CASE AUTH/3281/11/19

MEMBER OF THE PUBLIC v SANOFI

Responses to enquiries

A member of the public, complained about various interactions he/she had had with Sanofi in 2019. The complainant had called medical information about the availability of the quadrivalent influenza vaccine (QIV). The complainant stated that Sanofi's failure to respond to his/her telephone call in September 2019 was a breach of the Code.

The complainant also stated that no response was received in response to his/her email of 5 September 2019 to medical information regarding the use of Dupixent (dupilumab) and that no formal response had been received in reference to his/her physician's request for compassionate use of Dupixent.

The complainant referred to The Equality Act and alleged that General Data Protection Regulation (GDPR) was breached as he/she was given specific information about his/her compassionate usage request without being asked any security or verification questions. In addition, he/she was told that his/her consultant had already been informed about his/her application for compassionate use of Dupixent which was not so.

The complainant also alleged that an email sent by medical information, regarding the supply of Approvel (irbesartan) to his/her local pharmacy was untrue. The email stated that a consignment of Approvel was due for delivery to the wholesaler on 14 August. The complainant noted, however, that Sanofi had previously admitted it had supply chain issues at the time but had failed to notify him/her or the pharmacy about that. In that regard, the complainant referred to a letter sent by Sanofi to pharmacists on 9 August which noted that there had been some supply problems caused by IT systems implementation but that it was expected that deliveries would return to normal by 26 August.

Finally, the complainant alleged that Sanofi was the only pharmaceutical manufacturer to use an 0845 telephone number for patients to contact the company; by doing so Sanofi brought the industry into disrepute as it profited when patients used that number. The complainant submitted that such a practice was unacceptable.

The detailed response from Sanofi is given below.

The Panel noted that the complainant had the burden of proving his/her complaint on the balance of probabilities. The Panel noted that extreme dissatisfaction was usually required on the part of an individual before he or she was moved to complain. The Panel noted that the complaint concerned, *inter alia*, what was said during telephone conversations and, in that regard, considered that it might be difficult to determine precisely what was said. A judgement had to be made on the evidence provided by the parties.

In relation to the allegation that a named individual had failed to respond to the complainant's call of 24 September, the Panel noted Sanofi's submission that the call was made by the complainant to a named individual rather than via the medical information line and thus there were no telephone recordings. Sanofi stated that the respondent's notes recorded that there were no medical information queries raised by the complainant in the call so it was subsequently closed, without escalation. The Panel did not have a copy of the telephone call notes. The Panel noted that a subsequent email of 4 October from the complainant to Sanofi referred to the telephone conversation of 24 September and that he/she had not received a response. The email of 4 October referred to QIV and delivery dates but it was not clear whether these were matters raised during the telephone call in question.

The Panel considered that it would have been helpful, and certainly good practice, if Sanofi had made its decision to close the matters raised in that call clear to the complainant. It further noted Sanofi's submission that its investigation into the matter had identified improvements it could make to its process for complaints which fell outside of the scope of the Code. In the Panel's view, the complainant had not established, on the balance of probabilities, what was said during the telephone call in question and therefore the Panel was unable to determine whether the matters raised fell within the scope of the Code and required a response. The Panel therefore ruled no breach of the Code as there was no evidence that the matter fell within the scope of the Code.

In relation to the allegation that Sanofi had not responded to the complainant's email dated 5 September regarding the use of Dupixent (dupilumab) and that no formal response was received with reference to the physician's request for compassionate use of Dupixent, the Panel noted Sanofi's submission that a member of the medical information team emailed the complainant on 6 September to let him/her know that Sanofi was following up a request for compassionate use and any decision would be communicated by Sanofi to the complainant's health professional. According to Sanofi, a medical advisor from Sanofi spoke to the complainant's consultant with a decision on eligibility for compassionate use on 6 September. The Panel did not have copies of the emails described above. The Panel noted, however, that Sanofi's email to the complainant of 20 September included that '…all information regarding your request has now been sent to your consultants. As explained earlier this week, your consultant will advise on next steps'. The Panel noted its comments above about the burden of proof and considered that, in relation to compassionate supply and the email dated 5 September, Sanofi had established that it had responded to the points raised including the provision of information to the respondent's consultant. The Panel therefore ruled no breach of the Code.

