

HEALTH PROFESSIONAL v BRITANNIA

Email distribution of promotional material

A health professional stated that, despite emailing Britannia Pharmaceuticals Ltd three times over the last 12 months, asking to be removed from all mailing lists, a sales representative had emailed him/her a copy of Kinetic. Kinetic (a copy of the March 2020 edition was provided by Britannia) was a magazine about the practical management of Parkinson's disease. The front cover stated that the publication series had been initiated and funded by Britannia and that the company's products would be discussed. Prescribing information for Apo-go (apomorphine) was included on the back cover. Apo-go was indicated for the treatment of certain patients with Parkinson's disease.

The complainant alleged that the Kinetic magazine was entirely promotional and 'pushing' such an item was in poor taste given the current Covid-19 situation. Why was promotional literature being sent out during a national crisis when doctors had more pressing issues to deal with? The complainant suggested that the representative had been pressurised to distribute large numbers of the magazine. The complainant alleged that the behaviour was not acceptable.

The detailed response from Britannia is given below.

The Panel noted that in April 2020, a Britannia employee emailed representatives a copy of the Kinetic magazine stating that it provided a great way to touch base with customers where face-to-face interactions were limited. The email asked the representatives, that where consent had been obtained, to share Kinetic with their customers, and in that regard the Panel considered that as face-to-face interactions would be limited due to the Covid-19 pandemic, the representatives might turn to email communication more than usual. The Panel noted Britannia's acknowledgment that the email did not provide sufficient guidance and that it had not been approved/reviewed as it should have been; the company accepted that representatives must have sent the promotional item in question to health professionals on this occasion.

The Panel noted that material had been emailed by a representative and that, according to Britannia, permission to send promotional emails had not been sought prior to the distribution of the Kinetic magazine in question. The Panel ruled a breach of the Code as acknowledged by the company.

The Code required that mailing lists be kept up-to-date and requests to be removed from promotional mailing lists be complied with promptly. The Panel noted the complainant's submission that he/she had tried to stop promotional material being sent from Britannia but to no avail. The Panel noted Britannia's submission that the company did not have an up-to-date distribution list for promotional material and company employees did not correctly understand the need to have an up-to-date distribution list or the risks involved in not having one. The Panel further noted Britannia's submission that health

professionals were not provided with suitable guidance about how to stop receiving promotional material and that any request to be removed from a promotional mailing list would have been futile as there was no robust process or governance in place with regard to promotional mailing lists when the Kinetic magazine was distributed. The Panel therefore ruled a breach of the Code as acknowledged by the company.

The Panel noted Britannia's submission that it had extensive internal processes and procedures in place to ensure that it adhered to data protection regulations. Training was provided to all employees however, on this occasion, those policies had not been followed. The Panel noted Britannia's submission that its process for collecting consent within its sales and marketing department had fallen short of a robust and compliant procedure. The Panel was concerned to note Britannia's further submission that there was no process or governance regarding its promotional mailing lists in place at the time and there was confusion, lack of accountability and inadequate understanding of the Code with regard to mailing lists and GDPR.

The Code required that representatives must at all times maintain a high standard of ethical conduct in the discharge of their duties and must comply with all relevant requirements of the Code. The Panel noted that the representatives had not appeared to receive appropriate training and briefing with regard to the use of promotional emails etc and so they had not obtained prior consent to send such emails to health professionals as required by the Code. The Panel ruled a breach of the Code.

The Panel noted the complainant's concern that promotional literature was being sent out during the Covid-19 crisis when doctors had more pressing issues to deal with. The Panel noted Britannia's submission that its representatives had received verbal instructions that they should be a partner during the crisis instead of being purely promotional. Nonetheless, the Panel noted that the Code did not prohibit the distribution of promotional material at any time provided that it complied with the requirements of the Code. On the narrow ground of *when* the Kinetic magazine had been distributed, the Panel did not consider that high standards had not been maintained and no breach of the Code was ruled.

The Panel, however, noted its comments and rulings above regarding the process surrounding the email distribution of the magazine. The transcripts of interviews showed that knowledge regarding the use of consent, mailing lists, how to keep those mailing lists up-to-date and GDPR etc, even amongst senior employees, was extremely hazy and confused; there appeared to be little or no sense of employees taking personal responsibility for compliance. The Panel considered that Britannia had failed to maintain high standards and a breach of the Code was ruled.

A health professional stated that, despite asking to be removed from all mailing lists, he/she had been emailed a copy of Kinetic, a promotional magazine, by a sales representative from Britannia Pharmaceuticals Ltd. Kinetic magazine (a copy of the March 2020 edition was provided by Britannia) was about the practical management of Parkinson's disease. It was stated at the bottom of the front cover of the magazine that the publication series had been initiated and funded by Britannia and that the company's products would be discussed. Prescribing information for Apo-go (apomorphine) was included on the back cover. Apo-go was indicated for the treatment of certain patients with Parkinson's disease.

