

EX-EMPLOYEE v INDIVIOR

Non-disclosure of transfers of value

An ex-employee of Indivior complained that in 2017 the company had not disclosed payments made to health professionals, donations or sponsorships in the UK.

The detailed response from Indivior is given below.

The Panel noted that the Code required companies to document and publicly disclose certain transfers of value made directly or indirectly to health professionals and healthcare organisations located in Europe; in the UK, this had to be via a central platform.

The Panel noted Indivior's submission that a previous senior employee had agreed for Indivior to join the list of non-member companies which had agreed to comply with the Code and accept the jurisdiction of the Authority. The Panel was very concerned that this decision had not been more broadly communicated throughout the company; this information only became apparent to those currently employed with the company from April 2019 in relation to this complaint.

Indivior was required by the Code, due to its status from June 2017 to disclose 2017 transfers of value to UK health professionals and UK healthcare organisations on the central platform by the end of June 2018, however, the Panel noted that Indivior had failed to do so and therefore it ruled a breach of the Code as acknowledged by the company.

The Panel noted Indivior's submission that it had documented all disclosures for 2015 onwards and had (and would) retain those records for at least five years after the end of the calendar year to which they related. The complainant had provided no evidence to the contrary and therefore the Panel ruled no breach of the Code with regard to the retention of data in relation to the 2017 transfers of value.

The Panel noted its comments and rulings above and considered that Indivior had failed to maintain high standards and a further breach of the Code was ruled.

The Panel noted that Clause 2 was a sign of particular censure and was reserved for such use. Despite Indivior's submission that it had always sought to comply with the spirit of the Code there had been no public disclosure of the 2017 transfers of value on the central platform as required. In the Panel's view, transparency in relation to transfers of value to health professionals and healthcare organisations was of the utmost importance to the reputation of the pharmaceutical industry. The Panel considered, on balance, that Indivior had brought discredit upon and reduced confidence in the industry for its failure to publicly disclose any of its 2017 transfers of value to

health professionals and healthcare organisations and it ruled a breach of Clause 2.

An ex-employee of Indivior, complained that in 2017 the company had not disclosed payments made to health professionals.

COMPLAINT

The complainant cited an Indivior website and alleged that in 2017 Indivior decided not to report payments to health professionals, donations or sponsorship in the UK and across Europe unless the countries made their own decisions about reporting. The previous company websites were deleted and so no previous data could be found. No payment had since been reported in the UK. The complainant alleged that this decision was made by named senior executives and supported by others.

The complainant alleged that Indivior had never signed up to being an ABPI member but that it tried to comply with the rules. Not anymore.

When writing to Indivior, the Authority asked it to consider the requirements of Clauses 2, 9.1, 24.1, 24.2, 24.4, 24.5, 24.6 and 24.10 of the 2016 Code in relation to the disclosure of 2016 and 2017 data. The 2015 Code would apply to the disclosure of 2015 data.

RESPONSE

Indivior submitted that it had always sought to comply with the spirit of the Code and had appropriately documented transfers of value (copies provided of transfers of values made in 2015, 2016 and 2017). Accordingly, any error that had occurred related only to the disclosure of the data rather than a failure to collect or monitor such transfers of values.

Indivior submitted that in 2015 and 2016, although it was neither a member of the ABPI nor a non-member company that had agreed to comply with the Code and accept the jurisdiction of the PMCPA (a listed non-member), it nonetheless sought to operate in accordance with the spirit of the Code as evidenced by gathering and maintaining data on transfers of values. The company sought to disclose its 2015 data on the ABPI central platform (correspondence was provided). However, it appeared that the correspondence with the ABPI was misinterpreted by Indivior and it mistakenly understood that the data could not be uploaded on to the central platform. Therefore, seeking to comply with the spirit of the Code, the company published the 2015 UK data on its public website. In doing so, an accompanying methodological note (as required by Clause 24.10) was also published on the website (copy provided).

Indivior submitted that due to resourcing and technical challenges, transfers of values for 2016, although collated according to ABPI requirements and in the ABPI template, were not disclosed on the Indivior website. Indivior appreciated that this was inappropriate for a company aligning to the spirit of the Code and that its 2016 transfers of value data should have been disclosed on its website, consistent with the 2015 data disclosure. Nevertheless, whilst this was not in line with the then applicable Code, Indivior did not consider that it was a breach of the Code as, at the time, the company was not a listed non-member and therefore it was not formally subject to the Code and the jurisdiction of the Authority.

Indivior stated that it was not originally aware that a previous senior employee had agreed in June 2017 that the company, although not a member of the ABPI, would, nonetheless, comply with the Code and accept the jurisdiction of the Authority (ie be a listed non-member). The company believed this was done as part of the complaint it raised around that time (Case AUTH/2961/6/17). The company stated that it was regrettable that the previous senior employee did not inform the company more widely at the time so that it was aware of its impact; the company was taking steps to ensure no similar mistakes were repeated. Nevertheless, Indivior only became aware of being a listed non-member company when it was notified of this complaint. However, Indivior stated it had always sought to comply with the Code and, as such, it was happy to accept this status from June 2017 onwards. Under the then applicable 2016 Code, Indivior should thus have disclosed transfers of values in 2017 and in 2018. Further, Indivior should disclose transfers of values in 2018 by the end of June 2019. Consistent with this, Indivior stated that it had documented transfers of value data for 2017 and 2018 in accordance with Code requirements and on the ABPI disclosure template.

Indivior appreciated that from June 2017, it was not only bound to disclose transfers of value data by good intent and seeking to align to the Code, but also obliged to do so as a non-member that had formally agreed to comply with the Code and accept the jurisdiction of the Authority. Accordingly, the company should have disclosed 2017 data in 2018. This did not happen because Indivior was unaware of its membership status.

