CASE AUTH/3130/12/18

ANONYMOUS v GLAXOSMITHKLINE

Arrangements for a meeting and alleged use of LinkedIn to promote a medicine

An anonymous contactable individual complained about a poster inviting pharmacists to attend a continuing professional development (CPD) meeting to look at asthma medication reviews and a minor illness referral service. The name of a retail pharmacy group appeared at the top of the poster and the GlaxoSmithKline logo appeared at the bottom. The complainant also drew attention to a LinkedIn post about Bexsero (meningococcal group B vaccine) from several employees of GlaxoSmithKline.

The detailed response from GlaxoSmithKline is given below.

The complainant alleged that a poster for the CPD meeting had been circulated by GlaxoSmithKline and it was not clear if the meeting would be sponsored by the company or if its medicines would be promoted. If a promotional meeting was to be held under the guise of a CPD meeting, then the complainant considered that GlaxoSmithKline was pulling the wool over health professionals' eyes. As the poster stated that the meeting would start at 7pm at a restaurant and a three-course meal would be provided, the complainant was concerned that the hospitality was the main reason and attraction to the event. The complainant noted that there was no date as to when the poster had been produced; he/she was shocked that it was shared actively on Facebook and had no means of being directed to relevant personnel.

The Panel noted GlaxoSmithKline's detailed submission about communications between the retail pharmacy group and GlaxoSmithKline's representatives, and between the GlaxoSmithKline representatives and GlaxoSmithKline management.

The Panel noted GlaxoSmithKline's submission that it was first approached in November 2018 with regard to sponsoring the meeting and that on 26 November it became aware that the invitation, with the company's logo, had been advertised the previous day by the retail pharmacy group before sponsorship of the meeting had been confirmed and without GlaxoSmithKline's approval or knowledge.

It appeared to the Panel from the emails provided that GlaxoSmithKline made a final maximum sponsorship offer on 9 December which was confirmed by the retail pharmacy group.

The Panel noted that GlaxoSmithKline was informed of the complaint on 7 December and a GlaxoSmithKline representative emailed the retail pharmacy group on 12 December, the day of the meeting, to withdraw GlaxoSmithKline's offer of sponsorship. The Panel noted GlaxoSmithKline's submission that the retail pharmacy group had evidently continued to circulate the invitation clearly ignoring its representative's warning that the invitation was not compliant, and that sponsorship still needed to be agreed and confirmed. The Panel noted GlaxoSmithKline's submission that following this exchange, it did not sponsor or attend the meeting and had no further involvement.

The Panel noted that it was not clear how and when the complainant had seen the invitation. The complaint was received by the PMCPA on 3 December and referred to the invitation at issue being circulated by GlaxoSmithKline and actively shared on Facebook. GlaxoSmithKline had submitted that it did not circulate the invitation at issue. The Panel noted that it appeared, according to the information before it, that the retail pharmacy group advertised the invitation on 25 November. The local pharmaceutical committee (LPC) also wanted to send out an invitation around 5 December but it was not clear if it did.

The Panel noted the complainant had the burden of proving his/her complaint on the balance of probabilities and in the Panel's view it appeared that GlaxoSmithKline had not confirmed sponsorship of the meeting when the retail pharmacy group advertised the meeting with an invitation which contained the company's logo on 25 November, nor had sponsorship been confirmed prior to 3 December when the complaint was received. Therefore, the Panel considered that, when the complainant received the invitation, GlaxoSmithKline was not responsible for sponsorship of the meeting and so it did not need to declare sponsorship. No breach was ruled in that regard.

Given this ruling, the invitation was not disguised promotion, nor was GlaxoSmithKline responsible for the offer of a three course meal. The Panel therefore ruled no breaches of the Code including Clause 2.

The complainant provided a copy of a LinkedIn post which consisted of a photograph of what was assumed to be a GlaxoSmithKline office above which was stated 'Looks like another potential vaccines blockbuster!'. Below the photograph was the statement 'GlaxoSmithKline weighs men B shot Bexsero's promise against gonorrhea' followed by the pharmaceutical industry news agency website (fiercepharma.com).

The complainant alleged that the LinkedIn post 'by several members of GSK' promoted its medicine directly to the public as LinkedIn was a very public platform.

The Panel noted that LinkedIn was different to some other social media platforms in that it was a business and employment-orientated network and

was primarily, although not exclusively, associated with an individual's professional heritage and current employment and interests. In the pharmaceutical industry, the Panel noted that an individual's network might, albeit not exclusively, be directly or indirectly associated with the healthcare industry. In the Panel's view, it was of course not unacceptable for company employees to use personal LinkedIn accounts and whether the Code applied would be determined on a case-by-case basis taking into account all the circumstances including: the content, any direct or indirect reference to a product, how the information was disseminated on LinkedIn, the company's role in relation to the availability of the content and whether such activity was instructed or encouraged by the company. If activity was found to be within the scope of the Code, the company would be held responsible.

