

## **EVER PHARMA v BRITANNIA**

### **Use of business rate telephone number**

Ever Pharma complained about Britannia Pharmaceuticals Ltd's use of an 0844 business rate telephone number for calls about services and patient information related to APO-go (apomorphine).

Ever Pharma alleged that asking patients and health professionals to pay to make calls about APO-go services and patient information brought the pharmaceutical industry into disrepute, in breach of Clause 2.

Ever Pharma explained that in response to intercompany dialogue Britannia committed that the 0844 number would be removed from circulation or updated by 29 January 2021 and changes made online before 31 December 2020. Unfortunately, that had not happened. Ever Pharma included both a screenshot and screen recording of a Britannia website, taken, 9 February 2021.

Ever Pharma noted that the website at that time had a job bag number of APO-1-0420-11048 and date of preparation of December 2020. The website was thus certified after Britannia's undertaking to remove the 0844 telephone number. Ever Pharma subsequently identified that the number continued to be included in multiple materials. Including many NHS shared care guidelines and patient organisation information documents.

In summary Ever Pharma believed that Britannia had brought the industry into disrepute, in breach of Clause 2, for two reasons:

- For providing the APO-go Technical Support Line via an 0844 number which charged patients for the service without informing them.
- For breaching the undertaking it had given as part of inter-company dialogue.

The detailed response from Britannia is given below.

The Panel considered that contrary to Britannia's submission, the technical support line was within the scope of the Code. It was to provide additional support to patients and health professionals in relation to the use of Britannia's product, alongside Britannia's nurse and medical information.

The Panel noted Ever Pharma's allegation that Britannia had brought the industry into disrepute, in breach of Clause 2, for two reasons. Firstly, for providing the APO-go technical support line via an 0844 number which charged patients for the service without informing them.

The Panel noted the call charges and phone numbers section of the gov.uk website and the Ofcom site guidance accessed during its consideration of this case. The government guide indicated that an 0844 number was a business rate number and that such numbers were made up of a service charge up to 7 pence per minute plus an access charge from the telephone company. The range of charges for the service charge was the same whether calling from a landline or a mobile telephone. According to Ofcom guidance when a service charge was levied this must be clearly displayed wherever the phone number was advertised or promoted. It appeared that some arrangements included the access charge as part of the contract whereas other arrangements did not.

The Panel also noted the outcome of Case AUTH/3281/11/19 which was published on 20 July 2021 and related to the use of a business rate number for medical information enquiries.

The Panel noted Ever Pharma's submission that Britannia had committed that the 0844 number would be removed from circulation or updated by 29 January 2021 and changes made online before 31 December 2020. The Panel noted from Britannia's response that following inter-company discussions with Ever Pharma that it had changed the arrangement for its business rate number for the technical support line, replacing it with a freephone number and implementing an automated voice message advising of the number change on 17 November 2020. It appeared that arrangements were changed and in place by the end of 2020. The Panel thus considered that the matter had been dealt with during inter-company dialogue and therefore made no ruling in relation to Britannia's initial use of the business rate number.

The Panel noted Ever Pharma's allegation that a website which was certified after the undertaking Britannia had provided to Ever Pharma included the 0844 business rate telephone number. Ever Pharma stated that at that time it had a job bag number of APO-1-0420-11048 and date of preparation of December 2020 and alleged that the second reason Britannia had brought the industry into disrepute, in breach of Clause 2 was for breaching the undertaking it had given as part of inter-company dialogue. The Panel noted that the outcome of inter-company dialogue was a matter for companies. The fact that a company might have not honoured its inter-company commitments was not necessarily a breach of the Code. Such a commitment was not the same as a formal undertaking given to the PMCPA by a company ruled in breach of the Code.

The Panel noted Britannia's submission that the APO-go website was updated with the freephone number as per the commitment made to Ever Pharma, and the updated version was certified for use on 22 December 2020. The Panel further noted Britannia's submission that the website was kept in 'maintenance mode' until certified whilst undertaking the updates and on 12 November 2020 its website host broke the links that led to the www.apo-go.com website to ensure that the pages could not be accessed and the associated pages were hidden.

