CASE AUTH/3354/5/20

COMPLAINANT v TAKEDA

Date from which a medicine can be described as 'new'

A complainant who described him/herself as a concerned health professional, noted that an online advertisement for Takhzyro (lanadelumab) referred to the medicine as 'new' even though the marketing authorisation was granted over twelve months ago.

Takhzyro was indicated for routine prevention of recurrent attacks of hereditary angioedema (HAE) in patients aged 12 years and older.

The detailed response from Takeda is given below.

The Panel noted that the Code required that the word 'new' must not be used to describe any product or presentation which had been generally available, or any therapeutic indication which had been promoted, for more than twelve months in the UK.

The Panel noted Takeda's submission that Takhzyro was first authorised on 22 November 2018 and that the hosted webpage, which included the advertisement at issue, was the first promotional item published since 18 September 2019, the date Takeda considered Takhzyro to be 'generally available'. Takeda had released a press release on 18 September 2019 about the outcome of the National Institute of Health and Care Excellence (NICE) appraisal process stating that the final appraisal document would recommend NHS funding for Takhzyro [a high-cost medicine] providing certain conditions were followed.

The Panel further noted Takeda's submission that 'general availability' could otherwise be regarded as being the date of the first supply of commercial Takhzyro stock into the UK ie 26 June 2019; if funding was available, prescriptions could have been fulfilled from then on.

Whilst noting Takeda's submissions about the product's general availability, the Panel also noted Takeda's submission about three presentations, one by a Takeda medical team member on 1 April 2019 and two by health professionals for which Takeda was responsible at a meeting on 2-3 May 2019. The Panel examined the presentations and noted that two presentations detailed the pivotal study; all three were clearly promotional and, as acknowledged by Takeda, had been certified as such.

In the Panel's view, Takhzyro had been promoted from 1 April 2019 and thus could only be described as new for 12 months from that date. The Panel noted that the advertisement at issue which described Takhzyro as 'a new preventative treatment for use in type I/II HAE' appeared to have been viewed by the complainant towards the end of May 2020 when the complaint was submitted. The Panel therefore ruled a breach of the Code.

A complainant who described him/herself as a concerned health professional, complained about an advertisement for Takhzyro (lanadelumab) (ref C-APROM/UK//3323) placed on a hosted webpage on the BMJ website by Takeda. The advertisement referred to the National Institute for Health and Care Excellence (NICE) recommendation for Takhzyro.

Takhzyro was indicated for routine prevention of recurrent attacks of hereditary angioedema (HAE) in patients aged 12 years and older.

COMPLAINT

The complainant noted that the advertisement included the claim 'Introducing Takhzyro: a new preventative treatment for use in type I/II HAE' even though the marketing authorisation for the product was granted over twelve months ago. The complainant provided a screenshot of the advertisement.

When writing to Takeda, the Authority asked it to consider the requirements of Clause 7.11.

RESPONSE

Takeda stated that it had very carefully considered the complainant's concern and was confident that the advertisement at issue was not in breach of Clause 7.11.

Takeda explained that one of its areas of focus was rare diseases, including HAE which affected between 1 in 10,000 and 1 in 50,000 people worldwide.

Takhzyro was first granted a marketing authorisation on the 22 November 2018. The marketing authorisation holder for Takhzyro was Shire Pharmaceuticals Limited which, following the acquisition of Shire by Takeda in January 2019, was now a wholly owned subsidiary of Takeda. Takhzyro had a list price of £12,420 per 300mg vial and was administered every 2 weeks (although dose reduction to every 4 weeks was within the marketing authorisation for stable attack-free patients). The list price meant that in the absence of a Patient Access Scheme negotiated with NICE and the Scottish Medicine Consortium (SMC), a year's worth of treatment with Takhzyro could cost up to £322,920.

Takeda stated that NICE published its technology appraisal guidance recommending the use of Takhzyro on 16 October 2019 which was then implemented across NHS England on 14 January 2020. The SMC published its positive recommendation on 9 December 2019. Wales and Northern Ireland followed the NICE guidance with Wales implementing the guidance on 16 December 2019. Takeda stated that it was unaware of any formal date given for implementation in Northern Ireland.

