

ANONYMOUS v NOVO NORDISK

Promotion of Saxenda and conduct of a representative

An anonymous, contactable health professional complained about Novo Nordisk and its employees with regard to alleged insider trading and promoting and selling Novo Nordisk's weight-loss prescription only medicine, Saxenda (liraglutide), directly to the public.

The complainant stated that a pharmaceutical wholesale company recently approached him/her through his/her clinic, not realising that he/she had his/her own partnership in a wholesale company. The wholesale company had been trying to poach some of the complainant's established customers who provided aesthetics and slimming services. The complainant stated that an investigation uncovered some very disturbing matters. In summary there were three issues. Firstly, that Novo Nordisk was directly funding companies which advertised, distributed and sold Saxenda directly to the public. Secondly, that at least one Novo Nordisk employee was the owner of, a major shareholder of, and affiliated to, a number of such companies, ie promoting, selling, supplying aesthetic products as well as the slimming pens Saxenda directly to the public, as well as supplying software to such clinics. Thirdly, Novo Nordisk, which must know of these activities, supported some private companies (mainly those its employee had shares in), putting other companies like those of the complainant at a competitive disadvantage.

The complainant provided detailed information about various companies and named individuals.

The detailed response from Novo Nordisk is given below.

The Panel noted the allegations with regard to insider trading and putting other companies at a competitive disadvantage. Whilst the Code did not explicitly refer to such matters, it required that pharmaceutical companies must comply with all applicable codes, laws and regulations to which they were subject. The Panel noted from the evidence before it that there did not appear to have been any formal finding by any judicial authority, or appropriate body formally charged with determining matters in relation to insider trading or competition law, that Novo Nordisk had not complied with the relevant laws and regulations. The Panel therefore ruled no breach of the Code.

The Panel noted the allegations that Novo Nordisk was directly funding companies which advertised, distributed and sold Saxenda directly to the public and that at least one Novo Nordisk employee was owner, major shareholder of and affiliated to a number of such companies.

The Panel noted Novo Nordisk's submission that it only supplied Saxenda to one named wholesaler and did not and could not have any influence over the supply chain beyond the wholesaler who then sold Saxenda to various entities including distributors.

The Panel noted Novo Nordisk's submission that its investigation into the complaint had identified that one of its representatives named by the complainant, was a shareholder in a distributor (named). The Panel noted that according to Novo Nordisk, the representative had explained that he/she used to work at the distributor before joining Novo Nordisk and had taken action to alleviate the risk of any conflict of interest, had no day-to-day involvement with the distributor and had not had any involvement with it for years. The Panel noted its comments above about Novo Nordisk's lack of influence upon the supply chain and the company's submission that it had not had any business dealings with the named distributor. The Panel did not consider that there was any evidence before it to show that Novo Nordisk had any role in relation to the activities of the named distributor or that it was aware of, had directed or otherwise acquiesced to the conduct of its representative in relation to the matters alleged. Novo Nordisk had not failed to maintain high standards in this regard and the Panel ruled no breach of the Code.

The Panel noted that the representative was listed as a company director and shareholder of a second named company. The representative's family members were also shareholders, as was a second Novo Nordisk representative. Neither representative had disclosed their interests in this company to Novo Nordisk. The Panel noted Novo Nordisk's submission about the nature of this company and that Novo Nordisk had no record of this company selling Saxenda or otherwise having any connection to Novo Nordisk. The Panel considered that there was no evidence before it that Novo Nordisk had any involvement with this company including the provision of software or education as alleged. The Panel therefore ruled no breach of the Code in this regard.

The Panel noted the allegation of promotion to the public and that the complaint referred to two further companies in this regard. The Panel noted Novo Nordisk's submission that none of the shareholders or directors of these two companies were Novo Nordisk employees. The Panel noted that the complainant was concerned that the websites associated with these two companies were selling Saxenda online without the necessary checks. The Panel considered that it had no evidence before it that Novo Nordisk was in any way involved with the online sales of Saxenda to the public by either company and consequently ruled no breach of the Code.

