NO BREACH OF THE CODE

CASE AUTH/3364/6/20

COMPLAINANT v ASTRAZENECA

LinkedIn post and 'likes'

A complainant, who described him/herself as a concerned UK health professional, complained that a LinkedIn post, from a senior executive at AstraZeneca, promoted an unlicensed medicine.

The complainant submitted that as LinkedIn was clearly a platform aimed at the general public and not health professionals, the LinkedIn post at issue clearly promoted a future product to the general public, as there was considerable interest in such vaccines in the UK.

The complainant noted that although the person who placed the LinkedIn post might not be based in the UK, AstraZeneca was and several other staff at AstraZeneca had also 'liked' the post.

The detailed response from AstraZeneca is given below.

The Panel noted that it was an established principle under the Code that UK-based global or other such companies were subject to the Code. If such entities were not members of the ABPI, or on the list on non-member companies that otherwise complied with the Code, the UK company had to take responsibility for their acts and omissions under the Code.

In the Panel's view, the LinkedIn post at issue came within the scope of the ABPI Code because it had been placed by a senior executive of a company located in the UK (AstraZeneca global).

The Panel further noted AstraZeneca's submission that eleven UK-based AstraZeneca employees had engaged (commented, shared or reacted to (including 'Likes')) with the LinkedIn post. In that regard, the Panel considered that the actions of the UK employees meant that they had in effect further disseminated the material within the UK. The Panel considered that the UK employees' involvement in and engagement with the post, and thus the dissemination of the material also brought the LinkedIn post and associated article within the scope of the Code.

Having decided that the LinkedIn post was subject to the Code, the Panel noted the complainant's allegation that it 'clearly promoted a future product to the general public as there was considerable interest in such vaccines in the UK'. In that regard the Panel noted that the LinkedIn post stated:

> **'Today we announced we've licensed coronavirus targeting antibodies from Vanderbilt University and plan to advance a pair of these mAbs [monoclonal antibodies] into clinical evaluation as a combination approach for both the prevention and treatment of Covid-19. Thank you to [a named doctor] at Vanderbilt and the extended team involved in this endeavour!'**

The LinkedIn post directed readers to an article housed in the media section of AstraZeneca's global corporate website. The article, dated June 2020, was entitled 'Advancing our discovery of novel coronavirus-neutralising antibodies against Covid-19' and referred in the most part to the work AstraZeneca was doing in relation to the pandemic including that it had licensed coronavirus targeting antibodies, a pair of which it planned to advance into clinical evaluation as a combination approach as a potential combination therapy for the prevention and treatment of Covid-19. In that regard, the article contained the prominent quotation from an employee from another named pharmaceutical company:

> **'By combining two monoclonal antibodies that bind to distinct parts of the SARS-CoV-2 spike protein into what potentially could be a single preventative therapy, we hope to improve its effectiveness in neutralising the virus. These collaborations help ensure potential medicines that can prevent or treat COVID-19 are accelerated as quickly and safely as possible.'**

Although most of the linked article referred to monoclonal antibodies, the final paragraph, headed 'Part of a comprehensive COVID-19 response', stated:

> **'AstraZeneca's comprehensive response to the COVID-19 global pandemic also includes a landmark agreement with the University of Oxford for the global development and distribution of *the* University's potential recombinant adenovirus vaccine aimed at preventing COVID-19 infection from SARS-CoV-2. The Company has also quickly moved to test new and existing medicines from multiple therapy areas to treat the infection' (emphasis added).**

The Panel acknowledged that in the context of the current pandemic there would understandably be enormous public interest in the work being done by pharmaceutical companies and others to investigate possible treatments for Covid-19. However, companies must ensure that materials and activities complied with the Code.

The Panel noted that, contrary to AstraZeneca's implied submission that the article in question only pertained to a licensing deal for numerous monoclonal antibodies that would enter clinical development to address the global Covid-19 pandemic, the final paragraph also referred to the collaboration between AstraZeneca and Oxford University regarding the development and distribution of a specific potential vaccine.

The Panel noted that whilst no specific product was mentioned within the LinkedIn post in question, the associated article referred to AstraZeneca's agreement with Oxford University for the global development and distribution of the University's potential recombinant adenovirus vaccine aimed at preventing COVID-19 infection. It was clear that the potential vaccine was not yet licensed and thus AstraZeneca did not have a prescription only medicine available in June 2020 when the LinkedIn post, together with

its associated article, was published. On this very narrow technical point the Panel ruled no breaches of the Code in relation to the alleged promotion to the public.