The advertisement at issue was a hosted webpage on the BMJ website, accessible to UK health professionals by clicking through a banner advertisement; it included the claim that Takhzyro was 'a new preventative treatment for use in type I/II HAE' and had been produced by Takeda and certified in accordance with the Code on 25 October 2019. The advertisement promoted Takhzyro in light of the recent technology appraisal by NICE, where Takhzyro had been recommended for use in line with its licensed indication subject to certain conditions. The hosted webpage went on to introduce the medicine and provided summary results from the pivotal study. The hosted webpage marked the first use of the term 'new', or synonyms of it,

and was the first promotional item released since Takeda considered Takhzyro to be 'generally available'.

Clause 7.11 stated that the word 'new' must not be used to describe any product or presentation which had been generally available, or any therapeutic indication which had been promoted, for more than twelve months in the UK. Takeda deemed Takhzyro to have become 'generally available' in the UK from 18 September 2019. This was the date on which Takeda released a press release on the outcome of the NICE appraisal process stating that the final appraisal document would recommend that the NHS fund treatment with Takhzyro providing conditions set out in the document were followed. Takeda noted that NHS funding for new medicines became available following an implementation period which started with NICE publishing its technology appraisal guidance, therefore by deeming Takhzyro to have become 'generally available' on 18 September 2019, Takeda had taken a highly conservative approach.

Furthermore, Takeda noted that the only early access programme it offered for Takhzyro was one which provided free of charge ongoing supply of the medicine for patients who had originally been treated with Takhzyro within a clinical trial. Takeda had not received any requests for supply of Takhzyro outside of this very restricted programme before the NICE/SMC approval. Given the high price of Takhzyro and the fact that other medicines approved for the prevention of recurrent attacks of HAE were already funded by the NHS, this was in line with Takeda's expectations.

The first UK commercial order for Takhzyro was received by Takeda in December 2019.

In conclusion, Takeda submitted that as Takhzyro was a high-cost medicine subject to a NICE technology appraisal and SMC technology assessment, the medicine could not be considered to have become 'generally available' in the UK until positive NICE/SMC guidance was issued and implemented. Takeda had taken a very conservative approach by considering Takhzyro to have become 'generally available' on 18 September 2019, the date on which Takeda issued its press release indicating that NICE would publish a final appraisal document recommending NHS funding for Takhzyro. Takeda submitted that its approach was reinforced by the fact that no commercial orders for Takhzyro were received by Takeda until December 2019.

Since the Code permitted the use of the word 'new' in conjunction with a medicine for a period of 12 months following the 'general availability' of that medicine, Takeda believed that the advertisement complied with the requirements of Clause 7.11 and that the complaint was without merit.

In response to a query from the Panel regarding other activities that took place before 18 September 2019 (the internally agreed Day 1 of active promotion, defined by Takeda as the date on which the UK press release relating to the positive NICE final appraisal document was issued) Takeda submitted that a presentation by a Takeda medical team member took place on the 1 April 2019 and two presentations by health professionals were presented at a single meeting on 2-3 May; all of the presentations were certified as promotional as they took place within the context of broader promotional meetings. None of the certified slides presented used the word 'new'. The medical team led the presentation and one of the health professional's presentations focussed on data from the pivotal study. The other health professional presentation mentioned Takhzyro, amongst other treatments used in the management of HAE, and was not the focus of the presentation. None of the slides presented used Takhzyro's

branded promotional imagery or colour schemes. There were no promotional materials related to Takhzyro distributed at either meeting.

Takeda submitted that representatives were present at both meetings to allow interactions on the two actively promoted HAE products in Takeda's portfolio (Cinryze and Firazyr). The representatives at the time of those meetings had been briefed on the Takhzyro summary of product characteristics (SPC) to ensure compliance in the case of unsolicited health professional questions but had been specifically briefed to only reactively provide a specific response to enquiries and state that Takhzyro was not yet available in the UK. The briefing stated that Takhzyro was not expected to be available until September 2019, although individual requests at full list price could be considered from June 2019 if local funding had been approved, and to direct all enquiries to Takeda's medical information team. In Takeda's view, individual requests were extremely unlikely due to the high cost of the medicine and so Takhzyro would not be 'generally available' until after September 2019 in line with NICE timelines.

