CASE AUTH/3190/4/20 *NO BREACH OF THE CODE*

ANONYMOUS v TAKEDA

Sponsored therapy review service

An anonymous contactable group, which described itself as consisting of GPs, NHS leaders, pharmacists, NHS patients and current staff from a named third party providing therapy review services, complained about a number of therapy review services provided by that third party on behalf of a number of pharmaceutical companies, including Takeda UK Ltd. The Takeda service at issue was related to type 2 diabetes.

Takeda marketed a number of medicines for type 2 diabetes including Actos (pioglitazone), Vipidia (alogliptin) and Vipdomet (alogliptin and metformin).

Actos was a thiazolidinedione and was indicated as second or third-line treatment of type 2 diabetes mellitus in certain patients.

Vipidia was a dipeptidyl IV (DPP-4) inhibitor and was indicated in combination with other glucose lowering medicines in certain type 2 diabetes mellitus patients.

The complainants stated that a therapy review service sponsored by a pharmaceutical company would, in the majority of cases, lead to an increase in prescribing of that pharmaceutical company's medicines; a fact widely known and accepted within the healthcare industry. It also followed that a therapy review service programme which did not demonstrate an increase in prescribing of the product of the sponsoring company would not lead to ongoing financial investment from the sponsoring company.

In order to remain profitable, the named third party service provider had to retain pharmaceutical companies as clients by providing them with a 'return on investment' when it delivered therapy review services. It did this by coaching its pharmacists on what it called 'client value' which was a guise for 'return on investment'. The complainant stated that the named third party service provider had historically done this verbally, being careful not to put anything in writing. Like most untoward activities, however, the truth was eventually exposed.

There was now written proof that the named third party service provider linked its therapy review services to the products of the sponsoring pharmaceutical company. This was commercial bias.

The complainants stated that their complaint was based on an internal email sent by a very senior employee at the named third party service provider to the entire clinical team dated 14 August 2018. The complainants alleged that within the email there were several links made between pharmaceutical company product and therapy review service which was totally unacceptable and represented clear breaches of the Code.

The complainants stated that, regardless of whether some of the services referred to were currently 'live' or not, the confidence and integrity of the pharmaceutical companies involved, along with the Code had already been breached by the sending of the email.

The complainants referred to a number of companies and used the example of linking some named products to some named companies as implying that other therapy reviews listed where no product was mentioned had a clear and obvious link to client product/therapy priorities. There was a number of cross referrals within the letter of complaint.

The email read as follows with regard to the involvement of Takeda:

> **'We have over the last 3 months increased the level of bookings to record levels and are now approaching the original budget allocation set by the client. To ensure we do not exceed this we have started the process of moving reviews back in the diaries and are currently in discussion around the possibility of additional funding. We would also ask that reviews underway are completed in an efficient manner and stopped as clinic attendance drops and to curtail work that does not need to be done if it does not cause practice or patient issues'.**

Another extract from the email (final paragraph), provided to Takeda was as follows:

> **'As the business evolves a constant challenge will be to transition and integrate client product/therapy priorities into our internal resource and schedules. The addition of new clients such as [three named companies – not Takeda] also add in the additional challenge of new clinical training. Whilst not every aspect will run exactly to plan the list above illustrates clearly that our reputation […] continues to grow and that our objectives of expansion and diversification are on track.'**

The complainants noted the wording of the final paragraph of the email and submitted that it was not Code compliant for an 'independent' clinical service provider to email its pharmacists about integrating client product/therapy priorities into its internal resources and schedules. The complainants alleged that this was an attempt to influence the pharmacists and set the expectation for client product where there should be no link at all. The wording implied that the therapy reviews named in the email had a clear and obvious link to 'client product/therapy priorities'.

As the therapy review from Takeda was referred to within the email, a breach of Clause 2 was alleged.

By operating in this way, the therapy review services were misleading, deceptive and unlawful. The services were not transparent to either those who used them or to patients who had their notes accessed and medicines altered without their consent or knowledge of this bias.

The complainants stated that the matter was being reported to the NHS Counter Fraud Authority. The activities would soon be highlighted in the pharmaceutical and mainstream media as it was in the public interest. The public needed to know that GPs were being misled into signing up to 'independent' reviews and that patients had had their treatments changed by the named third party service provider which had a hidden

agenda to provide a return on investment to the pharmaceutical companies which paid its wages in order for it to make a profit as a business. The NHS and the public needed protecting from this.

The detailed response from Takeda is given below.

The Panel noted that before considering each individual case, there were general points relevant to the therapy review services and the email in question which in its view were relevant to all of the cases and these are given below. Each individual case would be considered on its own merits.

In the Panel's view, the overall impression of the email was such that in the view of the author the therapy services carried out by the third party service provider were inextricably linked to the products of the sponsoring companies. It was extremely concerning that in places the email linked the service to particular products or only offered the service in practices where the formulary did not preclude the company's product. This and the reminder regarding developing the business including the phrase 'integrate client product/therapy priorities' could link company products to a therapy review service. Even where a particular product was not mentioned by name it was extremely likely that the company's product would be linked to the relevant therapy review, as understandably many of the recipients might see integrating client product/therapy priorities as increased prescribing of the company's medicines. The important consideration for the Panel was the effect and influence of the email in question in relation to all the other arrangements for each therapy review.

The Panel noted its comments with regard to the impression of the entire email but noted that the email did not refer to a specific Takeda medicine nor link the Takeda therapy review service to a specific medicine.

The Panel noted Takeda's submission that it developed the Type 2 diabetes therapy review service in conjunction with the third party service provider. The objectives of the service were to improve glycaemic control in T2DM via therapeutic optimisation in accordance with the latest clinical guidelines and GP practice-defined treatment strategy; support GP practices with the optimisation of non-insulin antidiabetic therapy prescribing in accordance with practice defined treatment pathways and local/national guidelines; and facilitate improvement of GP practice achievement within the nine key care processes for diabetes as recommended by NICE, in accordance with the Quality and Outcome Clinical indicator targets for diabetes.

The Panel noted Takeda's submission that the service was targeted at practices which appeared to have the greatest need to improve the management of patients with T2DM. The list of practices eligible for therapy reviews were those in the bottom quartile of achievement of the QoF indicator HbA1c < 59mmol/mol. Achieving QoF indicators would benefit patients and the practice.

The Panel noted the documents provided by Takeda regarding the arrangements as set out below.

The Panel noted the data provided by the third party service provider to Takeda, the type 2 diabetes service dashboard 2018/19. The pre-clinic analysis showed that action to

facilitate treatment optimisation (change or initiation) constituted over 16000 interventions. A breakdown of medicine intervention by therapy class post audit included data that the most interventions related to DPP-4 inhibitors (around 4500). There were a number of options available in this class including Takeda's medicine alogliptin.

