

# COMPLAINANT/DIRECTOR v NOVARTIS

## Use of Twitter/alleged breach of undertaking

A complainant, who described him/herself as a concerned UK health professional, complained about a retweet from Novartis which had appeared in his/her Twitter feed. The tweet, originally sent by a clinician who had attended a Novartis meeting, read:

'So many terrific talks at the @NovartisUK Haematology Masterclass meeting on recent advances in MPN, AML, CAR, ITP, AA, CML (attached pic of [name] giving an excellent plenary talk) and many more. Haematology is such an exciting field – can't wait for next year!!'

The complainant searched on line as he/she did not know what the Novartis Haematology Masterclass was and found the website for the Association of Myeloid Neoplasm Practitioners (AMNP) with a Haematology Academy flyer. This was the first mention that the meeting was promotional. Novartis had thus retweeted a health professional's tweet about a Novartis' promotional meeting – the complainant alleged that this was disguised promotion as well as promotion to the public.

The complainant noted a statement on the AMNP website: 'Developed with support from Novartis Pharmaceuticals UK Ltd'. The complainant alleged that this lacked clarity as to the relationship between Novartis and the AMNP. The website appeared to only promote Novartis meetings and host Novartis' promotional content. This ranged from an act unilaterally undertaken by the AMNP to one that was actively aided by Novartis to do so.

The complainant stated that the Haematology Academy flyer had no prescribing information.

The complainant stated that a few months previously, a Novartis employee was found to have promoted to the public [Case AUTH/3038/4/18] and now the official Novartis UK Twitter feed had done almost the same thing. The complainant stated that this hardly demonstrated that any lessons were learned and suggested that the undertaking given in the previous case be reviewed.

In relation to the alleged breach of undertaking, this aspect would proceed in the name of the Director.

The detailed response from Novartis is given below.

The Panel noted that Novartis UK had retweeted, without any additional comment, a tweet posted by a health professional who had attended a Novartis promotional meeting. The Panel agreed that there was potentially a difference between sharing information about the content of a meeting and sharing information about the arrangements. It was important that those attending meetings were clear about the content of such meetings as

well as the role of pharmaceutical companies in the arrangements.

The Panel noted that the tweet did not contain links to other sites but had included the Novartis UK Twitter handle. The tweet referred to recent advances in MNP [myeloproliferative neoplasms], AML [acute myeloid leukaemia], CAR [chimeric antigen receptor], ITP [immune thrombocytopenia], AA [aplastic anaemia] and CML [chronic myeloid leukaemia] and included a picture of a speaker and part of a PowerPoint slide. The Panel noted that no specific medicine was directly mentioned in the text of the tweet and, in its view, no medicine was legible from the slide in the picture within the tweet.

In the Panel's view, as the tweet made no direct or indirect reference to a specific medicine, it did not consider that Novartis' retweet constituted promotion of a prescription only medicine to the public and ruled no breach of the Code.

The Panel noted the allegation of breach of undertaking and that the complainant had referred to Case AUTH/3038/4/18. In that case, a Novartis employee had disseminated information referring to a prescription only medicine to contacts in his/her personal LinkedIn account and the company was found to be in breach of the Code including advertising to the public. The Panel noted that a form of undertaking and assurance was an important document. Companies had to give an undertaking that the material in question and any similar material, if not already discontinued or no longer in use, would cease forthwith and give an assurance that all possible steps would be taken to avoid similar breaches of the Code in future. The Panel noted that although both cases related to the alleged promotion of a prescription only medicine to the public via a social media channel, there were differences. The Panel noted, however, its ruling above of no breach and thus ruled no breach of the Code including Clause 2 in relation to the allegation of a breach of undertaking in Case AUTH/3038/4/18.

The Panel did not consider that the retweet constituted disguised promotion and ruled no breach of the Code.

