

CASE AUTH/3242/9/19

ANONYMOUS v BAYER

Hospitality provided by affiliate at overseas meeting

An anonymous, contactable individual complained about the hospitality provided by Bayer plc to UK health professionals attending the European Society of Cardiology (ESC) meeting in Paris, 31 August – 4 September 2019.

The complainant stated that on the evening of Sunday, 1 September Bayer UK put on a party, in full view of the public, in the lobby bar of a named Paris hotel where Bayer delegates were staying. The party, which was clearly signposted, was open to anybody including the complainant and other doctors who had been taken to ESC by Bayer. Free alcohol was provided, and the event lasted until at least 2am on 2 September. The complainant provided photographs and two videos which he/she stated clearly showed Bayer UK and UK doctors partying.

The complainant alleged that the party was an entirely social event and beyond the level anybody would pay for themselves. As sponsored doctors should go to ESC sessions in the morning, it seemed wrong for Bayer to put on a late-night party with free alcohol. Many people were hungover the next day and did not go to the ESC. This clearly brought the company and the pharmaceutical industry into disrepute.

The detailed response from Bayer is given below.

The Panel noted Bayer's submissions that the event was a private internal event for Bayer global staff only, Bayer UK paid nothing in relation to the event nor was it involved in its organisation, it had no prior knowledge or warning of the global event and as it did not take place in the UK and no external UK health professionals were invited, as far as Bayer UK was aware, the event did not fall within the scope of the Code.

The complainant described the event as being clearly signposted and open to him/her and other doctors and stated that the photographs submitted showed Bayer UK and UK doctors dancing. Bayer submitted that during its room assessment of the event, it had identified a UK health professional, whom it had not sponsored, on the dance floor and that none of the UK delegates it had sponsored were there. The Panel, however, noted Bayer's further submission that a video depicted mainly identifiable Bayer global colleagues and a person believed to be a UK health professional sponsored by Bayer UK standing outside the bar area without a drink talking to a man; it was unclear to the Panel whether this was one of the videos provided by the complainant, allegedly taken around 2am, or a video identified by Bayer during its enquiry into the event. The Panel noted the parties' differing accounts but considered that, at the very least, there had, on the balance of probabilities, been one UK health professional present on the dance floor at the Bayer global event.

The Panel noted that it was a well-established principle that UK pharmaceutical companies were responsible for the activities of overseas affiliates if such activities came within the scope of the Code eg the provision of hospitality to UK health professionals. That the hospitality was provided to a UK health professional in France did not alter the application of this principle. In the Panel's view, in the circumstances of this case, the matter in question fell within the scope of the Code and Bayer UK was thus responsible for it.

The Panel disagreed with Bayer's submission that the 'Bayer' signs placed on the entry to the rear bar area where the event was held were to ensure that there was some clarity around the private event. In the Panel's view, the 'Bayer' signs to an event held in the hotel in which Bayer UK sponsored delegates were staying might encourage those health professionals to attend the event. The signs did not make it clear that it was a private, corporate event. In any case, given the presence of health professionals at the hotel, the Panel queried whether it was appropriate to hold a company social event at the public hotel bar.

The Panel noted Bayer's submission that whilst it had quickly diverted the sponsored UK delegates away from the global social event upon returning to the hotel that evening, a senior Bayer manager saw a UK health professional, who had not been sponsored by Bayer, at the event. According to Bayer, that UK health professional refused to leave the event when asked to do so by the senior Bayer manager. In the Panel's view, it appeared that at least one UK health professional had attended the event, he/she was seen on the dance floor and had refused to leave and had thereby received inappropriate hospitality.

The Panel considered that it was important for a company to be mindful of the impression created by such activities. The Panel did not know whether the UK health professional had been provided with food or drink but noted that he/she had been seen at a Bayer global internal event that, according to Bayer, was entirely social in nature. Taking all the circumstances into account, the Panel considered that the UK health professional's attendance at the event was contrary to the requirements of the Code. The Panel considered that the impression given by the UK health professional's presence at the event, which, from the photographs and video, appeared to have a party atmosphere, was wholly unacceptable. High standards had not been maintained. Breaches of the Code were ruled.

It appeared that Bayer had been badly let down by its global affiliate. There was no evidence before the Panel of whether global was aware of, or had taken any action in relation to, the UK health professional. Bayer UK had quickly diverted its delegates away from the event and had asked the UK health professional present to leave the global event. Nonetheless, it would be helpful if companies had policies and procedures in place to ensure that they were, at the very least, aware of such internal events given the presence of UK health professionals at the hotel.

The Panel considered, however, that attendance at a purely social event constituted excessive hospitality and considered that the arrangements in this case were such as to bring discredit upon the industry. A breach of Clause 2 of the Code was ruled.

An anonymous, contactable individual complained about the hospitality provided by Bayer plc to UK health professionals attending the European Society of Cardiology (ESC) meeting in Paris, 31 August – 4 September 2019.