Whilst the Panel had concerns including about how the email portrayed the named third party therapy services and its effect on its pharmacists and other staff, it nonetheless noted that the complainant bore the burden of proof. On the balance of probabilities, it was not unreasonable that some if not all of the named third party service provider pharmacists would associate the Takeda therapy review with Takeda products particularly based on the email at issue. However, taking all the circumstances into account, including its view that Takeda's written arrangements for the review did not appear to amount to a switch to Takeda medicines, the Panel did not consider that the complainants had established, on the balance of probabilities, that the email demonstrated that the arrangements for the type 2 diabetes therapy review supported by Takeda were such that they failed to meet the requirements for medical and educational goods and services in the Code. Nor had the complainants provided evidence that the therapy review constituted disguised promotion. The Panel therefore ruled no breaches of the Code.

In the Panel's view, Takeda had been let down by its third-party. The Panel had serious concerns about the impression given by the entire email. However, it did not consider that, in the particular circumstances of this case, the complainants had provided evidence that Takeda had failed to maintain high standards and no breach of the Code was ruled. This ruling was upheld following an appeal from the complainant.

Given its rulings of no breach of the Code, the Panel consequently ruled that there was no breach of Clause 2.

An anonymous contactable group, which described itself as consisting of GPs, NHS leaders, pharmacists, NHS patients and current staff from a named third party service provider, complained about a number of therapy review services provided by the third party service provider on behalf of a number of pharmaceutical companies, including Takeda UK Ltd. The Takeda service at issue was related to type 2 diabetes.

Takeda marketed a number of medicines for type 2 diabetes including Actos (pioglitazone), Vipidia (alogliptin) and Vipdomet (alogliptin and metformin).

Actos was a thiazolidinedione and was indicated as second or third-line treatment of type 2 diabetes mellitus in certain patients.

Vipidia was a dipeptidyl IV (DPP-4) inhibitor and was indicated in combination with other glucose lowering medicines in certain type 2 diabetes mellitus patients.

COMPLAINT

By way of background, the complainants stated that the named third party service provider claimed to be an 'independent' clinical service provider. The third party service provider

received the vast majority of its income from pharmaceutical companies which paid it to deliver sponsored therapy review services.

The complainants stated that a therapy review service sponsored by a pharmaceutical company would, in the majority of cases, lead to an increase in prescribing of that pharmaceutical company's medicines; a fact widely known and accepted within the healthcare industry. It also followed that a therapy review service programme which did not demonstrate an increase in prescribing of the product of the sponsoring company would not lead to ongoing financial investment from the sponsoring company.

In order to remain profitable, the named third party service provider had to retain pharmaceutical companies as clients by providing them with a 'return on investment' when it delivered therapy review services. The third party did this by coaching its pharmacists on what it called 'client value' which was a guise for 'return on investment'. The third party had historically done this verbally, being careful not to put anything in writing. Like most untoward activities, however, the truth was eventually exposed.

The complainants stated that they now had written proof that the named third party service provider linked its therapy review services to the products of the sponsoring pharmaceutical company. This was commercial bias.

The third party service provider pharmacists were recruited under the façade of delivering 'independent' therapy reviews, improving outcomes for patients. Generally speaking, there was an industry-wide reluctance for employees to complain for fear of repercussion and damage to future career prospects. Uncomfortable with this commercial bias and having been misled during recruitment, most looked for another job and resigned after a short time instead of complaining to the PMCPA. The complainants alleged that the named third party service provider had very high staff turnover and this untoward activity had gone largely unreported until now.

The complainants stated that their complaint was based on an internal email sent by a very senior employee of the named third party service provider to the entire clinical team dated 14 August 2018. The complainants alleged that within the email there were several links made between pharmaceutical company product and therapy review service which was totally unacceptable and represented clear breaches of the Code.

The complainants stated that, regardless of whether some of the services referred to were currently 'live' or not, the confidence and integrity of the pharmaceutical companies involved, along with the Code had already been breached by the sending of the email.

The complainants referred to a number of companies and used the example of linking some named products to some named companies as implying that other therapy reviews listed where no product was mentioned had a clear and obvious link to client product/therapy priorities. There was a number of cross referrals within the letter of complaint.

The email read as follows with regard to the involvement of Takeda:

> 'Dear All

> As most of you will be aware we are currently in the midst of several adjustments to the business as we introduce and train-in new services and align our activities to client priorities.
>
> The phasing of these changes will of course raise a few short term challenges but will also deliver the increase in client and therapy mix we have been working towards throughout 2018. To clarify these changes I list below the client plan for the remained [sic] of 2018
>
> …
>
> **Takeda**
>
> We have over the last 3 months increased the level of bookings to record levels and are now approaching the original budget allocation set by the client. To ensure we do not exceed this we have started the process of moving reviews back in the diaries and are currently in discussion around the possibility of additional funding. We would also ask that reviews underway are completed in an efficient manner and stopped as clinic attendance drops and to curtail work that does not need to be done if it does not cause practice or patient issues'.

Another extract from the email (final two paragraphs), provided to Takeda was as follows:

> 'In addition to the range above we continue to hold large advance payments for our BGTS and PN clients who are all looking to us to do more between now and the end of the year to generate bookings against the many practice opportunities listed in [named database]. These reviews should not be devalued as simple cost cutting as when done well, they offer a range of great clinical outcomes for practices and patients alike.
>
> As the business evolves a constant challenge will be to transition and integrate client product/therapy priorities into our internal resource and schedules. The addition of new clients such as [three named companies – not Takeda] also add in the additional challenge of new clinical training. Whilst not every aspect will run exactly to plan the list above illustrates clearly that our reputation […] continues to grow and that our objectives of expansion and diversification are on track.'

The complainants noted the wording of the final paragraph of the email and submitted that it was not Code compliant for an 'independent' clinical service provider to email its pharmacists about integrating client product/therapy priorities into its internal resources and schedules. The complainants alleged that this was an attempt to influence the pharmacists and set the expectation for client product where there should be no link at all. The wording implied that the therapy reviews named in the email had a clear and obvious link to 'client product/therapy priorities'.

As the therapy review from Takeda was referred to within the email, a breach of Clause 2 was alleged.

The complainants noted that under the PMCPA guidance for digital communications, a pharmaceutical company was responsible under the Code for any activities carried out on its behalf by a third party even if that third-party acted beyond the scope of its contract.

In summary, the complainants stated that in their view, the case for sponsoring company product linked to therapy review service (commercial bias) had been conclusively proven.

By operating in this way, the sponsored therapy review services were misleading, deceptive and unlawful. The services were not transparent to either those who used them or to patients who had their notes accessed and medicines altered without their consent or knowledge of this bias.

Based on the above, the named third party service provider should not be permitted to operate as a clinical service provider to the NHS where it was funded by pharmaceutical companies to deliver 'independent' services. It was inconceivable for the third party to be allowed to continue based on the information supplied.

The complainants stated that the matter was being reported to the NHS Counter Fraud Authority. The activities would soon be highlighted in the pharmaceutical and mainstream media as it was in the public interest. The public needed to know that GPs were being misled into signing up to 'independent' reviews and that patients had had their treatments changed by the third party service provider which had a hidden agenda to provide a return on investment to the pharmaceutical companies which paid its wages in order for it to make a profit as a business. The NHS and the public needed protecting from this.