The Panel noted that the Novartis haematology academy flyer contained the Novartis logo and a website address for the haematology academy; it invited readers to register for future haematology events and access past meeting material. It also stated, 'Discover a growing collection of Novartis educational content and materials, easily accessible on one platform'. At the bottom of the flyer, it stated: 'Events are either organised or sponsored by Novartis Pharmaceuticals UK Ltd.' and 'This website [haematology academy] has been developed

by Novartis Pharmaceuticals UK Ltd for use by HCPs [healthcare professionals] only and contains promotional material'. The Panel noted Novartis' submission that there was no active hyperlink to the haematology academy contained within the flyer and that if users typed in the URL address, or found it by an internet search, they would have to declare they were a health professional and register as the website was access restricted.

The Panel noted that the flyer at issue contained no direct or indirect reference to a specific medicine and therefore, in its view, did not require prescribing information. No breach of the Code was ruled.

The Panel considered that the AMNP website declaration 'Developed with support from Novartis Pharmaceuticals UK Ltd' could have been clearer given Novartis was also providing support to AMNP for the website's ongoing maintenance; particularly as another company was listed as providing support for the website maintenance. The AMNP website had a Novartis flyer for the haematology academy which Novartis submitted was uploaded following a decision by the AMNP steering group and without Novartis' involvement or influence. The Panel noted Novartis' submission that it did not have any influence over the AMNP, its website or the materials hosted upon it and it had no involvement in the flyer being made available on the AMNP website.

The Panel considered that, on balance, the declaration was not misleading as to the relationship between Novartis and the AMNP in relation to the website content where it appeared Novartis had no influence. The Panel therefore ruled no breach based on the narrow allegation.

The Panel noted its comments above and did not consider that Novartis had failed to maintain high standards and ruled no breach of the Code.

A complainant, who described him/herself as a concerned UK health professional, complained about a retweet from Novartis which had appeared in his/her Twitter feed. The tweet, originally sent by a clinician who had attended a Novartis meeting, read:

'So many terrific talks at the @NovartisUK Haematology Masterclass meeting on recent advances in MPN, AML, CAR, ITP, AA, CML (attached pic of [name] giving an excellent plenary talk) and many more. Haematology is such an exciting field – can't wait for next year!!'

## COMPLAINT

The complainant stated that he/she did not know what the Novartis Haematology Masterclass was so he/she searched for it online and found the website for the Association of Myeloid Neoplasm Practitioners (AMNP) with a Haematology Academy flyer. This was the first mention that the meeting was promotional. Novartis had thus retweeted a health professional's tweet about Novartis' own promotional meeting – the complainant alleged that this was disguised promotion as well as promotion to the public.

The complainant did not know what the relationship between the AMNP website and Novartis was, although he/she noted a statement on the website: 'Developed with support from Novartis Pharmaceuticals UK Ltd'. The complainant alleged that this lacked clarity as to the relationship between Novartis and the AMNP. The complainant stated that he/she did not know the contractual arrangement between the two but the AMNP website appeared to only promote Novartis meetings and host Novartis promotional content. This ranged from an act unilaterally undertaken by the AMNP to one that was actively aided by Novartis to do so.

The complainant provided a copy of the Haematology Academy flyer and stated that it had no prescribing information nor a link to such.

The complainant stated that a few months previously, a Novartis employee was found to have promoted to the public [Case AUTH/3038/4/18] and now, after case completion and remedial action apparently taken, the official Novartis UK Twitter feed had done almost the same thing. The complainant stated that this hardly demonstrated that any lessons were learned and suggested that the undertaking given in the previous case be reviewed.

When writing to Novartis, the Authority asked it to consider the requirements of Clauses 4.1, 9.1, 9.10, 12.1 and 26.1 of the 2019 Code. In relation to the alleged breach of undertaking, this aspect would proceed in the name of the Director and Novartis was asked to consider the requirements of Clauses 2 and 29.