With regard to the allegation that one of these companies claimed to be set-up and fully supported by Novo Nordisk and its representative, the Panel noted Novo Nordisk's submission that this was not so. The Panel noted that in the interests of transparency Novo Nordisk disclosed that it had sponsored three educational meetings for a named company registered to the same address. The Panel did not consider that Novo Nordisk's interactions in this regard were within the scope of the complaint and there was no evidence that a Novo Nordisk representative had any connection with the company. The Panel did not consider that there was any evidence before it to show that Novo Nordisk had any role in relation to the alleged activities of the named company. The Panel ruled no breach of the Code.

The Panel noted Novo Nordisk's submission that the representative did not regard his/her involvement with the distributor as a conflict of interest and therefore never disclosed it to his/her manager or to anyone at Novo Nordisk. The Panel also noted that the distributor had sold Saxenda to health professionals and clinics in the same region in which the representative promoted the product. The Panel was very concerned that despite there being a potential conflict of interest, the representative had not disclosed his/her interest and neither representative had disclosed their interests in the other company as required by Novo Nordisk's Business Ethics Code of Conduct and, according to Novo Nordisk, in breach of their employment contracts. The Panel considered that the Novo Nordisk employees had failed to maintain a high standard of ethical conduct in this regard and a breach was ruled.

The Panel did not consider that it had evidence before it that Novo Nordisk had failed to maintain high standards in relation to the disclosure of conflicts of interest or that it had otherwise brought the industry into disrepute; it had a Business Ethics Code of Conduct which required employees to disclose conflicts of interest and the matter was also covered by Novo Nordisk's standard employment contract. Employees, including the employees in question, were trained annually on the Business Ethics Code of Conduct. The Panel therefore ruled no breach of the Code.

An anonymous, contactable health professional complained about Novo Nordisk and its employees with regard to alleged insider trading and promoting and selling its weight-loss prescription only medicine, Saxenda (liraglutide), directly to the public.

COMPLAINT

The complainant explained that a pharmaceutical wholesale company recently approached him/her through his/her clinic, not realising that he/she had his/her own partnership in a wholesale company. The company had been trying to poach some of the complainant's established customers who provided aesthetics and slimming services. The complainant stated that an investigation uncovered some very disturbing matters. The following was a summary of what came to light:

- 1 Novo Nordisk was directly funding companies which advertised, distributed and sold Saxenda directly to the public.
- 2 At least one Novo Nordisk employee was the owner of, a major shareholder of, and affiliated to, a number of such companies, ie promoting, selling, supplying aesthetic products as well as the slimming pens Saxenda directly to the public, as well as supplying software to such clinics.
- 3 Novo Nordisk, which must know of these activities, supported some private companies (mainly those its employee had shares in), putting other companies like those of the complainant at a competitive disadvantage.

The complainant explained that one of the services his/her clinic provided to its clients was a weight-loss treatment plan and Saxenda was part of the treatment offered; Saxenda was supplied to the clinic by a longstanding and trusted wholesaler. The clinic was contacted by a named pharmaceutical wholesale/distribution company which offered to supply Saxenda at a low cost.

The complainant provided information about trading names, an online portal, shareholders and named individuals.

It transpired that one of Novo Nordisk's named representatives was a major shareholder of the distributor and also owned significant shares in other businesses that would constitute insider trading. These companies (details were provided as evidence) were online pharmacy portals, doctor services and clinic software providers.

On another linked company's website a customer could buy Saxenda simply by adding it to the shopping cart and paying for it. No health screening took place and the company did not have the necessary Care Quality Commission (CQC) registration for such a service. The complainant was shocked to discover that a major and trusted pharmaceutical company would allow its employees to not only distribute, but to sell such a medicine online without the necessary health checks.

In addition to this, a colleague who ran an aesthetics clinic was contacted by another named company which claimed that in order to run a weight-loss service you needed to be authorised and certified by them to operate. This was not so. This company claimed to be set-up and fully supported by the manufacturers of Saxenda, Novo Nordisk and its representative. It also claimed to offer full support, including supply of Saxenda at a competitive price. This company, in addition to the above activities, also sold Saxenda online directly to customers.