Takeda submitted that these presentations constituted important health professional education on a licensed medicine soon to be available in the UK. The objective of the presentations was primarily to educate on the pivotal trial. The presentations were not intended to advocate immediate use of the product, but to educate and prepare the clinicians for a new medicine that was soon to be available. Takeda submitted that it had confirmed with members of the team present at those meetings, and still part of Takeda, that the lack of availability was explained at the start of the presentations. The deliberately minimal briefing provided to the representatives was designed to ensure that there would be no active promotion of Takhzyro by the sales force during the period when Takhzyro was not readily available.

As a result of a salesforce restructure which began in April 2020 [2019], promotional activity involving face-to-face interactions with health professionals, where proactive discussion on all Takeda HAE products including Takhzyro took place, did not begin until November 2019.

With regard to the Panel's query regarding the possibility of Takhzyro being ordered prior to December 2019, Takeda submitted that the first supply of commercial Takhzyro stock into the UK occurred on 26 June 2019. For reasons previously stated, relating to the NICE approval process and high cost of Takhzyro, Takeda did not consider that the medicine was generally available on that day. However, were funding made available, prescriptions of the product could have been fulfilled from 26 June 2019 onwards. Had an order been received prior to this date, it might have been possible to expedite importation to the UK, although in Takeda's view, this would have been exceptional to its normal processes and would certainly not have constituted general availability. Takeda reassured the Panel that if this date was deemed to constitute 'general availability', the website referred to in the original complaint had been taken down by this day as part of a planned update to the promotional campaign and did not contain the word 'new'.

Takeda submitted that Takhzyro was not 'generally available' until a positive final appraisal document had been issued by NICE (18 September 2019). However, it understood that it could alternatively be argued that the medicine was 'generally available' following first importation into the UK (26 June 2019). Takeda submitted that under either of these definitions of 'general availability' Clause 7.11 had not been breached.

PANEL RULING

The Panel noted that Clause 7.11 stated that the word 'new' must not be used to describe any product or presentation which has been generally available, or any therapeutic indication which has been promoted, for more than twelve months in the UK.

The Panel noted Takeda's submission that Takhzyro was first authorised on 22 November 2018. The Panel noted Takeda's submission that the hosted webpage, which included the advertisement at issue, was the first promotional item published since 18 September 2019, the date Takeda considered Takhzyro to be 'generally available'. Takeda stated that it had released a press release on 18 September 2019 about the outcome of the NICE appraisal process stating that the final appraisal document would recommend that the NHS fund treatment with Takhzyro providing certain conditions were followed.

The Panel further noted Takeda's submission that the first supply of commercial Takhzyro stock into the UK occurred on 26 June 2019 and were funding made available, prescriptions of the product could have been fulfilled from 26 June 2019 onwards.

The Panel noted Takeda's submission that if 26 June 2019 was deemed to constitute 'general availability' the website referred to in the original complaint had been taken down by this date as part of a planned update to the promotional campaign and did not contain the word 'new'. The Panel assumed that this meant that the website had been updated to remove the word 'new' by 25 June, 2020 but the Panel did not know precisely when this occurred.

Whilst noting Takeda's submissions about the product's general availability, the Panel also noted Takeda's submission about a presentation by a Takeda medical team member on 1 April 2019 and two presentations by health professionals for which Takeda was responsible at a meeting on 2-3 May 2019. The Panel noted Takeda's submission that representatives' briefings for both meetings stated that in response to unsolicited enquiries, representatives should state that Takhzyro was not yet available in the UK. In addition, the lack of availability was stated at the start of the meeting. The briefing stated that Takhzyro was not expected to be available until September 2019, although individual requests at the full list price could be considered from June 2019 if local funding had been approved. The Panel examined the presentations and noted that two presentations detailed the pivotal study and that all three were clearly promotional and, as acknowledged by Takeda, had been certified as such.

In the Panel's view, Takhzyro had been promoted from 1 April 2019 and thus could only be described as new for 12 months from that date. The Panel noted that the advertisement which included the claim 'Introducing Takhzyro: a new preventative treatment for use in type I/II HAE' appeared to have been viewed by the complainant towards the end of May 2020 when the complaint was submitted. The Panel therefore ruled a breach of Clause 7.11.

Complaint received **25 May 2020**

Case completed **8 February 2021**