The Panel considered that some readers might assume that the reference in the article to the global distribution of the AstraZeneca/Oxford vaccine implied research success and meant that the vaccine was about to be shipped and was almost ready for use. The Panel did not consider that use of the phrase 'potential…vaccine' (emphasis added) was sufficient to negate that impression and thus in the Panel's view, noting the dissemination of the post and associated article on LinkedIn, the unlicensed vaccine had been advertised to the public as alleged and meant that high standards had not been maintained; a breach of the Code was ruled.

The Panel noted that the supplementary information to Clause 2 included promotion prior to the grant of a marketing authorization as an example of an activity that was likely to be in breach of that clause. The Panel noted its comments and ruling above. The Panel noted that AstraZeneca had proactively posted material that was amended post approval and referred to a potential specific vaccine on to a social media platform which the company acknowledged would be visible to the public. Further a number of UK employees had engaged with the post resulting in its potential subsequent proactive dissemination to all of their connections. The Panel considered that in promoting the unlicensed vaccine, including to members of the public as alleged, AstraZeneca had brought discredit upon and reduced confidence in the pharmaceutical industry and a breach of the Code was ruled.

Upon appeal by AstraZeneca the Appeal Board noted that compliance challenges arose when the personal use of social media by pharmaceutical company employees overlapped with their professional responsibilities or the interests of the company.

The Appeal Board considered that as the Global Corporate Affairs function was based in the UK and that UK employees had involvement in and engagement with the post, the dissemination of the material brought the LinkedIn post and associated article within the scope of the Code.

The Appeal Board noted that the LinkedIn post directed readers to an article dated June 2020, entitled 'Advancing our discovery of novel coronavirus-neutralising antibodies against Covid-19' in the media section of AstraZeneca's global corporate website. Most of the article referred to monoclonal antibodies and the final paragraph stated:

> **'AstraZeneca's comprehensive response to the COVID-19 global pandemic also includes a landmark agreement with the University of Oxford for the global development and distribution of the University's potential recombinant adenovirus vaccine aimed at preventing COVID-19 infection from SARS-CoV-2. The Company has also quickly moved to test new and existing medicines from multiple therapy areas to treat the infection.'**

The Appeal Board considered that as the media article was a link from the LinkedIn post at issue it should be considered as part of the post. The Appeal Board noted that the article had drawn attention to a scientific update and highlighted the collaboration between AstraZeneca and Oxford University regarding the development and distribution of the university's 'potential' future vaccine in the final paragraph. In the Appeal Board's

view, neither the LinkedIn post nor the associated article at the time it was sent included any product claims or indication that a successful treatment was now available or certain. In the Appeal Board's view, the paragraph at issue within the context of the article constituted factual information about the collaboration.

The Appeal Board acknowledged that in the context of the pandemic there would, at the time of the post, have been enormous public interest in having information about the work being done by pharmaceutical companies and others to investigate possible treatments for Covid-19. In the particular circumstances of this case the level of public awareness was not irrelevant. The Appeal Board considered that in June 2020 when the post and linked article were published that the public would have had an understanding that potential vaccines were being worked upon, but not yet available for use. The Appeal Board disagreed with the Panel's view that the paragraph at issue implied research success. The Appeal Board did not consider in this context that the reference to distribution would lead members of the public to consider that this related to imminent distribution of an available vaccine. The Appeal Board noted that it was likely that 'likes' by UK employees would lead to the proactive distribution of the post and associated article to the UK employees' LinkedIn connections. However, in the particular context of this case the Appeal Board concluded that did not mean that the items at issue were promotional.

The Appeal Board considered that, in the particular circumstances of this case and noting its comments above, no unlicensed medicine had been promoted. The Appeal Board therefore ruled no breach of the Code and consequently no breach of Clause 2 of the Code. The appeal was successful.

A complainant, who described him/herself as a concerned UK health professional, complained that a LinkedIn post, from a senior executive at AstraZeneca, promoted an unlicensed medicine. The post read:

> 'Today we announced we've licensed coronavirus targeting antibodies from Vanderbilt University and plan to advance a pair of these mAbs [monoclonal antibodies] into clinical evaluation as a combination approach for both the prevention and treatment of Covid-19. Thank you to [a named doctor] at Vanderbilt and the extended team involved in this endeavour!'

