to recontact then. In the complainant's view the representative should therefore not have contacted a second named hospital. The Panel noted a discrepancy in that the complainant initially stated that he/she had spoken to the representative and explained that he/she did not use the medicines that the representative was selling. In later

correspondence the complainant submitted that he/she had asked the representative to make contact in the New Year as the department was currently busy.

The Panel noted that the fact that the complainant was busy and that the representative should wait until January 2019 to engage was reflected in the representative's call notes. The Panel further noted Ferring's submission that the representative viewed the second named hospital as an independent entity with its own IBD clinical team and wanted to invite the new IBD nurse to a meeting.

The Panel noted Ferring's submission that only one call was placed to the patient telemedicine helpline on 8 August as advised by a secretary at the second named hospital. This was shown by the representative's company telephone records. Any other calls were made via the telephone switchboard and the representative asked to speak to a named individual not the helpline so the extension he/she was directed to was not within his control.

The Panel noted that the Code stated that representatives must ensure that the frequency, timing and duration of calls on health professionals and other relevant decision makers in hospitals and NHS and other organisations, together with the manner in which they are made, did not cause inconvenience. The wishes of individuals on whom representatives wish to call and the arrangements in force at any establishment, must be observed. The Panel noted the parties' differing accounts and its comments above on this point. Overall, the Panel did not consider that on the balance of probabilities the complainant had proved that the representative had contravened the requirements of the Code in relation to seeking appointments. The Panel thus ruled no breaches of the Code.

The Panel considered that there was no evidence that the representative had been instructed to overcall on clinicians or contact health professionals in a way that would be likely to lead to a breach of the Code. The Panel therefore ruled no breach in that regard.

A nurse specialist complained about a named Ferring representative harassing his/her department's staff for appointments.

COMPLAINT

The complainant requested advice from the PMCPA about the best way to report a representative from practically harassing the department's staff for appointments. The complainant stated he/she spoke to the representative already by phone and explained that they did not use the medicines that

he/she was selling. Furthermore, the representative was now abusing the patient telemedicine line leaving messages on it for staff members and had also left messages with secretarial staff members.

The complainant provided a copy of the complaint he/she had sent directly to Ferring.

The complainant explained that the main focus of the complaint was the representative's repeated calls and abuse of the patient telemedicine voicemail which clearly stated on the answerphone message that it was for patients only. All in all, the representative had upset 3 clinical members of the team.

The complainant further stated that Ferring had failed to come back to him/her by the date agreed.

When writing to Ferring, the Authority asked it to consider the requirements of Clauses 15.2, 15.4, 15.9, and 9.1.

RESPONSE

Ferring stated that it was disappointed to receive this complaint regarding the conduct of one of its representatives. Ferring noted that it had received the same complaint directly from the complainant in August 2018 which it had acknowledged. Ferring submitted that it informed the complainant that following a thorough investigation Ferring concluded that there had not been a breach of the Code. Ferring also stated that it would fully co-operate with the PMCPA investigation. Ferring was disappointed that it was not given the opportunity to respond to the complainant before it was escalated to the Authority.

Ferring submitted that from the evidence collected, it contended that its representative, had not breached the Code, either through the frequency or mode of contacts or the nature of his/her conduct.

Ferring UK did not require its sales representatives to adhere to a formal call rate. The sales representative's activity was guided by their account objectives which were formulated in conjunction with their area sales manager (ASM). The representative had not yet defined individual account plans with his/her ASM and was therefore working towards a set of personal objectives. This included understanding key stakeholder networks, familiarizing himself with local strategy documents and making appointments with relevant key stakeholders in various accounts. There were no requirements for the sales representatives to contact a prespecified number of customers within a defined time period.

Ferring explained the sequence of events as detailed by the representative who had met the complainant before and reported a previous collaborative working environment where the complainant helped to set up multi-disciplinary meetings. The representative was therefore surprised to receive this complaint as he/she viewed their working relationship to be amicable and indeed the individuals were on first-name terms.