When writing to Takeda, the Authority asked it to consider the requirements of Clauses 2, 9.1, 12.1 and 19.2 of the 2016 Code. Attention was drawn to the supplementary information of Clause 19.1. Relevant extracts of the email were provided to the company and not the complete email.

RESPONSE

Takeda submitted that as the UK healthcare system had evolved, the NHS increasingly expected the pharmaceutical industry to deliver value 'beyond the pill'. The therapy review service it funded in diabetes had improved the management of many patients with type 2 diabetes, with obvious benefits for them, their families and the NHS.

Type 2 diabetes mellitus (T2DM) was a long-term condition which required careful management in order to reduce the risk of potentially devastating long-term sequalae. Patients were mainly managed in primary care where the clinical team focussed on management of glycaemic control, minimisation of other cardiovascular risk factors such as blood pressure and cholesterol and early detection of damage to end organs such as the eyes and kidneys. When the condition was not managed well there was an increased risk of morbidity and serious complications which could lead to disability and premature death.

In Takeda's view the clinical need for a therapy review in T2DM remained high. Despite public health efforts and NHS interventions which focussed on lifestyle, diet and medication, many patients did not achieve the optimal standards of glycaemic control cited by the National Institute for Health and Care Excellence (NICE). Across the UK in 2018 only 70.6% of patients achieved the glycated haemoglobin (HbA1c) audit standard set by the Quality Outcome Framework (QoF) of 59mmol/mol or less.

Furthermore, it was well recognised that many T2DM patients had notable gaps in their medical records relating to fundamental components of diabetes care. NICE recommended that care should be structured around nine key care processes (the measurement of HbA1c, blood

pressure and cholesterol levels, retinal screening, foot checks, urinary albumin and serum creatinine testing, weight check and smoking status). A pharmacist led review programme on the management and control of T2DM in primary care published in a peer reviewed journal, resulted in an increase in the number of key care processes administered and improved diabetic control during the year of programme delivery (Langran *et al* 2017). Takeda stated that the published data gave it confidence in the clinical value of review programmes to improve the care of T2DM patients.

1 Therapy Review Service

Takeda explained that it developed the therapy review service at issue in conjunction with the named third party provider. Takeda submitted that the service offered to certain GP practices free of charge as a medical and educational good and service (MEGS), was in the interests of patients and benefited the NHS.

The objectives of the service were to:

- Improve glycaemic control in T2DM via therapeutic optimisation in accordance with the latest clinical guidelines and GP practice-defined treatment strategy.
- Support GP practices with the optimisation of non-insulin antidiabetic therapy prescribing in accordance with practice defined treatment pathways and local/national guidelines.
- Facilitate improvement of GP practice achievement within the nine key care processes for diabetes, in accordance with the Quality and Outcome Clinical indicator targets for diabetes.

The therapy review service was targeted at practices which appeared to have the greatest need to improve the management of patients with T2DM. This was achieved by generating a list of practices eligible for therapy reviews, which comprised those which fell within the bottom quartile of achievement of the QoF indicator HbA1c < 59mmol/mol. Both the third party service provider staff and senior Takeda sales representatives (regional account directors (RADs)) were provided a copy of the eligible practice list.

Takeda submitted that its internal materials and written instructions on the service for use with both the third party service provider and relevant Takeda employees (copies of material provided) fully met the supplementary information to Clause 19.2. [Details were set out in the supplementary information to Clause 19.1 not Clause 19.2 as cited by Takeda]. Specifically, the requirement for a written protocol which addressed the necessary transparency disclosure requirements and which also encompassed the requirements of certification described in Clause 14.3.

Eligible practices were introduced to the service by either Takeda RADs or the third party service provider pharmacists. Takeda submitted that it was made clear when the service was offered that it was not contingent on the prescribing of any Takeda product. The service could only be introduced to those practices on the eligible practice list. RADs were carefully briefed to separate the introduction of the service from the promotion of Takeda medicines. This briefing made clear to the RAD that the service:

a) Was a MEGS offering, and therefore non-promotional
b) Must not be linked to product

c) Must be discussed in separate calls to that in which promotion of product occurred
d) Must not be used as an inducement to prescribe.

In addition to the involvement of Takeda RADs, Takeda told its more junior sales representatives (customer account specialists) in which practice reviews were due to take place. This was to ensure that product promotion did not take place within 2 days either side of the service being delivered. The junior sales representatives did not receive a copy of the eligible practices list.

RADs were able to supply a service introduction leavepiece to practices which showed an interest in the service. RADs were only trained to briefly introduce the therapy review service. The third party service provider pharmacists were best placed to conduct more detailed discussions with interested practices.

Following introduction of the service, as outlined within the certified clinical pharmacist brief an authorisation form had to be completed by the practice to register for the service. This authorisation form required signatures from both the lead GP and either a second GP or practice manager and would specify the agreed date for commencement of the review.

Phase 1 of the service consisted of the third party service provider pharmacist accessing a computer to stratify the diabetes population within the practice. In Phase 2 the pharmacist and the multidisciplinary team met to co-ordinate patient clinics and reviews and finally Phase 3 consisted of the actual therapy review and therapy optimisation involving patient clinics. It was Phase 3 that was referred to in the email when it referred to stopping reviews 'as clinic attendance drops if … it does not cause patient or practice issues'.

During delivery of the service the management of all diabetes patients was evaluated by fully trained and qualified third party service provider pharmacists against the nine key care processes. The practice was then given details of patients for whom these processes were not up-to-date. Additionally, patients (excluding those on insulin therapy) whose blood sugar levels were not well controlled or optimally managed vs local guidelines were flagged and recommendations to align treatment with local guidelines were presented to the lead GP. Importantly, no intervention, either medicinal or non-medicinal, could be made without authorisation from the lead GP.

Takeda strongly refuted any claims of commercial bias in either the selection of practices or the delivery of therapy reviews.

2 Third party service provider – instructions, briefing and training

Takeda noted that it and the third party service provider had signed a series of detailed legal contracts which specifically defined the service delivered on behalf of Takeda UK. Takeda provided further written instructions to the third party by way of the clinical protocol and the clinical pharmacist briefing (copies provided).

All transfers of value (ToVs) generated as a result of the delivery of the service had been duly disclosed against the named GP practices in the subsequent calendar year.

The third party service provider advised Takeda that during 2018 more than 10% of its pharmacists' time was allocated for training, which was delivered both internally by a team of

highly skilled trainers and in conjunction with nationally recognised programmes. The third party considered that clinical pharmacists possessed an excellent skill set to be able to deliver therapy review services within general practice. Takeda shared this view and noted that NHS England had also recognised the vital role of pharmacists within the new GP contract.

Nevertheless, product knowledge was not left to chance and alongside extensive clinical training, the third party also provided product training on all options open to a prescriber and positioned this in line with the latest national guidance. Of relevance to pharmacist training, Takeda refuted the complainant's interpretation of the paragraph of the email at issue which referred to 'the integrating clients' product/therapy priorities into our internal resources and schedules'. Takeda understood that the third party provided services for many pharmaceutical companies and across many disease areas; creating the clear challenge for its pharmacists to have detailed knowledge of disease states, care standards and treatment options. It was therefore reasonable that integrating pharmacist development related to their commissioned work within the client's therapy area of interest was not only a wholly legitimate activity but also a prerequisite for safe and high quality clinical practice. Moreover, any recommendation for treatment change would be overseen and acted upon by the appropriate GP. This was viewed as essential training to avoid clinical risk through potentially giving incorrect advice to prescribers.

