CASE AUTH/3400/10/20

COMPLAINANT v NOVARTIS

Promotion of Inclisiran on a third party website

An anonymous health professional complained that a video recently viewed on a third party website included clinical data for inclisiran which, as far as he/she was aware, had not yet been licensed by the European Medicines Agency (EMA).

When the complaint was submitted, inclisiran (Leqvio) was being developed by Novartis for use in primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia, as an adjunct to diet.

The website included a tile on the homepage under the heading 'Editor's Choice' which invited readers to view a round table discussion on 'Reducing Cardiovascular Risk With Effective Management Of LDL Cholesterol' and included the third party logo and the Novartis logo within the tile. The discussion was broken down into a series of chapters and the complainant specifically referred to chapter 5 'Contemporary approaches to managing LDL-C and cardiovascular risk' and chapter 6 'Summary'.

The complainant noted that the website did not ask if he/she was a health professional and so would be accessible to members of the public. The complainant noted that the third party appeared to be a UK group based in Oxford, so the content of the Novartis sponsored video appeared to be aimed at a UK audience. The complainant alleged that Novartis' sponsorship of the videos meant that the company had promoted inclisiran before the grant of a marketing authorisation. Since the website was open to members of the public, the inclisiran content in chapters 5 and 6 would mean that a prescription only medicine had been advertised to the public, and also might encourage members of the public or patients to ask their GPs or prescribers for inclisiran.

The complainant alleged that the declaration of sponsorship did not appear to cover all aspects of Novartis' involvement in the video; Novartis had attempted to disguise the promotion of inclisiran behind a loose declaration. The materials themselves did not appear to have been certified. The complainant alleged that Novartis had not maintained high standards and that the apparent promotion of inclisiran, before the grant of marketing authorisation, was in breach of Clause 2.

The detailed response from Novartis is given below.

The Panel noted that it was a well-established principle under the Code that UK companies were responsible for the acts or omissions of overseas parents or affiliates that came within the scope of the Code. The Panel noted that the third party was based in the UK and the videos in question were available on its cardiology website to UK health professionals as well as others in Europe and the rest of the world. The Panel

considered that the arrangements therefore came within the scope of the UK Code as acknowledged by Novartis.

The Panel examined the document that Novartis UK referred to as the proposal. The document appeared to be produced by the third party and signed by Novartis AG. It stated that the proposed round table discussion was designed to provide clinicians with a better understanding of the associated CV risk factors in patients who experienced long-term exposure to elevated levels of LDL-C. It would outline the key challenges of managing sub-optimal response to traditional treatment methods and discuss the emergence of novel treatments. The document further stated that several investigational LDL-C lowering treatments were being evaluated in cardiovascular outcome studies. The document referred to three phase 3 trials from the ORION programme for inclisiran, stating that ORION-9 ORION-10 AND ORION-11 were pivotal trials which had met their co-primary endpoints; a pooled analysis showed that treatment with inclisiran compared with placebo was associated with LDL-C reductions of about 51% at 17 months and time adjusted placebo-adjusted reduction in LDL-C of 51% between 3 and 18 months. The document stated that the safety profile was similar to placebo with a higher rate of injection site reactions and no adverse changes in laboratory markers and that the product was expected to be administered twice a year subcutaneously providing ease of use and treatment compliance. The document further stated that this rapidly changing treatment landscape demanded an education initiative to deliberate on the new data and effective treatment management approaches for patients with elevated LDL-C.

The document set out the learning objectives which included, providing clinicians with an update on novel approaches to therapeutic dilemmas and ensuring understanding of emerging data throughout 2020. The proposed agenda included a section on novel treatments as well as addressing the challenges and questions around therapy with the latest data from ESC 2020. It stated that the content of the roundtable discussion would be divided into chapters to educate and ultimately change current behaviours to meet emerging standards of practice. The discussion would be recorded , edited and broken down into chapters so that the target audience of international cardiologists could engage with specific content. All chapters would be hosted on the third party website with the full programme also listed on another part of the third party site; in both instances, the content would be delivered as independent medical education. The Panel noted that the proposal referred to the treatment landscape evolving to include ezetimibe and monoclonal antibodies to PCSK9 as adjunctive strategies but stated that despite treatment available options, a high proportion of patients did not meet their target levels of LDL-C. The Panel noted that whilst the proposal referred to the discussion of the emergence of novel treatments and that several investigational LDL-C lowering treatments were being evaluated in cardiovascular outcome studies, the proposal very much focussed on inclisiran, Novartis' medicine which was unlicensed at the time.

The proposal gave the fee required to undertake the project and this exact amount was requested from Novartis.