The Panel noted Britannia's submission, however, that two hidden website pages which included the business rate number were in error reinstated as live pages on 27 January 2021 by Britannia's website host when performing an update. The Panel noted that whilst Britannia provided a number of webpages from the apo-go.com website, it had not provided these two webpages. None of the webpages provided by Britannia included the job bag number referred to by Ever Pharma but the date of preparation of each was

December 2020 and appeared to be from the certified updated website. The Panel considered that it was likely that the two reinstated pages had the incorrect date of preparation of December 2020 because of the update to the apo-go website which used a new footer. There was no evidence that Britannia had certified pages with the business rate number after its agreement with Ever Pharmaceuticals.

Whilst the Panel was concerned that according to Britannia the business rate number was given on the two hidden webpages that had been reinstated in error by its website host which was contrary to Britannia's commitment following the inter-company dialogue, according to Britannia anyone who telephoned the business rate number from 17 November 2020 would be redirected to a freephone number. This would also be so for those who had found the business rate number on the two webpages which were reinstated in error.

With regard to the use of the 0844 telephone number in many NHS shared care guidelines, the Panel noted Britannia's submission that NHS Shared Care Guidelines were NHS documents and that Britannia had no authority or control over those documents. The Panel noted that according to Britannia it wrote to all patients and health professionals on 23 December 2020, notifying them of the telephone number change and further anyone who telephoned the business rate number from 17 November 2020 would be redirected to a freephone number.

The Panel noted its comments and concerns above and the actions taken by Britannia following inter-company dialogue. Whilst the Panel considered that high standards had not been maintained in relation to the reinstatement of the webpages containing the business rate number, it did not consider that the particular circumstances of this case brought discredit upon, or reduced confidence in, the pharmaceutical industry as alleged. An alternative freephone number was made available by Britannia and callers to the business rate number would have been directed to it at the time the webpages with the business rate number at issue were reinstated in error in 2021 and the complaint was made. The Panel therefore ruled no breach of Clause 2 of the Code.

Ever Pharma complained about Britannia Pharmaceuticals Ltd's use of an 0844 business rate telephone number for calls about services and patient information related to APO-go (apomorphine).

APO-go was indicated for the treatment of certain patients with Parkinson's disease.

## **COMPLAINT**

Ever Pharma stated that Britannia Pharmaceuticals had used the 0844 number for many years and in the final quarter of 2020 it wrote to the company asking that the number be withdrawn and replaced with a freephone telephone number. Ever Pharma alleged that asking patients and health professionals to pay to make calls about APO-go services and patient information brought the pharmaceutical industry into disrepute, in breach of Clause 2.

Ever Pharma explained that in response to its request, Britannia committed that the 0844 number would be removed from circulation or updated by 29 January 2021 and changes made online before 31 December 2020. Unfortunately, that had not happened and in that regard it provided a link (<https://www.apo-go.com/hcp/contact-us>) to a webpage on a Britannia

sponsored site. (Ever Pharma included both a screenshot and screen recording of the site, taken, February 9, 2021).

Ever Pharma noted that the website at that time had a job bag number of APO-1-0420-11048 and date of preparation of December 2020. The website was thus certified after the undertaking to remove the 0844 telephone number which Britannia had provided to Ever Pharma as to when materials would be withdrawn. That observation led Ever Pharma to search for other evidence of persistence of the number as a component of the APO-go support package. Ever Pharma subsequently identified that the number continued to be included in multiple materials. Ever Pharma submitted that using Google to test the visibility of the APO-go support number should have been a simple check that anyone could have employed to ensure the situation had been remedied.

Ever Pharma noted that the 0844 telephone number continued to feature in many NHS shared care guidelines and provided examples. The number was also noted on several patient organisation information documents.

Ever Pharma provided a copy of the communication for details of its interaction in 2020 and stated that it had escalated the matter to the PMCPA as it saw no evidence of Britannia complying with the undertakings it had given and which Ever Pharma had previously taken in good faith. In addition, Ever Pharma alleged that the continuing direction of patients and health professionals to the 0844 technical support number, which triggered a cost to the user upon connection, brought the industry into disrepute.

Lastly, as per the inter-company dialogue, Ever Pharma had, for the sake of transparency, asked Britannia to publish the monies that it had received from patients/health professionals using the 0844 number and ideally return those monies to patients or patient organisations. Britannia had rejected either of those actions. Ever Pharma alleged that that attitude brought the industry into disrepute.

