

## **HEALTH PROFESSIONAL v AMGEN**

### **Information on Disclosure UK**

**A health professional complained that the Disclosure UK database incorrectly indicated that he/she had received financial support from Amgen.**

**The detailed response from Amgen is given below.**

**The Panel noted that the data disclosed on Disclosure UK for 2015 referred to the complainant who had the same first and last name as the health professional who had received the transfers of value but a different address.**

**It appeared to the Panel, based on the information provided by Amgen, that the company had submitted the correct health professional's details to Disclosure UK's third-party provider, and it had received no information that the disclosure would be made against a different individual. It was unclear to the Panel how this error had occurred.**

**Based on the information before it, the Panel considered, on the balance of probabilities, that the complainant had not discharged his/her burden of proof to establish that the incorrect disclosure of 2015 transfers of value against him/her on Disclosure UK was due to an error by Amgen and the Panel therefore ruled no breaches of the Code.**

**With regard to 2016 and 2017 transfers of value, it appeared to the Panel that Amgen had incorrectly submitted the complainant's details to the Disclosure UK portal which resulted in the disclosure of transfers of value to the complainant rather than to the individual who had actually received them.**

**The Panel considered that disclosing 2016 and 2017 transfers of value against an individual who had not received such transfers of value meant that Amgen had not complied with the requirements of the Code. The Panel ruled breaches of the Code including that Amgen had failed to maintain high standards.**

**It appeared to the Panel, on the information before it, that this error was in relation to one individual and there was no evidence that there was a systemic issue with the company's processes in this regard. The Panel did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 and ruled no breach accordingly.**

**A contactable health professional complained about information on the Disclosure UK database.**

### **COMPLAINT**

**The complainant noted that the Disclosure UK database indicated that he/she had received financial support from Amgen which was not so. The complainant stated that he/she had never**

received any financial or other support from Amgen and had had no contact with the company in any capacity.

The complainant submitted that the incorrect data had resulted in personal reputational damage within his/her employing organisation and a potential investigation by NHS Fraud.

The complainant asked that the error was immediately corrected and the incorrect data removed from the public domain, an explanation be provided as to why the error had occurred, and reassurance be given that processes were in place to ensure that this error would not be repeated.

When writing to Amgen, the Authority asked it to bear in mind the requirements of Clauses 2, 7.2, 9.1, 24.1, 24.2 and 24.7 of the 2016 Code.

## **RESPONSE**

Amgen submitted that it had received a query indirectly via the ABPI from the complainant after office hours on 21 December 2018 and it had initiated review of this issue as part of the Disclosure UK process prior to receipt of this complaint.

Amgen confirmed that, on reviewing the information on the Disclosure UK portal against its records, the information on Disclosure UK was incorrect. Amgen provided screenshots of the Disclosure UK portal which showed the 2015, 2016 and 2017 information for the complainant specific to Amgen.

Amgen asked the ABPI on 4 January 2019 to suppress the incorrect data. As the ABPI was moving to a new portal, supported by another third-party vendor, the information was not removed from public view until 11 January.

Subsequent to this discussion, as per the Disclosure UK process and following further review of its records vs the information that was actually disclosed, Amgen emailed the complainant on 10 January 2019 with an acknowledgement that the information on Disclosure UK was incorrect for Amgen, with an explanation as to when it would be removed and why there would be a delay with the removal from public view.

Amgen provided a detailed breakdown for each submission year with estimated dates of submission, along with a summary in respect of the data it had submitted and later verified as part of the Disclosure UK process. Amgen noted that it now knew of two health professionals of the same name – the complainant, who had never received any transfer of value from Amgen, and another who had received transfers of value from Amgen in 2015, 2016 and 2017. Both had worked at some point for the same group of hospitals within a named area.

Amgen stated that it did not feel it had knowingly breached Clauses 24.1, 24.2, 7.2, 9.1 or 2 of the 2016 Code. Amgen was committed to meeting the requirements of Clause 24 and had robust systems and processes to do so.