The Panel noted that the post provided by the complainant was titled 'Looks like another potential vaccines blockbuster!' which appeared in a different font to the rest of the post and was not stated in the linked article. It was not entirely clear to the Panel if this text was added when the post was shared or if it was part of the original post. GlaxoSmithKline made no submission in this regard. This was followed by a picture of a building below which was the statement 'GlaxoSmithKline weighs men B shot Bexsero's promise against gonorrhoea' followed by fiercepharma.com. The Panel noted the complainant's concern that a prescription only medicine was being promoted to the public. The Panel noted that Bexsero was indicated for active immunisation of individuals from 2 months of age and older against invasive meningococcal disease caused by Neisseria meningitidis group B.

The Panel noted that the full article which could be accessed through the fiercepharma.com link within the post explained that a study showed that meningitis B vaccines like GlaxoSmithKline's Bexsero could provide some protection against gonorrhea and the company was analysing whether to move forward with testing in the disease area. It further stated that GlaxoSmithKline could not comment further as work remained exploratory and that the company had not yet started any tests in the disease area.

The Panel noted GlaxoSmithKline's submissions that the article in question had never been posted or shared on any of its corporate external-facing channels and that the LinkedIn post in question was shared on LinkedIn by a contractor of GlaxoSmithKline Global (not GlaxoSmithKline UK Pharma), on their personal LinkedIn account. The Panel noted, however, that the GlaxoSmithKline global headquarters were based in the UK and the contractor who shared the post was based in the UK.

The Panel noted GlaxoSmithKline's submission that it played no role in the availability of the content of the post, nor did it instruct or encourage the contractor to disseminate it. According to GlaxoSmithKline, its policies and training made it clear to employees and contractors that content posted and shared on personal social media accounts risked being perceived as company-endorsed communication, and as such employees and contractors should never post or share content that mentioned or referred to prescription medicines other than content that had been specifically approved by GlaxoSmithKline for the general public audience; the contractor in question was trained on the global social media policy and had acted in breach of it.

Contrary to GlaxoSmithKline's submission the Panel did not consider that the issues raised by the complainant required GlaxoSmithKline to train all staff in depth on its product portfolio, but in the Panel's view it was reasonable for it to train all staff on its social media policy which according to GlaxoSmithKline had been done.

In the Panel's view, activity conducted on social media that could potentially alert one's connections to the activity might be considered proactive dissemination of material. In addition, an individual's activity and associated content might appear in that individual's list of activities on his/her LinkedIn profile page which was visible to his/her connections; an individual's profile page was also potentially visible to others outside his/her network depending on the individual's security settings.

The Panel noted that the post itself was headed 'Looks like another potential vaccines blockbuster' and referred to Bexsero as a 'men B shot' and its 'promise against gonorrhea' which was an unlicensed indication. The Panel noted that Bexsero was available as a prescription only medicine in the UK. The Panel further noted that the linked article referred to a study and stated, *inter alia*, 'meningitis B vaccines like GlaxoSmithKline's Bexsero can provide some protection against gonorrhoea ...'.

The Panel did not know how many connections the named contractor had on LinkedIn and if they were all health professionals; the company made no submission in that regard. However, as it was a personal LinkedIn account, the Panel considered that, on the balance of probabilities, not all the contractor's connections would have been health professionals and, therefore, sharing the LinkedIn post and associated article with his/her network constituted promotion of a prescription-only medicine to the public and might encourage members of the public to ask their health professional to prescribe Bexsero. Breaches of the Code were ruled including that high standards had not been maintained.

The contractor had acted in breach of company policy and training. The Panel considered that the particular circumstances of this case did not warrant a ruling of a breach of Clause 2 of the Code which was a sign of particular censure and reserved for such use.

An anonymous contactable individual complained about a poster inviting pharmacists to attend a continuing professional development (CPD) meeting taking place on 12 December 2018 which would look at asthma medication reviews and a minor illness referral service. The name of a retail pharmacy group appeared at the top of the poster and the

GlaxoSmithKline logo appeared at the bottom. The complainant also drew attention to a LinkedIn post about Bexsero (meningococcal group B vaccine) from individuals at GlaxoSmithKline.

1 CPD Meeting

COMPLAINT

The complainant provided a copy of a meeting poster which he/she alleged had been circulated by GlaxoSmithKline.

The complainant stated that he/she was aware of the ABPI requirements and that from the outset it was not clear if the meeting would be sponsored by GlaxoSmithKline and, without an agenda, it was not clear if the company's medicines would be promoted. If a promotional meeting was to be held under the guise of a CPD meeting, then the complainant considered that GlaxoSmithKline was pulling the wool over health professionals' eyes. The poster stated that the meeting would start at 7pm at a restaurant and a three-course meal would be provided. Given this statement, the complainant was concerned that the hospitality was the main reason and attraction to the event. The complainant noted that there was no date as to when this poster had been produced. The complainant stated that he/she was shocked that the poster was shared actively on Facebook and had no means of being directed to relevant personnel.