The complainant stated that another company which developed and provided software to clinics such as that run by the complainant was owned by the representative who must have insight into how much a clinic used a product and use this information to the complainant's disadvantage.

Another linked named company provided education on obesity and weight management. The complainant did not investigate this particular company any further but could not understand why a pharmaceutical company would provide education on the back of its employees' companies rather than directly and declaring it.

The complainant considered his/her investigations raised the following serious questions:

- Why would a major pharmaceutical company selling a slimming product allow its representative to be involved in so many companies which gave the representative an avenue to profiteer and potentially poach customers from would be competitors?
- For this employee this surely constituted insider trading as he/she was potentially privy to internal information that would give his/her various businesses an unfair advantage over business such as the complainant's. Why would Novo Nordisk allow such behaviour?
- Within the support offered to a named company did Novo Nordisk also supply it with discounted Saxenda? The complainant considered that it must do if the company was able to beat the price of the complainant's existing supplier and actually supply it below cost. This behaviour was hugely unfair to companies like that of the complainant.

- Why did Novo Nordisk support the set-up and running of a company which promoted and directly sold its medicine to the general public. Surely it knew this type of activity was not condoned.
- Why would Novo Nordisk not only condone its employee selling Saxenda directly to consumers online, but do so without the necessary health questionnaire as per CQC guidelines (which it was not actually registered with)?
- Why did Novo Nordisk provide education through companies owned by its employees or those it had helped create and not directly? Was this due to an advertising and promoting loophole?

The complainant asked for the matter to be investigated further. He/she considered it his/her duty to uphold the integrity of the healthcare sector and matters like this only tarnished it and brought it into disrepute.

When writing to Novo Nordisk, the Authority asked it to consider the requirements of Clauses 1.11, 2, 7.2, 9.1, 9.10, 12.1, 15.2 and 26.1 of the 2016 Code.

RESPONSE

Novo Nordisk noted that the complaint related to Saxenda, prescribed by health professionals to assist with weight loss in obesity. The complainant alleged that at least one Novo Nordisk employee was affiliated to companies that advertised, distributed and sold Saxenda directly to the public, and that Novo Nordisk must know about those activities. The complainant also alleged that Novo Nordisk supported those companies, including by supplying Saxenda at a discount, therefore putting other Saxenda distributors at a competitive disadvantage.

Novo Nordisk submitted that it took the allegations raised in the complaint extremely seriously, given the nature of the issues. It had thoroughly investigated the matters which brought to light that the representative had some business interests outside of Novo Nordisk and had not disclosed his/her interest in those companies to Novo Nordisk. This conflict of interest constituted a serious breach of Novo Nordisk's internal policies and employment contract.

Novo Nordisk categorically refuted any suggestion that it knew of, or was in any way involved in, the representative's conduct. Novo Nordisk also categorically refuted the suggestion that it had breached the Code.

Background

Details of the representative's career at Novo Nordisk were provided.

Novo Nordisk launched Saxenda in the private market in the UK in January 2017. Novo Nordisk sold Saxenda to a named wholesaler who then onward sold it to various entities across the UK. Distributors in the supply chain supplied the product to clinics and health professionals (such as specialist obesity clinics, who might prescribe it as part of a package of care). Novo Nordisk had no influence over the supply chain beyond the named wholesaler. Novo Nordisk representatives visited clinics and health professionals in order to raise awareness of Novo Nordisk products and provide information about them.

Companies identified in the complaint

Novo Nordisk stated that on receipt of the complaint, it engaged an external law firm to help conduct an investigation into the companies identified and any associated employees, as follows:

- Novo Nordisk ran searches on the Companies House website against the names of the companies identified in the complaint. Novo Nordisk also ran searches against the representative and his/her manager and any known family members, to ascertain whether there were any other companies affiliated to those individuals.
- The companies named in the complaint were cross-checked against known suppliers of Saxenda, to establish whether any of these companies had distributed the product.
- Internal records were thoroughly checked to establish whether Novo Nordisk had ever directly paid, sponsored or otherwise supported those companies.
- Novo Nordisk also interviewed the relevant employees to ascertain their responses to these issues.