Takeda provided details about the third party and its services and submitted that the third party's high reputation contributed to the observed value of the service. This in turn enhanced patient care and helped to build Takeda's reputation with the NHS and diabetes stakeholders.

3 Success measures

Takeda stated that the objective of the service was to add value to T2DM patients beyond the simple supply of medicines. The service built on previous work done by the third party service provider which the NHS viewed as valuable. Success was measured in terms of feedback from practices and data supplied to Takeda in the form of reports which demonstrated that therapy reviews continued to identify high numbers of inadequately managed patients. An example of such a report was provided. The reports provided by the third party did not state which new medicines had been initiated. Takeda further understood that such data was not maintained by the third party. Instead the reports referred to breakdown of medicine interventions by therapy class.

Contrary to the complainants' allegations, uptake of Takeda medicines or 'return on investment' did not constitute a success measure for the service and these metrics were not tracked or reported by either Takeda or the third party service provider as they conflicted with the intent and nature of the activity. Takeda was unaware of any evidence which would suggest otherwise.

4 Ongoing compliance

Takeda submitted that the therapy review service was strictly non-promotional as reflected in the briefing and training materials provided to Takeda and the third party service provider staff. The service was funded from the Takeda medical department budget.

Takeda stated that it had quarterly meetings with the third party service provider to review the progress of the service and these included discussion of specific feedback from practices.

These meetings were typically attended by Takeda scientific staff, the third party account manager and a third party clinical pharmacist. An example of the minutes from these meetings was provided. Additional *ad hoc* discussions between Takeda medical staff and the third party took place to facilitate the smooth running of the service.

5 Changes in patient therapy

Takeda stated that it had a specific interest in the management of T2DM and marketed three different medicines, Actos (pioglitazone), Vipidia (alogliptin) and Vipdomet (alogliptin and metformin). As outlined in the contract between Takeda and the third party service provider, within the clinical protocol and clinical pharmacist briefing, interventions were made only if there was a clinical need. Interventions could be both medicinal and non-medicinal, had to be in line with local/national guidelines and authorised by a GP. Optimising patient care was the primary aim of the reviews. As outlined above, the proportion of patients changed to a Takeda medicine was not tracked nor reported to Takeda.

6 'Client value' and pharmacist coaching

The third party service provider advised Takeda that the reference in the complaint to 'client value' related to the support and improvement a service delivered to GPs in helping to deliver better care for their patients. Takeda submitted that the therapy review services were designed with the aim of enhancing patient care or benefitting the NHS and maintaining patient care. All third party staff were encouraged to talk to NHS staff about the value to patients and the NHS that its services delivered. If therapy review services were valued by patients and NHS staff, then companies were likely to support them. In terms of pharmacist coaching, the third party advised Takeda that any training or coaching by a lead pharmacist would be solely around correct adherence/application of the protocol, briefing materials and relevant SPCs to the therapy area.

7 Email at issue dated 14 August 2018

The third party service provider informed Takeda that the email in question was sent to the majority of (exclusively) its employees, details were provided. The section in the email which related to stopping of the service had been addressed above (point 1) with an outline of the different 'Phases' of the review process and which 'Phase' the stop referred to.

Takeda stated that it was fully committed to the spirit and letter of the Code, and in that regard, it was accountable for the acts or omissions of third parties acting on its behalf. The email provided by the complainants, as they had acknowledged, was an internal communication. It described how the third party should internally manage its business priorities represented by its different contracts with various clients, which included Takeda. The complaint was thus about the communication of the internal business practices of the third party. Contrary to the complainants' allegations, the email did not specifically refer to the use or sale of Takeda medicines. The email did not establish a link between the use of Takeda's medicines and the service.

Takeda stated that it had a robust governance framework to ensure the service was designed and continued to be delivered compliantly. There had been no commercial bias and Takeda was not aware of any Takeda product promotion (disguised or otherwise) occurring in connection with the service. The service had, since its inception, been approved, delivered and

monitored in full accordance with the Code and in particular Clause 19.2 and the associated supplementary information. Takeda understood that the service had been of substantial benefit to patients and submitted that high standards had been maintained throughout. The service had strengthened Takeda's reputation and consequently no discredit to, or reduction of confidence in, the industry had occurred. Accordingly, Takeda refuted the allegations and was confident that no breach of Clauses 2, 9.1, 12.1 or 19.2 of the Code had occurred.

In response to a request for further information Takeda submitted that the third party service provider confirmed that it did not produce its own product training material, instead it directed its pharmacists to relevant, reputable, publicly available information sources, including relevant summaries of product characteristics (SPCs) and NICE guidelines.

The third party service provider provided Takeda with details regarding the training it provided for its pharmacists:

> …. The pharmacist is directed to read over the full list of reference sources contained within the service protocol. During training on a service, an experienced National or Regional Lead Pharmacist will spend up to 6-8 days in practice with the pharmacist assessing their understanding and application of the guidelines and product SPCs.
>
> Only once a pharmacist is deemed to have a full and broad understanding of the therapy area and available treatments, will the pharmacist be signed-off to deliver the service unsupervised. Routine field visits and quality assurance checks are carried out across our pharmacist team to ensure knowledge is current and any gaps are identified and supported.'

Takeda submitted that information provided in its initial response outlined the training received in relation to the therapy review service supported by Takeda. Specifically, all clinical pharmacists involved in the delivery of the Type 2 Diabetes Therapy Review Service received training based on the clinical protocol (UK/NON/1804/0004) and pharmacist briefing document (UK/NON/1807/0018). This training was conducted by the third party service provider. Takeda did not provide any therapy area training. Takeda noted that the third party pharmacists who delivered therapy reviews were required to keep their clinical knowledge up-to-date in the areas they practised in via continuing professional development in order to maintain their registration with the General Pharmaceutical Council.

Takeda submitted that a third party pharmacist could introduce the therapy review service to eligible practices in two ways, both of which were reactive and would involve going through the service introduction leavepiece. The first scenario would occur if a third party pharmacist was already in a practice (or had previously done some work in that practice), by conducting a therapy review in a different disease area. If that practice expressed an interest in receiving support in other disease areas and if that practice was also on the Takeda eligible practice list, the pharmacist would be able to introduce the service in person via the service introduction leavepiece. The second scenario would occur following an enquiry from a practice that had become aware that support was available. If the practice was listed within the Takeda eligible practice list, the third party pharmacist would be able to introduce the service in person via the service introduction leavepiece.

Takeda submitted that all recommendations for medical interventions made by third party pharmacists to the practice GPs were by specific product. However, as per the certified

protocol and third party clinical pharmacist brief, all recommendations for medical interventions were made in line with the practice defined treatment map, which was generally based on local guidelines/formulary and typically specified which medicine was recommended within any particular class. All recommendations were individually authorised by the GP. If the GP did not agree with the recommendations, they did not sign the individual patient assessment form.