With regard to the availability of QIV, the Panel noted Sanofi's submission that the availability of the QIV was covered in the email from medical information to the complainant dated 20 September 2019 which gave information about locating stock. The Panel considered that responses to this matter had been sent to the complainant and therefore ruled no breach of the Code.

In relation to the allegation that a letter from the complainant's consultant was ignored, the Panel noted that it was not clear from the complaint what letter the complainant was referring to. The Panel noted that the complainant had provided a letter from a

consultant dated 22 September 2019 as an attachment to his/her email response to Sanofi (dated 20 September). The Panel noted Sanofi's submission that if the complainant was referring to this letter then its actions were appropriate in the light of the information available at that time and the complainant was treated fairly and without prejudice. The Panel noted that the letter detailed the complainant's circumstances and noted that it might be helpful if he/she was allocated a single point of contact within Sanofi to deal with his/her queries and to keep any communication as brief as possible. Whilst it was not clear whether Sanofi had responded to the letter, it did not appear that the letter particularly required a response. The letter from the consultant was not addressed to Sanofi, it appeared to be a 'whomsoever it may concern' letter that the complainant could provide, as needed to those that interacted with him/her. The Panel noted that whilst it might have been helpful for Sanofi to at least refer to the letter, there was no evidence that Sanofi had not taken the content of the letter into consideration when dealing with the complainant after its provision on 20 September and the Panel therefore ruled no breach of the Code.

The Panel noted the complainant's allegation that General Data Protection Regulation (GDPR) was breached as on the 13 September he/she was given specific information about the compassionate usage request without being asked any security or verification questions. The Panel noted Sanofi's submission that examination of the voice recording and written record for this in-coming call had not identified any personal data breaches. It appeared that there had been no formal finding of a data breach in an appropriate legal forum. There was no evidence that there had been a breach of GDPR and the Panel therefore ruled no breach of the Code.

The Panel noted the complainant's allegation regarding the provision of inaccurate information about what the consultant had been told regarding the application for compassionate use of Dupixent. The Panel noted Sanofi's submission that the complainant did not provide a date for this element of the complaint and there were no references to compassionate use discussed on the call recording of 13 September. The Panel did not consider that the complainant had established his/her complaint in this regard and the Panel therefore ruled no breaches of the Code.

Noting the definition of representative, the Panel did not consider that the requirements for representatives was applicable in relation to the complainant's allegations and the Panel therefore ruled no breach of the Code.

In relation to the allegation that information regarding the supply of Approvel was untrue, the Panel noted Sanofi's submission that its email of 13 August was factually correct when it was sent in stating that there was a further consignment of Approvel 150mg due for delivery on 14 August 2019. The Panel therefore ruled no breaches of the Code.

The Panel noted that Sanofi had not commented on whether the telephone lines used were within the scope of the Code. The Panel noted Sanofi's acknowledgment that 0845 telephone numbers were perceived as premium rate and, whilst it was not unusual for pharmaceutical companies to use them, it did have an ongoing project to review the use of UK telephone numbers. The Panel noted Sanofi's submission that it did not, however, levy a charge for the 'service charge' element of the call and thus did not receive any revenue from calls to those numbers. If callers telephoned its 0845 numbers from a landline, they were charged at a landline local rate; calls from a mobile phone would have

differing access charges based on the caller's network provider. The Panel noted the very important nature of the interactions that might occur on medical information calls especially with regard to patient safety matters. The Panel considered that such medical information telephone lines should be accessible. The Panel considered that a premium rate call number might deter certain callers, particularly those on a low income. The Panel considered that in using a premium rate number for its medical information service, Sanofi had failed to maintain high standards and the Panel ruled, on balance, a breach of the Code. This ruling was unsuccessfully appealed by Sanofi.

A member of the public, complained about various interactions he/she had had with Sanofi.

On Friday, 20 September 2019 medical information emailed the complainant following a telephone conversation the previous Monday. The complainant emailed back by return, concerned that Sanofi had contacted him/her by email and not telephoned as requested. It appeared that the complainant had telephoned Sanofi again on 24 September and he/she emailed the company on 4 October, complaining that he/she had yet to receive a response to his/her concerns. The complainant was concerned about the availability of the quadrivalent influenza vaccine (QIV). The complainant stated that Sanofi's failure to respond to his/her telephone call of the 24 September was a direct breach of the Code which stated in the introduction that 'Pharmaceutical companies must ensure that enquiries about their medicines are answered appropriately in a timely manner'.

