

ANONYMOUS v BRISTOL-MYERS SQUIBB AND PFIZER

Declaration of sponsorship on a patient organisation video

An anonymous, contactable complainant who described him/herself as a member of the public, complained that the fact that a patient organisation's video, on the organisation's YouTube channel, was sponsored by pharmaceutical companies was only revealed at the end of the video and not clearly acknowledged at the outset. The Bristol-Myers Squibb/Pfizer Alliance was listed as one of the sponsors.

The complainant further noted that the YouTube video information which showed the text accompanying the video did not mention the support from the pharmaceutical companies. The patient organisation homepage banner which linked to the YouTube channel, did not mention the support of the pharmaceutical companies.

The detailed response from Bristol-Myers Squibb and Pfizer is given below.

The Panel noted that the complainant was concerned that, contrary to the requirements of the Code, it was not immediately obvious that a podcast video on a patient organisation's YouTube channel was sponsored by pharmaceutical companies; the complainant had submitted that involvement of the companies had only been revealed at the end of the 33-minute video.

The Panel noted that whilst it appeared from the screenshots provided by the Alliance and downloaded by the case preparation manager that the Alliance's sponsorship was declared in the static text beneath the video on the landing page when reaching YouTube, it queried whether the font size was sufficient for the information about sponsorship to be obvious to the viewer. Further, on the screenshot provided by the complainant the declaration was missing from the text below the video on the landing page and on the banner on the patient organisation's website linking to the video. The Panel considered that on the balance of evidence before it, when the complainant viewed the video and submitted the complaint the Alliance's sponsorship of the video had not been declared such that viewers would have been aware of it at the outset. A breach of the Code was ruled.

The Panel noted that whilst a written agreement between the parties, which referred to the need to declare the companies' sponsorship, was in place, in the Panel's view it was not clear within the agreement that sponsorship must be clearly acknowledged and apparent from the start and, on balance, a breach of the Code was ruled.

The Panel noted its comments and rulings above and considered that high standards had not been maintained. A breach of the Code was ruled.

The Panel noted its comments and rulings above and did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 and no breach was ruled.

An anonymous, contactable complainant who described him/herself as a member of the public, complained that the fact that an Anticoagulation UK video, on the organisation's YouTube channel, was sponsored by pharmaceutical companies was only revealed at the end of the video and not clearly acknowledged at the outset. The Bristol-Myers Squibb/Pfizer Alliance was listed as one of the sponsors.

COMPLAINT

The complainant alleged that the companies listed all worked with the patient group and had a vested interest in the therapy area. The complainant stated that he/she recently watched a patient video on the patient organisation's YouTube channel about anticoagulation and the coronavirus but was concerned to note only at the end of the video that it had been supported by pharmaceutical companies including the Bristol-Myers Squibb/Pfizer Alliance. The complainant welcomed the valuable contribution the companies made to patient organisations but was concerned that this support was only revealed at the end of the video.

The complaint provided relevant screenshots and links. The complainant stated that the screenshots showed that at the start of the video (00:00 minutes) there was no declaration of sponsorship by the companies and that that declaration only appeared at the end of the video (32.25 minutes).

The complainant further noted that the YouTube video information which showed the text accompanying the video did not mention the support from the pharmaceutical companies. The patient organisation homepage banner which linked to the YouTube channel, did not mention the support of the pharmaceutical companies.

The complainant alleged breaches of the following:

Clause 27.9 because the Bristol-Myers Squibb/Pfizer Alliance did not ensure that its sponsorship was clearly acknowledged from the outset.

Clause 27.3 required a written agreement with a statement that all parties were fully aware that sponsorship must be clearly acknowledged and apparent from the start. As this acknowledgement had not happened in the video at the start, the complainant believed that either there were no written agreements in place or the written agreements did not include such a statement.

Clause 9.1 because high standards had not been maintained in the relationship between the company and the patient organisation.

Clause 2 because the above breaches brought discredit to the pharmaceutical industry, as the Bristol-Myers Squibb/Pfizer Alliance should know it should be fully transparent in its relationships with patient organisations.

The complainant emphasised that the video was excellent for patients and he/she did not want it taken down, however the support from pharmaceutical companies should be declared up front.

When writing to Bristol-Myers Squibb and Pfizer, the Authority asked them to consider the requirements of Clauses 27.3, 27.9, 9.1 and 2 of the Code.