## RESPONSE

Novartis submitted that the retweet did not constitute direct-to-consumer promotion or disguised promotion and was most unlikely to lead to a consumer asking for a particular medicine. The retweet was never intended to promote a prescription-only product, nor could it have that effect based on an objective and reasonable analysis of the content. Rather, the retweet drew attention to the fact that a clinician valued attending a health professional only event. It was a key corporate aim to contribute to scientific education and provide value to the healthcare community and the purpose of the retweet was simply to highlight this and show that it was appreciated by attendees. Neither the retweet nor the event itself were about a particular Novartis product and the company did not accept that the retweet had a product promotional purpose. It was appropriate, and commonplace, for pharmaceutical companies to share on social media comments and other news that supported their wider corporate goals and educational activities, particularly when that was about unbranded, non-product-specific meetings and events that had an educational focus. The fact that the meeting might also have included some promotional content did not alter that principle – sharing information about the meeting was clearly distinguishable from sharing the promotional content of the meeting. If that were not the case, it would mean that a pharmaceutical company could not mention on any public forum the fact that it held a promotional or educational

meeting as even this would be deemed product promotion. Such an approach would run contrary to established principles in medicines advertising law, regulation, and also prior approaches taken by the PMCPA. Moreover, this approach would fundamentally alter the way in which pharmaceutical companies communicated over social media and it would ultimately undermine the industry's efforts to build trust and engage with the public. Novartis stated that it worked hard to build value for the healthcare community and was committed to being open and transparent about how it engaged with health professionals and the NHS.

In that context, Novartis stated that it was disappointed that the complainant conflated the two issues in a way that was unsupported by the facts and the Code. The complainant stated that having read the retweet, he/she researched the Haematology Masterclass and this led him/her to the AMNP website which contained a 2018 information flyer for the Haematology Academy. The flyer stated that the Haematology Academy ran events that Novartis organized/sponsored and that its website contained health professional only information developed by Novartis, which might contain promotional material. None of those websites or links were product promotional, and product promotional material on the Haematology Academy website was access restricted to registered health professionals. The complainant had clearly gone to some lengths to try and establish a link between the retweet and the promotion of Novartis' products; Novartis noted that he/she had been unable to do so. This again went to the core of the issue – that a tweet about an event run by a pharmaceutical company (even if the event was promotional) was clearly separate from a communication about the content of that event and/or the promotion of a product. That separation was self-evident from the complaint – the complainant did not allege that the retweet promoted a product precisely because that was not the impression anyone would get from viewing it. Put simply, the retweet did not lead lay viewers to become interested in a Novartis product and asking their healthcare providers to prescribe it.

Novartis submitted that in light of the above, it was clear that the retweet was a non-product-promotional communication and hence there had been no breach of Clauses 4.1, 12.1 or 26.1. The retweet and the contents of the flyer were entirely appropriate in the circumstances as non-promotional information about an event, and unrelated to any medicine or specific diseases. It followed that there was no breach of Clause 9.10. High standards had been maintained and Novartis did not see any grounds for a breach of Clause 9.1.

Given the above, Novartis did not see how it had breached the undertaking given in Case AUTH/3038/4/18. That case concerned the company guiding its employees about their use of personal social media accounts. Although there was a similar medium here, this case concerned the extent to which the company itself could engage in non-promotional communications over social media. The two were markedly different in that respect and Novartis did not see how that would affect the

undertakings, which it gave sincerely and in good faith. Therefore, Novartis did not see the basis for alleging breaches of Clauses 2 and 29 of the Code.

### Original tweet

Novartis explained that on 15 February 2019 it held the 'Haematology Masterclass', an annual health professional only educational meeting; it was attended by over 250 attendees and had CPD accreditation. There were over 25 speakers from the UK and overseas, with the programme put together by Novartis and an external faculty of medical experts. The main focus of the meeting was education but there were some promotional elements and so for transparency purposes Novartis treated the event as a promotional meeting.

On the same day, a clinician who attended the masterclass posted the original tweet on his personal Twitter account about the positive experience he had at the meeting and how he was excited for next year. Novartis noted that the tweet was posted in the evening after the event had concluded. The clinician complimented one of the speakers on 'giving an excellent plenary talk' and included a picture of that speaker presenting. The text of the original tweet mentioned the disease areas covered in the programme and clearly acknowledged that this was a Novartis organised event. The name of the event, 'Haematology Masterclass' featured prominently in the background of the picture, without featuring Novartis' name or logos. There was no suggestion whatsoever in the original tweet that its purpose was to promote a specific product.