The reader was provided with a link to what the complainant described as a press briefing and invited to read more.

COMPLAINT

The complainant submitted that as LinkedIn was clearly a platform aimed at the general public and not health professionals, the LinkedIn post at issue clearly promoted a future product to the general public, as there was considerable interest in such vaccines in the UK.

The complainant noted that although the person who placed the LinkedIn post might not be based in the UK, AstraZeneca was and several other staff at AstraZeneca had also 'liked' the post.

When writing to AstraZeneca, the Authority asked it to consider the requirements of Clauses 26.1, 26.2, 9.1 and 2.

RESPONSE

AstraZeneca refuted that it had breached Clauses 2, 9.1, 26.1 or 26.2 and summarised its response to the allegations as follows:

- The complainant's allegation was unfounded. The LinkedIn post in question referred to a legitimate corporate announcement about the company's corporate strategy to address the Covid-19 pandemic and in particular, a licensing deal with an academic partner for multiple candidate monoclonal antibodies.

- The contents of the LinkedIn post and linked webpage article were factual and balanced.

- Neither the LinkedIn post, nor the linked webpage article mentioned a specific AstraZeneca medicine. Rather, both articles clearly stated that multiple monoclonal antibody candidates were licensed with a view to future clinical development. As no product was mentioned, by definition, AstraZeneca had neither promoted a medicine nor had it implied research success, raised unfounded hopes for treatment or encouraged members of the public to ask their doctor or other prescribers to prescribe a specific prescription only medicine.

AstraZeneca explained that the content for the LinkedIn post, together with the AstraZeneca website article, was developed by the global research and development corporate affairs team in collaboration with senior research and development leaders.

The person who posted the LinkedIn announcement was a senior global executive based in the US. The LinkedIn post referred specifically to the acquisition of candidate monoclonal antibodies from Vanderbilt University and how AstraZeneca intended to move these assets into clinical development to address the Covid-19 pandemic. The LinkedIn post also provided thanks to the extended team involved in the collaboration.

AstraZeneca explained that the LinkedIn post included a link to a webpage article entitled 'Advancing our discovery of novel coronavirus-neutralising antibodies against COVID-19' (copy provided). That article was housed on the global corporate AstraZeneca website, www.astrazeneca.com and outlined the collaboration between AstraZeneca and Vanderbilt University, as well as the agreements with US government agencies to mobilise research efforts. The article also explained why AstraZeneca was interested in researching multiple monoclonal antibodies, including the rationale for a dual monoclonal antibody approach, in order to maximise chances of addressing the Covid-19 pandemic to everyone's benefit.

AstraZeneca submitted that neither the LinkedIn post, nor the website article, mentioned or alluded to any specific AstraZeneca medicine. For the purposes of clarity and to correct the complainant's erroneous statement, the article on the corporate website was not issued as a press release by AstraZeneca.

The intended target audience of the LinkedIn post was principally followers of the AstraZeneca employee, including scientists, collaborators and peers working in the academic, biotech and

pharmaceutical sectors, with a view to advancing scientific discovery and stimulating further research collaboration possibilities. AstraZeneca acknowledged that any LinkedIn post or article on its website was visible to members of the general public – the reviewers of these pieces took this important aspect into consideration explicitly.

AstraZeneca explained that the materials were reviewed and approved in line with the company's internal review process. In this instance, both articles were reviewed by the global research and development compliance director and a global research and development nominated signatory before being posted. Both reviewers were senior, highly experienced employees of AstraZeneca who were knowledgeable with respect to medicines promotion, regulatory and code of practice requirements.

Given the content for both the LinkedIn post and the webpage article was non-promotional, factual information about the company's licencing deals and plans for its early clinical development, AstraZeneca submitted that it did not constitute disease or medicine information for the public, which would require certification. The emails from the reviewers were provided.

Once notified of the complaint, and upon early investigation internally, the global corporate affairs team discovered that the US-based employee had in fact amended approved content before posting to his/her personal LinkedIn account on 9 June 2020. Whilst the amended content was not re-approved by a nominated signatory, the changes he/she made did not alter the context of the post – ie it remained non-promotional, factual and balanced. Regardless, the corporate affairs team immediately asked the employee to rectify his/her post to align with the original approved content about the licensing deal, which was done on 20 June. The expression of 'thanks' to the collaborators was left in place.

