

EX-EMPLOYEE v ABBVIE

Promotion of a poster and use of case studies

A contactable, ex-employee complained about the production of a poster by AbbVie and the use of case studies. The poster in question related to Synagis (palivizumab) which was indicated for the prevention of serious lower respiratory tract disease requiring hospitalisation caused by respiratory syncytial virus (RSV) in children at high risk for RSV disease. The complainant had previously complained to AbbVie about the matter.

The complainant explained that the national team was tasked with finding a trust that would participate in the Embrace Stars poster submission. The complainant joked with his/her line manager that the only way he/she would be able to achieve this after only a few months on territory would be to write a poster him/herself on behalf of a trust; he/she was shocked when the manager agreed. The manager's only concern was that the ideas suggested could not be 'too commercially written' but otherwise the manager fully agreed with the project and suggested multiple edits. The complainant stated that he/she made it very clear he/she would never write a poster on behalf of registered clinical nurses again; it was uncomfortable and stressful.

The complainant explained that the submission was forwarded to the nurses to approve and then forwarded to the agency. At one point the nurses told the agency that they did not recognise the work.

Eventually the poster was published and showcased around the country; ironically it was judged as 'outstanding' by the steering committee of nurse specialists. The complainant considered that they would be disappointed if they knew that the poster was written by the company that funded the process. To make matters worse, the statement 'This poster has been reviewed for compliance purposes by AbbVie with no influence on the content/opinions being presented' was printed on the bottom of the poster. This was not so. The poster was falsely portrayed as being written by health professionals and was written in such a way as to encourage health professionals to increase clinical capacity by up to 40%. It was wholly unethical. The conduct of the complainant's manager to support such an activity was detrimental to AbbVie's global reputation. This action and conduct brought shame upon, and reduced confidence in, not only AbbVie, but the whole industry.

The complainant added that team members were asked to present case studies at regional Embrace meetings. These case studies had not been put through the approval process and many in the team were extremely uncomfortable with the request

as the case studies have been presented by health professionals or by AbbVie's medical team.

The complainant noted that AbbVie partially upheld his/her complaint about the compliance issue and stated that it would take corrective action. The complainant considered that AbbVie had failed to properly investigate the poster submission; it had concluded that there was no breach of compliance. The complainant suggested motives behind the company's poor attempt at an investigation and also noted that the company had not referred to any contact with its communications agency to confirm or deny the suggestion that the nurses did not recognise the work – which would confirm that AbbVie was heavily involved in the writing of the health professional poster.

The complainant noted that AbbVie had partially upheld his/her complaint, however, he/she disputed this as he/she considered that AbbVie had failed to self-report this breach as required. AbbVie had stated in its response that the claim of account managers presenting the case studies was unsubstantiated, however, the complainant stated that he/she had a photograph that was posted by his/her manager to a WhatsApp group, of a named account manager presenting the said case studies; this clearly substantiated the original grievance which demonstrated that AbbVie was clearly misleading in its response 'unsubstantiated'. Either AbbVie never investigated or deliberately tried to withhold information.

The complainant listed some of the issues he/she had experienced with the internal complaints system and details were provided.

Subsequent to receipt of the complaint, the complainant provided additional evidence, a copy of a draft poster with track changes and comments which was provided to AbbVie.

The detailed response from AbbVie is given below.

The Panel noted that Case AUTH/2997/12/17 and Case AUTH/3028/3/18 contained similar allegations with regard to a named AbbVie representative presenting clinical case studies which had not been certified at a meeting in September 2017. In Case AUTH/2997/12/17, the Panel ruled a breach of the Code as a Pathways document which consisted of three different scenarios (case studies), which were discussed in a session facilitated by an AbbVie representative, had not been certified, as acknowledged by AbbVie. The Panel noted that the complainant bore the burden of proof and considered that there was no evidence to show that in facilitating a discussion on the three scenarios within the Pathways document, the representative

in question, or the company, had failed to maintain high standards on this narrow point. No breach of the Code was ruled. The Panel noted that it was not necessarily unacceptable under the Code for a representative to present case studies, as alleged, provided that the manner in which it was done complied with the Code.

Turning to the current case, Case AUTH/3028/3/18, the Panel noted the complainant's allegations regarding non-medical employees presenting uncertified case studies at regional Embrace meetings. The Panel noted that the complainant had referred broadly to all regional Embrace meetings and had only subsequently referred to the meeting at issue in Case AUTH/2997/12/17 as an example of a relevant meeting when commenting on AbbVie's findings during his/her grievance proceedings. The Panel considered that the rulings in Case AUTH/2997/12/17 set out above were relevant. The Panel similarly ruled a breach of the Code in the present case in relation to AbbVie's failure to certify the Pathways document (case studies) and no breach of the Code as the complainant in this case had not established that it was inappropriate for promotional staff to present case studies at promotional meetings as alleged.

The Panel noted that a further allegation in this case, Case AUTH/3028/3/18, concerned AbbVie's involvement in the production of an Embrace Stars poster and its failure to accurately declare such involvement. The poster at issue included the statement 'This poster has been reviewed for compliance purposes by AbbVie with no influence on the content/opinions being presented'. The Panel noted that the entry pack for the submission of the posters stated that the programme was organised and funded by AbbVie and would be certified as promotional material given that the posters were intended for display at a series of promotional educational meetings. It also stated that AbbVie would have ownership of the posters created and would use the material promotionally subject to approval for the wider sharing of best practice in the field of RSV prevention. The entry pack stated that AbbVie would provide support in developing posters through a communications agency. In the Panel's view, AbbVie's role went beyond reviewing for compliance purposes as stated on the poster. The role of its communications agency, whilst made clear to the participants at the outset and not necessarily unacceptable, went beyond matters of compliance and as shown by the track change comments on the completed template, at the very least influenced the content of the poster. In addition, the Panel noted that the initial completed template submitted for the poster in question stated within the methodology section 'working in conjunction with [named AbbVie representative] a simple spreadsheet was formulated to identify babies all year round ...'. In the Panel's view, this supported the complainant's assertion and it appeared that the named AbbVie representative was involved in the project that was the subject of the poster. The Panel was concerned to note that the reference to the representative's involvement did not appear on the published poster.

The Panel noted that whilst AbbVie's involvement might have been clear to those submitting posters, the Panel did not consider that the declaration 'This poster has been reviewed for compliance purposes by AbbVie with no influence on the content/opinions being presented' accurately reflected AbbVie's involvement to readers. In addition, the Panel considered that the prominence of the health professional authors' names and pictures of the hospital compounded the misleading impression given by the declaration and a breach was ruled.

The Panel noted its comments above in relation to the failure of AbbVie to accurately reflect its involvement in the production of the poster. High standards had not been maintained and a breach was ruled.