When writing to GlaxoSmithKline, the Authority asked it to consider the requirements of Clauses 9.10, 12.1, 22.1, 22.2, 22.4, 9.1 and 2.

RESPONSE

GlaxoSmithKline submitted that the poster was an invitation created and circulated by the named retail pharmacy group without the company's prior knowledge or approval and before sponsorship of the meeting had been agreed.

GlaxoSmithKline explained that the retail pharmacy group owned and operated a chain of pharmacies across a named geography. Staff at the retail pharmacy group first approached a GlaxoSmithKline representative on 20 November 2018 to ask whether the company would be interested in sponsoring the meeting in question. In accordance with GlaxoSmithKline's standard procedure the representative requested further details about the agenda, venue, attendees and speakers to assess whether the meeting would comply with the Code for sponsorship purposes. It was made clear that GlaxoSmithKline followed a strict approval process for sponsorship of meetings.

The retail pharmacy group provided an agenda for the meeting and a sponsorship proposal for consideration by GlaxoSmithKline on 22 November. The meeting would be held at a local restaurant and would provide two training sessions to pharmacists on (i) Medicines Use Reviews for asthma medicines and (ii) treating low acuity minor illness from the pharmacy. The retail pharmacy group requested sponsorship for catering at a given cost per head for a maximum of 70 attendees and in return offered promotional stand space; pharmacists would have time before the training to speak to GlaxoSmithKline representatives. As was standard procedure for sponsorship of third party meetings, GlaxoSmithKline would have no input into the agenda, organisation or administration of the meeting other than to ensure compliance with the Code.

On 23 November, the first representative introduced his/her contact at the retail pharmacy group to a second representative who would be responsible for any sponsorship arrangement and the approval process going forward. The retail pharmacy group replied that it would send the proposal form over outlining the details of the proposed meeting.

However, on 26 November, the retail pharmacy group emailed an invitation for the meeting and implied that it had already been circulated with 30 confirmed attendees. GlaxoSmithKline had not previously seen a copy of the invitation and had not been given any indication that the retail pharmacy group intended to circulate an invitation for the meeting displaying the company's logo. GlaxoSmithKline submitted that at this stage its due diligence processes were still ongoing and it had not confirmed that it would sponsor the meeting and had not entered into a contract with the retail pharmacy group.

On receipt of the email of 26 November attaching the invitation, the second representative immediately sent details of the meeting, sponsorship proposal and invitation to his/her first line manager for discussion in accordance with company procedures for sponsored meetings and immediately replied to the retail pharmacy group to make clear that sponsorship for the meeting still had to be authorized and confirmed.

After promptly reviewing the materials, the first line manager's feedback included that the invitation needed more than just the GlaxoSmithKline logo on it and he/she asked the second representative to send the amended invitation from the retail pharmacy group and stated that the sponsorship requested exceeded the lower amount usually paid by GlaxoSmithKline for a stand at sponsored events of that size.

The first line manager also referred the second representative to guidance on GlaxoSmithKline's internal field portal.

In accordance with his/her manager's instructions, the second representative informed the retail pharmacy group on 27 November that the invitation needed to be amended to comply with industry standards. On 28 November, the representative further confirmed that he/she would inform the pharmacy group if the sponsorship was approved by management and (if confirmed) amend the invitation.

During the week commencing 3 December the second representative and the retail pharmacy group discussed progress on GlaxoSmithKline's internal

assessment of the sponsorship proposal and a number of emails were exchanged to finalise the maximum amount of sponsorship GlaxoSmithKline could offer. A final maximum offer of lower than that requested was made by GlaxoSmithKline on 9 December, however, this was still subject to management authorization. Having confirmed the sponsorship amount, the second representative would have continued to follow company process for approval of sponsored meetings as outlined below.

Once informed of the complaint on 7 December the second representative emailed the retail pharmacy group on 12 December to withdraw GlaxoSmithKline's offer of sponsorship as the retail pharmacy group had evidently continued to circulate the invitation, clearly ignoring the representative's warning that the invitation was not compliant, and that sponsorship still needed to be agreed and confirmed. The representative further asked the pharmacy group to remove GlaxoSmithKline's logo from any further communications about the meeting. The pharmacy group replied claiming that it had not been told that use of the GlaxoSmithKline logo was unauthorized and that the company had been advised that the invitation had already been sent out on the 26 November. However, it was quite clear that GlaxoSmithKline did inform the retail pharmacy group on 27 November that the invitation was not compliant with industry standards and would need to be amended.

GlaxoSmithKline stated that following this exchange, it did not sponsor or attend the meeting. The company confirmed that it had not had any further involvement in or further correspondence with the pharmacy group after this exchange about the meeting.

GlaxoSmithKline recognised that the invitation did not comply with the Code as it included the company's logo without clearly declaring the company's sponsorship of the meeting and role in the event. However, GlaxoSmithKline asserted that it had not created the invitation which was circulated without prior notice and approval from the company, and before the company had confirmed to the retail pharmacy group that it was authorized to sponsor the meeting.