Although not mentioned by the complainant, Novartis noted that if the picture accompanying the tweet was significantly enlarged, it was possible on the top left to see part of one of the slides the speaker was presenting when the picture was taken. At the top of the slide it was possible to discern the name 'imatinib', which was the non-proprietary name for Glivec, marketed by Novartis. Generic versions of Glivec were also available. Novartis stated that it had referred to this for the sake of absolute transparency and did not consider that this was a material element of the complaint. The text on the slides was purely incidental to the picture of the speaker and would be illegible when viewed in the Twitter app on a smartphone and barely legible on a computer. Some of the text became legible if blown up to an uncommonly large format, which Twitter users were highly unlikely to do and, it was clear, the complainant did not do.

Novartis noted that even if Twitter users expanded the picture to an unnaturally large size, they would see the non-proprietary name of the product alone, with no brand name, no product claims nor a reference to the product's indication (eg chronic myeloid leukaemia). The text of the original tweet did mention learning about 'MPN, AML, CAR, ITP, AA [and] CML' at the meeting. These were general references to the scientific programme and not indications of any product, including imatinib. Lay viewers of the picture and the original tweet would not know what imatinib was licensed for. Novartis did not understand how a purely incidental and

almost invisible non-proprietary name would have the effect of raising awareness of, or interest in, Glivec, particularly without any mention of a disease. The most obvious analogy was with reply paid cards, which could feature the name of a product (and, of course, prior to that so-called promotional aids which could bear the brand name of the medicine but not the indication). It was well established that such cards did not promote the product to people who viewed the cards in passing (eg postal workers) because there was no product claim and no reference to the licensed indication. The same principles clearly applied to this case: even if a member of the public were to blow up the picture to an unnatural size, the effect would not be to promote a product. Notwithstanding that, Novartis had instructed its social media team to pay particular attention to names or other details that were incidentally mentioned in pictures to reduce any ambiguity or potential confusion.

In conclusion, Novartis submitted that the original tweet related to the Haematology Masterclass and was not directly or indirectly about any Novartis product, nor did it contain any claim about a Novartis product. For these reasons, it was self-evident that the original tweet was not product promotional, was not posted for product promotional reasons, and under any reasonable assessment, did not have a product promotional effect.

### The retweet

On 18 February 2019, days after the conclusion of the meeting, Novartis retweeted the original Twitter message on its Twitter account '@NovartisUK' without adding any further text or comment. The complainant's allegation was that the act of retweeting was somehow product promotional.

Retweets and liking/sharing content on social media had been the subject of a number of recent PMCPA cases and Novartis appreciated that the PMCPA was managing a media environment that raised a number of complex regulatory challenges. That said, it was well-established in this case history, wider principles and the unique facts of this case that the retweet did not have the purpose or effect of promoting Novartis' products. Reasons for this included:

- As noted in Case AUTH/3038/4/18, assessing whether social media activity amounted to promotion was nuanced and complex and required a case-by-case assessment. Novartis noted that the PMCPA had raised this point in other rulings about social media and had taken into account a range of factors including the nature of the material disseminated, its overall context and product references. It was important for the PMCPA to take a similarly holistic approach in this case and not simply conclude that any tweet by a pharmaceutical company was automatically product promotional.
- Particularly when pharmaceutical companies proactively disseminated information (eg by retweeting), it was a well-established principle of medicines advertising law that there should be an objective assessment of whether this was

for promotional purposes. For example, the EU Court of Justice has held: 'the **purpose** of the message constitutes the **fundamental defining characteristic of advertising**, and the **decisive factor** for distinguishing advertising from mere information' (emphasis added). The Court continued: 'If the message is designed to promote the prescription, supply, sale or consumption of medicinal products, it is advertising ...'. And further: 'The question whether a dissemination of information has a promotional objective must be determined by undertaking a detailed examination of all the relevant circumstances of the case ...'.