The webpage article was approved on 9 June 2020 by the global research and development nominated signatory. Post-approval, details of the US government agencies with which AstraZeneca had collaborated were added before publishing on the website, however, these changes did not alter the context of the post, which remained non-promotional, factual and balanced (copy provided).

As at 30 June 2020, eleven UK-based AstraZeneca employees had engaged (commented, shared or reacted to (including 'Likes')) with the LinkedIn post. Unfortunately, it was not possible for AstraZeneca to determine the date on which these employees engaged with the post. According to the global standard on employee use of personal social media channels for AstraZeneca and work-related content (copy provided), a mandatory training module for all UK-based employees, employees were permitted to engage with corporate and science related-content. Thus, AstraZeneca considered that it was reasonable for UK-based employees to engage with the LinkedIn post without breaching any clauses of the Code or contravening ethical or training standards.

AstraZeneca refuted the allegation of a breach of Clause 26.1. The content of the LinkedIn post in question, as well as the linked website article on the corporate AstraZeneca website, clearly referred to a recent licencing deal about numerous candidate monoclonal antibodies with a view to future clinical development. No specific medicine was referred to in either article. By definition that could not constitute promotion of a prescription medicine.

AstraZeneca also denied a breach of Clause 26.2. The LinkedIn post and website article provided a factual and balanced account of the status of a group of candidate monoclonal

antibodies for early clinical development. The articles did not imply research success, and therefore did not raise unfounded hopes for any treatment, nor encourage any member of the public to ask his/her doctor or other prescriber to prescribe a specific prescription only medicine.

AstraZeneca refuted the allegation of a breach of Clause 9.1 and submitted that the organization had maintained high standards throughout. The company acknowledged that approved content was amended by the US-based employee before it was posted on his/her personal LinkedIn account, and that additional information was added to the website article post-approval by the global research and development nominated signatory. Although this was disappointing, the revisions were minor and did not change the non-promotional context or balance of the post or article. Once AstraZeneca had identified the edit to the LinkedIn post, it was immediately updated to reflect the approved copy with respect to the licensing deal. The US-based AstraZeneca employee had confirmed that he/she understood the rationale why approved content should not be amended.

AstraZeneca denied a breach of Clause 2. AstraZeneca had maintained high standards throughout. The evidence submitted above demonstrated the company's full commitment to upholding the reputation of the industry.

In summary, AstraZeneca denied any breach of Clauses 2, 9.1, 26.1 and 26.2. The articles in question pertained to a licensing deal for numerous monoclonal antibodies that would enter clinical development to address the global Covid-19 pandemic, one of the greatest global healthcare crises in modern times. AstraZeneca considered that the complaint was unfounded.

PANEL RULING

The Panel noted that complex compliance challenges arose when the personal use of social media by pharmaceutical company employees overlapped with their professional responsibilities or the interests of the company. LinkedIn was a global business and employment-oriented network and was primarily, although not exclusively, associated with an individual's professional heritage and current employment interests. In the Panel's view, it was not unacceptable for pharmaceutical company employees to use personal LinkedIn accounts although they needed to be mindful of the compliance issues that might arise. The Panel considered that companies should assume that the Code would apply to all corporate LinkedIn posts and all work-related, personal LinkedIn posts by their employees unless, for very clear reasons, it could be shown otherwise. Whether the Code applied would be determined on a case-by-case basis, taking into account all of the circumstances including, *inter alia*, content and who had posted the material.

The Panel noted that it was an established principle under the Code that UK-based global or other such companies were subject to the Code. If such entities were not members of the ABPI, or on the list on non-member companies that otherwise complied with the Code, the UK company had to take responsibility for their acts and omissions under the Code.

In the Panel's view, the LinkedIn post at issue came within the scope of the ABPI Code because it had been placed by a senior executive of a company located in the UK (AstraZeneca global) albeit that the executive in question was based in the US.

Regardless of the US employee's actions, the Panel further noted AstraZeneca's submission that eleven UK-based AstraZeneca employees had engaged (commented, shared or reacted to

(including 'Likes')) with the LinkedIn post. In that regard, the Panel considered that the actions of the UK employees meant that they had in effect further disseminated the material within the UK. The Panel considered that the UK employees' involvement in and engagement with the post, and thus the dissemination of the material also brought the LinkedIn post and associated article within the scope of the Code.