The complainant also stated that no response was received in response to his/her email of 5 September to medical information regarding the use of Dupixent (dupilumab) and that no formal response had been received in reference to his/her physician's request for compassionate use of Dupixent.

The complainant added that no responses on the availability of the QIV were received and the letter from his/her consultant was also ignored in direct contravention of The Equality Act. Furthermore, the complainant alleged that General Data Protection Regulation (GDPR) was breached as on the 13 September he/she was given specific information about his/her compassionate usage request without being asked any security or verification questions. In addition, he/she was told that his/her consultant had already been informed about his/her application for compassionate use of Dupixent which was not so and was in direct contravention of Clause 15. The complainant noted that the supplementary information to Clause 15, Representatives, stated 'All provisions in the Code relating to the need for accuracy, balance, fairness, good taste etc apply equally to oral representations as well as to printed and electronic material. ***Representatives must not make claims or comparisons which are in any way inaccurate, misleading*****,** disparaging, in poor taste etc, or which are outside the terms of the marketing authorization for the medicine or are inconsistent with the summary of product characteristics. Indications for which the medicine does not have a marketing authorization must not be promoted' (emphasis added by the complainant).

In addition, the complainant alleged that an email sent to him/her on 13 August from medical information, regarding the supply of Approvel (irbesartan) to his/her local pharmacy was untrue. The email stated that a consignment of Approvel was due for delivery to the wholesaler on 14 August. The complainant noted, however, that Sanofi had previously admitted it had supply chain issues at the time but had failed to notify him/her or the pharmacy about that. In that regard, the complainant referred to a letter sent by Sanofi to pharmacists on 9 August which

noted that there had been some supply problems caused by IT systems implementation but that it was expected that deliveries would return to normal by 26 August.

Finally, the complainant alleged that Sanofi was the only pharmaceutical manufacturer to use an 0845 telephone number for patients to contact the company; by doing so Sanofi brought the industry into disrepute as it profited when patients used that number. The complainant submitted that such a practice was unacceptable.

When writing to Sanofi, the Authority asked it to consider the requirements of Clauses 7.2 and 9.1 in addition to Clause 15 as cited by the complainant.

RESPONSE

Sanofi addressed each of the complainant's concerns in turn.

Sanofi's failure to respond to [the] telephone call of the 24 September was a direct breach of the Code which stated in the introduction that 'Pharmaceutical companies must ensure that enquiries about their medicines are answered appropriately in a timely manner'.

Sanofi explained that call notes made following the conversation with the complainant showed that the call was made by the complainant to a named individual rather than via the medical information line and there were no telephone recordings. The respondent's notes recorded that there were no medical information queries raised by the complainant in the call and therefore the call was subsequently closed, without escalation.

Sanofi stated that its investigation had identified improvements it could make to its complaints-handling processes for complaints which fell outside of the scope of the Code, however, as there were no medical information requests made within this call by the complainant, Sanofi refuted breaches of Clauses 7.2 and 9.1.

Sanofi's failure to respond to an email from the complainant to medical information dated 5 September, and a failure by Sanofi to formally respond to a request regarding the compassionate use of Dupixent.

Sanofi stated that its records showed that the complainant's email of 5 September 2019 was escalated. This resulted in another member of the medical information team emailing the complainant on 6 September to let him/her know that Sanofi was following up a request for compassionate use for one of its products and any decision would be communicated by Sanofi to his/her health professional. A medical advisor from Sanofi spoke with the complainant's consultant with a decision on eligibility for compassionate use on 6 September, ahead of the complainant's planned appointment with the consultant.

Sanofi considered that the above actions were appropriately communicated, with the complainant being advised that the information would be provided to his/her health professional. Sanofi do not consider that it had breached Clauses 7.2 or 9.1 with respect to the complainant's two concerns stated above.

Sanofi's failure to respond regarding the availability of the QIV and it ignored a letter from the complainant's consultant.