- Under any reasonable interpretation, Novartis' retweet of the original tweet could not be said to be for product promotional purposes. Novartis did not add to or embellish the original tweet and it did not mention its product alongside the retweet. It was clear that the main purpose of the retweet was to demonstrate that a respected health professional valued attending a Novartis health professional only event and, by that, reaffirm Novartis' commitment to holding events that added value to the healthcare community. The original tweet did not draw attention to any of the promotional content of the meeting and it did not name specific Novartis products. The retweet was not intended to turn, and did not turn, the non-promotional original tweet into a promotional one.
- Companies had a legitimate right to communicate with health professionals and the public about meetings and events and there were several examples of pharmaceutical companies doing so. The PMCPA had in the past accepted that these communications would only come within the scope of the Code if they provided information about, or promoted, prescription-only medicines. For example, the PMCPA's Digital Guidelines stated: 'The use of social media to promote, increase awareness and encourage engagement with health professionals about prescription medicines is very likely to be seen as promotion ...'. It followed that where there was no purpose to promote, increase awareness of or otherwise engage with health professionals about a product, social media activity would fall outside the concept of promotion.
- That was supported by a line of PMCPA cases. For example, the PMCPA had found companies in breach of the Code where their social media activities were about specific products. However, in other cases, tweets that did not mention and were unrelated to a product were not considered promotional. Crucially, in Case AUTH/2612/6/13 the PMCPA distinguished between tweets that were about a promotional meeting and made no reference to any particular products (which it deemed non-promotional per se); and tweets that mentioned the event, the name of the product and its licensed indication (which were deemed promotional). It was patently clear that the retweet in this case fell into the former category as it had no relationship with any Novartis product.
- From a broader industry perspective, Novartis stated that it had deep concerns about the nature of this complaint and the future direction of travel

for pharmaceutical companies which engaged in legitimate non-promotional communications on social media. Novartis, and no doubt other companies, would be deeply troubled if the outcome of this case was that companies could not raise awareness of the positive impact of its work in a non-promotional way, or of meetings and events when the communications in question had no direct or indirect link to communicating to the public about medicines, let alone promoting them. This would represent a significant shift in the PMCPA's historical position as understood by industry and have considerable repercussions and would seem to be an unreasonable and disproportionate step when the ultimate aim of regulation was to protect the public from inappropriate advertising. If the PMCPA was concerned about industry's understanding of these issues, it should issue or update its guidance in consultation with industry.

#### **Other documents/webpages mentioned in complaint**

Novartis stated that although not especially clear, the complainant mentioned that he/she did research into the 'Haematology Masterclass' and discovered that it was a promotional meeting linked to the Novartis funded Haematology Academy (whose access restricted health professional only website contained promotional and educational content). The complainant did not allege that any of these websites or materials contained publicly visible promotional content, but rather that this established a link to the meeting being promotional. As noted above, the meeting had a strong educational focus but because of certain promotional elements, Novartis regarded it as a promotional meeting. As such, the content of the meeting was certified in accordance with its standard certification procedures.

With regard to the organisations and documents referred to by the complainant, Novartis submitted the following:

#### **The Association of Myeloid Neoplasm Practitioners (AMNP)**

Novartis stated that the AMNP was a professional association founded in 2006 by myeloid neoplasm health professions to establish a professional network and support those caring for patients with myeloid neoplasms and other haematological conditions, particularly in clinic settings. This was achieved by hosting educational events, and publishing other events and resources relevant to this area. The AMNP was open to any health professional involved in the care of patients with myeloid neoplasm, but was composed predominantly of nurses and pharmacists, some of whom were prescribers and some who were not. Novartis had contributed to the establishment of the AMNP website by providing a grant. Novartis also ran an annual nurse meeting, which it classed as promotional.

#### **The Haematology Academy**

The Novartis Haematology Academy was a promotional website that had information on brands, meetings, etc. It was hosted on Novartis' health professional website; users had to log-in to declare that they were health professionals and register.