The Panel acknowledged that AstraZeneca had not submitted that the LinkedIn post and associated article were outside the scope of the Code.

Having decided that the LinkedIn post was subject to the Code, the Panel noted the complainant's allegation that it 'clearly promoted a future product to the general public as there was considerable interest in such vaccines in the UK'. In that regard the Panel noted that the LinkedIn post stated:

> 'Today we announced we've licensed coronavirus targeting antibodies from Vanderbilt University and plan to advance a pair of these mAbs [monoclonal antibodies] into clinical evaluation as a combination approach for both the prevention and treatment of Covid-19. Thank you to [a named doctor] at Vanderbilt and the extended team involved in this endeavour!'

The LinkedIn post directed readers to an article housed in the media section of AstraZeneca's global corporate website. The article, dated June 2020, was entitled 'Advancing our discovery of novel coronavirus-neutralising antibodies against Covid-19' and referred in the most part to the work AstraZeneca was doing in relation to the pandemic including that it had licensed coronavirus targeting antibodies, a pair of which it planned to advance into clinical evaluation as a combination approach as a potential combination therapy for the prevention and treatment of Covid-19. In that regard, the article contained the prominent quotation from a senior employee from another named pharmaceutical company:

> 'By combining two monoclonal antibodies that bind to distinct parts of the SARS-CoV-2 spike protein into what potentially could be a single preventative therapy, we hope to improve its effectiveness in neutralising the virus. These collaborations help ensure potential medicines that can prevent or treat COVID-19 are accelerated as quickly and safely as possible.'

Although most of the linked article referred to monoclonal antibodies, the final paragraph, headed 'Part of a comprehensive COVID-19 response', stated:

> 'AstraZeneca's comprehensive response to the COVID-19 global pandemic also includes a landmark agreement with the University of Oxford for the global development and distribution of *the* University's potential recombinant adenovirus vaccine aimed at preventing COVID-19 infection from SARS-CoV-2. The Company has also quickly moved to test new and existing medicines from multiple therapy areas to treat the infection' (emphasis added).

The Panel acknowledged that in the context of the current pandemic there would understandably be enormous public interest in the work being done by pharmaceutical companies and others to investigate possible treatments for Covid-19. However, companies must ensure that materials and activities complied with the Code.

The Panel noted that, contrary to AstraZeneca's implied submission that the article in question only pertained to a licensing deal for numerous monoclonal antibodies that would enter clinical development to address the global Covid-19 pandemic, the final paragraph also referred to the collaboration between AstraZeneca and Oxford University regarding the development and distribution of a specific potential vaccine.

The Panel noted that Clause 26.1 prohibited the promotion of prescription only medicines to the public. Clause 26.2 stated that information about prescription only medicines which was made available either directly or indirectly to the public must be factual, presented in a balanced way, must not raise unfounded hopes of successful treatment and must not encourage members of the public to ask their health professional to prescribe a specific prescription only medicine.

The Panel noted that whilst no specific product was mentioned within the LinkedIn post in question, the associated article referred to AstraZeneca's agreement with Oxford University for the global development and distribution of the University's potential recombinant adenovirus vaccine aimed at preventing COVID-19 infection. It was clear that the potential vaccine was not yet licensed and thus AstraZeneca did not have a prescription only medicine available in June 2020 when the LinkedIn post, together with its associated article, was published. Clauses 26.1 and 26.2 only applied to prescription only medicines. On this very narrow technical point the Panel ruled no breach of Clauses 26.1 and 26.2 of the Code.

The Panel noted the requirements of Clauses 3.1 and considered that some readers might assume that the reference in the article to the global distribution of the AstraZeneca/Oxford vaccine implied research success and meant that the vaccine was about to be shipped and was almost ready for use. The Panel did not consider that use of the phrase '*potential*…vaccine' (emphasis added) was sufficient to negate that impression and thus in the Panel's view, noting the dissemination of the post and associated article on LinkedIn, the unlicensed vaccine had been advertised to the public as alleged and meant that high standards had not been maintained; a breach of Clause 9.1 was ruled.