Sanofi stated that the availability of the QIV was covered in the email from medical information to the complainant dated 20 September 2019. The complainant acknowledged information about the QIV in his/her emailed reply of the same date.

Sanofi stated that it was not certain to which letter from a 'consultant' the complainant had referred as this was not clearly indicated. If it related to the letter shown on the correspondence appended to the complaint, the complainant provided this as an attachment to his/her email response to Sanofi (20 September). This was received after Sanofi had communicated to the complainant its decision to request all further communication was by email, following concerns about some comments of a personal nature made to one of its medical information staff by the complainant.

Sanofi considered that its actions were appropriate in the light of the information available at that time and the complainant was treated fairly and without prejudice. Sanofi denied breaches of Clauses 7.2 and 9.1 in relation to this raised concern.

Alleged breach of GDPR

Sanofi stated that examination of the voice recording and written record for this in-coming call had not identified any personal data breaches. Sanofi refuted that there were any GDPR or Code breaches associated with the concern raised by the complainant.

Provision of inaccurate information about what the consultant had been told regarding the application for compassionate use of Dupixent.

Sanofi noted that the complainant did not provide a date for this element of the complaint. There were no references to compassionate use discussed on the call recording for 13 September and therefore there was no breach of Clauses 7.2 or 9.1.

Sanofi further noted that although the complainant had highlighted Clause 15 for consideration in relation to his/her concern, Clause 15 set out the requirements for representatives which Sanofi did not consider was applicable to medical information-related activities.

Provision of inaccurate information regarding the supply of Approvel.

Sanofi stated that the email of 13 August was factually correct when it was sent and it had confirmed that Approvel, as referred to in the email, was managed by its distribution centre and delivered as part of a scheduled order for delivery on 14 August 2019.

Sanofi did not consider that there had been a breach of Clause 7.2 or 9.1 in relation to the content of the email.

Use of an 0845 telephone number.

Sanofi acknowledged that 0845 telephone numbers were perceived as premium rate and, whilst it was not unusual for pharmaceutical companies to use them, it did have an ongoing project to review the use of the telephone numbers that the company used in the UK.

Sanofi stated that it did not however levy a charge for the 'service charge' element of the call and thus did not receive any revenue from calls to those numbers. If callers telephoned its 0845

numbers from a landline they were charged at a landline local rate; calls from a mobile phone would have differing access charges based on the caller's network provider.

Sanofi submitted that whilst it would be appropriate to review the dialling codes applicable to its services, it did not consider that there had been a breach of the Code by using an 0845 number.

Overall, Sanofi concluded that following investigation of the multiple concerns raised by the complainant, there were no breaches of Clauses 7.2 or 9.1. In addition, Clause 15 was not applicable.

PANEL RULING

The Panel noted that the complainant had the burden of proving his/her complaint on the balance of probabilities. The Panel noted that extreme dissatisfaction was usually required on the part of an individual before he or she was moved to complain. The Panel noted that the complaint concerned, *inter alia*, what was said during telephone conversations and, in that regard, considered that it might be difficult to determine precisely what was said. A judgement had to be made on the evidence provided by the parties.

In relation to the allegation that a named individual had failed to respond to the complainant's call of 24 September and that this was contrary to the Code, the Panel noted Sanofi's submission that its call notes made following the conversation with the complainant on 24 September showed that the call was made by the complainant to a named individual rather than via the medical information line and thus there were no telephone recordings. Sanofi stated that the respondent's notes recorded that there were no medical information queries raised by the complainant in the call so it was subsequently closed, without escalation. The Panel did not have a copy of the telephone call notes. The Panel noted that a subsequent email of 4 October from the complainant to Sanofi referred to the telephone conversation of 24 September and that he/she had not received a response. The email of 4 October referred to QIV and delivery dates but it was not clear whether these were matters raised during the telephone call in question.

The Panel considered that it would have been helpful, and certainly good practice, if Sanofi had made its decision to close the matters raised in that call clear to the complainant and it further noted Sanofi's submission that its investigation into the matter had identified improvements it could make to its complaints-handling processes for complaints which fell outside of the scope of the Code. In the Panel's view, the complainant had not established, on the balance of probabilities, what was said during the telephone call in question and therefore the Panel was unable to determine whether the matters raised fell within the scope of the Code and required a response. The Panel therefore ruled no breach of Clause 9.1 of the Code as there was no evidence that the matter fell within the scope of the Code.