Takeda provided two anonymised examples of individual patient assessment forms.

In response to questions about the use of insulin and why only those not managed with insulin were the subject of recommendations by the third party service provider pharmacist, Takeda noted that the management of poorly controlled Type 2 diabetics requiring insulin was often complex. In many situations such patients would be managed with input from a secondary care diabetes service or a community-based specialist. They were also likely to be monitored more closely and have more interactions with health professionals than patients managed with oral anti-diabetic therapies and were therefore less likely to benefit from a primary care based, pharmacist-led therapy review service.

Takeda explained that insulin therapy was a complex area that typically required specialist input and was therefore deemed to be beyond the scope of the therapy review service. For those patients identified during therapy review where consideration should be given to initiating insulin, based on the practice defined treatment map, the third party service provider pharmacist would highlight those patients to the GP but would not make a specific treatment recommendation.

PANEL RULING

General comments

The Panel noted that before considering each individual case, there were general points relevant to the therapy review services and the email in question which in its view were relevant to all of the cases. Each individual case would be considered on its own merits.

The Panel noted that under Clause 19 of the Code medical and educational goods and services which enhanced patient care or benefited the NHS and maintained patient care could be provided subject to the provisions of Clause 18.1. They must not be provided to individuals for their personal benefit. The supplementary information to Clause 19.1 gave further details. Pharmaceutical companies could promote a simple switch from one product to another but must not assist a health professional in implementing that switch. A therapeutic review which aimed to ensure that patients received optimal treatment following a clinical assessment was a legitimate activity for a pharmaceutical company to support and/or assist. The result of such clinical assessments might require, among other things, possible changes of treatment including changes of dose or medicine or cessation of treatment. It was not necessarily a breach of the Code for products from the company providing the service to be prescribed. However, a genuine therapeutic review should include a comprehensive range of relevant treatment choices including non–medicinal choices for the health professional and should not be limited to the medicines of the sponsoring pharmaceutical company. The decision to change or commence treatment must be made for each individual patient by the prescriber and every decision to change an individual patient's treatment must be documented with evidence that it was made on rational grounds.

The Panel noted that Clause 19.2 stated that medical and educational goods and services in the form of donations, grants and benefits in kind to institutions, organisations and associations that were comprised of health professionals and/or, *inter alia*, provided healthcare were only allowed if they complied with Clause 19.1, were documented and kept on record by the company and did not constitute an inducement to, *inter alia*, prescribe.

The Panel noted that the supplementary information to Clause 19.1 stated, *inter alia*, that service providers must operate to detailed written instructions provided by the company. These should be similar to the briefing material for representatives as referred to in Clause 15.9. The written instructions should set out the role of the service provider and should cover patient confidentiality issues. Instructions on how the recipients were to be informed etc should be included. The written instructions must not advocate, either directly or indirectly, any course of action which would be likely to lead to a breach of the Code.

The Panel noted that pharmaceutical companies investing in therapy review services were very likely to have commercial interests in the area. One of the questions to be considered was whether the therapy review service would likely lead to the use of a particular medicine and whether such an outcome was appropriate bearing in mind the therapy area and available treatment options. How the activity might be perceived by all stakeholders including the public was important in this regard. Documentation with regard to the therapy review service offered and the instructions to the service providers were important as was the training provided in relation to the service and the therapy area. Materials whether they be from the company or third party should not link a therapy review to a particular product. The Panel considered that companies should be confident that those carrying out the service such as the third party service provider pharmacists were appropriately trained.

All discussions with the responsible GPs and other staff including all direct and indirect references to medicines must be non-promotional, fair and accurate and otherwise comply with the Code. This applied irrespective of the fact that the lead GP reviewed and mandated all clinical decisions as such decisions might be indirectly influenced by the preceding discussions eg with the pharmacist/company representative.

The Panel noted that the complaint, which was taken up with a number of companies, was based on an internal email sent by a senior employee of the named third party service provider to the entire clinical team. In the Panel's view, the email in question dated 14 August 2018 might be seen by the third party pharmacists as instructions on how the therapy reviews should be conducted.

The Panel noted that the email described the client plan for the remainder of 2018, specific details for each named pharmaceutical company client were included. The case preparation manager provided each company named in the email with the extract of the email that specifically applied to it together with the general statements which appeared to apply to all of the named companies. Context was important and the Panel reviewed the email in its entirety. In the Panel's view, the overall impression of the email was such that in the view of the author ie a senior employee of the third party service provider, the therapy services carried out by the third party were inextricably linked to the products of the sponsoring companies. In a few instances the email referred to reviews as being specific company product reviews. For one company the email stated '… you can still recruit any practice where baseline criteria are met and where formulary doesn't preclude [named company, not Takeda] products'. It was extremely concerning that in places the email linked the service to particular products or only

offered the service in practices where the formulary did not preclude the company's product. This and the reminder regarding developing the business including the phrase 'integrate client product/therapy priorities' could link company products to a therapy review service. Even where a particular product was not mentioned by name it was extremely likely that the company's product would be linked to the relevant therapy review, as understandably many of the recipients might see integrating client product/therapy priorities as increased prescribing of the company's medicines. The reputational gain from supporting implementation of NICE Guidelines and other relevant guidelines and the improvements in patient care might not be seen by recipients of the email as delivering client value or integrating product/therapy priorities. The important consideration for the Panel was the effect and influence of the email in question in relation to all the other arrangements for each therapy review.

The Panel noted that it was an established principle under the Code that pharmaceutical companies were responsible for third parties acting on their behalf even if that third party acted outside the instructions from the pharmaceutical company.

The Panel noted that it appeared from the email that the therapy reviews were not necessarily always driven by pharmaceutical companies, it appeared possible for the third party, a commercial organisation, to propose therapy reviews to a pharmaceutical company in an attempt to gain business.

The linking of product to client companies within the email was particularly concerning when the third party pharmacists could proactively offer a therapy review service to a practice.

The basis for a pharmaceutical company's decision regarding in which areas and in which practices a service would be offered, was important. It might be inappropriate to offer a service only in practices or areas in which a sponsoring company's product was not precluded or was the only or known recommended treatment choice.

The arrangements for delivering the service and its impact on prescribing in the practices targeted was another important consideration for the Panel. This might include how recommendations were made by the pharmacist; by therapy class, specific product, following notes or face-to-face clinical review.

The Panel noted the complainant's allegation that the third party service provider coached its pharmacists on client value which was a guise for return on investment and that this was historically done verbally. In addition, conversations pharmaceutical company staff and the third party staff had with practices was another important consideration. As was usually the case, there was no evidence as to the content of verbal instructions and conversations.

Although companies were not provided with specific outcome data relating to prescribing medicines as the result of the therapy review in a particular practice following the third party pharmacist led clinics, overall data (non-product specific) appeared to be provided by the third party in some cases. The Panel considered that companies would be able to monitor use of their medicines and changes via other means for example sales data.