The Panel had some concerns about email communications between AbbVie staff and its communications agency and between the communications agency and the nurses said to be the authors of the poster, as well as concerns regarding AbbVie employees' involvement with regards to the Embrace Stars poster at issue. The Panel noted that the Code did not preclude the involvement of representatives in the creation of promotional material but companies should exercise caution in this regard. The Panel noted its rulings of breaches of the Code including its concerns about the role of the AbbVie representative. However, based on the narrow allegation, the Panel did not consider that the complainant had provided evidence to show that, on the balance of probabilities, the representative's role, and/or influence, was such that it could be stated that the representative had created the poster or that it was created at the express request of his/her manager and that the representative had not applied high standards in this regard. Based on the narrow allegation, the Panel ruled no breach of the Code.

Upon appeal by the complainant the Appeal Board considered that there was evidence to show that the complainant, the nurse(s) and AbbVie and its agency were involved with the production of the poster. In that regard the Appeal Board noted the Panel's ruling of a breach of the Code in relation to AbbVie's declaration of its involvement in the production of the poster. The Appeal Board considered that on the information available it did not have sufficient evidence to show on the balance of probabilities that the complainant had created the poster *de novo* at the direction of his/her manager, as alleged. Consequently, on the narrow allegation, the Appeal Board considered that there was no evidence that the representative had not applied high standards in this regard. The Appeal Board upheld the Panel's ruling of no breach of the Code. The appeal on this point was unsuccessful.

The Panel noted its comments and rulings above and did not consider that the circumstances warranted a ruling of a breach of Clause 2 which was as a sign of particular censure and reserved for such use. No breach of Clause 2 was ruled which was upheld on appeal.

A contactable, ex-employee complained about the production of a poster by AbbVie Limited and the use of case studies. The poster in question related to Synagis (palivizumab) which was indicated for the prevention of serious lower respiratory tract disease requiring hospitalisation caused by respiratory syncytial virus (RSV) in children at high risk for RSV disease.

COMPLAINT

The complainant stated that in December 2017 he/she formally complained to AbbVie about an issue with which he/she had been very uncomfortable about for some time; it took a lot of soul searching to even bring the matter to the company's attention as it was so detrimental to its reputation.

The complainant explained that the national team was tasked with finding a trust that would participate in the Embrace Stars poster submission. Under immense pressure, the complainant joked with his/her line manager that the only way he/she would be able to achieve this after only a few months on territory would be to write a poster him/herself on behalf of a trust; he/she was shocked when the manager agreed and suggested topics for the poster and scheduled time to discuss the matter further. During this discussion, the manager's only concern was that the ideas suggested could not be 'too commercially written' but otherwise he/she fully agreed with the project and suggested multiple edits. The complainant stated that he/she made it very clear he/she would never do anything like that ever again; it was uncomfortable and stressful being involved in the writing of a poster on behalf of registered clinical nurses.

The complainant explained that the submission was forwarded to the nurses to approve and then forwarded to a communications agency. At one point the nurses told the agency that they did not recognise the work. This was extremely stressful to manage and there were multiple discussions with the nurses to ask them to agree to the content of the poster.

Eventually the poster was published and showcased around the country; ironically it won many votes and finally came a very close second to the winning poster which was judged by the steering committee of elite clinical reference group (CRG) and clinical nurse specialists. The complainant considered that the steering committee would be disappointed if it knew that it had judged a poster as outstanding that was written by the company that funded the process. To make matters worse, the statement 'This poster has been reviewed for compliance purposes by AbbVie with no influence on the content/opinions being presented' was printed on the bottom of the poster. This was not so, the poster made a mockery of the Embrace Stars format, as it was falsely portrayed as being written by health professionals and was written in such a way as to encourage health professionals to increase clinical capacity by up to 40%. It was wholly unethical. The conduct of the business unit manager to allow such insidious behaviour to go on, let alone support it and suggest edits, was reckless and detrimental to AbbVie's

global reputation. This action and conduct brought shame upon, and reduced confidence in, not only AbbVie, but the whole industry in breach of Clauses 9 and 2. Furthermore, it was common knowledge within the team and marketing that AbbVie wrote this poster on behalf of a trust.

The complainant added that team members were asked to present case studies at regional Embrace meetings. These case studies had not been put through the Zinc process and many in the team were extremely uncomfortable with the request as they should have been presented, at best, by health professionals or alternatively by AbbVie's medical team.

The complainant noted that AbbVie only partially upheld his/her complaint about the compliance issue and stated that it would take corrective action.

The complainant considered that AbbVie had failed to properly investigate the poster submission; it had concluded that there was no breach of compliance. The complainant confirmed that the poster was written by AbbVie and suggested that the company's poor attempt at an investigation proved, beyond doubt, that it was attempting to deflect as it had failed to mention or comment on whether it had contacted the nurses to confirm or deny. The complainant submitted that the nurses would confirm his/her version of events. The complainant also noted that the company had not referred to any contact with the communications agency to confirm or deny the suggestion that the nurses did not recognise the work – again, this would only confirm that AbbVie was heavily involved in the writing of the health professional poster. Further, the complainant noted that he/she had a document (copy provided) sent to him/her by AbbVie as part of a subject access request, albeit late and incomplete, a document that suggested changes/edits to the poster and comments from the manager as follows:

'could we elaborate on "time of eligibility"
'we will add in figures here once obtained firm figures requested above'
'we haven't really explained the changes in the service here'.

The complainant submitted that AbbVie's submission that it was not clear that the manager had directed or sanctioned guidance was ludicrous based on that one document alone. The manager, who held a very senior position within AbbVie, knew about the poster submission being written by AbbVie on behalf of the nurses and the complainant stated that he/she would stand in a court of law under oath to confirm this.

The complainant noted that AbbVie had partially upheld his/her complaint, however, he/she disputed this as he/she considered that AbbVie had failed to self-report this breach as required. AbbVie had stated in its response that the claim of account managers presenting the case studies was unsubstantiated, however, the complainant stated that he/she had a photograph that was posted by his/her line manager to a WhatsApp group, of an account manager presenting the said case studies with the caption '[account manager]

in action' (the time and date were provided); this evidence substantiated the original grievance which demonstrated that AbbVie was clearly misleading in its response 'unsubstantiated'. Either AbbVie never investigated or deliberately tried to withhold information.

The complainant explained some of the issues he/she had experienced with the internal complaints system and details including the outcome were provided.

The grievance complaint contained an allegation that medical case studies were used that were not Zinc certificated. Corrective action would be put in place to ensure that this did not happen again.

Outcome: Upheld in part. The action recommended to the business was to take corrective action to ensure that medical case studies were Zinc certificated.