The proposal noted that the third party would market the video for 12 months to its full global database of >100,000 cardiologists and gave details of the expected number of viewings of the video. The proposal stated that the third party would select, recruit, manage and pay faculty honoraria for the activity and that recruitment would be based

on experience and understanding of the data being discussed. A list of example faculty members was included.

The Panel noted that Novartis recognised the perception of supporting the proposal as it stood and accepted that its own internal standards on reviewing grant applications or having clearly worded sponsorship statements were not met. The Panel noted Novartis' submission that it was evident that the proposal and associated purchase order were not appropriate for the activity.

The Panel noted that it was not possible to know whether Novartis had influenced initiation of the arrangements or the material to be covered and there was no evidence that Novartis had selected the speakers. The Panel noted Novartis' submission that the initial engagement was an approach from the third party to Novartis AG and that it was independently arranged medical education supported reactively with an educational grant by Novartis AG. The Panel noted Novartis' submission that Novartis had no influence or involvement in the production of the videos or educational content; Novartis UK had no input or oversight, and Novartis AG did not have any input into the agenda or arrangements. The complainant had not provided any evidence that Novartis had influenced to whom the videos were made available.

Nor was it possible for the Panel to know how the detailed references to Novartis' product in the proposal document came about. The Panel noted Novartis' submission that when the actual activity itself was reviewed in its entirety of the six videos, Novartis believed that the balance of the discussion was apparent and hence there was no promotion of the use of inclisiran. The Panel reviewed each of the six videos in question. The Panel noted that the first video was a welcome and introduction, the second video discussed the role of LDL cholesterol in the pathogenesis of artherosclerosis, the third video discussed current EU and US guidelines and the fourth covered the challenges in achieving guideline-based LDL cholesterol targets in the real world with current treatments (one of which was patient adherence with once daily treatment). The fifth video discussed contemporary approaches to managing LDL-C and cardiovascular risk and introduced new treatment options for combination, including monoclonal antibodies against PCSK9, inclisiran including the ORION trials; and finally, bempedoic acid. Inclisiran was described as being a disruptive technology in this fifth video and in the final (sixth) video. The final video was a summary and discussed the issue of poor uptake for some other treatments and stated that inclisiran appeared to be safe.

The Panel noted Novartis' submission that the entire recorded discussion would be edited and broken down into chapters so that the target audience of cardiologists could engage with specific content. The Panel disagreed with Novartis' submission that when the actual activity itself was reviewed in its entirety of the six videos, the balance of discussion was apparent and hence there was no promotion of the use of inclisiran prior to the grant of its marketing authorisation. The Panel noted that videos five and six were very positive about inclisiran and the advantage it gave over current treatments in terms of its twice-yearly dosage regimen. Patient non-adherence with current therapies was discussed at length in the preceding video (video 4). In the Panel's view, whether videos 5 and 6, which were referred to specifically by the complainant, were viewed in isolation or as part of the entire six video series, the take home message was that inclisiran was the medicine to overcome the existing unmet medical need in this area as outlined in the summary in video 6.

The Panel noted that the impression given by the proposal document was concerning in that it appeared that the discussion would mainly be focussed on the positive aspects of Novartis' product which did not have a marketing authorisation at the time in a video series paid for by the company. The Panel noted its comments above and queried whether this was truly the funding of balanced education rather than the funding of promotional material for an unlicensed medicine. Despite the proposal stating that several investigational LDL-C lowering treatments were being evaluated in cardiovascular outcome studies, the proposal appeared to focus on inclisiran; and although the videos mentioned other new treatment options they appeared to be focussed on, and were very positive about, inclisiran.

The company would have had a clear idea of what would be covered before deciding whether or not to fund the video series. It appeared from the proposal that the project would only go ahead with Novartis' support and it stated that the third party would provide detailed reports to Novartis as to the number of video plays each piece of content had received at four time intervals after publication. The Panel noted that Novartis provided a copy of the one report it had received in this regard. In the Panel's view, it was clear from the proposal that the discussion would promote inclisiran and queried whether it would ever be acceptable for a pharmaceutical company to sponsor an activity which it could not do itself.

Noting its comments above, in the Panel's view, the videos in question promoted Novartis' unlicensed medicine which was clear from the proposal and in funding the project Novartis was therefore responsible for the promotion of an unlicensed medicine and a breach of the Code was ruled.

The Panel noted that Novartis should have thus certified the material which it had not done and thus a breach of the Code was ruled.

The Panel noted Novartis' submission that there was a declaration of sponsorship located adjacent to accessing the videos on the third party website which stated that '[t]his medical experts roundtable discussion was organised independently by [named third party], work that was funded by Novartis which, in Novartis' view, made the respective involvement of both it and the third party clear. The declaration further stated: 'It is intended for healthcare professionals as medical educational materials, and may include data/information on investigational uses of compounds/drugs that have not yet been approved by regulatory authorities' followed by the Novartis company logo and the strapline 'Reimagining Medicine'.