COMPLAINT

The complainant stated that on the evening of Sunday, 1 September he/she was surprised to see a party put on by Bayer UK in the lobby bar of a named hotel in Paris where Bayer delegates were staying. The party was in full view of the public lobby and open to anybody including the complainant and other doctors who had been taken to ESC by Bayer. Nobody was prevented from attending the party which was clearly signposted. Free alcohol was provided, and the event lasted until at least 2am on the morning of 2 September. The complainant provided copies of photographs and two videos which he/she stated were taken around 2am and which he/she stated clearly showed Bayer UK and UK doctors partying.

The complainant alleged that the party was in breach of the Code which required hospitality to be strictly limited to the main purpose of the event and 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 and costs involved must not exceed that level which recipients would normally adopt when paying for themselves. Conversely, the complainant submitted that the Bayer party was an entirely social event and beyond the level anybody would pay for themselves. As sponsored doctors should go to ESC sessions in the morning, it seemed wrong for Bayer to put on a late-night party with free alcohol. Many people were hungover the next day and did not go to the ESC. This clearly brought the company and the pharmaceutical industry into disrepute.

When writing to Bayer, the Authority asked it to consider the requirements of Clauses 2, 9.1 and 22.1 of the Code.

RESPONSE

Bayer explained that it sponsored 57 UK health professionals including cardiologists, pharmacists and primary care physicians, to attend the ESC Congress.

In advance of the congress, Bayer prepared a certified concept document and invitations for all delegates. An itinerary and final details were emailed to the UK health professionals and included in the delegate welcome pack. The welcome letter and email also clearly set out the hospitality arrangements and policy around reimbursement of sustenance and beverages. Any beverages consumed outside of the pre-arranged dinners was at the delegates' own expense.

The hospitality arrangements for the UK delegates was prepared and certified separately. Accommodation was at the named Paris hotel where the party in question took place. The Bayer-sponsored UK delegates were offered dinner on the evenings of Friday, 30 August through to Monday, 2 September; all dinners, apart from that on Friday, 30 August, were held outside the hotel and allocated a given cost including two glasses of wine.

On Sunday, 1 September 2019, the evening of the event in question, Bayer UK staff and the 57 UK delegates attended a speaker presentation followed by a dinner. That event ended at 22.45 and the Bayer staff and delegates returned to the hotel with the intention of immediately retiring, having completed the agenda items for that day. On arrival at the hotel, Bayer became aware

of a private, Bayer AG (global) internal event in a separate area to the rear of the bar. Bayer had no prior knowledge or warning of the global event; indeed, there was no reference to it in any of the UK certified documents. Bayer politely directed its delegates away from the global event and looked around the room to ensure that none of the UK sponsored delegates were there. After 5-10 minutes, Bayer staff were satisfied that none of the 57 UK delegates were in attendance.

During the room assessment, a senior Bayer manager saw a UK health professional, believed to have been sponsored by another pharmaceutical company, on the dance floor. The senior Bayer manager asked the UK health professional to leave the event, but he/she refused to do so and as nothing could practically be done to dissuade him/her, Bayer staff returned to their rooms a few minutes later. At the time of the assessment, none of the 57 UK sponsored delegates were at the event.

Enquiries had confirmed that the event was arranged by Bayer global as a leaving event for one of its senior managers. The event was only for Bayer global staff and no external health professional was invited and there was no reason for a UK health professional to attend. The video depicted mainly identifiable Bayer global colleagues and a person believed to be a UK health professional sponsored by Bayer UK standing outside the bar area, without a drink, talking to a man. To ensure there was some clarity around the private event, Bayer global staff had placed 'Bayer' signs on the entry to the rear bar area. All hospitality was the responsibility of Bayer global; Bayer UK paid nothing in relation to the event and did not know when it started or finished as it was not involved in its organisation.

Contrary to the complainant's allegation, it was not a Bayer UK event, and Bayer UK staff had no prior knowledge or warning of the event; to the company's knowledge, no external health professionals, whether UK national or otherwise, were invited.

In conclusion, Bayer submitted that a UK health professional had gate-crashed Bayer global's private event. The itinerary and hospitality for the UK health professionals sponsored by Bayer was certified in accordance with the Code. Bayer had no prior knowledge or warning of the event and, as such, did not believe the behaviour of the UK health professional who had not been sponsored by Bayer was sufficient to bring the matter within the scope of the Code.

Bayer stated that it reviewed Case AUTH/2509/6/12, which featured a similar scenario concerning pharmaceutical company employees drinking in a bar where there were health professionals present at an international congress. Bayer noted that, in that case, the Appeal Board considered that 'the issue was not that pharmaceutical company employees and UK health professionals were present in the bar at the same time *per se*. Whether this was acceptable would always depend upon the circumstances of each individual case'.