The complainant did not feel that AbbVie had taken these very serious allegations seriously and that they needed to be fully investigated.

The complainant stated that he/she was prepared to be as cooperative as required and wished to remain an anonymous but contactable. As part of a subject access request, AbbVie provided him/her with the track changes document in relation to the poster submission, the complainant was happy to provide this if required.

Subsequent to receipt of the complaint, the complainant provided additional evidence, a copy of a draft poster with track changes and comments which was provided to AbbVie.

When writing to AbbVie, the Authority asked it to bear in mind the requirements of Clauses 2, 9.1, 9.10, 14.1 and 15.2.

RESPONSE

AbbVie submitted that the facts of this complaint were very similar to a complaint made by an anonymous health professional in December 2017 (Case AUTH/2997/12/17: Promotion of Synagis). AbbVie had responded in detail to that complaint and for completeness, a copy of that response was provided and would be referred to as the 'related complaint'. AbbVie noted that there was significant repetition in relation to the 'case studies' which it addressed below.

AbbVie believed that the complainant in both cases was the same person and the reasons for this were initially explained in the response to Case AUTH/2997/12/17. AbbVie noted that it had sought to clarify the complainant's interest, direct or indirect, in Case AUTH/2997/12/17 or in AbbVie but he/she had not responded to the Authority's request in that regard. This was a material consideration for the Panel in both cases and supported the position that the complainant was the same individual in both cases.

AbbVie stated that its response to Case AUTH/2997/12/17 it had addressed the case studies in detail which were the secondary focus of this complaint. In that response, AbbVie recognised that the case studies document (which it believed was the subject of Case AUTH/2997/12/17) was not certified. As explained, the document was not intended to promote Synagis, although it was used in the context of a promotional meeting. AbbVie submitted, therefore, that it had already taken appropriate remedial action about this element of the current complaint and it referred to its submission in Case AUTH/2997/12/17.

AbbVie stated that for the reasons set out below, it did not believe there was sufficient evidence to enable the complainant to discharge the burden of proof on the balance of probabilities.

AbbVie noted that the complainant was a 'contactable ex-employee' who had brought a series of internal grievances, largely about employment matters, in accordance with AbbVie's grievance process. AbbVie acknowledged that in order to maintain high standards, it was critical that individuals (whether employees or not) had the right to complain to the PMCPA.

The purpose of submitting posters to the Embrace Stars programme was to recognise best practice in the field of respiratory syncytial virus (RSV) protection, improvement in the RSV service for infants and their families and support best practice in the NHS. The submission process was intended to generate a poster (the content of which was non-promotional) by nurses involved in RSV prevention. AbbVie considered that the opportunity to author and display a poster would be a useful educational opportunity for nurses since this was not part of their normal practice. It was not intended that the poster would promote Synagis, although it was clear from the outset that it would be used in the context of a promotional meeting and reviewed for compliance.

All representatives were provided with a briefing pack or 'Meeting Alignment Toolkit' for the purpose of the Mini Embrace meeting series (copy provided). This material provided guidance to the team on the need to comply with the Code. While the guidance focussed on the meeting preparation, it also referred to the 'Embrace Stars' concept. This reinforced the aims of the project.

A member of the Synagis marketing team briefed the representatives about the programme and entry pack in late April 2017. The role of the representatives was to identify potential applicants to enter an idea for a poster and support the development of the posters (and the application form) in the entry pack. Successful posters would be displayed at the 'Mini Embrace' meeting series and on an AbbVie website for health professionals.

The Entry Pack for the submission of posters (copy provided) stated that the programme was 'Organised & Funded' by AbbVie and would be certified as promotional material given that the posters were intended for display at a series of promotional

educational meetings. It also stated on page two that 'AbbVie will have ownership of the posters created and will use the material promotionally (subject to approval) for the wider sharing of best practice in the field of RSV prevention'.

The Entry Pack also stated that 'AbbVie will provide support in developing posters through ... communications' agency and so AbbVie's involvement was transparent from the outset. All participants therefore knew that the posters they submitted would be used for promotional purposes. The process was managed primarily by AbbVie's communications agency, in conjunction with AbbVie.

The Entry Pack contained some examples of what an entry could cover and the assessment criteria – these were non-promotional. For example, 'Your entry could be a well-developed service delivery programme, on line training or be related to commissioning'.

Entries were judged by an independent steering committee of four health professionals. In January 2017, the steering committee for the Embrace 2017 Meeting series met to discuss the educational needs to be addressed in the meeting series and agreed to judge the Embrace Stars 2017 posters with objective assessment criteria that were also set out in the Entry Pack. It was proposed at that meeting that recognition for Embrace Stars 'could be an advertorial in a journal publication or editorial of their choice'. In particular, this would be for the best practice poster only and would be an AbbVie advertisement which contained an extract of the poster.

AbbVie received five poster applications which were all considered, by default, to be finalists. The posters were sent by the communications agency directly to the steering committee in early September 2017 for it to select a winner. The posters were not blinded as there was no conflict of interest with the steering committee. The authors of the poster, that was deemed to represent the best practice and to meet the assessment criteria, were notified in October. AbbVie noted that the best practice poster was not the one subject of the complaint.

The focus of the complaint initially suggested that AbbVie (the complainant) prepared the poster and that AbbVie was heavily involved in its preparation. AbbVie stated that it would address this further below although it noted that the complainant did not clearly articulate which of these two scenarios he/she was complaining about. AbbVie stated that it had tried to address both but there was insufficient evidence to draw any conclusions.

AbbVie noted that the complainant suggested that he/she wrote the subject poster application and then sent it to the nurses to approve. There was insufficient evidence to confirm the allegations based on discussions with the relevant business unit manager, the communications agency and the complainant's colleagues. AbbVie had also reviewed documents still in its possession which included documents that were retrieved during the grievance process, and collected in response to the

complainant's subject access request (referred to by the complaint above) which had been kept on file. However, the evidence did not show that the complainant was asked to prepare a poster for the nurses as alleged.

The key chronology appeared to be as follows:

- 26 May 2017 – The complainant sent his/her manager an email which attached an Embrace Stars Entry Pack for 2017. The complainant stated in the email, 'Sneak peak of [named trust] poster, feel free to suggest amendments I am seeing [nurse] next week to finalise'. There was no response to this email and the manager was not sure why the document was sent to him/her as opposed to the communications agency or a named AbbVie employee.
- June – At the bottom of an email chain (copy provided) was an email from a nurse from the named trust to the complainant which stated, 'Here is our poster'. AbbVie noted that there was no date on this email. The original email could not be located on AbbVie's system because the complainant had left the company and so the email had been deleted in accordance with the company's standard email retention procedure.
- 7 June – A second version of the email chain referred to above showed that the complainant sent what appeared to be the communications agency application to a named AbbVie employee who sent it to the communications agency.