COMPLAINT

The complainant submitted that the Kinetic magazine was entirely promotional and 'pushing' such an item was in poor taste given the current Covid-19 situation. The complainant asked why promotional literature was being sent out during a national crisis – doctors had more pressing issues to deal with.

The complainant stated that he/she had known the representative who had sent the magazine for a while, and it appeared that he/she had come under pressure from head office to distribute the material in high quantities.

The complainant alleged that the behaviour was not acceptable.

The complainant stated that he/she had emailed three separate addresses one of which bounced over the last 12 months requesting that he/she did not want to receive any promotional/non-scientific related items.

When writing to Britannia, the Authority asked it to consider the requirements of Clauses 9.1, 9.9, 11.3 and 15.2 of the Code.

RESPONSE

Britannia explained that in April 2020, an employee attached a copy of the Kinetic magazine to an email (copy provided) which he/she sent to the representatives as well as other third parties/partners (that promoted outside the UK). The email instructed the representatives to distribute hard copies of Kinetic once they had appropriate consent. However, Britannia acknowledged that this instruction was not explicit and should have provided sufficient guidance. The email had not been approved/reviewed by compliance or medical affairs in which it should have been based on the distribution briefing given.

Britannia stated that its investigation had shown that the company did not have a distribution list for promotional material. From the investigation it appeared that it was not usual company practice to email promotional/marketing materials and on the rare occasion that was done a third party supplier was used which dealt with consent. It was also clear from the interviews that were carried out (transcripts provided), that company employees did not correctly understand the need to have an up-to-date distribution list or the risks involved in not having one. A newly appointed senior employee questioned the consent process and the promotional distribution list during the internal UK leadership team meeting in March and was reassured by an identified associate director that the list was kept up-to-date and requests for unsubscribing were dealt with promptly.

Britannia stated that a newly appointed employee in compliance also raised concerns with the employee who sent the email in question regarding an up-to-date mailing list and consent (copy provided). Unfortunately, it was evident that, although training had been provided, the employee who sent the email did not have a good understanding of the subject matter.

Britannia stated that from those internal questions back in April there was now a cross-functional team working towards a solution to have the appropriate mechanics to enable promotional mailings through Britannia's current system.

Britannia submitted that health professionals were not provided with suitable guidance about removal from Britannia's promotional mailing list. Any request to be removed from the

promotional mailing list would have been futile, as there was not a robust process or governance to unsubscribe from its promotional mailing list in place at that time of distribution.

Britannia further submitted that there was no process or governance regarding its promotional mailing lists and that its representatives must have sent the promotional item in question to health professionals on this occasion.

With regard to the Covid-19 pandemic, Britannia stated that its representatives might have been told verbally to be a partner during this time instead of being purely promotional. These verbal instructions were provided by an identified senior employee. Britannia stated that it was unable to provide any details to the context, or logistics of where and when these verbal instructions were provided.

The protection and rights of all individuals with whom Britannia had a relationship was paramount. As part of its requirements within the sales and marketing teams they were permitted only to process personal data that was obtained legitimately to perform the tasks required pursuant to Article 6(1)(f) of the GDPR. The personal data was obtained at events when health professionals asked to receive further information about Britannia's future events and any marketing information. Therefore, any contact made by those teams was based upon the explicit consent obtained in the first instance from any parties who wished to receive any such information. The legal basis for processing any personal data was at that individual's explicit consent pursuant to Article 6(1)(a) of the GDPR.

Britannia stated that anyone who no longer wished to receive such information could withdraw their consent for any future contact, and furthermore had the right to have all their personal data held by the company erased.

Britannia stated that it had extensive internal processes and procedures in place to ensure that it adhered to the strict guidelines as provided by the GDPR and Data Protection Act 2018. Furthermore, training was provided to all employees, including refresher training, in addition to any training required regarding any updates that took place, so that they were aware of their responsibilities.

Britannia stated that it had a detailed GDPR statement on its website, which explained how it collected and processed personal data, data subject rights, the type of data it could potentially process. If anyone wished to raise concerns, had comments, or required information, they could contact the company's data protection officer.

Britannia stated that unfortunately on this occasion it was clear those policies had not been followed and it was evident that its process for collecting consent within its sales and marketing department had fallen short of a robust and compliant procedure. This was an area the company was working hard to rectify and it was committed to putting in place appropriate measures to ensure this matter was not repeated.

Britannia acknowledged that the following clauses had been breached:

- Clause 9.1 – failure to maintain high standards by not having a mailing list for promotional material
- Clause 9.9 – prior permission from health professionals before sending promotional material had not been obtained

- Clause 11.3 – promotional mailing list had not been kept up-to-date
- Clause 15.2 – representatives did not consistently maintain high standards by abiding with all of the requirements of the Code.