GlaxoSmithKline stated that it had procedures in place to ensure that items relating to meetings it sponsored included a declaration of the company's sponsorship and description of the company's role in the event.

GlaxoSmithKline explained that training on sponsored meetings was provided to all field force and first line sales managers, and the training slides were accessible to all representatives. The slides set out the process for approval of sponsored third-party meetings and guidance to ensure compliance with applicable Code provisions, including steps to ensure that meetings had a clear educational content, were for the benefit of patients, the sponsorship costs were in line with fair market value and the venues were appropriate. The training also made it clear that GlaxoSmithKline's sponsorship must be declared on the agenda and all papers relating to the meeting in order to comply with the Code. Examples of appropriate declarations provided in the slides included: 'GSK have sponsored the catering for this event' and 'GSK have sponsored this meeting through the purchase of stand space'.

GlaxoSmithKline stated that as evidenced in email exchanges provided, the invitation was promptly reviewed by the relevant first line sales manager and the absence of required information was flagged in accordance with company procedure; the retail pharmacy group was clearly informed that the invitation did not comply with industry standards and needed to be amended.

As the second representative had discussed in principle the sponsorship details with his/her first line sales manager and assessed fair market value of the sponsorship offer, the next stage in GlaxoSmithKline's sponsored meeting process would have been for the representative to review the agenda and all materials related to the meeting to ensure compliance with the Code. An engagement form would then be completed by the representative, including details of the sponsorship, and submitted for manager approval. A contract would then have been generated on the basis of GlaxoSmithKline's template for sponsored meetings. This template contract included provisions which required the event organiser to 'ensure that all potential attendees are aware, before the date of the Meeting, that GSK is providing Sponsorship for the Meeting and, if relevant, whether GSK staff are attending and whether GSK will have a promotional stand at the Meeting'. Further, the contract required that all materials produced by the organiser relating to the meeting included the following declarations 'in a sufficiently prominent position to ensure that those reading or viewing the materials are aware of the Sponsorship and any GSK presence at the outset'.

a) 'GlaxoSmithKline has provided Sponsorship towards the [stand space, venue, equipment, catering and / or speaker] costs of this meeting but have had no input into or influence over the agenda or content or selection of speakers.'

b) 'GlaxoSmithKline shall have [a stand at the Meeting promoting GlaxoSmithKline products and] staff will be present at the meeting.'

Further, the agreement prohibited the organiser from using GlaxoSmithKline's logo on any written materials without its consent. However, as the sponsorship did not proceed past the due diligence stage of the company's process, a contract was not generated for the meeting.

GlaxoSmithKline noted that the retail pharmacy group had circulated an invitation without the necessary declarations of sponsorship. GlaxoSmithKline did not approve, disseminate or know about the invitation. When the invitation was circulated, GlaxoSmithKline had not confirmed that it would sponsor the meeting, the sponsorship proposal was still going through its approval process, and the retail pharmacy group was fully aware of that. Had the sponsorship been agreed, any papers relating to the meeting would have gone

through GlaxoSmithKline's approval process to ensure compliance with the Code. GlaxoSmithKline thus denied any breach of Clauses 9.10 and 22.4.

GlaxoSmithKline recognised that the invitation did not comply with Clause 12.1 as it did not clearly declare that the company (and other sponsors) would have a promotional stand at the meeting staffed by representatives. However, the invitation was circulated before GlaxoSmithKline's knowledge and approval and before it finally confirmed that it would sponsor the meeting.

As explained above, GlaxoSmithKline had procedures and template contracts in place to ensure that where GlaxoSmithKline had purchased stand space at a third party organised event, a declaration was made to that effect on all papers about the meeting. The relevant GlaxoSmithKline personnel took all appropriate steps to comply with these procedures. The company denied any breach of Clause 12.1.

GlaxoSmithKline acknowledged that the reference to a three-course meal on the invitation might appear to be the main attraction to the event and would not have been appropriate or proportionate to the meeting. However, GlaxoSmithKline only knew that the meal would be provided when it received the invitation on 26 November. GlaxoSmithKline was also not informed that the meal would expressly be promoted or highlighted in any meeting materials.

GlaxoSmithKline repeated that it had procedures in place to ensure that sponsored meetings were held at appropriate venues conducive to the main purpose of the meeting and that any subsistence provided was appropriate and secondary to the nature of the meeting. Further, GlaxoSmithKline's template contract for sponsored meetings required the organiser of the meeting to comply with the principles set out in Clause 22.

GlaxoSmithKline reiterated that it did not sponsor this meeting. However, had sponsorship been agreed, any hospitality related to the meeting would have gone through due process to ensure compliance with the Code. GlaxoSmithKline denied any breach of Clauses 22.1 and 22.2.

GlaxoSmithKline stated that it tried to maintain high standards at all times and had appropriate policies and procedures in place to ensure compliance with the Code as evidenced above.