The Panel noted that the supplementary information to Clause 2 included promotion prior to the grant of a marketing authorization as an example of an activity that was likely to be in breach of that clause. The Panel noted its comments and ruling above. The Panel noted that AstraZeneca had proactively posted material that was amended post approval and referred to a potential specific vaccine on to a social media platform which the company acknowledged would be visible to the public. Further a number of UK employees had engaged with the post resulting in its potential subsequent proactive dissemination to all of their connections. The Panel considered that in promoting the unlicensed vaccine, including to members of the public as alleged, AstraZeneca had brought discredit upon and reduced confidence in the pharmaceutical industry and a breach of Clause 2 was ruled.

APPEAL BY ASTRAZENECA

AstraZeneca strongly disagreed with the Panel's rulings and welcomed the opportunity to discuss the issues with the Appeal Board. The rationale for AstraZeneca's appeal was as follows:

AstraZeneca had not engaged in a promotional activity

AstraZeneca submitted that 'Promotion' was defined by the Code as any activity undertaken by a pharmaceutical company or with its authority which promoted the administration, consumption, prescription, purchase, recommendation, sale, supply or use of its medicines. AstraZeneca submitted that this post did not directly or indirectly amount to any of these activities. The post in question was an announcement (and thank you to collaborators) on a professional networking site (LinkedIn) aimed at followers of the AstraZeneca employee who were predominantly scientists, collaborators and peers, working in the academic, biotech and the pharmaceutical industry sectors who had elected to connect with this employee and were likely to be interested in the news about the collaboration deal for these early development compounds. As such it was not promotional and it was accurate and appropriate for the channel. The linked webpage article was also non-promotional, balanced, accurate, and appropriate for the audience, and therefore, not in breach of Clauses 3.1 or 9.1.

AstraZeneca was absolutely certain that the post did not constitute a breach of Clause 2 and that it had done nothing to discredit the industry. The determination must take into account the daily media updates on Covid-19 vaccine development and the mechanisms of purchase, supply, recommendation and prescription of any such vaccines to fully contextualise the lack of promotional capacity of such an announcement about a collaboration agreement.

The paragraph in question within the article was taken out of context

AstraZeneca submitted that the appropriate context of the linked webpage article was important. It was first and foremost about the research & development agreement with Vanderbilt University for monoclonal antibodies. Information about the Oxford University collaboration agreement was made succinctly as a final paragraph, within the context of other collaboration agreements at the time in relation to the coronavirus pandemic. AstraZeneca submitted that the Panel had taken a specific comment from a paragraph in the article out of context. The paragraph read 'AstraZeneca's comprehensive response to the COVID-19 global pandemic also included a landmark agreement with the University of Oxford for the global development and distribution of the University's potential recombinant adenovirus vaccine aimed at preventing COVID-19 infection from SARS-CoV-2. AstraZeneca stated that it had also quickly moved to test new and existing medicines from multiple therapy areas to treat the infection'.

AstraZeneca submitted that the specific phrase within this paragraph deemed to be problematic by the Panel, was 'global development and distribution', ruling that it implied research success and meant that the vaccine was ready for immediate shipment. This was flawed and inaccurate, because the phrase was referring to the new agreement whereby the initial responsibility for development undertaken by the Jenner Institute & Oxford Vaccine Group, was going to become a collaborative effort with AstraZeneca. In addition, AstraZeneca became responsible for worldwide distribution. This was important, as it clarified the roles and responsibilities of each partner. If the Panel's interpretation of this commonly used phrase was taken to its logical conclusion, then no pharmaceutical company would be able to mention development or distribution in the context of compounds in development, nor be able to communicate about collaborations or agreements to develop future candidate compounds, without being seen as promoting, which AstraZeneca submitted was not the intention of the Code. The flawed interpretation by the Panel was also compounded by the off-hand dismissal of the word 'potential' which clarified that this was about something in the future and not about implied research success or readiness for immediate shipment as suggested.