In July 2018 the representative sent an email to the complainant details were provided including that the representative wanted to discuss National IBD Nurse meeting that Ferring was holding in Birmingham in September and to discuss the current ulcerative colitis patient pathway within the hospital so that the representative could understand the current situation.

First Hospital

The representative received no response to this email. In July 2018 the representative visited the hospital and his/her first point of contact was with a secretary who directed the representative to the complainant and another nurse as the most appropriate members of staff instructing the representative on how to find their office and to 'pop down' as they were approachable. The complainant and the other nurse would decide if the representative should approach the consultants if any further discussions were warranted. The office was empty when the representative arrived. At the same time another member of staff arrived and the representative introduced himself/herself and the purpose of his visit. He/she then asked the staff member to declare his/her visit to the complainant and his/her colleague, and to pass on leavetickets around two of Ferring's products and an invitation to the IBD Nurse meeting. This was not met with an objection and the representative left the department and went to the pharmacy to ascertain the formulary status of Ferring's products. He/she met with a pharmacist and the call was captured on the customer relations management (CRM) system. In view of the fact that the representative did not have any contact with the health professional in question, he/she placed a call to the complainant to arrange another appointment. The representative was connected to the main switchboard, he/she asked to speak to the complainant and was put through by switchboard. The representative left a voice message but was unable to recall if this was the IBD helpline or a personal telephone message that he/she was put through to by switchboard. There was one call placed to the hospital on that day as reflected in the representative's call log and no calls made directly to the patient helpline.

On 1 August the complainant called the representative and explained that the department was presently under resourced and stretched and as such could not speak with him until the new year. This was acknowledged and documented by the representative in the CRM.

Second Hospital

The representative was directed by his/her line manager to visit the second hospital to invite the new IBD nurse to an annual IBD meeting organized by Ferring. The previous IBD nurse had attended earlier events.

The representative called the hospital and spoke with one of the secretaries and enquired about the contact details for the new IBD nurse in order to make an introduction and extend an invitation to

the annual IBD nurse meeting. The secretary gave the name of the new IBD nurse and the best way to contact, which he/she was advised was via the patient telemedicine helpline. The representative's call log reflected that only one call was placed to the patient telemedicine helpline since he/she joined Ferring Pharmaceuticals. This call was preceded by a telephone call to the hospital switchboard which supported the representative's narrative. Ferring submitted that this was not an uncommon phenomenon as many health professionals asked members of the sales team to contact them on these numbers as they were always manned and easy to access.

The website link to the area mentioned eleven hospitals and there was no indication to show which hospitals were linked and where health professionals might cover different communities/hospitals within the same trust. The representative therefore viewed this hospital as an independent entity with its own IBD clinical team and wanted to invite the new IBD Nurse to the conference.

Ferring submitted that each interaction with the individual units was appropriate and distinct.

Ferring summarized that the representative's proactive contacts with the complainant were an email, a telephone message via hospital switchboard, and he/she also left promotional materials for him with another colleague. The representative therefore only spoke with one member of the clinical team and three administrative personnel. The conversations were all conducted in a professional manner and the representative viewed the contact with the individuals as positive and well received. No individual had suggested otherwise to the representative or Ferring other than the complainant and in the absence of any further specific details relating to the representative's conduct Ferring therefore concluded that there was no evidence of a breach of the Code.

FURTHER COMMENTS FROM THE COMPLAINANT

Upon viewing Ferring's response, the complainant stated that a named Ferring employee first contacted him/her by email on 9 August. This was following the complainant's initial complaint to Ferring about the representative's conduct. This email stated that he would investigate the matter and get back to the complainant by 17 August. As the complainant heard nothing that week, he/she contacted the ABPI on Monday, 20 August and received a letter from Ferring on 21 August stating that it would co-operate with the ABPI investigation. It was the complainant's strong feeling that Ferring would not have cooperated fully to investigate and resolve this issue had he/she not made the complaint to the ABPI.