GlaxoSmithKline reiterated that it did not create, approve or circulate the invitation. The invitation was created and circulated by the retail pharmacy group without the company's prior knowledge or approval and before sponsorship arrangements for the meeting had been agreed.

GlaxoSmithKline submitted that it had promptly informed the pharmacy group of the non-compliance and had the sponsorship been agreed, the company would have ensured that all materials about the event complied with the Code in accordance with its standard procedures.

On receiving the complaint and thus knowing that the retail pharmacy group had apparently continued to circulate what it knew was a non-compliant invitation for the meeting, GlaxoSmithKline promptly withdrew its sponsorship offer and asked for its logo to be removed from all future communications related to the meeting.

GlaxoSmithKline asserted that it did not create nor distribute any materials that discredited or reduced confidence in the industry, and it took appropriate action to rectify the actions of the retail pharmacy group to maintain high standards. GlaxoSmithKline denied any breach of Clause 9.1 or 2.

PANEL RULING

The Panel noted GlaxoSmithKline's detailed submission about communications between the lead pharmacist at the retail pharmacy group and its sales representatives, and between the sales representatives and management. The Panel also noted the timeline of events as revealed by the emails between the parties. The Panel noted that the retail pharmacy group had communications with three separate representatives about sponsorship arrangements.

The Panel noted GlaxoSmithKline's submission that it was first approached on 20 November 2018 with regard to sponsoring the meeting. The Panel noted that on 26 November GlaxoSmithKline became aware that the invitation at issue, which contained the company's logo, had been advertised the previous day by the retail pharmacy group without GlaxoSmithKline's approval or knowledge. The Panel noted GlaxoSmithKline's submission that this was before sponsorship of the meeting had been confirmed with the retail pharmacy group. The Panel noted that following this GlaxoSmithKline remained in discussion with the retail pharmacy group with regard to its potential sponsorship of the meeting.

It appeared to the Panel from the emails provided that GlaxoSmithKline made a final maximum sponsorship offer on 9 December which was confirmed the same day by the retail pharmacy group.

The Panel noted that when GlaxoSmithKline was informed of the present complaint on 7 December, a GlaxoSmithKline representative emailed the retail pharmacy group on 12 December, the day of the meeting, to withdraw GlaxoSmithKline's offer of sponsorship. The Panel noted GlaxoSmithKline's submission that the retail pharmacy group had evidently continued to circulate the invitation at issue, clearly ignoring its representative's warning that the invitation was not compliant, and that sponsorship still needed to be agreed and confirmed. The Panel noted GlaxoSmithKline's submission that following this exchange, it did not sponsor or attend the meeting and had no further involvement in or further correspondence with the retail pharmacy group.

The Panel noted that it was not clear how and when the complainant had seen the invitation

at issue. The Panel noted that the complaint was received by the PMCPA on 3 December and referred to the invitation at issue being circulated by GlaxoSmithKline and actively shared on Facebook. The Panel noted GlaxoSmithKline's submission that it did not circulate the invitation at issue. The Panel noted that according to the information before the Panel, it appeared that the retail pharmacy group advertised the invitation on 25 November. The local pharmaceutical committee (LPC) also wanted to send out an invitation around 5 December but it was not clear if it did.

The Panel noted that Clause 9.10 stated that material relating to medicines and their uses, whether promotional or not, and information relating to human health or diseases which was sponsored by a pharmaceutical company must clearly indicate that it had been sponsored by that company. The Panel did not consider that Clause 9.10 was relevant to the meeting invitation at issue and made no ruling in this regard.

The Panel noted that Clause 22.4 stated that when meetings were sponsored by pharmaceutical companies, that fact must be disclosed in all of the papers related to the meetings and in any published proceedings. The declaration of sponsorship must be sufficiently prominent to ensure that readers were aware of it at the outset.

The Panel noted GlaxoSmithKline's submission that at the time the meeting invitation was circulated it had not confirmed that it would sponsor the meeting. The complainant had the burden of proving his/her complaint on the balance of probabilities and in the Panel's view it appeared that GlaxoSmithKline had not confirmed sponsorship of the meeting when the retail pharmacy group advertised the meeting with an invitation which contained the company's logo on 25 November, nor had sponsorship been confirmed prior to 3 December when the complaint was received. Therefore, the Panel considered that, when the complainant received the invitation, GlaxoSmithKline was not responsible for sponsorship of the meeting and it ruled no breach of Clause 22.4.