Inconsistencies in the ruling provided in this case compared to rulings in other cases

AstraZeneca welcomed the Appeal Board's review and comparison of the following cases to the current case, for the reasons of consistency in approach and rulings. In particular, where unlike in the current case, specific named medicines, including current and future indications, were mentioned, and yet the companies were not found to be in breach of Clause 2. AstraZeneca submitted the following:

> **Case AUTH/3287/12/19** - An employee described his/her role at their company in their LinkedIn profile as 'Supporting Phase 3 programme in axial spondyloarthropathy for bimekizumab'. The Panel ruled that this statement promoted an unlicensed medicine – both the name of the medicine and an indication had been provided and a breach of Clause 3.1 was ruled. However, a breach of Clause 2 was not ruled, because the Panel considered, that because the statement at issue appeared on a professional networking site (LinkedIn) the majority of those who searched for it might reasonably be assumed to have a professional interest in the matter.
>
> **Case AUTH/3230/7/19** – A tweet about positive headline results relating to an unlicensed indication for a named prescription only medicine (the licensed indication was also included in the tweet). The prescription only medicine was licensed for use in the UK. The Panel considered that a prescription only medicine had been advertised to the public and ruled a breach of clause 26.1. The Panel did not however find the company in breach of Clause 3.1 or Clause 2 despite the Panel acknowledging that an unlicensed indication of a prescription only medicine was promoted to the general public.
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> **Case AUTH/2853/6/16** – A newspaper advertisement stated 'GlaxoSmithKline (GSK) had been working on the world's first malaria vaccine, which if approved we intend to make available at a reduced cost'. The complainant alleged that this constituted the promotion of an unlicensed medicine to patients. A video was also available on YouTube and GlaxoSmithKline's corporate website. Screenshots of newspaper positive headlines were included in the video 'GSK Steps closer to making world's first malaria vaccine' and 'GlaxoSmithKline malaria vaccine trials successful but drug will be not-for-profit'. The Panel considered that given the content of the video, the nature of the medicine and its potential intended geographical use, the video was a corporate advertisement. It was neither promotion of an unlicensed medicine nor promotion of a prescription only medicine to the public. The Panel ruled no breach of Clause 2, 3.1, 9.1, 26.1 or 26.2 despite a description pointing to a specific unlicensed medicine, it's intended indication and a claim (world's first).

AstraZeneca submitted that when compared to the above cases, the Panel's assessment of the current case was unfair, inappropriate, inconsistent with historical rulings, and undermined the spirit of the Code.

Finally, AstraZeneca clarified its position in relation to statements made by the Panel about US-based and contracted employees, who also worked within the Global organisation. The Panel stated that the AstraZeneca employee who submitted the post on LinkedIn was a global employee and because AstraZeneca Global was headquartered in the UK, the post came under the jurisdiction of the Code, even though the employee was US-based. The Panel went on further to state that AstraZeneca had not argued about this point, thereby implying that AstraZeneca agreed with this interpretation. AstraZeneca submitted that Global employees working in the US were US Affiliate employees with US contracts, even if they worked for the

Global organisation. For the avoidance of doubt, AstraZeneca did not consider the Code to have any jurisdiction over US-based employees, under US contracts (who might also happen to work for the Global organisation), who might create US-focused content, posted on US platforms. In this particular case, the content in question was created by Global Corporate Affairs that happened to be based in the UK, then posted by a Global employee working in the US - for this reason only, AstraZeneca chose not to disagree that the materials could be considered to fall under the Code.

Summary

AstraZeneca strongly disagreed with the Panel's ruling in this case. As an organisation, AstraZeneca submitted that it had worked tirelessly throughout the COVID-19 pandemic to advance scientific knowledge and accelerate the development of new medicines to reduce the profound suffering and extensive loss of life, with a commitment to broad, equitable access to vaccine and a commitment to no profit through the pandemic period. This work had in every way, vastly improved the reputation of the industry. AstraZeneca stated that it was extremely disappointed in the Panel's ruling of breaches of Clause 9.1 and 2 (which was a particular type of censure that was reserved for the most egregious breaches of the Code) and was completely inappropriate in this case. AstraZeneca submitted that it had done nothing whatsoever to bring the industry into disrepute or reduce confidence in the industry.

AstraZeneca stated that it looked forward to the opportunity to discuss the objections it had raised and outlined above at the Appeal Board meeting. More broadly, AstraZeneca submitted that this case suggested a profound mismatch between the intended spirit of the industry Code and the way it was currently being interpreted and implemented by the Panel. AstraZeneca submitted that there was a need to urgently review and update the social media guidance including the type of content posted outside of the UK that came under the jurisdiction of the Code and how posts were interpreted and ruled on by the Panel.