In relation to the allegation that Sanofi had not responded to the complainant's email dated 5 September regarding the use of Dupixent (dupilumab) and that no formal response was received with reference to the physician's request for compassionate use of Dupixent, the Panel noted Sanofi's submission that its records showed that the complainant's email of 5 September 2019 was escalated which resulted in another member of the medical information team emailing the complainant on 6 September to let him/her know that Sanofi was following up a request for compassionate use for one of its products and any decision would be communicated by Sanofi to the complainant's health professional. According to Sanofi, a medical advisor from Sanofi spoke with the complainant's consultant with a decision on eligibility for compassionate use on 6

September, ahead of the complainant's planned appointment with the consultant. The Panel did not have copies of the emails described above. The Panel noted, however, that Sanofi's email to the complainant of 20 September stated, with regard to compassionate use supply of Dupilumab, 'After consulting with our medical colleagues, all information regarding your request has now been sent to your consultants. As explained earlier this week, your consultant will advise on next steps'. The Panel noted its comments above about the burden of proof and considered that, in relation to compassionate supply and the email dated 5 September, Sanofi had established that it had responded to the points raised including the provision of information to the respondent's consultant. The Panel therefore ruled no breach of Clause 9.1.

The Panel noted that the complainant stated that no responses on the availability of the QIV was received. The Panel, however, noted Sanofi's submission that the availability of the QIV was covered in the email from medical information to the complainant dated 20 September 2019. The Panel noted that the email provided stated 'I understand you have had difficulty in obtaining the QIV vaccine. If your chosen Pharmacist or GP practice have questions about obtaining the vaccine, they can contact Sanofi customer services via email at [email address]. Customer service are able to accurately assist your healthcare professional in locating stock. Please note that customer services are unable to answer patient enquiries'. The Panel considered that responses to this matter had been sent to the complainant and therefore ruled no breach of Clause 9.1.

In relation to the allegation that a letter from the complainant's consultant was ignored, the Panel noted that it was not clear from the complaint what letter the complainant was referring to. The Panel noted that the complainant had provided a letter from a consultant dated 22 September 2019 as an attachment to his/her email response to Sanofi (20 September). The Panel noted Sanofi's submission that if the complainant was referring to this letter then its actions were appropriate in light of the information available at that time and the complainant was treated fairly and without prejudice. The Panel noted that the letter detailed the complainant's circumstances and noted that it might be helpful if he was allocated a single point of contact within Sanofi to deal with his/her queries and to keep any communication as brief as possible. Whilst it was not clear whether Sanofi had responded to the letter, it did not appear that the letter particularly required a response. The letter from the consultant was not addressed to Sanofi, it appeared to be a 'whomsoever it may concern' letter that the complainant could provide, as needed to those that interacted with him/her. The Panel noted that whilst it might have been helpful for Sanofi to at least refer to the letter, there was no evidence that Sanofi had not taken the content of the letter into consideration when dealing with the complainant after its provision on 20 September and the Panel therefore ruled no breach of Clause 9.1.

The Panel noted the complainant's allegation that General Data Protection Regulation (GDPR) was breached as on the 13 September he/she was given specific information about the compassionate usage request without being asked any security or verification questions. The Panel noted Sanofi's submission that examination of the voice recording and written record for this in-coming call had not identified any personal data breaches. Sanofi refuted that there were any GDPR or Code breaches associated with the concern raised by the complainant. In addition, it appeared that there had been no formal finding of a data breach in an appropriate legal forum. There was no evidence that there had been a breach of GDPR and the Panel therefore ruled no breach of Clause 9.1.

The Panel noted the complainant's allegation regarding the provision of inaccurate information about what the consultant had been told regarding the application for compassionate use of Dupixent. The Panel noted Sanofi's submission that the complainant did not provide a date for this element of the complaint and there were no references to compassionate use discussed on the call recording of 13 September. The Panel did not consider that the complainant had established his/her complaint in this regard and the Panel therefore ruled no breach of Clauses 7.2 or 9.1.