The Panel noted the complainant's concern that it was not clear from the invitation at issue if GlaxoSmithKline's medicines were to be promoted and if a promotional meeting was to be held under the guise of a CPD meeting, GlaxoSmithKline was pulling the wool over health professionals' eyes. Clause 12.1 stated that promotional material and activities must not be disguised. The Panel noted its comments above with regard to GlaxoSmithKline not being responsible for the sponsorship of the meeting when it was advertised on the 25 November or prior to 3 December when the complaint was received as it had not yet confirmed sponsorship of the meeting and the Panel therefore ruled no breach of Clause 12.1. The Panel noted the complainant's concern that the offer of a three-course meal on the invitation was the main reason and attraction to the event. The Panel noted that Clause 22.1 stated, *inter alia*, that hospitality must be strictly limited to the main purpose of the event and must be secondary to the purpose of the meeting ie subsistence only. The level of subsistence offered must be appropriate and not out of proportion to the occasion.

The Panel noted GlaxoSmithKline's submission that reference to a three-course meal on the invitation might appear to be the main attraction to the event and would not have been appropriate or proportionate to the meeting. The Panel noted GlaxoSmithKline's submission that it only became aware that a three-course meal would be provided when it received the invitation on 26 November. The Panel noted its comments above with regard to GlaxoSmithKline not being responsible for the invitation when it was advertised on the 25 November or prior to 3 December when the complaint was received, and the Panel therefore ruled no breach of Clause 22.1.

The Panel noted that Clause 22.2 stated that the cost of a meal (including drinks) provided by way of subsistence must not exceed £75 per person, excluding VAT and gratuities. The Panel, however, did not consider that there was an allegation with regards to the cost of the meal and therefore made no ruling.

The Panel noted its comments and rulings of no breach of the Code above and therefore ruled no breach of Clauses 9.1 and 2.

2 LinkedIn posting

The complainant provided a copy of a LinkedIn post which consisted of a photograph of what was assumed to be a GlaxoSmithKline office block above which was stated 'Looks like another potential vaccines blockbuster!'. Below the photograph was the statement 'GlaxoSmithKline weighs men B shot Bexsero's promise against gonorrhea' followed by a pharmaceutical industry news agency website address.

COMPLAINT

The complainant alleged that the LinkedIn post 'by several members of GSK' promoted its medicine directly to the public as LinkedIn was a very public platform.

When writing to GlaxoSmithKline, the Authority asked it to consider the requirements of Clauses 11.1, 26.1, 26.2, 9.1 and 2.

RESPONSE

GlaxoSmithKline submitted that the article in question had never been posted or shared on a GlaxoSmithKline corporate social media account. GlaxoSmithKline provided a copy of its standard operating procedure (SOP) for external and internal communications activities on behalf of the company. The SOP included a section on 'Expressions of personal opinion to a public audience, including personal use of social media'. The SOP highlighted that 'Personal use of social media can be perceived

as company-endorsed communication' and 'posts on their social media networks, can be visible to a wide range of audiences, including colleagues, patients, healthcare professionals …'. The SOP further stated that 'GSK Staff must not publicly express opinions about prescription products – whether GSK products or competitor products'.

In addition to the SOP, mandatory training was provided to all staff on the use of social media (training slides were provided). The training reinforced the far-reaching impact of sharing content on social media and possible risks for the company, and stated that GlaxoSmithKline staff should 'not create posts, make comments or share content that could be perceived as promoting our pharmaceutical products' or 'respond to third-party social media posts which mention GSK brands or competitor brands'. The training further stated that 'In general, if approved content appears on a GSK external channel used for our general public audience (GSK Facebook, YouTube, GSK LinkedIn or GSK Twitter), you can share it'.

GlaxoSmithKline stated that it never shared the article on any of its corporate external-facing channels (including GlaxoSmithKline Facebook, YouTube, GlaxoSmithKline LinkedIn or GlaxoSmithKline Twitter) and that it had appropriate SOPs and training in place to ensure compliance with Clauses 11.1, 26.1 and 26.2 and to ensure that high standards were maintained and that staff did not distribute any materials on social media that might discredit or reduce confidence in the industry.

A significant number of employees had personal social media accounts. Bearing in mind the special nature of medicines and the requirements under the Code, GlaxoSmithKline conducted a robust and thorough internal investigation and discovered that the LinkedIn post linking to the article published by the pharmaceutical industry news agency was shared on LinkedIn by an employee of GlaxoSmithKline Global (not GlaxoSmithKline UK Pharma), on their personal LinkedIn account. This was in direct contravention of the GlaxoSmithKline SOP for external and internal communications activities on behalf of GlaxoSmithKline as well as the mandatory training. As such, the matter was being dealt with directly with the individual concerned.

GlaxoSmithKline stated that it took its responsibility very seriously for ensuring all employees globally knew of, and truly understood, its policy on the personal use of social media. That was why relevant training was delivered as part of GlaxoSmithKline's global mandatory training to all employees entitled 'Living our Values and Expectations'. In addition, there were plans for GlaxoSmithKline's global communications team to run an employee advocacy programme in 2019 to help further explain the policy by sharing examples of acceptable use. Further to this, the company would reinforce to all employees the social media policy and, in addition, external communications, compliance and legal teams would ensure that GlaxoSmithKline policies adequately addressed the rapidly progressing area of social media.