RESPONSE

Bristol-Myers Squibb responded on behalf of the Bristol-Myers Squibb/Pfizer Alliance (the Alliance) as it had reactively reviewed, approved and processed the unsolicited request for funding from the patient organisation on behalf of the Alliance.

The Alliance noted that the activity involved the patient organisation Anticoagulation UK which was a charity dedicated to the prevention of thrombosis, raising awareness of the risk of blood clots and how to help prevent them by providing information, education and support for patients and health professionals. The patient organisation requested funding from the Alliance to support the production of a podcast on anticoagulation and Covid-19. The Alliance denied breaches of Clauses 27.3, 27.9, 9.1 and 2 on the following grounds:

- Bristol-Myer Squibb, on behalf of the Alliance, had a certified and signed written agreement with Anticoagulation UK related to the funding request
- This was an arm's length arrangement in response to the unsolicited request; the Alliance was not involved in, or had any role in, the development, review or production of the video content
- The agreement clearly stated the need for the patient organisation to abide by all applicable laws including local country and industry codes
- The agreement clearly stated that the patient organisation must declare the company's sponsorship on all materials related to this request clearly and prominently
- Bristol-Myer Squibb had a close out process in order to ensure funds had been used as per the written agreement.

The Alliance anticipated the project end date to be 30 June 2020 as per the timelines provided by Anticoagulation UK in its original request. The Alliance was notified of the availability of the podcast on one named channel, but only knew about the YouTube video on receipt of this complaint.

With regard to the complainant's query about whether a written agreement was in place, and if it was whether it contained a statement requiring appropriate acknowledgement of the support, the Alliance confirmed that a certified written agreement, referred to as the Letter of Agreement, was in place. The agreement contained a statement that the declaration of the Alliance support needed to be clearly stated. The Alliance also confirmed that the patient organisation agreed to the terms and conditions of this written agreement and it was duly signed by both organisations before the activity was initiated (a copy of the written agreement and a copy of the certified agreement was provided).

The Alliance noted a particular paragraph of the written agreement which clearly required Bristol-Myers Squibb's support to be acknowledged in all materials related to the activity. The examples used (invitations, announcements etc.) in the wording were specifically chosen to highlight that the support needed to be made clear from the outset of the activity itself.

Bristol-Myers Squibb submitted that it had a close out process, as outlined in the written agreement, to ensure that funds provided for the activity were used as per the written agreement.

Considering the factors mentioned above and the signed written agreement that was in place and included the relevant Code requirements to acknowledge company support, the Alliance denied a breach of Clause 27.3.

With regard to the complainant's view that the companies did not ensure that their sponsorship was clearly acknowledged from the outset, Bristol-Myers Squibb stated that a certified written agreement was in place. Three paragraphs in the written agreement detailed the specific requirements which the patient organisation must ensure, including that:

- the funds were used and complied with the written agreement, the applicable laws and the applicable industry codes;
- the organisation must acknowledge Bristol-Myers Squibb's support in all its activities such as invitations, announcements, brochures, blast emails and course materials.

On receipt of this complaint, the Alliance immediately investigated the live channels. Below was the Alliance's response to what was seen live at the time of its investigation.

In the Alliance's view, the requirements of the written agreement had been met as the Alliance's support was acknowledged multiple times within the activity at the following locations:

- At the outset on the dynamic banner on the patient organisation's website (the most likely access point to the material for viewers)
- On the fixed text below the YouTube video
- And again, within the video itself.

Dynamic banner on the patient organisation's website

When the Alliance checked the patient organisation's website, viewers first saw a large rolling banner, informing them of the podcast availability, topic and location. The banner clearly stated the names of the companies supporting that activity using bold, capitalised font. This was then immediately followed by a direct link to YouTube. The declaration of support would be seen before deciding whether to engage with the activity or click the link to access the YouTube platform and the video, and therefore from what the Alliance saw, the banner clearly acknowledged sponsorship. A screenshot (accessed 28 May) was provided.

Fixed text below the YouTube video

When reaching the YouTube platform, viewers would see a landing page where there was a fixed declaration in the static text beneath the video acknowledging the companies that had supported its production. A screenshot (accessed 29 May) was provided.

For the purposes of its investigation, the Alliance also tested the situation where a viewer might search for the video directly on YouTube, without first visiting the patient organisation website. The resultant view that appeared through a direct search using the search bar, showed the

declaration of support within the image of the video on the left of the screen. A screenshot (accessed 28 May) was provided.