Panel ruling in Case AUTH/3190/4/19

The Panel noted it comments above with regard to the impression of the entire email but noted that the email did not refer to a specific Takeda medicine nor link the Takeda therapy review service to a specific medicine.

The Panel noted Takeda's submission that it developed the Type 2 diabetes therapy review service in conjunction with the named third party service provider. The objectives of the service were to improve glycaemic control in T2DM via therapeutic optimisation in accordance with the latest clinical guidelines and GP practice-defined treatment strategy; support GP practices with the optimisation of non-insulin antidiabetic therapy prescribing in accordance with practice defined treatment pathways and local/national guidelines; and facilitate improvement of GP practice achievement within the nine key care processes for diabetes as recommended by NICE, in accordance with the Quality and Outcome Clinical indicator targets for diabetes.

The Panel noted Takeda's submission that the service was targeted at practices which appeared to have the greatest need to improve the management of patients with T2DM. This was achieved by generating a list of practices eligible for therapy reviews, which comprised those which fell within the bottom quartile of achievement of the QoF indicator HbA1c < 59mmol/mol. Achieving QoF indicators would benefit patients and the practice.

The documentation provided by Takeda included the clinical protocol which detailed the procedures by which the third party service provider pharmacists would assess patients. The clinical protocol stated that the offering of the service was not conditional on the prescribing of any Takeda product or service and therapy choice arising from patient review remained the choice and sole decision of the lead GP. The brief to Takeda representatives further stated that the service was a non-promotional activity, there must be no link to product, no inducement to prescribe and a therapy review service must not limit choices to sponsoring company's products.

The Panel noted that whilst the brief to the third party service provider pharmacists stated, *inter alia*, that the pharmacists would only implement the therapeutic review service and would not recommend a specific pharmaceutical product, write prescriptions or recommend or take any action that did not comply with the clinical protocol, in response to a request for further information Takeda submitted that recommendations were generally based on local guidelines/formulary and typically specified which medicine was recommended within any particular class. All recommendations were individually authorised by the GP.

The Panel noted the complainants' concern regarding the statement in the email at issue 'As the business evolves a constant challenge will be to transition and integrate client product/therapy priorities into our internal resource and schedules. The addition of new clients such as [three named companies – not Takeda] also add in the additional challenge of new clinical training'.

The Panel noted Takeda's submission that as the third party provided services for many pharmaceutical companies and across many disease areas this created the clear challenge for its pharmacists to have detailed knowledge of many disease states, care standards and treatment options.

The Panel noted Takeda's initial response that more than 10% of pharmacist time in 2018 was allocated for training, which was delivered by the third party both internally by a team of highly skilled trainers and in conjunction with nationally recognised programmes and that the third party did not leave product knowledge to chance and alongside its extensive clinical training, it

also provided product training on all options open to a prescriber and positioned this in line with the latest national guidance. The Panel noted Takeda's submission in response to a request for further information that the third party did not produce its own product training material, instead it directed its pharmacists to relevant, reputable, publicly available information sources, including relevant SPCs and NICE guidelines. The Panel was concerned about the difference between the initial submission and the further information. In the Panel's view, Takeda should have had the correct information regarding the training of the pharmacists in order to certify the arrangements.

The Panel noted Takeda's submission that the uptake of Takeda's products or 'return on investment' as referred to by the complainants did not constitute a success measure for the service; these metrics were not tracked or reported by Takeda or the third party service provider. The third party advised Takeda that reference to 'client value' referred to in the complaint related to the support and improvement a service delivered to GPs in helping deliver better care for their patients. The Panel noted that the email itself did not refer to client value, this was a term referred to by the complainants.

The Panel noted the data provided by the third party service provider to Takeda, the type 2 diabetes service dashboard 2018/19. The pre-clinic analysis showed that action to facilitate treatment optimisation (change or initiation) constituted over 16 500 interventions. A breakdown of medicine intervention by therapy class post audit included data that the most interventions related to DPP-4 inhibitors (around 4500). There were a number of options available in this class including Takeda's medicine alogliptin.

The clinical protocol stated that the practice was responsible to ensure that patients receiving any GP authorised intervention were made fully aware of the sponsorship of the therapy review by Takeda and all documentation relating to the service must clearly identify Takeda as the sponsoring company.

The introduction to the PMCPA Constitution and Procedure stated that a complainant had the burden of proving their complaint on the balance of probabilities.

The Panel noted the complainants' allegation that they now had written proof that the third party service provider linked its therapy review services to the products of the sponsoring pharmaceutical company; historically, the third party had done it verbally, being careful not to put anything in writing.

Whilst the Panel had concerns including about how the email portrayed the third party therapy services and its effect on the third party pharmacists and other staff, it nonetheless noted that the complainant bore the burden of proof. On the balance of probabilities, it was not unreasonable that some if not all of the pharmacists would associate the Takeda therapy review with Takeda products particularly based on the email at issue. However, taking all the circumstances into account, including its view that Takeda's written arrangements for the review did not appear to amount to a switch to Takeda medicines, the Panel did not consider that the complainants had established, on the balance of probabilities, that the email demonstrated that the arrangements for the type 2 diabetes therapy review supported by Takeda were such that they failed to meet the requirements of Clause 19.2. Nor had the complainants provided evidence that the therapy review constituted disguised promotion. The Panel therefore ruled no breach of Clauses 19.2 and 12.1 of the 2016 Code.

In the Panel's view, Takeda had been let down by its third-party. The Panel had serious concerns about the impression given by the entire email. However, it did not consider that, in the particular circumstances of this case, the complainants had provided evidence that Takeda had failed to maintain high standards and no breach of Clause 9.1 was ruled.

Given its rulings of no breach of the Code, the Panel consequently ruled that there was no breach of Clause 2.

APPEAL BY COMPLAINANTS

The complainants appealed the ruling of no breach of Clause 9.1 failing to maintain high standards. The complainants were pleased with the following comments and ruling by the Panel:

> The Panel had serious concerns about the impression given by the entire email.
>
> In the Panel's view, Takeda had been let down by its third-party.
>
> On the balance of probabilities, it was not unreasonable that some, if not all, of the third party service provider pharmacists would associate the Takeda therapy review with Takeda's products.
>
> In the view of a senior employee at the named third party service provider, the therapy services carried out by the third party were inextricably linked to the products of the sponsoring companies.
>
> In the Panel's view, the email in question might be seen by the third party service provider pharmacists as instructions on how the therapy reviews should be conducted.
>
> It was extremely concerning that in places the email linked the service to particular products…and the reminder regarding developing the business including the phrase 'integrate client product/therapy priorities' could link company products to a therapy review service. Even where a particular product was not mentioned by name, it was extremely likely that the company's product would be linked to the relevant therapy review, as understandably many of the recipients might see integrating client product/therapy priorities as increased prescribing of the company's medicines.
>
> The linking of product to client companies was particularly concerning when the third party service provider pharmacists could proactively offer a therapy review service to a practice.

The complainants requested that the Appeal Board consider the Panel's strongly worded comments above. The complainants alleged that these comments were not conducive to therapy review service which was maintaining high standards of Code compliance.