GlaxoSmithKline did not believe that it had failed to maintain high standards or had brought the industry into disrepute. The company played no role in the availability of the content of the post, nor did it instruct or encourage the employee to disseminate it. GlaxoSmithKline's policies and training made it quite clear to all employees that content posted and shared on personal social media accounts risked being perceived as company-endorsed communication, and as such employees should never post nor share any content that mentioned or referred to prescription medicines (whether GlaxoSmithKline or competitor products) other than content that had been specifically approved by GlaxoSmithKline for the general public audience.

GlaxoSmithKline submitted that it had continued to work hard to develop comprehensive and clear guidelines for its employees in the rapidly changing area of social media, whilst maintaining an appropriate and realistic balance between the rights of its employees as individuals and their responsibilities as GlaxoSmithKline employees.

GlaxoSmithKline denied any breach of Clauses, 11.1, 26.1, 26.2, 9.1 and 2 of the Code.

In response to a request for further information, GlaxoSmithKline noted that the article associated with the LinkedIn post stated that the company was assessing the potential for further investigation of Bexsero in preventing gonorrhoea. GlaxoSmithKline stated that it had not issued any press release or proactively sought to engage with the media other than to provide reactive statements, in either the UK or the US, about its intention to explore the use of Bexsero to prevent gonorrhoea. The article was written and published by an independent US pharmaceutical industry news agency. Before publishing the article, the agency contacted the US communications team at GlaxoSmithKline, unsolicited, to ask whether efforts were under way to develop a new gonorrhoea vaccine following recent reports. In response, the company provided a generic statement to clarify that it was, at the time, talking to health authorities and external researchers to determine the potential for further investigation, that any efforts in the area remained exploratory, and that no decision had yet been taken as to whether to conduct and fund company-sponsored studies for Bexsero or any other vaccine in this area. The article also quoted from a second article written and published independently by another third party, and to which GlaxoSmithKline had again only provided reactive statements to specific questions posed by a journalist. The article was clearly intended for a US audience; it focussed on the prevalence of gonorrhea in the US and the success of Shingrix in the US, a GlaxoSmithKline medicine licensed but not available in the UK. It would therefore be obvious to readers that the article did not concern the UK product market.

The individual who shared the article on LinkedIn was a contract worker engaged by GlaxoSmithKline for a role based at the company's headquarters in the UK. The employee had LinkedIn followers

based in the UK, however he/she also had a number of followers based abroad including the US. The employee in question had been engaged by GlaxoSmithKline for a couple of years.

GlaxoSmithKline noted that the individual in question did not work in a promotional role and his/her role was never customer facing. The company provided appropriate training tailored to the roles of its employees and contract workers and it confirmed that the contractor had completed the global mandatory social media training referred to above, before the date of the complaint. GlaxoSmithKline reiterated that the contractor had acted in breach of company policy and training requirements, and the matter had been dealt with directly.

GlaxoSmithKline explained that it employed a significant number of employees and contractors in non-commercial, non-promotional roles that were based in the UK, including in manufacturing, supply chain, R&D and head office based roles such as HR and recruitment, finance, regulatory and legal. It was therefore unreasonable and unrealistic to expect companies like GlaxoSmithKline, with multiple operations in the UK, to provide in depth training to all of its employees and contractors in the UK on the company's entire product portfolio, the significance of licensed/unlicensed products and indications, prescription and non-prescription, the significance of different clinical trial phases, and so on, to enable them to distinguish between material that would be considered promotional or not, where this was not relevant to their roles.

As noted above, GlaxoSmithKline had training and policies in place to ensure that all employees and contractors globally were aware of the risks of posting material on their personal social media accounts that might be perceived as promotional. GlaxoSmithKline did not proactively engage with the pharmaceutical industry news agency to publish the article, nor did it instruct or encourage the contractor to share the article on LinkedIn. GlaxoSmithKline stated that it regretted that a company-affiliated individual shared an article mentioning GlaxoSmithKline branded prescription products on a public social media page, however the company had taken all reasonable steps to train employees on this matter in order for this not to happen. The article was not shared with any promotional intent and it would have been obvious to any reader that the article was intended for a US audience.

GlaxoSmithKline reiterated that it did not consider that it had failed to maintain high standards or brought the industry into disrepute. The company denied any breach of Clauses 11.1, 26.1, 26.2, 9.1 and 2 of the Code.

PANEL RULING

The Panel noted that LinkedIn was different to some other social media platforms in that it was a business and employment-orientated network and was primarily, although not exclusively, associated with an individual's professional heritage and current employment and interests. In the pharmaceutical industry, the Panel noted that an individual's network might, albeit not exclusively, be directly or indirectly associated with the healthcare industry. In the Panel's view, it was of course not unacceptable for company employees to use personal LinkedIn accounts and the Code would not automatically apply to all activity on a personal account; whether the Code applied would be determined on a case-by-case basis taking into account all the circumstances including: the content, any direct or indirect reference to a product, how the information was disseminated on LinkedIn, the company's role in relation to the availability of the content and whether such activity was instructed or encouraged by the company. If activity was found to be within the scope of the Code, the company would be held responsible.