Details for each of the named companies were provided.

The distributor named by the complainant had the representative named as a shareholder on Companies House.

The representative stated that he/she used to work at the distributor before joining Novo Nordisk and had reduced his/her shareholding in 2015, in order to alleviate the risk of any conflicts of interest. The representative did not disclose his/her involvement to his/her manager or to anyone else in Novo Nordisk, as he/she did not regard it as a conflict of interest stating that he/she had absolutely no day-to-day involvement in the distributor and had not had any involvement for many years.

Novo Nordisk had checked its sales records and established that the distributor had sold Saxenda to health professionals and clinics. However, as stated above, Novo Nordisk did not know that the representative was a shareholder until this matter came to light through the complaint. Novo Nordisk had not had any business dealings with the distributor. As stated above, Novo Nordisk sold Saxenda to a named wholesaler, which then sold to other entities in the supply chain. Novo Nordisk did not and could not have any influence over to whom the wholesaler sold Saxenda.

The complaint also referred to another company and alleged that this company developed and provided software to clinics, as well as providing education on obesity and weight management.

Novo Nordisk submitted that, according to Companies House records, the representative was listed as the company director and a shareholder. In interview, the representative said that this was a company he/she set up was with family members. On investigation, Novo Nordisk ascertained that another Novo Nordisk representative also had a small shareholding which had been given to him/her. The second representative had very little involvement in the company.

Novo Nordisk could find no record of this company selling Saxenda, or otherwise having any connection to Novo Nordisk. Nevertheless, neither representative had disclosed their interests in this company to their managers at Novo Nordisk.

In relation to another company and the complainant's allegation that customers could buy Saxenda online, without any health screening or CQC registration, Novo Nordisk submitted that none of the shareholders or directors were Novo Nordisk employees (or known family members).

With regard to the company which claimed that it had to authorise and certify clinics before they could run a weight-loss service and also offered to supply Saxenda at a competitive price, and that it sold Saxenda online to customers, Novo Nordisk submitted that neither were entities incorporated with Companies House. There were various other companies associated with this address on Companies House, and were connected to a named individual who was not a Novo Nordisk employee. Novo Nordisk had not established any link between these companies and the representative.

Novo Nordisk had had limited involvement with one of these in that it had provided sponsorship to support a day's educational programme on three occasions in the past. Novo Nordisk received an exhibition stand space in exchange for financial sponsorship, in the usual way.

Saxenda had not been supplied at a discount by Novo Nordisk. As explained above, Novo Nordisk only supplied Saxenda to its wholesaler at arm's length, which then onward supplied the product to various distributors. Novo Nordisk therefore had not directly provided Saxenda to this company at all.

Other companies

For completeness, Novo Nordisk ran searches on the Companies House website against its two representatives and known family members of these individuals. As a result, Novo Nordisk had located additional companies to which these employees were previously or currently affiliated and details were provided.

As above, none of these interests were disclosed to Novo Nordisk by the representatives.

Outcome of investigation

Novo Nordisk provided details of the action it took. Noting that it was strictly prohibited, under Novo Nordisk's Business Ethics Code of Conduct, for employees to have professional or personal interests that might (or might appear to) have an undue influence on their professional judgement. Section 3 of the Code of Conduct provided:

'Personal interests must not have or even appear to have an undue influence on our professional judgement.

A conflict of interest occurs when you have a professional or personal interest that may affect your ability to perform your job without bias. It may relate to your own personal interests, or those of a family member, a friend or another entity you are involved with.

... If you believe that you are involved in an actual or potential conflict of interest, let your manager know immediately, so that an appropriate solution can be found.'

This prohibition was also reinforced in Novo Nordisk's standard employment contracts for its employees.

The conduct outlined above was, therefore, in clear breach of Novo Nordisk's policies.