Britannia stated that it was clear, from the transcripts of the internal investigation that there was confusion, lack of accountability and inadequate understanding of the Code concerning mailing lists and GDPR. Britannia took such matters extremely seriously, and noted that the following actions would take place before any promotional mailings (post/email) were sent out:

- Communication had been actioned to its sales and marketing departments to confirm no promotional/marketing material was to be sent electronically until a suitable solution was sourced
- Comprehensive Code training for identified staff
- Code update training for all representatives
- Extensive GDPR training for all sales and marketing personnel
- Commitment to find appropriate compliant solutions with its customer relationship management system to set up a mailing list database that would be kept up-to-date and facilitate prompt unsubscribing, under Code and GDPR legislation
- Future direction/instruction to the field force would be approved by compliance/medical affairs.

PANEL RULING

The Panel noted that in April, an employee emailed representatives a copy of the Kinetic magazine stating that it provided a great way to touch base with customers where face-to-face interactions were limited. The email continued by asking the representatives, that where consent had been obtained, to share Kinetic with their customers, and in that regard the Panel considered that as face-to-face interactions would be limited due to the Covid-19 pandemic, the representatives might turn to email communication more than usual. The Panel noted Britannia's acknowledgment that the email did not provide sufficient guidance and that it had not been approved/reviewed as it should have been; the company accepted that representatives must have sent the promotional item in question to health professionals on this occasion.

The Panel noted that Clause 9.9 required that, *inter alia*, email communications must not be used for promotional purposes, except with the prior permission of the recipient. The Panel noted Britannia's submission that on the rare occasion that it emailed promotional material, it was usually sent via a third party which dealt with consent. In that regard, the Panel thus considered that the representatives would not regularly email promotional material to their customers and so would not have a detailed working knowledge of the requirements of the Code in that regard. The Panel noted that, in this case, the material had been emailed by a representative and that, according to Britannia, permission to send promotional emails had not been sought prior to the distribution of the Kinetic magazine in question. The Panel ruled a breach of Clause 9.9 as acknowledged by the company.

Clause 11.3 required that mailing lists must be kept up-to-date and requests to be removed from promotional mailing lists must be complied with promptly. The Panel noted the complainant's submission that he/she had tried to stop promotional material being sent from Britannia but to no avail. The Panel noted Britannia's submission that the company did not have an up-to-date distribution list for promotional material and that employees did not correctly understand the need to have an up-to-date distribution list or the risks involved in not having one. The Panel

further noted Britannia's submission that health professionals were not provided with suitable guidance about how to request to no longer receive promotional material and any request to be removed from a promotional mailing list would have been futile, as there was no robust process or governance in place with regard to promotional mailing lists when the Kinetic magazine was distributed. The Panel therefore ruled a breach of Clause 11.3 as acknowledged by the company.

The Panel noted Britannia's submission that it had extensive internal processes and procedures in place to ensure that it adhered to the strict guidelines as provided by the GDPR and Data Protection Act 2018. Training was provided to all employees, including any updates that took place, to ensure that they were aware of their responsibilities however, on this occasion, those policies had not been followed. The Panel noted Britannia's submission that its process for collecting consent within its sales and marketing department had fallen short of a robust and compliant procedure. The Panel was concerned to note Britannia's further submission that there was no process or governance regarding its promotional mailing lists in place at the time and there was confusion, lack of accountability and inadequate understanding of the Code with regard to mailing lists and GDPR.

Clause 15.2 required that representatives must at all times maintain a high standard of ethical conduct in the discharge of their duties and must comply with all relevant requirements of the Code. The Panel noted that the representatives had not appeared to receive appropriate training and briefing with regard to the use of promotional emails etc and so they had not obtained prior consent to send such emails to health professionals as required by the Code. The Panel ruled a breach of Clause 15.2.

The Panel noted the complainant's concern that promotional literature was being sent out during the Covid-19 crisis when doctors had more pressing issues to deal with. The Panel noted Britannia's submission that its representatives had received verbal instructions that they should be a partner during the crisis instead of being purely promotional. Nonetheless, the Panel noted that the Code did not prohibit the distribution of promotional material at any time provided that it complied with the requirements of the Code. On the narrow ground of *when* the Kinetic magazine had been distributed, the Panel did not consider that high standards had not been maintained and no breach of Clause 9.1 was ruled.

The Panel, however, noted its comments and rulings above regarding the process surrounding the email distribution of the magazine. The transcripts of interviews showed that knowledge regarding the use of consent, mailing lists, how to keep those mailing lists up-to-date and GDPR etc, even amongst senior employees, was extremely hazy and confused; there appeared to be little or no sense of employees taking personal responsibility for compliance. The Panel considered that Britannia had failed to maintain high standards and a breach of Clause 9.1 was ruled.

Complaint received **4 May 2020**

Case completed **2 December 2020**