The Panel noted Novartis' submission that the presence of the company's logo, held for a few seconds at the commencement of each of the chapters, appeared to imply that Novartis had some input into the videos, however, each chapter commenced with the declaration above and aside from the Novartis logo/Reimagining Medicine appearance, all other branding was clearly that of the third party. The Panel noted that the declaration within the videos was difficult to read in full due to the short length of time it appeared within each video. The Panel further noted Novartis' submission that, in addition, in the opening Chapter 1 (at approximately 1:27), the speaker stated that the videos were enabled by an 'unrestricted educational grant from Novartis' and he/she reiterated that in the closing summary of video 6 (at approximately 2:06).

The Panel considered that the declaration of sponsorship was not sufficiently clear as to the role of Novartis' involvement in, and responsibility for, the activity and a breach of the Code was ruled as acknowledged by Novartis UK.

In the Panel's view, whilst it was clear from the proposal that the video would promote inclisiran, noting its comments above, it was not clear to the viewers of the video as to the role of Novartis in relation to this promotion and the Panel therefore ruled a breach of the Code.

The Panel ruled a further breach of the Code as the promotional material about prescription only medicines directed to a UK audience provided on the Internet did not comply with all relevant requirements of the Code.

The Panel noted that whilst the website was open access, it was clear that it contained material for health professionals rather than the public. At the time of the complaint, inclisiran did not have a marketing authorisation and was therefore not classified as a prescription only medicine. On this very narrow technical point, the Panel ruled no breaches of the Code.

The Panel ruled a breach of the Code as Novartis had failed to maintain high standards.

The Panel noted its rulings above and considered that Novartis had brought discredit upon, and reduced confidence in, the pharmaceutical industry and a breach of the Code was ruled.

An anonymous health professional complained that a video recently viewed on a named third party websiteincluded clinical data for inclisiran which, as far as he/she was aware, had not yet been licensed by the European medicines Agency (EMA).

When the complaint was submitted, inclisiran (Leqvio) was being developed by Novartis for use in primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia, as an adjunct to diet.

A tile on the homepage of the third party website, under the heading 'Editor's Choice' invited readers to view a round table discussion on 'Reducing Cardiovascular Risk With Effective Management Of LDL Cholesterol' and included the third party logo and the Novartis logo within the tile. The discussion was broken down into a series of chapters and the complainant specifically referred to chapter 5 'Contemporary approaches to managing LDL-C and cardiovascular risk' and chapter 6 'Summary' and provided links to each of those chapters.

COMPLAINT

The complainant noted that the website did not ask if he/she was a health professional and so would be accessible to members of the public. The complainant noted that the third party appeared to be a UK group based in Oxford, so the content of the Novartis sponsored video appeared to be aimed at a UK audience. The complainant alleged that Novartis' sponsorship of the videos meant that the company had promoted inclisiran before the grant of a marketing authorisation, in breach of Clause 3.1. Since the website was open to members of the public, the inclisiran content in chapters 5 and 6 would mean that a prescription only medicine had been advertised to the public, and also might encourage members of the public or patients to

ask their GPs or prescribers for inclisiran. The complainant alleged breaches of Clauses 26.1 and 26.2.

The complainant alleged that the declaration of sponsorship did not appear to cover all aspects of Novartis' involvement in the video; Novartis had attempted to disguise the promotion of inclisiran behind a loose declaration, in breach of Clause 12.1. As the material in question was digital, Clause 28.1 was also relevant. The complainant noted that the materials themselves did not appear to have been certified as required by Clause 14.1 as he/she could not see a reference code or the date of when it was prepared. The complainant asked if Novartis could perhaps provide the PMCPA with a copy of the certificate if it existed. The complainant alleged that Novartis had not maintained high standards (Clause 9.1) and that the apparent promotion of inclisiran, before the grant of marketing authorisation, was in breach of Clause 2.

When writing to Novartis, in addition to the clauses cited by the complainant, the Authority asked it to consider the requirements of Clause 9.10.

RESPONSE

Novartis stated that it was very concerned to have received the complaint and had taken its content very seriously. Before responding to the points raised in the complaint, Novartis highlighted that it was committed to operating in accordance with the required standards such that all activities, promotional and non-promotional, met the relevant requirements and expectations. Novartis noted that it had a key corporate aim to contribute to scientific education and to provide educational value to the healthcare community. Such contributions, if not undertaken directly by Novartis, might be carried out by third parties on its behalf. Alternatively, they might arise by reactively funding independent groups in their own arrangements, which Novartis would support with an unrestricted educational grant, where there would be no involvement in the content or agenda from Novartis. Typically, all requests for grants for UK activity were assessed and approved by an internal Novartis UK funding review panel to ensure that the requests were appropriate and Code compliant.