In all of the five examples of poster review, the representatives were involved as a 'go between' to facilitate poster production. AbbVie noted that four out of the five poster submissions were made by nurses via representatives to the communications agency.

- 12 June – The next email (copy provided) was from AbbVie's communication agency to a named AbbVie employee. The attachment was a copy of the poster submitted from the NHS trust which included text mark up and comments from the communications agency. This was the same document that the complainant submitted to the PMCPA and was subsequently provided to AbbVie by the Authority.

The communication agency engaged medical writers and all the posters that were submitted required medical writing support. Initial questions following the medical writer review were communicated to authors via AbbVie or the named AbbVie employee. This ranged from clarifying information and requesting further details to requesting photographs and images for the poster.

- 12 June – A further email which the named AbbVie employee sent to the complainant's manager who sent the comments from the communications agency to the complainant, and complimented him/her for ensuring that his/her sales territory (which included the NHS trust) had already prepared a poster. This email clearly stated that

the agency comments were to 'strengthen the information', not to influence the content. This was an important distinction. The comments from the complainant's manager were directed at the nurses to improve the accuracy of the poster, not the complainant.

- 16 June – An email from a different AbbVie representative to the complainant explained that the word count had been checked and additional information had been included. The representative recalled that the complainant wanted help, mainly with grammatical issues and a 'sense check' of the NHS trust's application pack.
- 27 June – The complainant sent the named AbbVie employee the trusts poster.
- 27 July – The poster was sent from the communications agency back to Abbvie. This contained the graphics and artwork that the communications agency had added.
- 31 July – The communications agency sent the fully art worked poster to the nurses and an email showed that they sought confirmation from the nurses. There was no reply to this email and so the communications agency emailed the nurses again on 7 August as a reminder and asked for a photograph of the nurses and the hospital to be included in the final poster. AbbVie understood that no final written approval was sent by the nurses to the communications agency and verbal approval was received through the complainant.
- By 4 September – All posters certified (including the poster at issue) before being sent to the steering committee. A copy of the final version of the poster and certificate was provided.
- From 8 September – All posters were displayed at Mini Embrace meetings.

AbbVie noted that the two nurses who submitted a poster then presented at the complainant's 'Mini Embrace' meeting in September 2017. The agenda for this meeting was provided. All five posters were displayed at this meeting and none of the nurses expressed any concern about their poster or suggested that they had not written it. The complainant stated that 'the nurses at one point responded to [the communications agency] saying they did not recognise the work, this was extremely stressful to manage and I had to have multiple discussions with the nurses to ask them to agree to the contents for the submission'. There was no evidence of this and as referred to above, no nurses from the trust raised any concern with AbbVie or the communications agency about this.

The alternative reading of the complaint was the allegation that AbbVie inappropriately influenced the content or opinions expressed in the poster. There was insufficient evidence to support that. AbbVie acknowledged, however, that the complainant might have helped the nurses to prepare their application form, modifying it and helping them through the process. Comments from the communications

agency were then provided to correct factual inaccuracies, tighten drafting and request that certain other information be added, for example, references to the Joint Committee on Vaccination and Immunisation (JCVI) Guidelines. A comparison with the final version of the poster at issue showed that some comments were included, but not all. AbbVie noted the final version of the poster was certified given that it was intended to be displayed at a promotional educational meeting.

Contrary to the allegations, AbbVie was clear that all posters were to be owned by the company and it would use the material for promotional purposes. As such, the company was obliged to ensure that the information was accurate and balanced and reviewed for compliance with the Code. The original substance of the poster submitted by the nurses was retained.

The complainant particularly noted the statement on the bottom of the final version of the poster 'This poster has been reviewed for compliance purposes by AbbVie with no influence on the content/opinions being presented'. As set out above, AbbVie had to review the posters (as did the communications agency) but the evidence supported that no substantive changes were made to the content or opinion. Abbvie also knew that the events articulated in the poster were true.

AbbVie accepted that the disclaimer statement on the final poster could have been clearer so that it was stated 'with no influence on the opinions being presented'. However, this did not alter the fact that the content did not change substantively and AbbVie's involvement in the organisation and funding of the project (and its plans for the subsequent use of the posters) was transparent.

In view of the above, and based on its review of the available information, AbbVie stated that it did not have sufficient evidence to confirm an allegation that the poster was actually prepared by the complainant. In relation to allegations about the role of others within AbbVie, there was a differing version of events and the conduct as alleged by the complainant was not recognised. As stated above, the complainant no longer worked for AbbVie.

AbbVie denied any breach of the Code.

With regard to case studies, AbbVie reiterated that they formed part of Case AUTH/2997/12/17 and the background on the case studies (or 'scenarios') as set out in its response to Case AUTH/2997/12/17.

AbbVie noted that the complaint focussed on the fact that a representative presented the case studies. This was not factually accurate. The purpose of the scenarios was explained in the response to Case AUTH/2997/12/17. This was an AbbVie facilitated session and during the session the attendees were divided by tables; every table had to discuss the scenarios, ask questions and then each health professional would provide feedback. The scenarios were printed and left on tables during the session for discussion and were not formally presented

by a speaker. However, an AbbVie representative facilitated the workshop which was why there was a photograph of a representative speaking at the front of the meeting on 15 September 2017.

AbbVie stated that, in its view, there had been no breach of Clauses 15.2 and 15.9.

In conclusion, and for the reasons outlined above, AbbVie did not believe, based on the evidence provided, that there was a case to answer.

AbbVie specifically asked that the complainant was not provided with a copy of its response; the material was confidential by its nature.

In response to a request for further information, AbbVie stated that there was no additional information that it wished to submit in relation to the allegations, save for three points in response to the Authority's specific questions, namely:

- 1 AbbVie enclosed further email communications between the communications agency and the NHS trust. These emails were provided to AbbVie by the communications agency as the majority of them were not in AbbVie's possession given that AbbVie employees were not included in the recipients. Some of the emails were included with AbbVie's initial response.
- 2 AbbVie confirmed that the comments made on the poster at issue were made by an agency employee.
- 3 AbbVie confirmed that all 5 Embrace Stars posters were displayed at the Mini Embrace meeting in September 2017.