Amgen denied breaches of Clauses 24.1 or 24.2, as the information it supplied and verified in each year on the transfer of value to the health professional was not as shown on the Disclosure UK portal for each year.

Amgen denied a breach of Clause 24.7 as it had subsequently made all efforts to remove incorrect data on the Disclosure UK portal.

Amgen also denied a breach of Clause 7.2. Whilst it acknowledged that issues had occurred due to matching of identity codes it had submitted, this did not remove the fact that the information Amgen supplied and validated in good faith did not accurately reflect the information shown on the Disclosure UK portal.

Amgen denied a breach of Clause 9.1, as all actions it had taken to support the ABPI in disclosing transfers of value on the Disclosure UK portal had followed procedure, including the checks and balances required to ensure records were correct and appropriate in line with the clauses listed above.

Amgen denied a breach of Clause 2. Whilst this clause related specifically to promotional activity, Amgen considered that it had acted appropriately and in the spirit of Disclosure UK.

Amgen stated that it would continue to work with the ABPI and the third-party provider to ensure the Amgen data was disclosed against the correct health professional on Disclosure UK.

Amgen acknowledged the complainant's comments regarding the distress caused and the problems that had arisen, and hoped that its direct response to him/her about the Disclosure UK process and the response above would assist in offering assurances that robust processes were in place to avoid unfortunate errors of this nature, and that all efforts had been taken by Amgen and the ABPI Disclosure Team to correct the error.

Following a request for further information, Amgen confirmed the address and identity code for the individual who had received the transfers of value in 2015, 2016 and 2017. The company believed that a different identity code was associated with the complainant. Amgen submitted that the confusion had been brought about by the unusual situation of having two individuals with the same name both working in the same area.

Amgen submitted that in 2015, when it made its first submission to the ABPI Disclosure portal, the health professional's information was listed with a specified address and identity code (details were provided). However, during that year, several resubmissions of the data took place at the request of the third-party provider; on each occasion Amgen submitted the health professional's data with the same address and identity code. However, the record kept being changed by the third-party provider to a different address with no identity code. This different address could equally have applied to the two health professionals as it covered a named hospital trust and hospital. The final submission by Amgen in 2015 to the portal was for the correct health professional with the correct identity code. However, the actual data disclosed on the ABPI Disclosure portal referred to an individual with the same first and last name but a different address; information that Amgen had not provided at any stage.

Amgen submitted that according to its customer relationship management system, in 2016, both health professionals had previously worked at the same address and it appeared that the complainant's identity code was selected in error when developing Amgen's disclosure list. Amgen submitted that it believed that this identity code was subsequently matched to the complainant when it was disclosed on the ABPI Disclosure portal for disclosures in 2016 and 2017.

Amgen submitted that its process for disclosure was to develop an individual contract with each health professional for transfers of value or fee for service etc. In each contract Amgen submitted that it explicitly asked the health professional for their consent for their data to be disclosed. If consent was not granted, the company reported within the aggregate amount. Amgen did not have any contracts with the complainant and had made no payments to the complainant.

Amgen submitted that as soon as the complainant notified it about the incorrect disclosure in January 2019, the company investigated the matter quickly and took immediate steps to rectify the issue and correct the data on the disclosure portal. Amgen stated that it appeared that whilst the complainant would have been notified through the Disclosure UK process by the ABPI following disclosures in 2015, 2016 and 2017 they did not raise any issues prior to January 2019.

In summary, Amgen submitted that this appeared to have been a system and human administrative error in the named disclosure years as there were two health professionals with the same first and last names, working at some point for the same group of hospitals and both in the same therapy area. Amgen submitted that its processes were robust and fit for purpose enabling Amgen to respond rapidly and to rectify the issues for all 3 years.

## **PANEL RULING**

The Panel noted that Clause 24.2 described the transfers of value covered by Clause 24.1. Failure to document and publicly disclose transfers of value as described in Clause 24.2 would be a breach of Clause 24.1.