Novartis noted that the funding for the activity in question was provided by Novartis Pharma AG, based in Switzerland, with neither insight nor input from Novartis UK. The activity itself was a global activity targeting a global online audience of health professionals; it was not specifically targeted towards a UK audience. However, Novartis understood and appreciated that because the independent educational provider was a UK-registered company, the auspices of the Code prevailed, and Novartis UK would respond accordingly.

In summary, Novartis stated that its position was as follows:

a) that this was an independent medical educational activity intended for a global audience and supported with a grant by Novartis AG;
b) there was no input or oversight of the activity from Novartis UK;
c) Novartis AG did not have any input into the agenda or arrangements of the education; and
d) as this was independently arranged medical education supported reactively with an educational grant by Novartis AG, Novartis' position was that Novartis did not undertake any promotional activity; but
e) Novartis accepted there had been some failings related to the standards the company set itself and hence the perception of the level of Novartis' involvement in this activity.

1 Background

Novartis noted that the complaint focused on material on the third partywebsite. The third party was an independent specialist provider of cardiovascular, and other content, tasked with offering medical education for health professionals. The overwhelming majority of subscribers to the third party platform formed an audience that was broader than that of UK health professionals. Data from the third party showed the total number of subscribers was about 100,000 of which around 6% of health professional subscribers were based in the UK. Those numbers therefore supported the notion that the intent from the outset was for the medical education activity to be made available on a global scale.

The initial engagement was an approach from the third party to Novartis AG seeking a grant (details provided) to develop and create medical education content for its website. This was documented in the proposal Novartis received. The learning objectives for an audience of cardiologists, outlined in the proposal were to:

- improve the understanding of patients who experienced long-term exposure to elevated levels of LDL-C and the implications of associated cardiovascular risk factors;
- outline the challenges of managing sub-optimal response to traditional treatment methods;
- update clinicians on novel approaches to therapeutic dilemmas; and
- ensure understanding of emerging data throughout 2020.

The material in question constituted a video series, entitled 'Reducing cardiovascular risk with effective management of LDL cholesterol' which was a roundtable discussion of health professionals looking to provide a better understanding of the associated cardiovascular risk factors in patients who experience long-term exposure to elevated levels of LDL-C disease. The proposal was assessed and signed by Novartis AG without engaging or consulting Novartis UK. Novartis AG colleagues had explained that the project was definitively not a Novartis commissioned activity, that the third party was not creating content on the company's behalf, and that Novartis AG had supported the project in response to the third party's request for financial support to create independent content for its own independent medical educational platform. Novartis AG confirmed that it had no further input or involvement on the agenda or content. Novartis stated that it recognised the perception of supporting the proposal as it stood; however, Novartis submitted that it had not promoted to health professionals or the public either disguised or prior to the grant of a marketing authorisation. Novartis accepted that its own internal standards on reviewing grant applications or having clearly worded sponsorship statements were not met.

2 Clause 14.1

Novartis noted that Clause 14.1 required all promotional material generated by, or on behalf of, a pharmaceutical company to be certified. The activity and associated materials at issue were created and developed by an independent educational provider and funded reactively by Novartis AG. As such, Novartis had no influence on the content, agenda, materials or videos. Accordingly, because Novartis had provided a grant for independent medical education, there was no requirement – nor would it be appropriate – for Novartis to certify material that was developed entirely independently by a third party for its own purposes. Novartis denied a breach of Clause 14.1.

3 Promotion (Clauses 26.1, 26.2, 28.1, 12.1 and 3.1)

Promotion

Novartis reiterated that the material in question was created and delivered by an independent educational provider, funded with a reactive grant from Novartis, where Novartis had no influence or involvement in the production of the videos or educational content. Novartis submitted that it therefore did not promote to health professionals or to the public because the videos were:

- developed independently by the third party as medical education on the management of LDL cholesterol and cardiovascular risk, not developed for, or on behalf of, Novartis;
- supported only by the provision of funds by Novartis AG with no further input from the company with regard to the content or agenda;
- developed for an independent online platform designed specifically for health professionals.

Novartis stated that the videos were created by the third party with no input from Novartis. The provision of the funds requested by the third party was intended as a grant for the development of its own independently produced educational material to be housed on its own online platform for a global audience. As this activity was carried out as a grant for the third party to develop its own content for its own independent online platform, Novartis considered that it was the third party's responsibility, as the owners of the platform, to ensure who had access to its content. Novartis AG had confirmed to Novartis UK that the third party had not developed and produced the videos on behalf of Novartis AG, nor performed any other services either for, or on behalf of, Novartis. Novartis therefore submitted that it had not promoted a medicine.