#### **The Haematology Academy Flyer on the AMNP's website**

The flyer raised awareness of the Haematology Academy website that contained Novartis' promotional initiatives in haematology. The flyer itself did not contain any visible promotional content, and clearly advised that the internal content of the Haematology Academy website was aimed at health professionals only and contained promotional materials. Novartis stated that out of an abundance of caution the flyer was certified in accordance with standard procedures.

Viewers could only access the promotional material referenced in the flyer by independently going onto the Haematology Academy website, either by typing the URL address found on the flyer or searching the internet for it. There was no active link to the Haematology Academy website contained in the flyer, as uploaded onto the AMNP's website. Once users reached the Haematology Academy website, they had to positively confirm their status as health professionals and, finally, enter correct log-in details. Neither the original tweet nor the retweet contained any link or direction to the flyer, or to the material referenced within it. It was only through his/her own research that the complainant located the flyer; it was not material that was advertised to the public in either tweet. As per the EU Court of Justice Merck Sharp & Dohme case (C-316/09) cited above, if such information sat passively on a platform and required active steps to search and find it, that was a key factor indicating that the information on the platform was not promotional. That was the situation in the Merck Sharp & Dohme case where the internet platform was fully open-access. In contrast, it was clear on the facts of this case that there were a number of steps in place to prevent those who were not health professionals from accessing the material concerned.

#### **Alleged breaches of the Code**

With regard to specific clauses of the Code, Novartis commented as follows:

**Clause 4.1** – It had already been established that the retweet and the flyer were non-product-promotional communications. The only promotional content on any ancillary website or document was behind health professional only access restrictions and prescribing information was available in that context. Novartis denied a breach of Clause 4.1.

**Clause 9.10** – The assessment of the retweet and the flyer did not change because the underlying event was promotional. The focus must be on the

communication itself. Nevertheless, it was clear from the content of the original tweet and the retweet that the Haematology Masterclass was sponsored by Novartis (this was shown in the text accompanying the picture). Novartis denied a breach of Clause 9.10.

**Clause 12** –The identity of Novartis as the event sponsor was clear in the original tweet and the retweet. Novartis did not make any effort to conceal its identity in the retweet, rather it reproduced, in full, a tweet from an individual that had attended a Novartis sponsored event. It could not be said that the flyer for the Haematology Academy was disguised promotion by Novartis. If members of the public followed the links on the AMNP website to access the flyer, they would see that it stated on its face that events were either organised or sponsored by Novartis, and that the website had been developed by the company for use by health professionals only and that it contained promotional material. Novartis denied a breach of Clause 12.

### **Alleged breach of undertakings**

Novartis did not accept that it had breached the undertaking given in Case AUTH/3038/4/18. Novartis gave that undertaking solemnly and in good faith and took its compliance responsibilities very seriously. The company had taken a number of proactive steps to improve how its employees managed their social media accounts. These included:

- on 11 December 2018, a company-wide email from Novartis' country president which focussed on the lessons from the PMCPA ruling and what conduct Novartis considered acceptable for its associates when active on social media;
- a company-wide call the next day by the country president to reinforce to associates what acceptable conduct was when being active on social media; and
- after receiving the complaint, before the case was decided and before the undertaking was entered, Novartis developed a local UK policy for personal use of social media and related training, which was rolled out from July 2018 onwards. Such training was now provided as core training to all new joiners.

Notwithstanding the above, the current case concerned a materially different point. Case AUTH/3038/4/18 was about giving appropriate guidance to employees about their use of social media. By contrast, the current case concerned the boundaries of legitimate non-promotional communication from a recognised company social media account and where the retweeting had been approved through a specific company procedure. Novartis provided a copy of the procedure which, in summary, permitted using Novartis social media accounts to engage with non-company content (eg retweeting) provided that there was no relationship with the company's products and was non-contentious. Novartis was confident that this was the correct approach and was consistent with PMCPA guidelines and the law. The company was also confident that the correct procedures were followed

in this case, however, it had reminded colleagues to pay particular attention to all images (including out-of-focus images) in case they mentioned a specific product to avoid any confusion or ambiguity on this point. Further, the two cases also concerned two entirely different sets of policies: the first related to an employee social media policy; the second to a communications strategy.