PANEL RULING

The Panel noted that Case AUTH/2997/12/17 and Case AUTH/3028/3/18 contained similar allegations with regard to a named AbbVie representative presenting clinical case studies which had not been certified at a meeting in September 2017. In Case AUTH/2997/12/17, the Panel ruled a breach of Clause 14.1 as a pathways document which consisted of three different scenarios (case studies) which were discussed in a session facilitated by a named AbbVie representative had not been certified, as acknowledged by AbbVie. The Panel noted that the complainant bore the burden of proof and considered that there was no evidence to show that in facilitating a discussion on the three scenarios within the pathways document, the representative in question, or the company, had failed to maintain high standards on this narrow point. No breach of Clause 15.2 was ruled. The Panel noted that it was **not necessarily unacceptable** under the Code for a representative to present case studies, as alleged, provided that the manner in which it was done complied with the Code.

Turning to the current case, Case AUTH/3028/3/18, the Panel noted the complainant's allegations regarding non-medical employees presenting uncertified case studies at regional Embrace meetings. The Panel noted that the complainant had

referred broadly to all regional Embrace meetings and had only subsequently referred to the meeting at issue in Case AUTH/2997/12/17 as an example of a relevant meeting when commenting on AbbVie's findings during his/her grievance proceedings. The Panel considered that the rulings in Case AUTH/2997/12/17 set out above were relevant. The Panel similarly ruled a breach of Clause 14.1 in the present case in relation to AbbVie's failure to certify the pathways document (case studies) and no breach of Clause 15.2 as the complainant in this case had not established that it was inappropriate for promotional staff to present case studies at promotional meetings as alleged. The Panel noted that as in the previous case, Case AUTH/2997/12/17, Clause 15.9 had been raised by the case preparation manager in this case. Clause 15.9 required that companies must prepare detailed briefing material that must not advocate, either directly or indirectly, any course of action which would be likely to lead to a breach of the Code and is subject to the certification requirements of Clause 14. In Case AUTH/2997/12/17 the Panel did not consider that there was an allegation in this regard and therefore made no ruling in relation to this matter. The Panel noted the position was the same in this case and thus made no ruling with regard to Clause 15.9.

The Panel noted that a further allegation in this case, Case AUTH/3028/3/18, concerned AbbVie's involvement in the production of an Embrace Stars poster and its failure to accurately declare such involvement. The poster at issue included the statement 'This poster has been reviewed for compliance purposes by AbbVie with no influence on the content/opinions being presented'. The Panel noted that the entry pack for the submission of the posters stated that the programme was organised and funded by AbbVie and would be certified as promotional material given that the posters were intended for display at a series of promotional educational meetings. It also stated that AbbVie would have ownership of the posters created and would use the material promotionally subject to approval for the wider sharing of best practice in the field of RSV prevention. The entry pack stated that AbbVie would provide support in developing posters through its communications agency. In the Panel's view, AbbVie's role went beyond reviewing for compliance purposes as stated on the poster. The role of its communications agency, whilst made clear to the participants at the outset and not necessarily unacceptable, went beyond matters of compliance and as shown by the track change comments on the completed template, at the very least influenced the content of the poster. In addition, the Panel noted that the initial completed template submitted for the poster in question stated within the methodology section 'working in conjunction with [named AbbVie representative] a simple spreadsheet was formulated to identify babies all year round ...'. In the Panel's view, this supported the complainant's assertion and it appeared that the named AbbVie representative was involved in the project that was the subject of the poster. The Panel was concerned to note that the reference to the representative's involvement did not appear on the published poster. The Panel noted that whilst AbbVie's involvement might have been clear to those submitting posters, the Panel

did not consider that the declaration 'This poster has been reviewed for compliance purposes by AbbVie with no influence on the content/opinions being presented' accurately reflected AbbVie's involvement to readers of the poster. In addition, the Panel considered that the prominence of the health professional authors' names and pictures of the hospital compounded the misleading impression given by the declaration and a breach of Clause 9.10 was ruled.

The Panel noted its comments above in relation to the failure of AbbVie to accurately reflect its involvement in the production of the poster. High standards had not been maintained and a breach of Clause 9.1 was ruled.

The Panel had some concerns about email communications between AbbVie staff, between AbbVie staff and its communications agency and between the communications agency and the nurses said to be the authors of the poster, as well as concerns regarding AbbVie employees' involvement with regards to the Embrace Stars poster at issue. The Panel noted that the Code did not preclude the involvement of representatives in the creation of promotional material; companies should exercise caution in this regard and such material had to comply with all of the requirements of the Code including certification. The Panel noted its ruling above in relation to Clause 9.10 including its concerns about the role of the AbbVie representative. However, based on the narrow allegation, the Panel did not consider that the complainant had provided evidence to show that, on the balance of probabilities, the representative's role, and/or influence, was such that it could be stated that the representative had created the poster or that it was created at the express request of his/her manager and that the representative had not applied high standards in this regard. Based on the narrow allegation, the Panel ruled no breach of Clause 15.2.

The Panel noted its comments and rulings above and did not consider that the circumstances warranted a ruling of a breach of Clause 2 which was as a sign of particular censure and reserved for such use. No breach of Clause 2 was ruled. This ruling was appealed by the complainant.

APPEAL BY THE COMPLAINANT

The complainant appealed the Panel's rulings of no breach of Clause 15.2 in relation to the poster and Clause 2 in relation to the poster and the case studies.

The complainant was extremely disappointed by AbbVie's response to the complaint and even more shocked that it would use the opportunity to make a personal attack on his/her motives for the initial complaint. The complainant alleged that AbbVie had in place a written protocol for whistleblowing, however, it was prone to ignore these and be extremely bullish and intimidating towards any staff member who dared to raise issues. The complainant alleged that this was highlighted extremely clearly by its 'vehement' denial of any wrong doing, intentional or otherwise.

The complainant alleged that as AbbVie had considered that it was necessary to provide some 'background' information as to why he/she would even dare to approach the PMCPA with any alleged breach of Code he/she also took the opportunity to provide some 'background' information. The complainant alleged that his/her submission was even more relevant in the demonstration of AbbVie's disregard of rules and regulations. In addition to his/her complaint, the complainant also made an independent complaint to the Information Commissioners (ICO), following AbbVie's failure to acknowledge a serious breach of data protection. In the interest of transparency the complainant provided his/her response from the ICO in entirety. Details of the ICO findings were provided. AbbVie was, however, still denying that there was any wrongdoing.

The complainant understood that the burden of proof regarding an alleged breach of Code was on the complainant and that it was the responsibility of the complainant to provide evidence to support allegations made. With this in mind and following AbbVie's submission that strongly refuted that the Embrace Stars Poster was in fact written by the complainant and not the nurses in question, the complainant had contacted the customer in question to obtain written confirmation that this was in fact the case and therefore prove without any doubt that his/her allegation had always been true. The complainant alleged that he/she had always stated that he/she had written the poster and he/she had invited the nurses; the alleged authors, to confirm his/her version of events. AbbVie never took that opportunity and the complainant alleged that this was due to the fact that it already knew the truth, but it suited AbbVie to deny it.