In relation to promoting a prescription only medicine to the public, Novartis noted that inclisiran was not a prescription only medicine hence there was no breach of Clause 26.1.

Novartis stated that the website (and the proposal itself) clearly stated the targeted audience was cardiologists, which was further supported by the composition of the subscribers to the third party's platforms alongside the fact that the website's premise was for 'lifelong learning for cardiovascular professionals'. It was unlikely that the general public would look for content on the third party's platform, given the multiple patient-orientated resources on cardiovascular disease that existed, and the language was very much directed at health professionals, and not in line with a style of communication expected for the general public.

Based on those facts, Novartis submitted that it had not breached Clauses 26.1, 26.2 and 28.1.

Disguised and pre-licence promotion

Novartis acknowledged that the proposal specifically referred to inclisiran and, in that regard, Novartis noted that, on occasion, independent providers might refer to specific areas of interest they perceived a company to have in order to support their funding applications. This might give an incorrect impression about the nature of the arrangement, as grants were not provided as an inducement. However, when reviewing the proposal, the overall objectives themselves made clear that the intent and premise of the round-table discussion was to look at reducing cardiovascular risk with effective LDL-C management. Inherent in such a discussion were the various current treatments, as well as looking to the future landscape.

Novartis stated that the presence of the company's logo, held for a few seconds at the commencement of each of the chapters, appeared to imply that Novartis had some input into the videos, however, each chapter commenced with the declaration regarding the development of the videos, created independently (by the third party) with funding from Novartis. Aside from the Novartis logo/Reimagining Medicine appearance, all other branding was clearly the third party's. Overall, Novartis submitted that although the imagery might infer Novartis' involvement, it was clear that this was a programme developed by the third party with the funding for development supported by Novartis.

Novartis accepted, however, that the sponsorship declaration which stated '…and might include data/information on investigational uses of compounds/drugs that had not yet been approved by regulatory authorities' confounded matters by alluding to investigational medicines. In spite of the poorly worded statement, and the reference to inclisiran in the proposal, Novartis AG had emphasised that the activity was intended by the third party as a programme that was holistically focused on LDL cholesterol management which included a discussion on emerging treatments which formed only a proportion of the overall discussion. When the actual activity itself was reviewed in its entirety of the six videos, Novartis believed that this balance of discussion was apparent and hence there was no promotion of the use of inclisiran prior to the grant of its marketing authorisation.

Novartis therefore denied breaches of Clauses 12.1 and 3.1.

4 Standards and Sponsorship (Clauses 9.1 and 9.10)

Novartis accepted that there had been a failure to maintain high standards and therefore it acknowledged a breach of Clauses 9.1 and 9.10.

Clause 9.10

Novartis noted that Clause 9.10 required material related to medicines and their uses (whether promotional or not) to have a clear and unambiguous statement regarding the level of involvement of the pharmaceutical company sponsoring that activity.

In accordance with Clause 9.10 and as outlined above, there was a declaration of sponsorship located adjacent to accessing the videos on the third party's website and indeed within the content of the videos. The declaration – or in this case, acknowledgement of the grant, clearly stated that '[t]his medical experts round table discussion was organised independently by [the named third party], work that was funded by Novartis'. The complaint cited this declaration as 'loose'; however, Novartis submitted that 'organised independently' clearly demarcated the level of Novartis' involvement. The declaration appeared on every chapter of the videos at the start, making the respective involvement of both Novartis and the third party clear to the viewer.

Novartis stated that, in addition, in the opening Chapter 1 (at approximately 1:27), the speaker stated unequivocally that the videos were enabled by an 'unrestricted educational grant from Novartis' and he/she reiterated that in the closing summary of Chapter 6 (at approximately 2:06).

Clause 9.10 required that the material 'clearly indicate that it had been sponsored by [Novartis]' and the supplementary information further stated '[t]he declaration of sponsorship must be sufficiently prominent to ensure that users of sponsored material are aware of it at the outset'.

Notwithstanding the declarations, Novartis acknowledged that the level of its influence (or lack of it) on the content could have been clearer, and the level of its involvement (ie that the activity was funded as a grant) was not fully transparent from the existing statement on the third party's website, and Novartis accepted a breach of Clause 9.10.

Clause 9.1

Novartis accepted that there had been a failure to maintain high standards and therefore acknowledged a breach of Clause 9.1 and it conceded that its own internal processes were not followed. The Novartis Global standard operating procedure (SOP) required legal and/or compliance consultation (copy provided); this did not occur and, in any event, Novartis UK was not informed at any point, and the company did not know that an educational grant was provided to the third party. This activity had transpired in the way it did because Novartis AG considered that it had engaged with a global medical education provider. There was, however, a failure to recognise that the third party was based in the UK; this was not in the minds of the Novartis AG individuals who interacted with the third party.