The complainant stated that the representative left two messages, the second after being specifically asked not to by the complainant on the patient telemedicine voicemail. The voicemail service offered clearly stated on its automated message that it was a patient service only. It could only hold a certain number of voicemail messages. If it was full of calls from external contacts, then patients

would not be able to leave messages and care would be delayed. The complainant alleged that the representative was lying that he/she only left one message. The complainant noted that Ferring's response stated that the representative could not remember; the complainant considered that that was blatantly false.

The complainant stated that he had not seen the email that was said to be sent to him/her by the representative.

The complainant stated that the department's secretarial team was fully aware that it did not have a process set up that representatives could freely 'pop down' to the department's office – which was shared with other health professionals. Nor did the department have any jurisdiction over whether it was appropriate for a representative to see a consultant. It was up to the secretary to contact the doctor, to make arrangements - not the complainant. The complainant also did not appreciate messages and promotional 'paraphernalia' being left on his/her desk due to the potential implications that this could have for the Nursing and Midwifery Council (NMC) code of conduct. The complainant found it highly unlikely that a member of staff or anyone in the office would have asked the representative to leave anything on his desk.

The complainant stated that when he spoke to the representative on the telephone he/she carefully and specifically explained to him/her that the area – which included the two named hospitals and others – could not facilitate a meeting until the new year and asked him/her to recontact then as they were currently busy. Despite this, the representative went to the second hospital. The complainant clarified that the colleague who he/she line managed was not a 'New IBD Nurse'. In fact he/she had been in post for 2 years. The complainant explained that the department had three nurses currently covering all three sites. The complainant thought that having had the discussion with the representative, he/she should have understood that by deciding to attend the second hospital, again unannounced, would be wrong.

The complainant remembered meeting with the representative around 3 years ago, when he/she worked for a different pharmaceutical company.

The complainant stated that the representative was once again being economical with the truth. The complainant did not have any recollection of setting up meetings for the representative before and he/she was not on any of the department's lists for the last few years. The complainant stated that they had never had a collaborative relationship, nor did the complainant feel that they were on 'First named terms'; the complainant had only met the representative once before, several years ago. The complainant summarised by stating that he/she believed the representative was acting unprofessionally, had lied in his/her statement in several places and his/her approach was 'wrong, pushy and ignorant despite clear dialogue to him/her'.

FURTHER COMMENTS FROM FERRING

Ferring submitted that both the company and the representative stood by the original response to the complaint and could see no new evidence in the complainant's further comments.

Ferring submitted that in view of the formal complaint lodged with the PMCPA, Ferring was compelled to follow the appropriate complaints procedure and thus wait for the formal response from the PMCPA before responding. Ferring explained that it conducted a thorough investigation which was initiated on receipt of the complaint and entailed gathering written and oral testimony from the representative who was interviewed in person. The formal complaint from the PMCPA was received on 22 August. Ferring submitted that it therefore took the complaint very seriously and investigated it as soon as possible.

Ferring submitted that as per its original response, the representative's company telephone records clearly showed only one call placed to the patient telemedicine helpline on a particular day in August as advised by the gastroenterology secretary at the second hospital. Any other calls were made via the telephone switchboard and the representative asked to speak to a named individual not the helpline so the extension he/she was directed to was not within his/her control.

The email sent by the representative to the complainant was provided with Ferring's original response and was retrieved from the representative's sent items.

Ferring stood by the representative's description of events and did not accept that it was in any way unlikely or unusual that the secretary told him/her to pop down to the complainant's offices and that another member of staff would have asked him/her to leave material on the complainant's desk.

Ferring submitted that the representative was directed by his/her manager to contact the second hospital as an invitation from the head office to the Ferring IBD nurse meeting had bounced back saying the individual had left the organization. The representative wanted to invite the replacement nurse to the meeting, offering high quality education. He/she did not arrive unannounced at the hospital seeking an appointment, instead he/she called the department.

Ferring submitted that the training of the representative was provided at the request of the PMCPA.

Ferring submitted that the representative wrote to the complainant to make him/her aware of his/her new role. The tone and content of the email implied that the representative knew the complainant professionally. Ferring expected that he/she followed up in person having received no reply.

