

NHS WORKER v BIOGEN

Alleged promotion at a social event

An anonymous, non-contactable individual who stated that he/she worked in the NHS, complained about a conversation that had taken place between a Biogen Idec medical science liaison (MSL) and another guest who were at the same social event. Biogen produced Tysabri which was a disease modifying therapy indicated for certain groups of adults with highly active relapsing remitting multiple sclerosis (MS).

The complainant alleged that the Biogen MSL discussed Tysabri and the benefits that it offered with his/her fellow guest who was an MS patient. Following that discussion the patient, who had been taking a competitor disease modifying therapy, asked his/her local MS nurse to switch him/her to Tysabri. This was agreed but was against the nurse's advice.

The complainant was alarmed that a pharmaceutical company employee actively advised and promoted his/her products to patients and the public. The complainant considered that this was inappropriate and unacceptable behaviour in breach of the Code.

The detailed response from Biogen is given below.

The Panel noted that the complainant had alleged that, at a social event, a conversation had taken place between the MSL and another guest about Tysabri and the benefits that it offered. The complainant had not provided any specific detail in that regard and could not be contacted for further information. The Constitution and Procedure for the Prescription Medicines Code of Practice Authority stated that anonymous complaints would be accepted but that, like all other complaints, the complainant had the burden of proving his/her complaint on the balance of probabilities. All complaints were judged on the evidence provided by the parties. It appeared that the complainant was not the person with whom the MSL had had the conversation some seven months earlier, nor was it clear if the complainant had been present when the conversation had taken place.

The Panel noted Biogen's submission that once the MSL had been drawn to reveal that he/she worked for Biogen and the fellow guest had seemed to be aware that the company was active in the MS therapy field, the MSL had drawn the conversation to a close and advised his/her fellow guest to seek advice about her personal medical treatment from her health professional. Biogen had submitted that the MSL had not referred to any of the company's medicines. The Panel considered that it was possible, having had a conversation with a Biogen employee, and reportedly being dissatisfied with her current standard of care, that the fellow guest subsequently searched the Internet for information on Biogen and Tysabri. The Panel noted that the complainant had not referred to any specific claims about the medicine made by the MSL.

The Panel noted that it was difficult to determine precisely what was said during the conversation at the social event. The Panel noted that the complainant bore the burden

of proof and noted its comments above in this regard. In the Panel's view, the complainant had not established, on the balance of probabilities, that the conversation between the MSL and his/her fellow guest at a wedding had promoted Tysabri. No breach of the Code was ruled. The Panel had no evidence before it to show that, on the balance of probabilities, the MSL had made any statement for the purpose of encouraging his/her fellow guest to ask her health professional for Tysabri. No breach of the Code was ruled. The Panel thus considered that, on the balance of probabilities, the conversation had not been the disguised promotion of Tysabri; no breach of the Code was ruled.

The Panel did not consider that on the information before it that the MSL had failed to maintain a high standard of ethical conduct; no breach of the Code was ruled. High standards had been maintained and the Panel ruled no breach of the Code.

The Panel noted its rulings above and ruled no breach of Clause 2.

An anonymous, non-contactable individual who stated that he/she worked in the NHS, complained about a conversation that had taken place in the summer of 2019 between a Biogen Idec medical science liaison (MSL) and another guest who were at the same social event. Biogen produced Tysabri which was a disease modifying therapy indicated for certain groups of adults with highly active relapsing remitting multiple sclerosis (MS).

COMPLAINT

The complainant alleged that during a conversation with his/her fellow guest, and MS patient, the Biogen MSL discussed Tysabri and the benefits that it offered. Following that discussion the patient, who had been taking a competitor disease modifying therapy, asked her local MS nurse to switch her to Tysabri. This was agreed but was against the nurse's advice.

The complainant was alarmed that a pharmaceutical company employee actively advised and promoted his/her products to patients and the public. The complainant considered that this was inappropriate and unacceptable behaviour in breach of Clauses 2, 9.1, 12.1 and 15.2.

When writing to Biogen, the Authority asked it to consider the requirements of Clauses 26.1 and 26.2 in addition to the clauses cited by the complainant.

RESPONSE

Biogen noted that the MSL in question had worked in the pharmaceutical industry for a number of years, most of which had been as an MSL (details were provided). Accordingly, this particular MSL was regarded as a highly competent and experienced professional, who throughout the course of an interview about the matter displayed a flawless understanding and appreciation of the standards required of MSLs. One such element of this competency was a comprehensive and robust knowledge and application of the Code.

Biogen stated that the MSL acknowledged meeting, for the first time, a fellow guest at a wedding ceremony and reception in May 2019. During the course of routine social exchange, when asked by the fellow guest as to the nature of his/her employment, the MSL stated that he/she worked in the pharmaceutical industry and, on further questioning, stated that he/she worked for Biogen.

In reply, the fellow guest responded that she was an MS sufferer and seemed to be aware of Biogen's profile in the MS arena. In addition, she stated that she was not satisfied with her standard of care. This information was volunteered spontaneously by the fellow guest and not solicited.