RESPONSE FROM THE COMPLAINANT

The complainant had nothing further to add and he/she was sure the Appeal Board had all the information it needed.

APPEAL BOARD RULING

The Appeal Board noted that compliance challenges arose when the personal use of social media by pharmaceutical company employees overlapped with their professional responsibilities or the interests of the company.

The Appeal Board noted that although previous cases were of some relevance each case had to be decided on its merits. The Appeal Board noted that where Clause 2 had not been raised by the complainant or case preparation manager as appropriate it could not be considered by either the Panel or the Appeal Board. The absence of a Clause 2 ruling was therefore not always an indication of the seriousness of a breach.

The Appeal Board noted that 11 AstraZeneca UK employees had liked a LinkedIn post created by the Global Corporate Affairs function that was based in the UK, and posted by a Global employee working from the US. The Appeal Board considered that as the Global Corporate Affairs function was based in the UK and that UK employees had involvement in and

engagement with the post, the dissemination of the material brought the LinkedIn post and associated article within the scope of the Code.

The Appeal Board noted that Clause 1.2 of the Code defined 'promotion' as any activity undertaken by a pharmaceutical company or with its authority which promoted the administration, consumption, prescription, purchase, recommendation, sale, supply or use of its medicines.

The Appeal Board noted that the LinkedIn post at issue stated:

> 'Today we announced we've licensed coronavirus targeting antibodies from Vanderbilt University and plan to advance a pair of these mAbs [monoclonal antibodies] into clinical evaluation as a combination approach for both the prevention and treatment of Covid-19. Thank you to [a named doctor] at Vanderbilt and the extended team involved in this endeavour!'

The Appeal Board noted that the LinkedIn post directed readers to an article dated June 2020, entitled 'Advancing our discovery of novel coronavirus-neutralising antibodies against Covid-19' in the media section of AstraZeneca's global corporate website. Most of the article referred to monoclonal antibodies and the final paragraph stated:

> 'AstraZeneca's comprehensive response to the COVID-19 global pandemic also includes a landmark agreement with the University of Oxford for the global development and distribution of the University's potential recombinant adenovirus vaccine aimed at preventing COVID-19 infection from SARS-CoV-2. The Company has also quickly moved to test new and existing medicines from multiple therapy areas to treat the infection.'

AstraZeneca submitted that its internal policies imposed higher standards than those required by the Code in relation to social media activity. The AstraZeneca representatives at the appeal agreed that the final paragraph of the media article referred to a potential vaccine and therefore the article in question was product related. However, they submitted that the LinkedIn post itself would not have been seen as product related by employees, and employees were permitted under internal policies to react to corporate releases.

The Appeal Board considered that as the media article was a link from the LinkedIn post at issue it should be considered as part of the post. The Appeal Board noted that the article had drawn attention to a scientific update and highlighted the collaboration between AstraZeneca and Oxford University regarding the development and distribution of the university's 'potential' future vaccine in the final paragraph. In the Appeal Board's view, neither the LinkedIn post nor the associated article at the time it was sent included any product claims or indication that a successful treatment was now available or certain. In the Appeal Board's view, the paragraph at issue within the context of the article constituted factual information about the collaboration.

The Appeal Board acknowledged that in the context of the pandemic there would, at the time of the post, have been enormous public interest in having information about the work being done by pharmaceutical companies and others to investigate possible treatments for Covid-19. In the particular circumstances of this case the level of public awareness was not irrelevant. The Appeal Board considered that in June 2020 when the post and linked article were published that the public would have had an understanding that potential vaccines were being worked upon, but not yet available for use. The Appeal Board disagreed with the Panel's view that the

paragraph at issue implied research success. The Appeal Board did not consider in this context that the reference to distribution would lead members of the public to consider that this related to imminent distribution of an available vaccine. The Appeal Board noted it was likely that 'likes' by UK employees would lead to the proactive distribution of the post and associated article to the UK employees' LinkedIn connections. However, in the particular context of this case the Appeal Board concluded that did not mean that the items at issue were promotional.

The Appeal Board considered that, in the particular circumstances of this case and noting its comments above, no unlicensed medicine had been promoted. The Appeal Board therefore ruled no breach of Clause 9.1 and consequently no breach of Clause 2 of the Code. The appeal was successful.

Complaint received **18 June 2020**

Case completed **18 March 2021**