PANEL RULING

The Panel noted the complainant's allegation that the Ferring representative was harassing his/her department's staff for appointments and leaving messages for staff on the patient telemedicine line and with secretarial staff members. The Panel noted that the parties' accounts differed in this regard. The Panel noted the difficulty in dealing with complaints based on one party's word against the other; it was often impossible in such circumstances to determine precisely what had happened. The introduction to the Constitution and Procedure stated that a complainant had the burden of proving their complaint on the balance of probabilities. The Panel noted, however, that a high degree of dissatisfaction was usually required before an individual was moved to submit a formal complaint.

The Panel noted Ferring's submission that the representative called the complainant to arrange another appointment as he/she had not seen him/her when visiting the named hospital on 26 July. According to Ferring the representative asked to speak to the complainant and was put through by the switchboard. The representative left a voice message but could not recall if this was on the IBD helpline or a personal telephone message. Ferring submitted that only one call was made to the hospital that day as reflected in the representative's call log and no calls were made directly to the patient helpline. The Panel noted the complainant's submission that when speaking to the representative he/she carefully and specifically explained that the named sector which included a number of named hospitals could not facilitate a meeting until the new year as they were busy and asked him/her to recontact then. In the complainant's view the representative should therefore not have contacted the second named hospital. The Panel noted a discrepancy in that the complainant initially stated that he/she had spoken to the representative and explained that he did not use the medicines that the representative was selling. In later correspondence the complainant submitted that he/she had asked the representative to make contact in the New Year as the department was currently busy.

The Panel noted that the fact that the complainant was busy and that the representative should wait until January 2019 to engage with him/her was reflected in the representative's call notes. The Panel further noted Ferring's submission that the representative viewed the second named hospital as an independent entity with its own IBD clinical team and wanted to invite the new IBD nurse to a meeting.

The Panel noted Ferring's submission that only one call was placed to the patient telemedicine helpline in August as advised by a secretary at the second named hospital. This was shown by the representative's company telephone records. Any other calls were made via the telephone switchboard and the representative asked to speak to a named individual not the helpline so the extension he/she was directed to was not within his control.

The Panel noted that Clause 15.4 stated that representatives must ensure that the frequency, timing and duration of calls on health professionals and other relevant decision makers in hospitals and NHS and other organisations, together with the manner in which they were made, do not cause inconvenience. The wishes of individuals on whom representatives wished to call and the arrangements in force at any establishment, must be observed. The Panel noted the parties' differing accounts and its comments above on this point. Overall, the Panel did not consider that on the balance of probabilities the complainant had proved that the representative had contravened the requirements of this clause. The Panel thus ruled no breach of Clause 15.4.

Given its ruling regarding Clause 15.4, the Panel did not consider that the representative had failed to maintain a high standard of ethical conduct. The Panel thus ruled no breach of Clause 15.2.

The Panel noted that Clause 15.9 of the Code required companies to prepare detailed briefing material for representatives on the technical aspects of each medicine which they would promote. Briefing material must comply with the relevant requirements of the Code and, in particular, was subject to the certification requirements of Clause 14. Briefing material must not advocate, either directly or indirectly, any course of action which would be likely to lead to a breach of the Code.

The Panel noted Ferring's submission that it did not require its sales representatives to adhere to a formal call rate; their activity was guided by their account objectives which were formulated in conjunction with their area sales manager (ASM). The representative had not yet defined individual account plans with his/her ASM and was therefore working towards a set of personal objectives. These included understanding key stakeholder networks, familiarizing himself/herself with local strategy documents and making appointments with relevant key stakeholders. There were no requirements for the sales representatives to contact a prespecified number of customers within a defined time period. The Panel noted Ferring's submission about the representative's training. The Panel considered that there was no evidence that the representative had been instructed to overcall on clinicians or contact health professionals in a way that would be likely to lead to a breach of the Code. The Panel therefore ruled no breach of Clause 15.9.

The Panel noted its rulings above and did not consider that Ferring had failed to maintain high standards. No breach of Clause 9.1 was ruled.

Complaint received **21 August 2018**

Case completed **26 October 2018**