Indivior noted that since receipt of this complaint, and upon learning that it could use the ABPI central platform it had sought to publish the collated transfers of values data it had on file for 2017 (retrospectively) and 2018 (before the June deadline), and for good practice for 2016 (before it had agreed to comply with the Code and accept the jurisdiction of the Authority) on the central platform.

Indivior noted that the complainant, correctly, referenced that the voluntarily disclosed 2015 data was removed from the company website. Indivior submitted that in early 2018, in seeking to identify a more effective way of managing disclosure of transfers of value data in general, it thought it appropriate to remove old data pending

improvements to the disclosure page of its website. This data (including the methodological note) was therefore removed from the company website in March 2018.

Based on interactions with the ABPI, Indivior understood that 2015 data could not now be uploaded and disclosed on to the central platform (as on uploading of 2018 data, 2015 data would naturally fall away). Indivior stated that it would retain the data for 5 years in accordance with Clause 24.6.

Indivior acknowledged that it had failed to disclose 2017 transfers of values made to UK health professionals and healthcare organisations in accordance with the requirements of Clause 24 of the 2016 Code. Thus, it acknowledged breaches of Clauses 24.1 and 24.4.

Given the breaches of Clauses 24.1 and 24.4, Indivior submitted that there were inevitable consequential breaches of Clause 24.5 as the 2017 disclosures were not made available for the requisite three years following disclosure and Clause 24.10 as a methodological note was not published about the 2017 transfers of value.

Indivior submitted that Clause 24.2 appeared as an informative clause in relation to the transfers of values that must be disclosed under Clause 24.1, therefore a breach of that clause was covered by the acknowledged breach of Clause 24.1.

As noted above, in line with Clause 24.6, Indivior submitted that it had documented all disclosures for 2015 onwards and had (and would) retain those records for at least five years after the end of the calendar year to which they related. Therefore, Indivior denied a breach of Clause 24.6. Further, the breaches above would shortly be rectified by the 2017 data being published on the ABPI central platform.

Indivior stated that whilst it strove to maintain high standards, it accepted that it was not aware that a former employee had agreed that Indivior would be a listed non-member company in June 2017 as part of separate proceedings, and most importantly that as a result of this oversight, it had failed to disclose the 2017 data diligently collected in accordance with the Code; these things together could be seen as falling below these standards. However, as noted above, Indivior did collect a comprehensive record of transfers of values and did attempt to voluntarily disclose such data in line with the Code. Indivior was working with the ABPI to use the central platform moving forward to retrospectively publish the 2017 data and publish the 2018 data before the June deadline. The company thus did not consider that it had breached Clause 9.1 of the Code. Moreover, in view of the facts, it did not believe this matter breached Clause 2 of the Code which was reserved for cases of particular censure.

PANEL RULING

The Panel noted that Clause 24.1 stated that companies must document and publicly disclose

certain transfers of value made directly or indirectly to health professionals and healthcare organisations located in Europe. The supplementary information to this clause stated that, in the UK, the central platform for disclosure must be used by companies.

Clause 24.2 listed the transfers of value covered by Clause 24.1. Failure to document and publicly disclose transfers of value described in Clause 24.2 would be a breach of Clause 24.1.

The Panel noted Indivior's submission that a previous senior employee had agreed for Indivior to become a listed non-member company and comply with the Code and accept the jurisdiction of the Authority in June 2017, however, this information only became apparent to those currently employed with the company from April 2019 in relation to this complaint. The Panel was very concerned that the decision to join the list of non-member companies which had agreed to comply with the Code had not been more broadly communicated throughout the company.

The Panel noted Indivior's submission that its 2015, 2016 and 2017 transfers of value data were not disclosed on the central platform required by the Code in the UK. The Panel noted, however, that as Indivior only became a listed non-member company which had agreed to comply with the Code and accept the jurisdiction of the Authority from June 2017, the requirement to disclose the 2015 and 2016 ToVs on the central platform did not apply to Indivior and the Authority could make no ruling in relation to the disclosure of such data under the Code.

Indivior was required by the Code, due to its status from June 2017 as a listed non-member company which had agreed to comply with the Code and accept the jurisdiction of the Authority, to disclose 2017 ToV to UK health professionals and UK healthcare organisations on the central platform by the end of June 2018, however, the Panel noted that Indivior had failed to do so and therefore it ruled a

breach of Clauses 24.1 and 24.4 as acknowledged by the company.

The Panel considered that as there had been no public disclosure of the 2017 transfers of value at the time the Authority received the complaint, Clauses 24.5 and 24.10 were not relevant and no ruling was made in that regard.

The Panel noted Indivior's submission that it had documented all disclosures for 2015 onwards and had (and would) retain those records for at least five years after the end of the calendar year to which they related. The complainant had provided no evidence to the contrary and therefore the Panel ruled no breach of Clause 24.6 in relation to the 2017 data. The Panel noted its comments and rulings above and considered that Indivior had failed to maintain high standards and a breach of Clause 9.1 was ruled.

The Panel noted that Clause 2 was a sign of particular censure and was reserved for such use. The Panel noted that despite Indivior's submission that it had always sought to comply with the spirit of the Code there had been no public disclosure of the 2017 transfers of value on Indivior's website. The Panel further noted that there had been no public disclosure of the 2017 transfers of value on the central platform as required by the Code. In the Panel's view, transparency in relation to transfers of value to health professionals and healthcare organisations was of the utmost importance to the reputation of the pharmaceutical industry. The Panel considered, on balance, that Indivior had brought discredit upon and reduced confidence in the industry for its failure to publicly disclose any of its 2017 transfers of value to health professionals and healthcare organisations and it ruled a breach of Clause 2.

Complaint received	20 December 2018
Case completed	19 August 2019