It appeared to the Panel, from the information provided by Amgen, that two health professionals with the same first and last name had worked at some point for the same group of hospitals within a named area and both in the same therapy area.

### **2015 transfers of value**

The Panel noted Amgen's submission that in 2015, when Amgen made its first submission to the ABPI disclosure portal, several resubmissions of the data took place at the request of the third-party provider and on each occasion Amgen stated that it submitted the address and identity code for the correct health professional. The Panel noted, however, that on two occasions (10 May and 18 May), the third-party provider contacted Amgen to validate a new report and listed the health professional as at the same address provided by Amgen but with no identity code and on three occasions (22 June, 28 June and 29 June) listed the health professional as at a different address (within the same city) and with no identity code. The Panel noted that Amgen did not contest the information in relation to the health professional's record on any of these occasions. The Panel noted Amgen's final submission for 2015 data (5 July) to the portal was for a health professional with the address and identity code which it first submitted, which Amgen stated was the correct health professional.

The Panel noted that the actual data disclosed on the ABPI Disclosure portal for 2015 referred to the complainant, who had the same first and last name as the correct health professional but a different address (in a different county).

It appeared to the Panel, based on the information provided by Amgen, that on each occasion the company had submitted the correct health professional's details to the third-party provider. The Panel noted Amgen's submission that it had received no information that the disclosure would be made against an individual with the address that appeared on the Disclosure portal. It was unclear to the Panel how this error had occurred.

Based on the information before it, the Panel considered, on the balance of probabilities, that the complainant had not discharged his/her burden of proof to establish that the incorrect disclosure of 2015 transfers of value against him/her on Disclosure UK was due to an error by Amgen and the Panel therefore ruled no breach of Clauses 7.2 and 24.1. The Panel consequently ruled no breach of Clause 9.1.

The Panel noted that Clause 24.7 was raised by the case preparation manager. Clause 24.7 stated that different categories of transfers of value to individual health professionals can be aggregated on a category by category basis, provided that itemised disclosure would be made available upon request to the relevant recipient or the relevant authorities. The Panel did not consider that the complainant had made an allegation with regard to Clause 24.7 and therefore made no ruling.

### **2016 and 2017 transfers of value**

The Panel noted Amgen's submission that in 2016, the complainant (with a specified identity code) was selected in error when developing Amgen's disclosure list. Amgen submitted that it believed that this identity code was subsequently matched to the name and address of the complainant when it was disclosed on the ABPI Disclosure portal for disclosures in 2016 and 2017.

It appeared to the Panel that Amgen incorrectly submitted the complainant's details to the Disclosure UK portal for 2016 and 2017 transfers of value and that this error made by Amgen had resulted in the disclosure of transfers of value to the complainant rather than to the individual who had actually received the transfers of value.

The Panel considered that disclosing 2016 and 2017 transfers of value against an individual who had not received such transfers of value meant that Amgen had not complied with the requirements of the Code and the Panel therefore ruled a breach of Clause 24.1.

The Panel considered that the 2016 and 2017 transfers of value published on Disclosure UK at the time of the complaint were inaccurate and misleading and a breach of Clause 7.2 was ruled.

The Panel considered that Amgen had failed to maintain high standards in this regard and a breach of Clause 9.1 was ruled.

The Panel noted that Clause 24.7 was raised by the case preparation manager. Clause 24.7 stated that different categories of transfers of value to individual health professionals could be aggregated on a category by category basis, provided that itemised disclosure would be made available upon request to the relevant recipient or the relevant authorities. The Panel did not consider that the complainant had made an allegation with regard to Clause 24.7 and therefore made no ruling.

The Panel noted that Clause 2 was a sign of particular censure and reserved for such use. It appeared to the Panel, on the information before it, that this error was in relation to one individual and there was no evidence that there was a systemic issue with the company's processes in this regard. The Panel, therefore, did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 and ruled no breach accordingly.

**Complaint received**      **21 December 2018**

**Case completed**         **10 August 2019**