In response, the MSL stated that he/she could not comment on the status of her condition, nor her treatment, but suggested that if she had any questions or concerns with regards to her ongoing clinical management then she should seek the advice of her attending health professional. The MSL then made a conscious and concerted effort to terminate the topic of conversation, in the knowledge that any further dialogue would not be appropriate.

At no time did the MSL make any comment on or refer to Tysabri or any other Biogen product, nor any competitor products. To the best of the MSL's recollection, his/her fellow guest did not mention Biogen products either.

In conclusion, Biogen stated that following a thorough evaluation of the account provided by the MSL, it was confident that he/she, a highly experienced and knowledgeable in-field medical specialist, had conducted him/herself in a wholly appropriate and professional manner and that his/her behaviour and conduct were exemplary. Furthermore, Biogen refuted the complainant's allegations that the MSL's interaction with the fellow guest was in breach of the Code.

Biogen stated that throughout the full duration of the interaction and dialogue with the fellow guest, the MSL's conduct was professional and respectful. The MSL did not refer to any Biogen products or their use, nor did he/she give any advice with regard to either the clinical management of the guest's condition or choice of current therapy.

Biogen considered that the MSL had behaved with utmost integrity and respect to his/her fellow guest and her condition, upholding all the standards expected in the Code. Biogen denied a breach of Clause 2.

Biogen stated that the MSL did not discuss Biogen treatments, their utility or effectiveness, nor did he/she comment on the appropriateness of the fellow guest's current therapy or clinical management. The MSL behaved with neutrality and respect. Biogen's considered that throughout the exchange between the MSL and his/her fellow guest, high standards were maintained.

Biogen stated that the MSL did not discuss Biogen treatments, their applicability, safety or effectiveness, nor did he/she seek to influence the fellow guest's choice of therapy. Accordingly, Biogen's considered that the dialogue conducted between the MSL and the fellow guest was appropriate, neutral and did not constitute disguised promotion.

Biogen believed that the MSL's behaviour and conduct during the exchange was professional and fully respectful of the fellow guest and her condition of MS. Furthermore, Biogen was confident that the MSL conducted him/herself with courtesy and absolute integrity, offering no opinion or guidance on his/her fellow guest's condition or clinical management. Biogen thus considered that high ethical standards were maintained at all times.

Biogen submitted that, in its view, the charges that had been levelled at the MSL with regard to his/her behaviour and conduct in front of both a fellow guest (a patient with MS) and the public were unfounded and without substance.

Biogen was wholly confident that the MSL had conducted him/herself with utmost professionalism and had not compromised his/her personal integrity or that of the company. The MSL had consistently upheld the highest standards expected of him/her in keeping with both internal company policies and procedures and that of the Code.

PANEL RULING

The Panel noted that the anonymous and non-contactable complainant had alleged that, at a social event, a conversation had taken place between the MSL and another guest about Tysabri and the benefits that it offered. The complainant had not provided any specific detail in that regard and could not be contacted for further information. The Constitution and Procedure for the Prescription Medicines Code of Practice Authority stated that anonymous complaints would be accepted but that like all other complaints, the complainant had the burden of proving his/her complaint on the balance of probabilities. All complaints were judged on the evidence provided by the parties. It appeared that the complainant was not the person with whom the MSL had had the conversation some seven months earlier, nor was it clear if the complainant had been present when the conversation had taken place.

The Panel noted Biogen's submission that once the MSL had been drawn to reveal that he/she worked for Biogen and the fellow guest had seemed to be aware that the company was active in the MS therapy field, the MSL had drawn the conversation to a close and advised his/her fellow guest to seek advice about her personal medical treatment from her health professional. Biogen had submitted that the MSL had not referred to any of the company's medicines. The Panel considered that it was possible, having had a conversation with a Biogen employee, and reportedly being dissatisfied with her current standard of care, that the fellow guest subsequently searched the Internet for information on Biogen and Tysabri. The Panel noted that the complainant had not referred to any specific claims about the medicine made by the MSL.

The Panel noted that it was difficult to determine precisely what was said during the conversation at the social event. The Panel noted that the complainant bore the burden of proof and noted its comments above in this regard. In the Panel's view, the complainant had not established, on the balance of probabilities, that the conversation between the MSL and his/her fellow guest at a wedding had promoted Tysabri. No breach of Clause 26.1 was ruled. The Panel had no evidence before it to show that, on the balance of probabilities, the MSL had made any statement for the purpose of encouraging his/her fellow guest to ask her health professional for Tysabri. No breach of Clause 26.2 was ruled. The Panel thus considered that, on the balance of probabilities, the conversation had not been the disguised promotion of Tysabri; no breach of Clause 12.1 was ruled.

The Panel did not consider that on the information before it that the MSL had failed to maintain a high standard of ethical conduct; no breach of Clause 15.2 was ruled. High standards had been maintained and the Panel ruled no breach of Clause 9.1.

The Panel noted its rulings above and ruled no breach of Clause 2.

Complaint received **13 December 2019**

Case completed **16 September 2020**