Furthermore, all employees were required to be trained annually on business ethics including conflicts of interest, to ensure that they were fully aware of the scope of this prohibition, and the obligation to notify Novo Nordisk of any potential conflicts. Details of the representative's attendance and training in the Code were provided.

The combination of Novo Nordisk's strict compliance policies, the terms of its standard employment contracts, and its rigorous training programme were designed to have a deterrent effect on employees placing themselves at risk of conflicts of interest. Nevertheless, Novo Nordisk was considering what further preventative measures it could put in place, in order to guard against similar incidents occurring. These measures might include more frequent reminders to employees of the obligations contained in Novo Nordisk's Code of Conduct, and periodic monitoring of employees' compliance with those obligations.

Response to allegations raised in the complaint

The complainant listed a number of specific allegations against Novo Nordisk, which the company responded to below in light of the above matters:

- a) The complainant alleged that Novo Nordisk was allowing its representatives to be involved in external companies, allowing them to profiteer and potentially poach customers.

Novo Nordisk submitted that this was completely untrue. Novo Nordisk strongly refuted this allegation, as it was wholly unaware that its representatives were involved in external companies. This conduct was strictly prohibited, and appropriate action had now been taken.

- b) The complainant alleged that Novo Nordisk allowed insider trading by its employees.

Novo Nordisk submitted that, as outlined above, it did not permit its employees to hold undeclared interests in companies outside of Novo Nordisk. Nevertheless, Novo Nordisk and its external advisors had not found any evidence whatsoever to suggest that the representative was able to use any confidential company information in order to give another entity he/she was involved with a competitive advantage. A named wholesaler sold Saxenda to all distributors at the same price.

- c) The complainant queried whether Novo Nordisk supplied discounted Saxenda.

Novo Nordisk submitted that all sales were made only to a named wholesaler (who then sold on to the distributors, without Novo Nordisk's involvement).

- d) The complainant asked why Novo Nordisk was supporting the set up and running of companies which sold medical products directly to the public without proper authorisation. The complainant also asked why Novo Nordisk condoned employees selling Saxenda directly to consumers online.

Novo Nordisk submitted that it outlined above sponsorship to one company in exchange for exhibition stands. These were arms-length transactions and conducted in accordance with Novo Nordisk's internal policies. Otherwise, Novo Nordisk had had no involvement. Novo Nordisk did not knowingly associate with any companies that were not in full compliance. If, and to the extent it was established that there were health professionals, clinics or other companies that were supplying or promoting Saxenda in a manner that was not compliant with their regulatory obligations, Novo Nordisk would take those matters very seriously. Novo Nordisk expressly confirmed that such practice would not be being carried out on Novo Nordisk's behalf or with its authority. Novo Nordisk was also unaware of any relationship between the representative and the distributor until this complaint was raised.

- e) Novo Nordisk submitted that, contrary to the complainant's query, it had not provided education through companies owned by its employees. In addition, Novo Nordisk was not aware that the representative was connected to the companies identified, as he/she failed to disclose these interests to Novo Nordisk.

PANEL RULING

The Panel noted that the Authority was not an investigatory body. It made its rulings based on the evidence provided by both parties. The complainant had the burden of proving his/her complaint on the balance of probabilities.

The Panel noted the allegations with regard to insider trading and putting other companies at a competitive disadvantage. Whilst the Code did not explicitly refer to such matters, Clause 1.11 stated that pharmaceutical companies must comply with all applicable codes, laws and regulations to which they were subject. The Panel noted from the evidence before it that there did not appear to have been any formal finding by any judicial authority, or appropriate body formally charged with determining matters in relation to insider trading or competition law, that Novo Nordisk had not complied with the relevant laws and regulations. The Panel therefore ruled no breach of Clause 1.11.

The Panel noted the allegations that Novo Nordisk was directly funding companies which advertised, distributed and sold Saxenda directly to the public and that at least one Novo Nordisk employee was owner, major shareholder of and affiliated to a number of such companies.