Noting the definition of representative at Clause 1.7, the Panel did not consider that Clause 15, which set out the requirements for representatives was applicable in relation to the complainant's allegations and the Panel therefore ruled no breach of Clause 15.

In relation to the allegation that an email dated 13 August was untrue, the Panel noted Sanofi's submission that its email of 13 August was factually correct when it was sent and confirmed that Approvel was managed by its distribution centre. The email stated that there was a further consignment of Approvel 150mg due for delivery to a named wholesaler on 14 August 2019. The Panel therefore ruled no breach of Clauses 7.2 and 9.1.

The Panel noted that Sanofi had not commented on whether the telephone lines used were within the scope of the Code. The Panel noted Sanofi's acknowledgment that 0845 telephone numbers were perceived as premium rate and, whilst it was not unusual for pharmaceutical companies to use them, it did have an ongoing project to review the use of UK telephone numbers. The Panel noted Sanofi's submission that it did not, however, levy a charge for the 'service charge' element of the call and thus did not receive any revenue from calls to those numbers. If callers telephoned its 0845 numbers from a landline, they were charged at a landline local rate; calls from a mobile phone would have differing access charges based on the caller's network provider. The Panel noted the very important nature of the interactions that might occur on medical information calls especially with regard to patient safety matters. The Panel considered that such medical information telephone lines should be accessible. The Panel considered that a premium rate call number might deter certain callers, particularly those on a low income. The Panel considered that in using a premium rate number for its medical information service, Sanofi had failed to maintain high standards and the Panel ruled, on balance, a breach of Clause 9.1. This ruling was appealed by Sanofi.

APPEAL FROM SANOFI

Sanofi appealed the Panel's ruling of a breach of Clause 9.1 in relation to the use of an 0845 telephone number for its medical information service.

Sanofi submitted that:

- At the time of relocation of the Sanofi UK Headquarters from three UK sites to a central site in Reading in July 2019, a decision was taken by senior management to retain the existing Sanofi 0845 372 7101 for medical information enquiries. The rationale was, in the short-term, to minimise disruption to customers who already had access to this contact number. A longer term coordinated plan was subsequently put in place to consolidate all changes to company head office addresses and contact telephone numbers across all regulatory and marketing materials for all Sanofi's products.
- 0845 telephone numbers were categorised as **Business Rate Numbers** or **Service Rate Numbers**. Calls made to an 0845 number had a cost which was based on a 'service

charge' element which was set by the organisation being called and an 'access charge' element which was variable depending on the caller's phone provider.
    - Indicative values for the *service charge* for calls to 084 numbers were between 0p and 7p per minute. Sanofi had set this charge at zero and confirmed that it received no revenue from calls to this medical information number.
    - Indicative values for the *access charge* could range from 8p to 65p per minute, dependant on the network provider and the call plan set up. For some providers, access charges to 0845 lines were inclusive 'free calls' within call plans.

- Sanofi noted that Ofcom stated that **Premium rate numbers** generally began with 09, 118, 0871, 0872 and 0873. Indicative call costs were based on a service charge (up to £3.60 per minute) and an access charge, which was dependent on the network provider. Costs to these numbers were regulated by the Phone-Paid Services Authority (PSA).

- Sanofi submitted that it was aware that there could be confusion relating to telephone charges associated with the range of available telephone codes and that this might include 0845 numbers being incorrectly perceived as Premium Rate numbers. The company planned to consolidate its contact details, which were mentioned earlier, including a move to a centralised 0800 (freephone number) for medical information to improve transparency around call costs.

  Sanofi stated that this number was now live (0800 035 2525) and had been added as the company medical information contact line on the Electronic Medicines Compendium (eMC). It was being updated in all patient materials, marketing materials and regulatory documents (target completion date end March 2021). Current callers to the 0845 number were advised that there was an alternative freephone number available. The 0845 number would be live, in parallel with the 0800 number, for approximately 12 months after all materials had been updated. This was to support customers who had older materials in their possession.

- Sanofi noted that the Panel ruling stated 'The Panel noted that Sanofi had not commented on whether the telephone lines used were within the scope of the Code.' As Sanofi had been asked to respond to Clause 9.1, amongst others, the company considered it appropriate to demonstrate in its response that it was behaving with high standards and was not benefitting financially from use of this telephone line. Sanofi was however surprised that, if it was questionable whether this fell within the scope of the Code, the PMCPA had made a ruling on this aspect of the case.