It was evident that the proposal and associated purchase order (copy provided) – which formed the contract – were not appropriate for the activity. However, the purchase order did specify that any work performed under the agreement was subject to local laws, regulations and codes. Novartis had specific contract templates for grants, and as referenced in the SOPs, there should have been appropriate oversight by the UK. Had the defined processes been followed, Novartis was confident that there would have been more clarity around the activity and involvement of Novartis.

Accordingly, Novartis accepted that high standards had not been maintained in breach of Clause 9.1. Further, Novartis was now working with its global colleagues to ensure grants and sponsorship activities either taking place with UK entities or occurring in the UK must have local legal and/or compliance engagement.

Novartis submitted that this was a single incident as a result of individuals failing to follow established processes and given the declarations already in place in and around the videos and the clearly identifiable intended audience, together with the fact that the videos were the result of a grant with no involvement of Novartis in their production, the company denied a breach of Clause 2.

In response to a request for further information, Novartis submitted that the development of the educational videos by the third party was undertaken by provision of a financial grant supported by Novartis. Novartis was thus not the intellectual property owner of the videos. However, the third party provided Novartis with the videos, contingent upon confirmation from the PMCPA that they were not for further dissemination and/or publication. There were no available transcripts of the videos.

With regard to the provision of viewership reports of the videos by the third party, such data was intrinsic to the third party's business as a medical educator and, as such, were offered (as standard) to Novartis. Details were provided of the single report received by Novartis to date was provided which detailed user statistics between 3 October 2020 and 1 November 2020. Novartis confirmed the receipt of the report(s) as proof of fulfilment of the grant; receipt of the same has had no bearing on any promotional or non-promotional activities thereafter.

PANEL RULING

The Panel noted that it was a well-established principle under the Code that UK companies were responsible for the acts or omissions of overseas parents or affiliates that came within the scope of the Code. The Panel noted that the third party was based in the UK and the videos in question were available on its cardiology website to UK health professionals as well as others in Europe and the rest of the world. The Panel considered that the arrangements therefore came within the scope of the UK Code as acknowledged by Novartis.

The Panel examined the document that Novartis UK referred to as the proposal. The document appeared to be produced by the third party and signed by Novartis AG. It stated that the proposed round table discussion was designed to provide clinicians with a better understanding of the associated CV risk factors in patients who experienced long-term exposure to elevated levels of LDL-C. It would outline the key challenges of managing sub-optimal response to traditional treatment methods and discuss the emergence of novel treatments. The document further stated that several investigational LDL-C lowering treatments were being evaluated in cardiovascular outcome studies. The document referred to three phase 3 trials from the ORION programme for inclisiran, stating that ORION-9 ORION-10 AND ORION-11 were pivotal trials which had met their co-primary endpoints; a pooled analysis showed that treatment with inclisiran compared with placebo was associated with LDL-C reductions of about 51% at 17 months and time adjusted placebo-adjusted reduction in LDL-C of 51% between 3 and 18 months. The document stated that the safety profile was similar to placebo with a higher rate of injection site reactions and no adverse changes in laboratory markers and that the product was expected to be administered twice a year subcutaneously providing ease of use and treatment compliance. The document further stated that this rapidly changing treatment landscape demanded an education initiative to deliberate on the new data and effective treatment management approaches for patients with elevated LDL-C.

The document set out the learning objectives which included, *inter alia*, providing clinicians with an update on novel approaches to therapeutic dilemmas and ensuring understanding of emerging data throughout 2020. The proposed agenda included a section on novel treatments as well as addressing the challenges and questions around therapy with the latest data from ESC 2020. It stated that the content of the roundtable discussion would be divided into chapters to educate and ultimately change current behaviours to meet emerging standards of practice. The discussion would be recorded virtually, edited and broken down into chapters so that the target audience of international cardiologists could engage with specific content. All chapters would be hosted on the the third party website with the full programme also listed on another of the third party's websites; in both instances, the content would be delivered as independent medical education. The Panel noted that the proposal referred to the treatment landscape evolving to include ezetimibe and monoclonal antibodies to PCSK9 as adjunctive strategies but stated that despite treatment available options, a high proportion of patients did not meet their target levels of LDL-C. The Panel noted that whilst the proposal referred to the discussion of the emergence of novel treatments and that several investigational LDL-C lowering treatments were being evaluated in cardiovascular outcome studies, the proposal very much focussed on inclisiran, Novartis' medicine which was unlicensed at the time.

The proposal gave the fee required to undertake the project and this exact amount was requested from Novartis.

The proposal noted that the third party would market the video for 12 months to its full global database of >100,000 cardiologists through a combination of targeted email blasts and social media marketing via the third party's channels and gave details of the expected number of viewings of the video. The proposal stated that the third party would select, recruit, manage and pay faculty honoraria for the activity and that recruitment would be based on experience and understanding of the data being discussed. A list of example faculty members was included.