The Panel noted that the post provided by the complainant was titled 'Looks like another potential vaccines blockbuster!' which appeared in a different font to the rest of the post and was not stated in the linked article. It was not entirely clear to the Panel if this text was added when the post was shared or if it was part of the original post. GlaxoSmithKline made no submission in this regard. This was followed by a picture of a building below which was the statement 'GlaxoSmithKline weighs men B shot Bexsero's promise against gonorrhoea' followed by fiercepharma.com. The Panel noted the complainant's concern that a prescription only medicine was being promoted to the public. The Panel noted that Bexsero was indicated for active immunisation of individuals from 2 months of age and older against invasive meningococcal disease caused by Neisseria meningitidis group B.

The Panel noted that the full article which could be accessed through the website link within the post explained that a study showed that meningitis B vaccines like GlaxoSmithKline's Bexsero could provide some protection against gonorrhea and the company was analysing whether to move forward with testing in the disease area. It further stated that GlaxoSmithKline could not comment further as work remained exploratory and that the company had not yet started any tests in the disease area.

The Panel noted GlaxoSmithKline's submission that the article in question had never been posted or shared on any of its corporate external-facing channels (including GlaxoSmithKline Facebook, YouTube, GlaxoSmithKline LinkedIn or GlaxoSmithKline Twitter).

The Panel noted GlaxoSmithKline's submission that the LinkedIn post in question was shared on LinkedIn by a contract worker engaged by GlaxoSmithKline Global (not GlaxoSmithKline UK Pharma), on their personal LinkedIn account. The Panel noted, however, that the GlaxoSmithKline global headquarters were based in the UK and the contractor who shared the post was based in the UK. The Panel noted GlaxoSmithKline's submission that it played no role in the availability of the content of the post, nor did it instruct or encourage the contractor to disseminate it. According to GlaxoSmithKline, its policies and training made it quite clear to all employees and contractors that

content posted and shared on personal social media accounts risked being perceived as company-endorsed communication, and as such employees and contractor should never post nor share any content that mentioned or referred to prescription medicines other than content that had been specifically approved by GlaxoSmithKline for the general public audience; the contractor in question was trained on the global social media policy and had acted in breach of it.

Contrary to GlaxoSmithKline's submission the Panel did not consider that the issues raised by the complainant required GlaxoSmithKline to train all staff in depth on its product portfolio, but in the Panel's view it was reasonable for it to train all staff on its social media policy which according to GlaxoSmithKline had been done.

In the Panel's view, activity conducted on social media that could potentially alert one's connections to the activity might be considered proactive dissemination of material. In addition, an individual's activity and associated content might appear in that individual's list of activities on his/her LinkedIn profile page which was visible to his/her connections; an individual's profile page was also potentially visible to others outside his/her network depending on the individual's security settings.

The Panel noted that Clause 26.1 prohibited the promotion of prescription only medicines to the public. Clause 26.2 stated that information about prescription only medicines which was made available either directly or indirectly to the public must be factual, presented in a balanced way, must not raise unfounded hopes of successful treatment and must not encourage members of the public to ask their health professional to prescribe a specific prescription only medicine.

The Panel noted that the post itself was headed 'Looks like another potential vaccines blockbuster' and referred to Bexsero as a 'men B shot' and its 'promise against gonorrhea' which was an unlicensed indication. The Panel noted that Bexsero was available as a prescription only medicine in the UK. The Panel further noted that the linked article referred to a study and stated, *inter alia*, 'meningitis B vaccines like GlaxoSmithKline's Bexsero can provide some protection against gonorrhoea ...'.

The Panel did not know how many connections the named contractor had on LinkedIn and if they were all health professionals; the company made no submission in that regard. However, as it was a personal LinkedIn account, the Panel considered that on the balance of probabilities not all the contractor's connections would have been health professionals and therefore sharing of the LinkedIn post and associated article with his/her network constituted promotion of a prescription only medicine to the public and a breach of Clause 26.1 was ruled. The Panel considered that it might encourage members of the public to ask their health professional to prescribe Bexsero and therefore a breach of Clause 26.2 was ruled.

The Panel noted that Clause 11.1 requires that material should only be sent or distributed to those categories of persons whose need for, or interest in, it can reasonably be assumed. The Panel did not consider that the complainant had raised an allegation in this regard and the Panel therefore made no ruling.

The Panel noted its comments and rulings of breaches of the Code as set out above. Overall, the Panel considered that high standards had not been maintained and ruled a breach of Clause 9.1.

The contractor had acted in breach of company policy and training. The Panel considered that the particular circumstances of this case did not warrant a ruling of a breach of Clause 2 of the Code which was a sign of particular censure and reserved for such use. No breach of Clause 2 was ruled.

Complaint received **7 December 2018**

Case completed **9 August 2019**