The complainants started by setting context. The complainants alleged that the complaint was specifically based upon the email sent by a senior employee of the third party service provider dated 14 August 2018. It was widely accepted that the approved protocols and documents for an industry sponsored therapy review were never going to be found to make any link to the increased prescribing of the product of the sponsoring company. They would always be

produced to refute any claims of bias and to avoid any reprimand. What the complainants were exposing was what went on behind the official paperwork. As an example, the Panel had rightly said, 'conversations pharmaceutical company staff and [third party service provider] staff had with practices was another important consideration. As was usually the case, there was no evidence as to the content of verbal instructions and conversations'. The complainants uncovered an email which exposed the true relationship between an 'independent' clinical service provider and the products of their clients.

The complainants stated the point for this appeal that although Takeda claimed to have been Code compliant, it was an established principle under the Code that pharmaceutical companies were responsible for third parties acting on their behalf even if that third party acted outside the instructions from the pharmaceutical company. It was clear that there had been a gross failing on the part of their third-party.

The complainants disagreed that it had not provided evidence to show that Takeda had failed to maintain high standards. The complainants alleged that the email dated 14 August 2018 was enough evidence. Even though a specific Takeda product was not mentioned, the Panel had serious concerns about the impression given by the entire email and stated that 'on the balance of probabilities, it was not unreasonable that some, if not all, of the [third party service provider] pharmacists would associate the Takeda therapy review with Takeda's products'. This conclusion alone was damning enough, on the balance of probabilities, to rule a breach of Clause 9.1 in the complainants' opinion.

The complainants highlighted that the following phrase which was the focus of the complaint: 'integrate client product/therapy priorities'. This phrase referred to ALL of the clients within the email. This was of major significance and the complainants requested that the Panel reviewed the wording again. Client product/therapy did not mean therapy area or disease area, it meant product of the client and therefore linked the product of any client referenced within the email to their respective therapy review. As the Panel had said, the phrase 'could link company products to a therapy review service. Even where a particular product was not mentioned by name, it was extremely likely that the company's product would be linked to the relevant therapy review, as understandably many of the recipients might see integrating client product/therapy priorities as increased prescribing of the company's medicines'.

The complainants agreed with this damning summary from the Panel which supported the complainants' complaint that it influenced the pharmacists and set the expectation for client product making a clear and obvious link between the therapy reviews named and product of the clients.

The complainants alleged that what Takeda did not understand was that within the email, several specific products were named and linked to therapy reviews from other companies. Takeda were named within this email and therefore the email caused serious concern to the complainants and the PMCPA.

The complainants alleged that contrary to the view of the Panel and the complainants, Takeda was of the opinion that in reference to 'client product/therapy priorities' – 'integrating pharmacist development related to their commissioned work within a client's therapy area is a wholly legitimate activity but also a prerequisite for safe and high-quality clinical practice'. The complainants declared that there was a difference between training staff to be knowledgeable in therapy areas and sending a business update implying increased prescribing of the company's

medicines. This was a gross error of judgement and Takeda had been ill advised in its attempt to deflect the statement. Takeda had naively partnered with the third party service provider for commercial gain and as the PMCPA had rightly said, it had been let down by them. There must be accountability in this case and under the Code, Takeda was responsible for the actions of the third party and therefore had not maintained high standards.

The complainants alleged that it must not be possible for a pharmaceutical company to partner with an 'independent' clinical service provider and an email of this nature to be written with no accountability or consequences whatsoever. The complainants appealed that a breach of Clause 9.1, at the very least, was entirely appropriate in this case, which might also serve as a warning to other pharmaceutical companies and clinical service providers wishing to partner in this manner, to show that this kind of behaviour would not be tolerated.

The complainants had raised concern as to why certain staff from the third party service provider (job titles given) were in attendance with the Takeda scientific advisor to discuss the running of the service and specific feedback from practices. The complainants alleged this should be clinical staff only and questioned why non-clinical, commercial staff were in attendance. The complainants were extremely concerned as to the additional *ad hoc* discussions between Takeda medical staff and the third party service provider staff.

The complainants noted the Panel's concerns about Takeda's initial submission and further information regarding the training of the third party service provider pharmacists. The complainants found it unacceptable that Takeda did not have the correct information regarding the training of the pharmacists in order to certify the arrangements. The complainants urged the Panel to take this conduct into account when deciding if high standards had or had not been maintained.

The complainants alleged that they were appalled that for the Takeda therapy review, only those not managed with insulin were the subject of recommendations by the third party service provider pharmacist. Excluding this important group and deeming them 'beyond the scope of the therapy review service' was not comprehensive and did not take into account all treatment options. The complainants alleged, contrary to Takeda's explanation, that pharmacists had an important input in the management of these patients such as help and support with advice around injecting, insulin management, testing and signposting to diabetes services to name just a few. Takeda had wrongly excluded this massively important patient group and the complainants were pleased the Panel had highlighted that out of ALL of the treatment options in type 2 diabetes, the post-audit data for the Takeda therapy review revealed that the most interventions related to DPP-4 inhibitors. Indeed, the complainants, the Appeal Board and the NHS were no fools and this statistic was of no surprise to anybody with Takeda's product, alogliptin being one of the DPP4's on the market. Takeda had, of course, produced its protocols and briefings to the Panel which showed this to be a Code compliant service, on paper. The complainants urged the Appeal Board not to rule that the complainants, on the balance of probabilities, had not discharged their burden of proof that high standards had not been maintained. The complainants were certain that they had discharged the burden of proof, on the balance of probabilities, and the comments made by the Panel around the email in question supported this.

The complainants requested a fair appeal hearing and for the Appeal Board to consider the points above around the email dated 14 August 2018, specifically, its responsibility around third parties acting on behalf of the pharmaceutical company and where the accountability lay.

COMMENTS FROM TAKEDA

Takeda provided some background and context to the Takeda-sponsored type 2 diabetes mellitus (T2DM) Therapy Review Service. Elements of the below were also included in Takeda's initial response to this complaint.

Takeda submitted that as the UK healthcare system had evolved over time, the NHS was increasingly expecting the pharmaceutical industry to deliver value which went 'beyond the pill'. Takeda submitted that the Therapy Review Service it funded in diabetes had resulted in improvement in the management of many patients with T2DM, with obvious benefits for those patients, their families and the NHS. Data had been collected which supported this view and Takeda intended to submit a manuscript to a peer-reviewed journal in due course.

Takeda submitted that T2DM was a long-term condition which required careful management in order to reduce the risk of potentially devastating long-term sequalae. Patients were mainly managed in primary care where the role of the clinical team was focussed on management of glycaemic control, minimisation of other cardiovascular risk factors such as blood pressure and cholesterol, and early detection of damage to end organs such as the eyes and kidneys. When the condition was not managed well there was a well-documented increased risk of morbidity and serious complications which could lead to disability and premature mortality (provided).

Takeda submitted that a pharmacist-led review programme (commissioned by a named NHS clinicial commissioning group (CCG)) on the management and control of T2DM in primary care and published in a peer-reviewed journal, resulted in an increase in the number of key care processes administered and improved diabetic control during the year of programme delivery (provided). Takeda became aware of the data from this study in advance of its full publication. This data gave Takeda confidence in the clinical value of review programme in improving the care of patients with T2DM. Additionally, Takeda considered that the proven experience of the third party service provider in conducting diabetes therapy reviews, together with its strong relationships with many entities within the NHS, made them a logical organisation for Takeda to partner with.