The Panel noted that Novartis recognised the perception of supporting the proposal as it stood and accepted that its own internal standards on reviewing grant applications or having clearly worded sponsorship statements were not met. The Panel noted Novartis' submission that it was evident that the proposal and associated purchase order (copy provided) – which formed the contract – were not appropriate for the activity.

The Panel noted that it was possible for a company to sponsor material, produced by a third party, which mentioned its own products, and not be liable under the Code for its contents, but only if, *inter alia*, there had been a strictly arm's length arrangement between the parties. In practical terms, the arrangements must be such that there could be no possibility that the pharmaceutical company had been able to exert any influence or control over the final content of the material. Factors which might mean there had not been a strictly arm's length arrangement would include, but not be restricted to:

- Initiation of the material, or the concept for it, by the pharmaceutical company.
- Influence from the pharmaceutical company on the content/balance/scope of the material.
- Choice/or direct payment of the authors by the pharmaceutical company.
- Influence from the pharmaceutical company on the list of persons to whom the material was sent.

It had previously been decided, in relation to material/activities aimed at health professionals, that the content would be subject to the Code if it was promotional in nature or if the company had used the material for a promotional purpose. Even if neither of these applied, the company would be liable if it had been able to influence the content of the material in a manner favourable to its own interests.

The Panel noted that it was not possible to know whether Novartis had influenced initiation of the arrangements or the material to be covered and there was no evidence that Novartis had selected the speakers. The Panel noted Novartis' submission that the initial engagement was an approach from the third party to Novartis AG and that it was independently arranged medical education supported reactively with an educational grant by Novartis AG. The Panel noted Novartis' submission that Novartis had no influence or involvement in the production of the videos or educational content; Novartis UK had no input or oversight, and Novartis AG did not have any input into the agenda or arrangements. The complainant had not provided any evidence that Novartis had influenced to whom the videos were made available.

Nor was it possible for the Panel to know how the detailed references to Novartis' product in the proposal document came about. In that regard, the Panel noted Novartis' submission that, on occasion, independent providers might refer to specific areas of interest they perceived a company to have in order to support their funding applications which might give an incorrect impression about the nature of the arrangement, as grants were not provided as an inducement. Novartis stated that when reviewing the proposal, the overall objectives themselves made clear

that the intent and premise of the roundtable discussion was to look at reducing cardiovascular risk with effective LDL-C management. Inherent in such a discussion were the various current treatments, as well as looking to the future landscape. Novartis AG emphasised that the activity was intended by the third party as a programme that was holistically focused on LDL cholesterol management which included a discussion on emerging treatments which formed only a proportion of the overall discussion. The Panel noted Novartis' submission that when the actual activity itself was reviewed in its entirety of the six videos, Novartis believed that the balance of the discussion was apparent and hence there was no promotion of the use of inclisiran. The Panel reviewed each of the six videos in question. The Panel noted that the first video was a welcome and introduction, the second video discussed the role of LDL cholesterol in the pathogenesis of artherosclerosis, the third video discussed current EU and US guidelines and the fourth covered the challenges in achieving guideline-based LDL cholesterol targets in the real world with current treatments (one of which was patient adherence with once daily treatment). The fifth video discussed contemporary approaches to managing LDL-C and cardiovascular risk and introduced new treatment options for combination, including monoclonal antibodies against PCSK9, inclisiran including the ORION trials; and finally, bempedoic acid. Inclisiran was described as being a disruptive technology in this fifth video and in the final (sixth) video. The final video was a summary and discussed the issue of poor uptake for some other treatments and stated that inclisiran appeared to be safe.

The Panel noted Novartis' submission that the entire recorded discussion would be edited and broken down into chapters so that the target audience of cardiologists could engage with specific content. The Panel disagreed with Novartis' submission that when the actual activity itself was reviewed in its entirety of the six videos, the balance of discussion was apparent and hence there was no promotion of the use of inclisiran prior to the grant of its marketing authorisation. The Panel noted that videos five and six were very positive about inclisiran and the advantage it gave over current treatments in terms of its twice-yearly dosage regimen. Patient non-adherence with current therapies was discussed at length in the preceding video (video 4). In the Panel's view, whether videos 5 and 6, which were referred to specifically by the complainant, were viewed in isolation or as part of the entire six video series, the take home message was that inclisiran was the medicine to overcome the existing unmet medical need in this area as outlined in the summary in video 6.