The complainant provided an email from one of the nurses that was listed as an author of the Embrace Poster. The complainant alleged this was written confirmation that he/she, acting as an AbbVie representative, had been the author of the poster, despite the disclaimer that was printed on the bottom of the said poster.

The email included confirmation that the poster presentation regarding the success of the RSV clinics was contributed to by two nurses with the complainant and then was produced by the complainant.

The complainant alleged that he/she was baffled that AbbVie was able to find emails from June 2017 as when he/she was making his/her initial complaint, he/she had submitted a subject access request (SAR) and AbbVie confirmed in writing, that no emails were kept on its systems for longer than 30 days and were therefore unable to provide him/her with anything outside of that timeframe. Clearly those emails predated 30 days. Furthermore, by AbbVie's own admission the 'author' did not respond directly to the communications agency contact. The poster was therefore produced off his/her verbal confirmation alone. Surely for something as important as a final sense check of a poster that was to be showcased it would have been vital to get written confirmation from the author? The fact of the

matter was the complainant's manager knew exactly who wrote the poster and he/she suggested the edits the complainant should make, which the Panel had commented on. It was sheer nonsense for AbbVie to claim that these comments were directed at the nurses. If this had been the case the comments would have been sent directly to the nurses from the agency just copying the complainant in, as the representative. The reality was that the nurses never saw the suggested track changes or input into those changes.

The complainant hoped that he/she had provided enough information to show the appalling way in which AbbVie had tried to deflect from the truth. Not only had AbbVie blatantly lied but due to its digging in of heels and not being 'brave and courageous', which was one of their own core values, it had left the complainant with no alternative other than to contact one of its customers to provide the evidence of the truth.

The complainant noted that despite previously remaining anonymous to AbbVie, the complainant alleged that it had gone out of its way to indicate it knew who made the complaint and therefore saw no reason to continue to hide his/her identity. The complainant alleged that all he/she had ever hoped for was that AbbVie would accept that it acted incorrectly and to be able to prevent such a situation arising for other staff members in the future. As AbbVie had acted in such an arrogant manner and was insistent that it was completely innocent the complainant felt he/she had little alternative.

RESPONSE FROM ABBVIE

AbbVie strongly refuted the unfounded allegation made by the complainant in his/her Appeal that it had acted in a 'bullish and intimidating' manner towards whistle blowers. As previously explained, AbbVie had a well-established whistleblowing process in place, including an independent ethics and compliance helpline and a strong track record of dealing with such issues and with the PMCPA. Rather than taking advantage of AbbVie's whistleblowing processes during the summer of 2017, when the events that were the subject of the complaint took place, the complainant did not raise his/her alleged concerns until December 2017 in the context of a separate grievance process relating to various employment matters.

AbbVie submitted that it had previously expressed concerns as to the intentions behind this complaint. The concern about this complaint (and the two complaints that AbbVie believed to be related) were genuine, and it was not, as the complainant suggested, using the complaint as an 'opportunity to make a personal attack'. While AbbVie did not want to repeat these points at length, the appeal only added to AbbVie's view that the complainant was abusing the PMCPA complaints process as a forum to air his/her personal grievances and cause disruption to AbbVie's business.

AbbVie noted that the PMCPA Guidance on Appeal Procedures stated that 'An appeal must be accompanied by detailed reasons as to why the

ruling was not accepted (7.3) and which clauses are appealed'. Far from providing detailed reasons why the ruling was not accepted, a large portion of the appeal related to a wholly separate complaint made to the Information Commissioner's Office (ICO). This was irrelevant to the appeal.

AbbVie submitted that the parts of the appeal that did relate to the complaint were in part made up of subjective and unspecified criticisms of AbbVie's conduct in responding to the complaint and were difficult to address. In fact, there did not appear to be a valid appeal point, the complainant simply did not agree with the Panel's decision. The purported reasons had no bearing on whether AbbVie breached Clauses 2 or 15.2.

AbbVie submitted that with respect to the Panel's rulings of no breach of Clause 15.2, the appeal only referred to Clause 2. AbbVie was unclear how this element of the appeal could proceed without detailed reasons.

AbbVie submitted that the appeal made only one substantive point that was not already addressed in its response to the complaint the inclusion of an email that attempted to substantiate the complainant's claim that he/she was the author of the 'Embrace Star poster'. As set out below, AbbVie did not consider that this email provided any substantiation of the claim, but in any event, it was inappropriate for the complainant to attempt to adduce new evidence at this stage of the process. The Guidance on Appeal Procedures stated that 'It should be borne in mind that it must have been possible to substantiate a claim etc. on the day it was made'. The complainant was unable to substantiate his/her claim that he/she was the author of the poster at the time he/she made the original complaint, and it should be dismissed as it was in the Panel's original ruling.

AbbVie submitted that it continued to acknowledge the importance of the complaints and appeals procedure and understood that the Panel must take each complaint seriously, it was difficult to see, in light of the points above, how the complainant's appeal could succeed. It was disappointing that AbbVie would have to spend further time and resources preparing for the appeal hearing.

The ICO Complaint

AbbVie submitted that as noted above, the majority of the appeal related to a separate complaint the complainant made to the ICO. Since this ICO complaint had no bearing on the PMCPA complaint, AbbVie did not wish to respond to this part of the appeal in detail.

AbbVie submitted that the complainant had also mischaracterised its response to his/her subject access request. The ICO concluded that AbbVie had complied with its obligations in this regard. The complainant stated that he/she 'was completely baffled that AbbVie was able to find emails to provide to the PMCPA from June last year'. The complainant's first SAR was limited in time from 26 July 2016 to 19 December 2017. Emails from June

2017 were provided in response so AbbVie did not understand this comment. In response to the first SAR, all data relating to records of employees who had left AbbVie was permanently deleted. AbbVie was able to provide emails to the PMCPA following the review of documents still in AbbVie's possession which included documents retrieved during the grievance process and collected in response to the first SAR which had been kept on file.

The complainant's alleged authorship of the Embrace Stars Poster

AbbVie noted that the Panel's ruling stated that 'based on the narrow allegation, the Panel did not consider that the complainant had provided evidence to show that, on the balance of probabilities, the representative's role, and/or influence, was such that it could be stated that the representative had created a poster or that it was created at the express request of his/her manager and that the representative had not applied high standards in this regard'. AbbVie submitted that in order to address this, the complainant had provided the text of an email from one of the nurses behind the Embrace Stars poster. Without prejudice to the point made above that the complainant should not be permitted to adduce new supporting evidence at this stage, this email did not prove that the complainant was the author of the poster. First, AbbVie noted that the complainant had not attached the entirety of the email chain but had instead copied and pasted the nurse's response.