Declaration within the video itself

The Alliance stated that as provided by the case preparation manager, the complainant and seen by the Alliance on the day the complaint was received (screenshot provided), a detailed declaration also appeared at the end of the video as a reminder of the support provided by pharmaceutical companies.

On investigation, as demonstrated above, the Alliance saw a declaration of support in multiple positions, ensuring transparency. In conjunction with the stipulations within the signed written agreement it denied a breach of Clause 27.9.

The Alliance noted that the complainant cited a breach of Clause 9.1, as in his/her view high standards were not maintained in the relationship between the Alliance and Anticoagulation UK, and a breach of Clause 2 for not transparently declaring the Alliance's relationship with the patient organisation.

In recognition of the Code's stipulation that patient organisations should have full independence, the Alliance had not been involved in the development of the content, any of the advertisements or the production of the educational video and in that regard the Alliance referred to the signed, written agreement.

The Alliance considered that it had responsibly entered into an agreement as per the requirements of the Code for an arm's length grant, provided reactively to an unsolicited request from the patient organisation. The existence of the relevant sections of the written agreement demonstrated that the Alliance had upheld the requirements expected by the Code in such an agreement. By doing so the Alliance maintained an appropriate balance between the independence of the organisation and the contractual requirements set out within the written agreement including the need to acknowledge Bristol-Myers Squibb's support.

The Alliance had noted multiple changes to content during the course of this investigation, discussed separately below. As noted by the complainant, the video provided important and valuable information to viewers during the current and ongoing Covid-19 pandemic. In light of this, the Alliance considered that it was important to work with the patient organisation to ensure all requirements of the Code and contract were met, whilst also respecting the patient organisation's independence.

The Alliance submitted that it had demonstrated that a clear written and signed agreement was in place including a statement for the need to declare company involvement fulfilling the requirements of the Code and requiring the patient organisation to abide by all applicable laws and industry codes. Furthermore, as demonstrated above, the YouTube video and leading banner also contained the declarations when examined. Hence, the Alliance considered that there had been full transparency, and independence in its approach, in supporting this third-party independent activity.

The Alliance thus denied the breach of Clauses 9.1 and 2, as it considered that it had maintained high standards and had not undermined confidence in the industry.

The Alliance noted that it had seen changes in the video and within the banner on the patient organisation website between the time the complaint was received and the Alliance submitted its response; this had made the investigation into the complaint challenging. The declaration on the patient website banner, and that in the static text below the YouTube video, had been amended several times to remove sponsorship of two other companies. In addition, the declaration slide in the video (final viewpoint) was removed with no direction from the Alliance.

On approaching the patient organisation to explore the reasons for these changes, it stated that these were not technical issues, but instead confirmed that the changes were made in response to external requests. The Alliance was committed to abiding by the Code both in the spirit and letter. To ensure that high standards were maintained, the Alliance was working with the patient organisation to ensure that all the terms of the agreement were upheld and the requirements were satisfied.

In response to a request from the case preparation manager for further information, the Alliance clarified the following:

- As the content was completely independent with no input from the Alliance; the Alliance did not use the video in any of its activities, nor did it direct any health professionals or patients to it.
- The patient organisation approached the Alliance in April 2020 to request funding to support its production of a podcast on anticoagulation and Covid-19, with the purpose of sharing knowledge and raising awareness amongst health professionals, patients, carers and families. The unsolicited request was evaluated in line with the robust in-house process to approve such hands-off grants.
- For all arm's length grant requests, to ensure that the Alliance had no direct or indirect involvement, Bristol-Myers Squibb carefully detailed all the key requirements within the terms and conditions of such agreements, to ensure all the requirements of the Code were met without having to get involved in review of the activities. This allowed the organisation requesting funding to work totally independently.
- Bristol-Myers Squibb reviewed and assessed each request for support to determine whether it was appropriate and compliant. Due to the nature of arm's length grants, Bristol-Myers Squibb ensured compliance with the Code by means of a signed written agreement.
- The written agreement was certified.

PANEL RULING

The Panel noted that the complainant was concerned that, contrary to the requirements of the Code, it was not immediately obvious that a podcast video on a patient organisation's YouTube channel was sponsored by pharmaceutical companies; the complainant had submitted that involvement of the companies had only been revealed at the end of the 33-minute video.