Given the above, Novartis denied a breach of undertaking; the current case did not involve a breach of the Code and, even if the PMCPA were to rule against Novartis, the breaches were materially different to the subject matter of the undertakings. Novartis thus denied a breach of Clause 29 and of Clause 2.

Following a request for further information, Novartis submitted that it did not have any influence over the AMNP, their website or the materials hosted upon it. Novartis had contributed to the establishment and the maintenance of the AMNP website by providing two separate grants:

- provision of funds (£15915) for the establishment of the website in May 2016;
- contribution, alongside another pharmaceutical company, for half the cost of maintenance and hosting of the AMNP website for a period of three years, in June 2018, amounting to £2202 (£4404 total cost).

Novartis submitted that, in compliance with its internal guidelines and the Code, the grants were provided following unsolicited requests; no benefits were received by Novartis in return and disclosure of the relative transfers of value had been and would be made, respectively, as applicable.

Novartis stated that the Haematology Academy leavepiece was certified for hard copy distribution to health professionals and only hard copies were printed. No electronic copies were distributed or disseminated; from the posting on the AMNP website the imagery and text appeared consistent with a hard copy being scanned and uploaded. The membership of AMNP was made up of health professionals and Novartis' assumption was that one of them scanned the leavepiece and uploaded it to their website.

Novartis submitted that it contacted the AMNP steering committee (copy of correspondence provided) which, through one of its members, confirmed the independence of the AMNP when deciding what to upload to the website and the circumstances surrounding the upload of the leavepiece to the AMNP website. Novartis quoted from the AMNP's response that the AMNP 'look for material that might be of use, and [...] the AMNP steering group decide what to upload to the website' and that the leavepiece 'was acquired by an individual registered user of the AMNP website for personal use. It is likely that it was picked up at a recent meeting. The registered users of the AMNP website are health care professionals, which are also the intended users of the Novartis Haematology Academy. The leaflet was scanned onto the website'.

## PANEL RULING

The Panel noted that the use of social media, including Twitter, to provide information to the public was a legitimate activity if the material complied with the Code. Each case needed to be considered on its own particular merits. When a health professional tweeted material from a pharmaceutical company meeting, that material was not necessarily covered by the Code. Much would depend on the relationship between the pharmaceutical company and the health professional. However, when a pharmaceutical company circulated that material eg by retweeting it, then that material was potentially subject to the Code, even if the company had not altered the material in any way.

The Panel noted that Novartis UK had retweeted, without any additional comment, a tweet posted by a health professional who had attended a Novartis promotional meeting. The Panel noted that the Code required every meeting to have clear educational content and this applied to meetings where medicines were promoted. The Panel agreed that there was potentially a difference between sharing information about the content of a meeting and sharing information about the arrangements. It was important that those attending meetings were clear about the content of such meetings as well as the role of pharmaceutical companies in the arrangements.

The Panel noted that the tweet did not contain links to other sites but had included the Novartis UK Twitter handle. The Panel noted that the tweet at issue referred to recent advances in MNP [myeloproliferative neoplasms], AML [acute myeloid leukaemia], CAR [chimeric antigen receptor], ITP [immune thrombocytopenia], AA [aplastic anaemia] and CML [chronic myeloid leukaemia] and included a picture of a speaker and part of a PowerPoint slide. The Panel noted that no specific medicine was directly mentioned in the text of the tweet and, in its view, no medicine was legible from the slide in the picture within the tweet. The Panel considered, however, that particular care must be taken if a company's medicine, even though not named, was the only medicine associated with a certain disease or mechanism of action etc. Novartis made no submission in this regard.

In the Panel's view, as the tweet made no direct or indirect reference to a specific medicine, it did not consider that Novartis' retweet constituted promotion of a prescription only medicine to the public and ruled no breach of Clause 26.1.