The Panel noted that the impression given by the proposal document was concerning in that it appeared that the discussion would mainly be focussed on the positive aspects of Novartis' product which did not have a marketing authorisation at the time in a video series paid for by the company. The Panel noted its comments above and queried whether this was truly the funding of balanced education rather than the funding of promotional material for an unlicensed medicine. Despite the proposal stating that several investigational LDL-C lowering treatments were being evaluated in cardiovascular outcome studies, the proposal appeared to focus on inclisiran; and although the videos mentioned other new treatment options they appeared to be focussed on, and were very positive about, inclisiran.

The company would have had a clear idea of what would be covered before deciding whether or not to fund the video series. It appeared from the proposal that the project would only go ahead with Novartis' support and it stated that the third party would provide detailed reports to Novartis as to the number of video plays each piece of content had received at four time intervals after publication. The Panel noted that Novartis provided a copy of the one report it had received in this regard. In the Panel's view, it was clear from the proposal that the discussion would

promote inclisiran and queried whether it would ever be acceptable for a pharmaceutical company to sponsor an activity which it could not do itself.

Noting its comments above, in the Panel's view, the videos in question promoted Novartis' unlicensed medicine which was clear from the proposal and in funding the project Novartis was therefore responsible for the promotion of an unlicensed medicine and a breach of Clause 3.1 was ruled.

The Panel noted that Novartis should have thus certified the material which it had not done and thus a breach of Clause 14.1 was ruled.

The Panel noted that Clause 9.10 stated, *inter alia*, that material relating to medicines and their uses, whether promotional or not which is sponsored by a pharmaceutical company, must clearly indicate that it has been sponsored by that company.

The Panel noted Novartis' submission that there was a declaration of sponsorship located adjacent to accessing the videos on the third party's website which stated that '[t]his medical experts roundtable discussion was organised independently by [the named third party], work that was funded by Novartis which, in Novartis' view, made the respective involvement of both it and the third party clear to the viewer. The declaration further stated: 'It is intended for healthcare professionals as medical educational materials, and may include data/information on investigational uses of compounds/drugs that have not yet been approved by regulatory authorities' followed by the Novartis company logo and the strapline 'Reimagining Medicine'.

The Panel noted Novartis' submission that the presence of the company's logo, held for a few seconds at the commencement of each of the chapters, appeared to imply that Novartis had some input into the videos, however, each chapter commenced with the declaration above and aside from the Novartis logo/Reimagining Medicine appearance, all other branding was clearly the third party's. The Panel noted that the declaration within the videos was difficult to read in full due to the short length of time it appeared within each video. The Panel further noted Novartis' submission that, in addition, in the opening Chapter 1 (at approximately 1:27), the speaker stated that the videos were enabled by an 'unrestricted educational grant from Novartis' and he/she reiterated that in the closing summary of video 6 (at approximately 2:06).

The Panel noted the requirements of Clause 9.10 and its supplementary information including that the declaration of sponsorship must be sufficiently prominent to ensure that readers of sponsored material were aware of it at the outset. The wording of the declaration must be unambiguous so that readers would immediately understand the extent of the company's involvement and influence over the material. The supplementary information included that this was particularly important when companies were involved in the production of material which was circulated by an otherwise wholly independent party. Noting its comments above, the Panel considered that the declaration of sponsorship was not sufficiently clear as to the role of Novartis' involvement in, and responsibility for, the activity and a breach of Clause 9.10 of the Code was ruled as acknowledged by Novartis UK.

In the Panel's view, whilst it was clear from the proposal that the video would promote inclisiran, noting its comments above, it was not clear to the viewers of the video as to the role of Novartis in relation to this promotion and the Panel therefore ruled a breach of Clause 12.1.

The Panel noted the complainant's allegation that, as the material in question was digital, Clause 28.1 was also relevant. Clause 28.1 stated that promotional material about prescription only medicines directed to a UK audience which is provided on the Internet must comply with all relevant requirements of the Code. The Panel noted its rulings of breaches of the Code above and therefore ruled a breach of Clause 28.1.

The Panel noted that whilst the website was open access, it was clear that it contained material for health professionals rather than the public. It also noted that at the time of the complaint, inclisiran did not have a marketing authorisation and was therefore not classified as a prescription only medicine. 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 Novartis' submission that there should have been appropriate oversight by the UK; its internal processes were not followed and if they had been followed, Novartis was confident that there would have been more clarity around the activity and involvement of Novartis. The Panel noted its comments and rulings above and considered that Novartis had failed to maintain high standards and a breach of Clause 9.1 was ruled.

Clause 2 was a sign of particular censure and reserved for such use. The Panel noted the examples in the supplementary information to this Clause included promotion prior to the grant of a marketing authorisation. The Panel noted its rulings above and considered that Novartis had brought discredit upon, and reduced confidence in, the pharmaceutical industry and a breach of Clause 2 was ruled.

Complaint received **18 October 2020**

Case completed **16 August 2021**