The Panel noted Novo Nordisk's submission that it only supplied Saxenda to one named wholesaler and did not and could not have any influence over the supply chain beyond the wholesaler who then sold Saxenda to various entities including distributors.

The Panel noted Novo Nordisk's submission that its investigation into the complaint had identified that one of its representatives was a shareholder in a named distributor. The Panel noted that according to Novo Nordisk, the representative had explained that he/she used to work at the distributor before joining Novo Nordisk and had taken action to alleviate the risk of any conflict of interest, had no day to day involvement with the distributor and had not had any involvement with it for years. The Panel noted its comments above about Novo Nordisk's lack of influence upon the supply chain and the company's submission that it had not had any

business dealings with the distributor. The Panel did not consider that there was any evidence before it to show that Novo Nordisk had any role in relation to the activities of the distributor or that it was aware of, had directed or otherwise acquiesced to the conduct of its representative in relation to the matters alleged. Novo Nordisk had not failed to maintain high standards in this regard and the Panel ruled no breach of Clause 9.1.

The Panel noted that the representative was listed as a company director and shareholder of a second named company. The representative's family members were also shareholders, as was a second Novo Nordisk representative. Neither representative had disclosed their interests to Novo Nordisk. The Panel noted Novo Nordisk's submission about the nature of the company and that Novo Nordisk had no record of this company selling Saxenda or otherwise having any connection to Novo Nordisk. The Panel considered that there was no evidence before it that Novo Nordisk had any involvement with this company including the provision of software or education as alleged. The Panel therefore ruled no breach of Clauses 9.10 and 12.1 in this regard.

The Panel noted the allegation of promotion to the public and that the complaint referred to two further companies in this regard. The Panel noted Novo Nordisk's submission that none of the shareholders or directors of these two companies were Novo Nordisk employees. The Panel noted that the complainant was concerned that the websites associated with these two companies were selling Saxenda online without the necessary checks. The Panel considered that it had no evidence before it that Novo Nordisk was in any way involved with the online sales of Saxenda to the public by either company and consequently ruled no breach of Clause 26.1.

With regard to the allegation that one of these companies claimed to be set-up and fully supported by Novo Nordisk and its representative, the Panel noted Novo Nordisk's submission that this was not so. The Panel noted that in the interests of transparency Novo Nordisk disclosed that it had sponsored three educational meetings for a named company registered to the same address. The Panel did not consider that Novo Nordisk's interactions in this regard were within the scope of the complaint and there was no evidence that a Novo Nordisk representative had any connection with the company. The Panel did not consider that there was any evidence before it to show that Novo Nordisk had any role in relation to the alleged activities of the named company. The Panel ruled no breach of Clauses 9.10 and 12.1.

The Panel noted that the case preparation manager had raised Clause 7.2. In the Panel's view, there did not appear to be a Clause 7.2 allegation and therefore it made no ruling.

The Panel noted Novo Nordisk's submission that the representative did not regard his involvement with the distributor as a conflict of interest and therefore never disclosed it to his manager or to anyone at Novo Nordisk. The Panel also noted that the distributor had sold Saxenda to health professionals and clinics in the same region in which the representative promoted the product. The Panel was very concerned that despite there being a potential conflict of interest, the representative had not disclosed his/her interest and neither representative had disclosed their interests in the other company as required by Novo Nordisk's Business Ethics Code of Conduct and, according to Novo Nordisk, in breach of their employment contracts. The Panel considered that the Novo Nordisk employees had failed to maintain a high standard of ethical conduct in this regard and a breach of Clause 15.2 was ruled.

The Panel did not consider that it had evidence before it that Novo Nordisk had failed to maintain high standards in relation to the disclosure of conflicts of interest or that it had otherwise brought the industry into disrepute; it had a Business Ethics Code of Conduct which required employees to disclose conflicts of interest and the matter was also covered by Novo Nordisk's standard employment contract. Employees, including the employees in question, were trained annually on the Business Ethics Code of Conduct. The Panel therefore ruled no breach of Clauses 9.1 and 2.

Complaint received **18 March 2019**

Case completed **14 October 2019**