Takeda's response to complainants' reasons for appeal

Takeda submitted that it could not comment on any therapy review services commissioned by other pharmaceutical companies since these were entirely outside of Takeda's control. As had been acknowledged by the Panel, Takeda's written arrangements for the review did not appear to amount to a switch to Takeda medicines.

Takeda submitted that the complainants also raised concerns in relation to the operational meetings involving Takeda and third party service provider employees. The Therapy Review Service was an operationally complex service, so quarterly meetings were essential to ensure that the service was operating appropriately, and within the allocated budget.

Takeda submitted reasons for the attendance of the two staff from the third party service provider including that one of the individuals was the main point of contact for Takeda and was responsible for managing the therapy review service on a national basis and the other managed the pharmacists who had been able to provide valuable feedback and highlight issues and challenges arising 'on the ground'.

Takeda submitted that, it was entirely appropriate for the two individuals to attend regular operationally-focussed meetings with Takeda. Takeda did therefore not agree with the complainants' concerns in relation to these meetings and considered the actual role of the third party service provider attendees to be more important than simply the individual's job titles. Takeda also confirmed that the nature of the discussion during these meetings was entirely focussed on the smooth operation of the therapy review service.

Takeda submitted that another point of note commented on by the complainants was the exclusion of insulin managed patients from the therapy review service. As Takeda had previously explained:

> 'the management of poorly controlled Type 2 diabetics requiring insulin is often complex. In many situations such patients will be managed with input from a secondary care diabetes service or a community-based specialist. They are also likely to be monitored more closely and have more interactions with HCPs than patients managed with oral anti-diabetic therapies, and are therefore less likely to benefit from a primary care based, pharmacist led therapy review service…..for those patients identified during therapy reviews where consideration should be given to initiating insulin, based on the practice defined treatment map, the [third party service provider] pharmacist would highlight those patients to the GP but would not make a specific treatment recommendation'.

When setting up the service, Takeda and the third party service provider believed that the specialist management of insulin managed patients would be beyond the reasonable scope of the pharmacists. Takeda took patient safety extremely seriously and firmly stood by this rationale.

Finally, Takeda submitted that the complainants stated that most pharmacological interventions related to DPP-4 inhibitors. Takeda's DPP-4 inhibitor (alogliptin) was one of five DPP-4 inhibitors available in the UK. As Takeda had previously explained, all recommendations for medicinal interventions were made in line with the practice defined treatment map, which was generally based on local guidelines/formulary and typically specified which medicine was recommended within any particular class. All recommendations were individually authorised by the GP. If the GP did not agree with the recommendations, they did not sign the individual patient assessment form. The fact that most pharmacological interventions related to the initiation of DPP-4 inhibitors was not entirely surprising, given that in recent times DPP-4 inhibitors had been a common add-on therapy prescribed to patients not adequately controlled on metformin alone. Takeda submitted that at no point during the operation of the therapy review service had its product been market leader within the DPP-4 inhibitor class. Takeda would like to reassure the Appeal Board that it had never received or sought any data from the third party service provider regarding the number of patients initiated on alogliptin as a result of the therapy review service. Furthermore, practices were offered the service based on an assessment of unmet need in this area (ie practices falling within the bottom quartile of achievement of the QoF indicator HbA1c < 59mmol/mol). There was no regard whatsoever to alogliptin's positioning within local formularies or guidance.

Takeda submitted that it had had a robust governance framework to ensure the therapy review service was designed and continued to be delivered compliantly. There had been no commercial bias and Takeda was not aware of any Takeda product promotion (disguised or

otherwise) occurring in connection with the service. Takeda therefore submitted that high standards had been maintained with respect to the Takeda sponsored T2DM service.

FINAL COMMENTS FROM THE COMPLAINANTS

The complainants alleged that the first third of Takeda's response detracted from the complaint and used the process as an opportunity to promote Takeda and the third party service provider. The job title referred to by Takeda was a non-clinical member and not an account manager. It appeared Takeda had got its title descriptions wrong for this appeal. Unless Takeda specified names the complainants would never know.

The complainants did not accept Takeda's explanation for excluding Type 1 diabetics on insulin but they agreed this was a specialist group, however, there was still important advice to be given by the third party service provider pharmacists and especially for type 2 diabetics who were often managed in primary care. The complainants alleged that this was NOT inclusive of ALL treatment options and therefore not Code compliant.

The complainants were aware DPP4's were only to be used where appropriate along with many other treatment choices. It was for the Appeal Board to decide if the highest intervention group being DPP4's was coincidence or not for a pharmaceutical company which made a DPP4, sponsoring a therapy review.

The complainants requested the Appeal Board consider the Panel's final comments in relation to the Takeda complaint, and reconsider if a breach Clause 9.1 was appropriate.

APPEAL BOARD RULING

The Appeal Board noted the Panel's general comments above and considered that they were relevant to all the related therapy review cases and the email in question. Each individual case would be considered on its own merits. In that regard, the Appeal Board noted that it could be argued that the email in question did not refer to a specific Takeda medicine nor link the Takeda therapy review service to a specific medicine. The Appeal Board noted, however, that the phrase 'integrate client product/therapy priorities' appeared towards the end of the email and appeared to apply to all the therapy reviews.

In the Appeal Board's view, it appeared that Takeda's documentation was not unreasonable in that it did not appear to link the therapy review service to Takeda's product. The Appeal Board noted that within the email at issue another pharmaceutical company's medicine had been linked to that company's therapy review service.

The Appeal Board noted that the complainants had alleged that the focus of their complaint was in relation the term 'integrate client product/therapy priorities' that appeared in the email. The Appeal Board noted that the email at issue was a single internal communication within the named third party service provider. The Appeal Board was concerned that the third party had linked another company's product to a therapy review service in the email. Whilst the Appeal Board considered that the wording of the phrase 'integrate client product/therapy priorities' could be improved, it did not consider, overall, that the phrase in itself or in the context of the email related to a particular Takeda medicine. Nor was evidence provided by the complainants to show that the email in question impacted on the delivery of the Takeda service.

In the Appeal Board's view, Takeda had been let down by its third-party service provider. The Appeal Board noted the Panel's serious concerns about the impression given by the entire email. However, the Appeal Board did not consider that, in the particular circumstances of this case, the complainants had provided evidence that Takeda had failed to maintain high standards and it upheld the Panel's ruling of no breach of Clause 9.1. The appeal was unsuccessful.

This case was one of a number of cases as follows; Case AUTH/3188/4/19 Bayer, Case AUTH/3191/4/19 Amgen, Case AUTH/3193/4/19 Novartis, Case AUTH/3194/4/19 GlaxoSmithKline, Case AUTH/3195/4/19 Chiesi and Case AUTH/3197/4/19 Ethypharm.

Complaint received **30 April 2019**

Case completed **14 October 2020**