AbbVie submitted that it was essential for fairness and transparency that the complainant provided a full unredacted copy of the email chain and any other reports of interactions. This was particularly important when operating under a self-regulatory framework. It was also a well-established principle that investigations required 'full and frank disclosure of the facts at the outset' (Case AUTH/2435/8/11). If there was confidentiality issues with this approach, then a full unredacted copy should be made available at least to the Appeal Board and, if necessary to an AbbVie representative who could sign a confidentiality undertaking if necessary. It went without saying that if the complainant had included his/her initial question, it might have provided some further clarity as to the meaning of the nurse's response.

AbbVie submitted that the response stated that two nurses contributed to the poster, along with the complainant. This was entirely consistent with the description of events in AbbVie's response to the complainant in which it concluded that from its review of the available information, and discussion it had had in the timeframe allowed by the PMCPA, the complainant might have been helping the nurses to prepare their application form, modifying it and 'hand holding' them through the process'. The email also stated that the complainant then 'produced' the poster. It was not clear what exactly was meant by 'produced', although the use of the word 'then' in this sentence (ie the 'production' took place after the contributions from the nurses and the complainant) suggests it was more likely to be referring to AbbVie's (and the communications agency's) role in converting the initial application

into the final poster (including adding graphics and making formatting changes, as well as editing the text). Again, this would be completely consistent with AbbVie's description of events in its response to the complaint.

AbbVie submitted that the complainant also cited the fact that AbbVie had not received written confirmation from the NHS trust that the edits of the poster were acceptable, but instead relied on verbal confirmation given to the complainant, as evidence that he/she was the true author of the poster. AbbVie's communication agency attempted to obtain written confirmation that the trust was happy with the poster on 31 July 2017 and again on 1 August 2017.

AbbVie submitted that however, when the trust did not respond, the complainant was asked to contact the trust to obtain its confirmation. AbbVie had no reason not to believe that the verbal confirmation passed on by the complainant was accurate, and if the complainant was suggesting that he/she deceived AbbVie, this was more the fault of the complainant than of AbbVie.

AbbVie submitted that finally, the complainant suggested that the fact that an AbbVie employee had sent comments to him/her rather than directly to the nurses suggested that he/she was the true author. In fact, this simply reflected standard lines of communication at AbbVie. The complainant was the one in direct contact with the nurses who were his/her customers.

FINAL COMMENTS FROM THE COMPLAINANT

There were a number of confidentiality issues which were resolved and relevant information was provided to the complainant.

The complainant noted that whilst he/she had previously had sight of some of the material, there were a number of emails/documents he/she had never seen. (This material fell within the timeframes of his/her SAR, but were previously not disclosed).

The complainant stated that having reviewed the document bundle it had become clear why AbbVie would not want him/her to have sight of the information as it presented clear evidence to substantiate his/her allegation. The complainant alleged that he/she had referred to those supporting documents throughout his/her response. The complainant had no other additional comments to make on the information supplied.

Firstly, the complainant addressed AbbVie's allegation that he/she was using this process to air any outstanding grievances, and stated that he/she was not, as there were no outstanding grievances. The complainant stated that he/she had fully exhausted AbbVie's grievance procedure and raised genuine concerns to the PMPCA after giving AbbVie ample opportunity to investigate and self-report. AbbVie had failed to do both. This was backed up by the fact that the Panel had already found AbbVie in breach of some of the clauses alleged.

The complainant alleged that he/she raised genuine issues of what he/she considered were breaches of the Code. The complainant noted that he/she stated this as AbbVie had been found in breach by two independent organisations. To be absolutely clear the complainant had only ever raised this **ONE** complaint regarding AbbVie. Any other complaints, whether they be linked or associated the complainant had absolutely no knowledge of. However there seemed to be an emerging pattern if there were further complaints relating to AbbVie and case studies/work ethics. The reason the complainant had provided the PMPCA with the ICO information was in response to AbbVie providing 'background information' to the PMPCA which was not relevant to the case and was only used to try to discredit his/her allegations, however the ICO findings the complainant provided were absolutely necessary in providing an insight into how AbbVie operated under such circumstances. The very fact that during AbbVie's 'robust process' it did not find ANY causes for concern. However, two independent, impartial organisations (ICO and PMCPA) upheld breaches, investigated and found failings, were yet further evidence of AbbVie's inability to deal with whistleblowing in a fair and transparent manner.

Specific comments on each point:

The complainant noted that AbbVie had mentioned the SAR requests which again had no relevance to this case. The complainant's comment on this was that AbbVie had failed to respond to the first SAR adequately, it was incomplete and it was asked by the ICO to share more details with the complainant. The second SAR was also incomplete, AbbVie did however manage to find some additional material which should have been shared in the first SAR. AbbVie had proven to be a non-complaint organisation which had a disregard for procedures and personal data protection, the complainant concluded on this point by noting that AbbVie was in fact found in breach of the first principle relating to the data protection act by the ICO.

The complainant noted that AbbVie had stated that he/she had not raised the issue until late 2017, when the events took place over the summer. The complainant gave details and stated that the grievance was raised at the first opportunity. The complainant was shocked AbbVie would be inclined to bring this up as it could be easily proved to be true. The complainant stated that he/she was more than happy for the PMCPA to ask AbbVie for he/her period of sick leave. In addition, the complainant had spoken with AbbVie's office of ethics and compliance in the early part of December, when he/she raised his/her concerns.

The complainant noted that AbbVie had stated that he/her appeal was subjective claiming it was motivated because he/she did not agree with the PMPCA response. Again, this was an example of AbbVie clearly not understanding the procedural importance of a process. A complainant had every right in appealing a process. It seemed that AbbVie was in fact not accepting his/her right to appeal.

The complainant noted that AbbVie was unhappy about his/her response. The complainant did not think his/her response could be any more detailed or fair. This case was based on the 'balance of probabilities' and not on the premise of 'beyond reasonable doubt'.

The complainant noted that AbbVie clearly did not want the evidence of the nurse who 'wrote' the poster to be admissible in the appeal. The complainant alleged that the nurses' evidence was absolutely essential and pertinent to the case. The complainant had been initially very reluctant to directly involve the nurses, as he/she did not want to put them into a difficult situation. However, following the initial PMPCA ruling, where it appeared that the complainant did not provide enough substantiating evidence to prove a breach of Clause 15.2 and subsequently a breach of Clause 2 the complainant felt he/she had absolutely no alternative other than to contact the nurses who then in turn confirmed his/her version of events.