Clause 27 referred to the relationship between pharmaceutical companies and patient organisations and Clause 27.9 stated, *inter alia*, that companies must ensure that their sponsorship [of materials/activities] was clearly acknowledged from the outset.

The complainant had provided relevant screenshots most of which appeared to have been accessed on 16 May 2020 – only the screenshot from the end of the video referred to pharmaceutical company sponsorship.

The Panel noted that upon receipt of the complaint on 22 May 2020 the case preparation manager downloaded the relevant screenshots from the YouTube link provided by the complainant. The Panel noted from these screenshots that in addition to the screenshot from the end of the video referring to pharmaceutical company sponsorship, there was a fixed declaration in the static text beneath the video, on the landing page when reaching the YouTube platform, acknowledging the companies that had supported its production which did not appear in the screenshot provided by the complainant.

The Alliance had provided a number of alternative screenshots, accessed on 28 and 29 May 2020, which showed that its sponsorship of the video was declared at multiple timepoints, including on a dynamic banner advertising the video at issue on the homepage of the patient organisation's website and in the text beneath the video on the landing page. A screenshot was also provided by the Alliance which showed that if a viewer had accessed the video directly through YouTube, without going via the patient organisation website, company sponsorship was declared at the outset. Sponsorship was also declared, as acknowledged by the complainant, at the end of the video.

The Panel noted that the screenshots provided by each party differed with the exception of the screenshot from the end of the video. The Panel noted that the screenshots had been accessed at different times. The Panel noted the Alliance's submission that changes had been made in the video and within the banner on the patient organisation website between the time the complaint was received and the Alliance submitted its response. The Alliance had also submitted that the declaration on the patient organisation website banner, and that in the static text below the YouTube video had been amended several times to remove sponsorship of two other companies. In addition, the declaration slide in the video (final viewpoint) was removed with no direction from the Alliance. The patient organisation had confirmed that the changes were made in response to external requests.

The Panel noted that whilst it appeared from the screenshots provided by the Alliance and downloaded by the case preparation manager that the Alliance's sponsorship was declared in the static text beneath the video on the landing page when reaching YouTube, it queried whether the font size was sufficient for the information about sponsorship to be obvious to the viewer. Further, on the screenshot provided by the complainant the declaration was missing from the text below the video on the landing page and on the banner on the patient organisation website linking to the video. The Panel considered that on the balance of evidence before it, when the complainant viewed the video and submitted the complaint the Alliance's sponsorship of the video had not been declared such that viewers would have been aware of it at the outset. A breach of Clause 27.9 was ruled.

The Panel noted that, as required by Clause 27.3, there was a written agreement in place between Bristol-Myers Squibb and the patient organisation with regard to sponsorship of the video. The supplementary information to Clause 27.3 stated that such an agreement must include a statement that all parties were fully aware that the sponsorship must be clearly acknowledged and apparent from the start. In that regard, however, the Panel noted that in the Letter of Agreement which covered the sponsorship of the video, under a heading 'Should Organization disclose this relationship to others?', it was stated 'Yes. [Bristol-Myers Squibb]

support must be acknowledged in all invitations, announcements, brochures, blast emails and course materials. Any other use of [Bristol-Myers Squibb's] name must be approved prior to use'. In that regard, the Panel considered it unfortunate that, what appeared to be a standard paragraph had been used – the reference to course materials seemed irrelevant. In the Panel's view, it would have been more helpful if the Letter of Agreement, which was specifically about the production of the video, had specifically stated that viewers must be made aware of the companies' sponsorship from the outset or similar. The Panel queried whether the reference to 'invitations' (presumably to view the video) was sufficient in that regard. Given the importance of transparency, the Panel considered that written agreements should be unequivocal about the requirements regarding declarations of sponsorship. The Panel noted that whilst a written agreement between the parties, which referred to the need to declare the companies' sponsorship, was in place, in the Panel's view it was not clear within the agreement that sponsorship must be clearly acknowledged and apparent from the start and, on balance, a breach of Clause 27.3 was ruled.

The Panel noted its comments and rulings above and considered that high standards had not been maintained. A breach of Clause 9.1 was ruled.

The Panel noted its comments and rulings above and did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 and no breach was ruled.

Complaint received 22 May 2020

Cases completed 18 January 2021