The Panel noted the allegation of breach of undertaking and that the complainant had referred to Case AUTH/3038/4/18. In Case AUTH/3038/4/18, a Novartis employee had disseminated information referring to a prescription only medicine to contacts in his/her personal LinkedIn account and the company was found to be in breach of the Code including Clause 26.1. The Panel noted that a form of undertaking and assurance was an important document. Companies had to give an undertaking that the material in question and any similar

material, if not already discontinued or no longer in use, would cease forthwith and give an assurance that all possible steps would be taken to avoid similar breaches of the Code in future (Paragraph 7.1 of the Constitution and Procedure). It was very important for the reputation of the industry that companies complied with undertakings. The Panel noted that both cases related to the alleged promotion of a prescription only medicine to the public via a social media channel, however, there were differences between the cases. The Panel noted, however, its ruling above of no breach of Clause 26.1 and thus ruled no breach of Clauses 29 and Clause 2 in relation to the allegation of a breach of undertaking in Case AUTH/3038/4/18. Noting its comments above the Panel did not consider that the retweet constituted disguised promotion and ruled no breach of Clause 12.1.

The Panel noted that after reading the tweet, the complainant searched the internet for reference to the Novartis haematology masterclass and found the Association of Myeloid Neoplasms Practitioners (AMNP) website which contained a Novartis haematology academy flyer.

The Panel noted that the flyer at issue contained the Novartis logo and a website address for the haematology academy; it invited readers to register for future haematology events and access past meeting material. It also stated, 'Discover a growing collection of Novartis educational content and materials, easily accessible on one platform'. At the bottom of the flyer, it stated: 'Events are either organised or sponsored by Novartis Pharmaceuticals UK Ltd.' and 'This website [haematology academy] has been developed by Novartis Pharmaceuticals UK Ltd for use by HCPs [healthcare professionals] only and contains promotional material'. The Panel noted Novartis' submission that there was no active hyperlink to the haematology academy contained within the flyer and that if users typed in the URL address, or found it by an internet search, they would have to declare they were a health professional and register as the website was access restricted.

The Panel noted that the flyer at issue contained no direct or indirect reference to a specific medicine and therefore, in its view, did not require prescribing information. No breach of Clause 4.1 was ruled.

With regard to the allegation that the complainant was unclear of the relationship between Novartis and the AMNP, the Panel noted Novartis' submission that it had contributed to the establishment and the maintenance of the AMNP website by providing two grants.

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 is sponsored by a pharmaceutical company must clearly indicate that it has been sponsored by that company. The supplementary information to this clause stated, *inter alia*, that the declaration of sponsorship must be sufficiently prominent to ensure that readers of sponsored material were aware of it at the

outset. The wording of the declaration must be unambiguous so that readers would immediately understand the extent of the company's involvement and influence over the material. In the Panel's view, this was particularly important when companies were involved in the production of material circulated by an otherwise wholly independent party.

The Panel noted that the screen shot provided by the complainant referred to another named pharmaceutical company supporting the maintenance of the site. The Panel noted that Novartis had also provided financial support to AMNP for the maintenance and hosting of the website.

The Panel considered that the AMNP website declaration 'Developed with support from Novartis Pharmaceuticals UK Ltd' could have been clearer given Novartis was also providing support to AMNP for the website's ongoing maintenance; particularly as another company was listed as providing the support for the website maintenance. The AMNP website had a Novartis flyer for the haematology

academy which Novartis submitted was uploaded following a decision by the AMNP steering group and without Novartis' involvement or influence. The Panel noted Novartis' submission that it did not have any influence over the AMNP, its website or the materials hosted upon it and it had no involvement in the flyer being made available on the AMNP website.

The Panel considered that, on balance, the declaration was not misleading as to the relationship between Novartis and the AMNP in relation to the website content where it appeared Novartis had no influence. The Panel therefore ruled no breach of Clause 9.10 based on the narrow allegation.

The Panel noted its comments above and did not consider that Novartis had failed to maintain high standards and ruled no breach of Clause 9.1.

<b>Complaint received</b>	<b>27 February 2019</b>
<b>Case completed</b>	<b>18 June 2019</b>