The complainant categorically confirmed that the email provided by the nurses was the thread in its entirety, there was no other email exchange. The complainant stated that he/she could resubmit the initial evidence if AbbVie submitted that he/she had just 'Copied and pasted' the email. The complainant alleged that he/she had had a discussion with the nurses over the phone and asked them to confirm what actually happened via email in order for him/her to use it as evidence. The complainant noted that he/she had previously asked AbbVie to confirm this with the nurses which they clearly had not done.

The complainant alleged that the play on the word of 'then', which AbbVie was suggesting, was an inappropriate attempt to distort the truth. If AbbVie wanted to continue with the ambiguity of words then it should invite the nurse to the hearing to hear his/her truth. The complainant guaranteed it would be aligned to his/her submission.

Also critically, the complainant alleged that AbbVie claimed the agency attempted to make contact with the nurses to provide final approval and sign off. In none of the documentation AbbVie provided was it apparent that this occurred. AbbVie claimed that it asked him/her to contact the nurses verbally to obtain sign off. This did not occur. Quite frankly if the agency could not gain the necessary compliance sign off and paper trail then the poster should never have been produced and displayed. The complainant noted that assuming this was the case as no paper trail existed from the nurses giving permission or claiming the poster as their work or publication. AbbVie claimed to be very good at compliance and had a large team dedicated to it, so the complainant queried why this had slipped through the net. To be clear it was never the complainant's role to ensure poster compliance that was the role of the agency and other AbbVie internal departments.

The complainant alleged that AbbVie's submission that an AbbVie employee's (comments were sent to him/her rather than the nurses as it was 'standard procedure' was nonsense. The Abbvie employee had

met with many customers and would approach any national customer if he/she felt the need.

The complainant alleged that the email exchange from his/her manager to him/her in 2017, where his/her manager was clearly directing him/her was clear evidence they had discussed the preparation of the poster submission, despite AbbVie claiming the manager had no knowledge or input. Certain content was highlighted by the complainant.

Furthermore, the complainant drew attention to an email exchange between the nurse and the agency highlighting particular sections and asking why would the nurse who had written that specific poster be making such comments to the agency about clear factual inaccuracies to his/her service provision if he/she had written the poster? The complainant referred to email exchanges from one of the nurses and the communications agency and between an AbbVie employee and the complainant as yet more evidence of the fact that AbbVie produced the poster.

The complainant alleged that the reasons why the initial submitted work 'does not seem to align to the results described' was because the complainant was not a health professional, and this formed many subsequent verbal discussions with his/her manager. The complainant alleged that he/she had also discussed the stress that this caused him/her with immediate members of his/her team and, and HR were documented during AbbVie's internal investigations, but were not present in any evidence AbbVie had supplied in relation to the case.

In summary, the evidence that AbbVie provided, could not be seen to substantiate AbbVie's view that it was only 'Handholding' in the production of the poster. On the contrary, the evidence which was included in its own previously redacted evidence plus the evidence of the nurse, proved a clear breach of Clause 15.2 and Clause 2.

The complainant took the opportunity to thank the PMCPA for hearing the appeal and for its transparency in providing all the necessary information for him/her to make an informed decision about his/her appeal as it was clear AbbVie did not want to share information for him/her to appeal, and the question the complainant would ask was why?

The complainant noted that AbbVie's own core values included Integrity, transparency and honesty, being brave and courageous.

The complaint submitted that throughout this process he/she had behaved professionally and felt strongly that AbbVie had tried to make very personal attacks in its responses, in order to discredit him/her.

APPEAL BOARD RULING

The Appeal Board noted that the complainant alleged that he/she had been instructed by his/her manager to create a poster on behalf of nurses at an NHS trust for them to approve as their own work. AbbVie referred to the company representative 'hand holding' the nurses through the process.

The Appeal Board noted the difference of opinion in this case. Both parties acknowledged that there was some involvement by the complainant, the question to be considered by the Appeal Board was the extent of that involvement.

The Appeal Board noted from the AbbVie representative at the appeal (another person was, at the last minute, unable to attend due to major travel difficulties) that the company had not contacted the nurses regarding this complaint. The company had also not provided any testimony from the complainant's manager, colleagues or its HR department concerning the creation of the poster. The Appeal Board did not accept AbbVie's submission that it had carried out a thorough investigation into this complaint as its representative at the appeal was unable to answer certain questions which in the Appeal Board's view should have been covered by the investigation.

The Appeal Board noted that the Embrace Stars 2017 entry pack attached to an email of 26 May 2017 from the complainant to his/her manager could have been completed by a nurse/nurses. The Appeal Board considered that the inclusion of the patient testimonials and feedback in the completed entry pack implied the involvement of health professionals. Although the content of this submission appeared to have been completely re-written in the final poster with the patient testimonials removed, the themes were similar.

The Appeal Board noted that the emails sent in July/August 2017 to the nurses by AbbVie's agency that had worked to create the poster requested that the nurses look at the attached draft poster and confirm if they were happy. The emails also asked the nurses to supply photographs of themselves to include in the poster. The nurses' replies included that he/she was leaving his/her current post and away for the presentation date so was not sure it was meant for him/her and that he/she had looked at the poster and did not have fortnightly clinics. The Appeal Board did not consider that such responses would be expected from authors of a poster. In that regard the Appeal Board noted that the final poster did not include pictures of either of the nurses listed as authors nor did the company receive their written approval. The Appeal Board noted its comments above with regard to the nurse/nurses implied involvement in completion of the entry pack which was submitted to AbbVie and its agency to rework into a final poster which appeared to the Appeal Board to be based on the original completed submission.

The Appeal Board noted that an email dated 26 July provided by the complainant from one of the two nurses involved confirmed that the poster presentation regarding the success of the RSV clinics was contributed to by the nurses with the complainant myself and [named nurse] and then produced by the complainant'.

The Appeal Board considered that there was evidence to show that the complainant, the nurse(s) and AbbVie and its communications agency were involved with the production of the poster. In that

regard the Appeal Board noted the Panel's ruling of a breach of Clause 9.10 above in relation to AbbVie's declaration of its involvement in the production of the poster. The Appeal Board considered that on the information available it did not have sufficient evidence to show on the balance of probabilities that the complainant had created the poster *de novo* at the direction of his/her manager, as alleged. Consequently, on the narrow allegation, the Appeal Board considered that there was no evidence that the representative had not applied high standards in this regard. The Appeal Board upheld the Panel's ruling of no breach of Clause 15.2. The appeal on this point was unsuccessful.

The Appeal Board noted its comments and rulings above and those of the Panel and did not consider that the circumstances warranted a ruling of a breach of Clause 2 which was a sign of particular censure and reserved for such use. The Appeal Board consequently upheld the Panel's ruling of no breach of Clause 2. The appeal on this point was unsuccessful.

Complaint received	9 March 2018
Case completed	17 October 2018