  In summary

- Sanofi submitted that it was factually inaccurate to categorise an 0845 number as a Premium Rate Number. Sanofi submitted that stating it as such in any subsequent case reports risked a negative opinion of the industry, particularly as it was aware that this access code was in use by other pharmaceutical companies.
- Sanofi submitted that it did not receive any revenue from the 0845 number and was not aware of any applicable legislative restrictions to its use to allow contact to a medical information service.
- Sanofi submitted that it had a robust change plan in place to align all external materials (including regulatory materials) with the contact details for the live 0800 number (target completion date end March 2021).

Sanofi refuted that it had breached high standards and it welcomed the opportunity to appeal.

COMMENTS FROM THE COMPLAINANT

The complainant provided a copy of pages from the Electronic Medicines Compendium which he/she alleged showed that Sanofi was still displaying the 0845 number. The complainant also alleged that all the Sanofi patient information leaflets were wrong.

APPEAL BOARD RULING

The Appeal Board considered that the common perception of an 0845 number was that it would incur an additional cost. It accepted Sanofi's submission that an 0845 number was not a premium rate number as stated by the Panel. It was however a business rate number and in the Appeal Board's view would be perceived by those using it as incurring costs in addition to the network costs. Sanofi acknowledged that 0845 numbers were perceived as premium rate numbers. The Appeal Board noted that NHS organisations were often barred from calling 0845 numbers.

The Appeal Board noted that OFCOM guidance provided by Sanofi stated that 'The service charge for calls to 084 numbers is between 0p and 7p per minute. The service charge must be clearly displayed wherever the phone number is advertised or promoted'. The Appeal Board noted that this charge was set by the business being called and that whilst Sanofi submitted it had set this charge to 0p per minute, this was not made clear when the number was provided by Sanofi. Those seeking to call the number would not know that the service charge had been set to 0p per minute.

The Appeal Board noted that as well as the service charge, callers to an 0845 number would also have to pay an access charge which according to Sanofi could range from 8p to 65p per minute, depending on the caller's network provider and the call plan. For some providers, access charges to 0845 lines were included within call plans. The cost of calling from a landline was said by Sanofi to be the landline local rate.

The Appeal Board noted the very important nature of the interactions that might occur on medical information calls particularly with regard to matters of patient safety. The Appeal Board considered that medical information telephone lines should be easily accessible. The use of an 0845 number, particularly without details of the costs which might be incurred, might deter certain callers due to the real or perceived costs involved as confirmed by the complainant at the appeal.

The Appeal Board noted Sanofi's submission that it was aware that there could be confusion relating to telephone charges and that this might include 0845 numbers being incorrectly perceived as premium rate numbers. The Appeal Board noted that Sanofi planned to consolidate its contact details, including a move to a centralised 0800 (freephone number) for medical information, to improve transparency around call costs. Sanofi's 0800 number recently became live and the 0845 number would continue to be live for approximately 12 months after all materials had been updated. Looking at the screenshot provided by the complainant, the Appeal Board noted that the eMC displayed Sanofi's phone number which was an 0845 number and a medical information direct line number which was an 0800 number. There was no mention of any charges associated with calling the numbers.

The Appeal Board noted Sanofi's submission that currently if a caller used the Sanofi 0845 number he/she was now advised that the caller could redial using an alternative freephone number.

In general terms the Appeal Board considered that given the potential deterrent effect that the use of an 0845 number for medical information might have on potential callers it was particularly important that any associated charges (service and network) were made clear in all written material at the outset. In addition, and irrespective of the transparency of the charges, the level of the service charge might be relevant when considering whether the use of an 0845 number was acceptable under the Code.

The Appeal Board considered that taking all the circumstances into account, the use of an 0845 number for the Sanofi medical information service, including the absence of information about the cost of calls, might be perceived as a barrier to patients and health professionals wishing to access Sanofi's medical information service. In that regard, Sanofi had failed to maintain high standards. The Appeal Board therefore upheld the Panel's ruling of a breach of Clause 9.1. The appeal was unsuccessful.

Complaint received **4 October 2019**

Case completed **11 January 2021**