Bayer submitted that it had quickly diverted the UK delegates away from the global event and could not reasonably have done anything more in the circumstances. Whilst it would have preferred for Bayer global to have informed the UK office of its plans, in circumstances where the event did not take place in the UK and where, so far as was known, no external UK health professionals were invited, Bayer suggested that it did not fall within the scope of the Code.

Bayer stated that it took all complaints very seriously and it had diligently investigated the matter from a Code perspective; the company denied breaches of Clauses 2, 9.1 and 22.1.

PANEL RULING

The Panel considered that the first issue to be determined was whether the matter was covered by the ABPI Code.

The Panel noted Bayer's submission that the event referred to by the complainant was a private internal event for Bayer global staff only; Bayer UK paid nothing in relation to the event nor was it involved in its organisation. The Panel also noted Bayer's submission that it had no prior knowledge or warning of the global event and as it did not take place in the UK and no external UK health professionals were invited, as far as it was aware, the event did not fall within the scope of the Code.

The complainant described the event as being clearly signposted and open to him/her and other doctors and stated that the photographs submitted in support of the complaint showed Bayer UK and UK doctors dancing. Bayer submitted that during its room assessment of the event it had identified a UK health professional, that it had not sponsored, on the dance floor and that none of the UK delegates it had sponsored were in attendance. The Panel, however, noted Bayer's further submission that a video depicted mainly identifiable Bayer global colleagues and a person believed to be a UK health professional sponsored by Bayer UK standing outside the bar area, without a drink, talking to a man; it was unclear to the Panel whether this was one of the videos provided by the complainant, allegedly taken around 2am, or a video identified by Bayer during its enquiry into the event. The Panel noted the parties' differing accounts but considered that, at the very least, there had, on the balance of probabilities, been one UK health professional present on the dance floor at the event run by Bayer global.

The Panel noted that it was a well-established principle that UK pharmaceutical companies were responsible for the activities of overseas affiliates that came within the scope of the Code, eg the provision of hospitality to UK health professionals. That the hospitality was provided to a UK health professional in France did not alter the application of this principle. In the Panel's view, in the circumstances of this case, the matter in question fell within the scope of the Code and Bayer UK was thus responsible for it.

The Panel disagreed with Bayer's submission that the 'Bayer' signs placed on the entry to the rear bar area where the event was held were to ensure that there was some clarity around the private, corporate event. In the Panel's view, the 'Bayer' signs to an event held in the rear area of a public bar at the hotel in which Bayer UK sponsored health professionals were staying during an international conference might encourage those delegates to attend the event. The signs did not make it clear that it was an private event. In any case, given the presence of health professionals at the hotel, the Panel queried whether it was appropriate to hold a company social event at the public hotel bar.

The Panel noted Bayer's submission that whilst it had quickly diverted the 57 sponsored UK delegates away from the global event upon returning to the hotel that evening, during the room assessment a senior Bayer manager saw a UK health professional, who had not been sponsored by Bayer, at the event. According to Bayer, the UK health professional seen on the dance floor refused to leave the event when asked to do so by the senior Bayer manager. In the Panel's view, it appeared that at least one UK health professional had attended the Bayer global social event, he/she was seen on the dance floor and had refused to leave and had thereby received inappropriate hospitality.

The Panel noted that Clause 22.1 stated that hospitality must not be provided except in association with, *inter alia*, scientific congresses, meetings and promotional meetings and 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 supplementary information stated that the impression created by the arrangements must be borne in mind. Meetings organised for groups of doctors, other health professionals and/or other relevant decision makers etc which were wholly or mainly of a social nature, were unacceptable.

The Panel considered that it was important for a company to be mindful of the impression created by such activities. The Panel did not know whether the UK health professional had been provided with food or drink but noted that he/she had been seen on the dance floor at a Bayer global internal event that, according to Bayer, was entirely social in nature. Taking all the circumstances into account, the Panel considered that the UK health professional's attendance at the event was contrary to the requirements of Clause 22.1 and a breach of that clause was ruled. The Panel considered that the impression given by the presence of the UK health professional at the event, which, from the photographs and video, appeared to have a party atmosphere was wholly unacceptable. The Panel considered that high standards had not been maintained and a breach of Clause 9.1 was ruled.

The Panel noted its comments and rulings above and considered that it appeared that Bayer had been badly let down by its global affiliate. There was no evidence before the Panel of whether the global affiliate was aware of, or had taken any action in relation to, the UK health professional. Bayer UK had acted quickly to divert its delegates away from the event and had asked the UK health professional present to leave the global event. Nonetheless, it would be helpful if companies had policies and procedures in place to ensure that they were, at the very least, aware of such internal events given the presence of UK health professionals at the hotel.

The Panel considered, however, that attendance at a purely social event constituted excessive hospitality which was listed as an example of an activity likely to be in breach of Clause 2 and considered that the arrangements in this case were such as to bring discredit upon the industry. A breach of Clause 2 was ruled.

Complaint received **2 September 2019**

Case completed **9 July 2020**