In summary Ever Pharma believed that Britannia had brought the industry into disrepute, in breach of Clause 2, for two reasons:

- For providing the APO-go Technical Support Line via an 0844 number which charged patients for the service without informing them.
- For breaching the undertaking it had given as part of inter-company dialogue.

Ever Pharma considered raising a complaint under Clause 19.1 as the item in question was called the APO-go technical Help line. Clause 19.1 stated:

‘Medical and educational goods and services which enhanced patient care, or benefit the NHS and maintain patient care, can be provided subject to the provisions of Clause 18.1. They must not be provided to individuals for their personal benefit. Medical and educational goods and services must not bear the name of any medicine but may bear the name of the company providing them.’

Ever Pharma submitted that as the technical help line number was available through many websites including those of patient organisations, then Clause 26, which prohibited that promotion of prescription only medicines to the public might also apply.

Ever Pharma noted, however, that it had not raised Clauses 19.1 or 26.1 in inter-company dialogue and so considered that to do so now would not be within the letter and spirit of Paragraph 5 of the Constitution and Procedure.

## **RESPONSE**

Britannia stated that it had taken the allegations made by Ever Pharma seriously although it did not consider that they were within the scope of the Code.

Britannia submitted that it provided the technical helpline to support patients and the health professionals overseeing their care. The provision of the helpline was not to increase sales nor promote the benefits of Britannia's portfolio of medicines. The helpline was provided as an additional level of support, alongside Britannia's nurse and medical information service, should patients or health professionals that oversaw their care have further queries specifically on the use of the products.

Britannia understood the importance of inter-company dialogue and the importance of the undertakings committed during such discussions. Britannia stated that it had engaged fully and professionally with Ever Pharma in relation to the complaint; its responses were complete, frank and delivered within the specified timeframes. Britannia was concerned that Ever Pharma did not respond to Britannia's inter-company communication sent on 18 December 2020 by 4 January 2021, yet escalated the matter to the PMCPA on 16 February 2021.

Britannia took Ever Pharma's allegations earnestly, and upon receipt of Ever Pharma's letter on 11 November 2020, the following actions were taken:

- A freephone telephone number was acquired for Britannia's technical support line and made live on 17 November 2020.
- An automated voice message advising the number change was implemented on 17 November 2020.
- All promotional material was withdrawn in August 2020 due to another required update. Therefore Britannia did not need to withdraw the material in November 2020.
- All relevant business cards, which featured the original 0844 telephone number, were withdrawn on 1 December 2020.
- The corporate website ([www.britannia-pharm.co.uk](http://www.britannia-pharm.co.uk)) was updated to reflect the new freephone number on 23 November 2020 (copy provided).
- Google links that led to [www.apo-go.com](http://www.apo-go.com) were broken by Britannia's external provider on 12 November 2020.
- Britannia instructed all relevant employees to ensure the telephone number was updated on their business voicemails on 23 November 2020.
- Britannia updated the telephone number on [apo-go.com](http://apo-go.com), which was certified for use on 22 December 2020 (copy provided).

- Britannia wrote to all patients and health professionals on 23 December 2020, notifying them of the telephone number change.

Britannia stated that, in line with its commitment to Ever Pharma, it withdrew all non-promotional materials in January 2021 once updated versions were available to provide health professionals and patients. Britannia's intention to keep those materials in circulation was justified in the company's letter to Ever Pharma on 18 December 2020. Britannia stated that it did not receive a response to that letter. Britannia did not withdraw those materials earlier as it had a duty of care to its patients and wanted to ensure it could continue to support them and their health professionals.

Britannia explained that the APO-go website was updated, and the updated version was certified for use on 22 December 2020 (copy provided). The website was kept in 'maintenance mode' until certified. The reference to the telephone number was removed as per the commitment made to Ever Pharma.

Whilst undertaking the updates, Britannia's website host also broke the links displayed in Google to ensure that members of the general public could not access the pages. Those links were broken on 12 November 2020, and the associated pages were hidden. If a Google generated search link was clicked, it would redirect to an 'under maintenance page'.

With regret, when Britannia's website host performed a module update on 27 January 2021, the two web pages that were hidden (<https://www.apo-go.com/hcp/contact-us> and <https://www.apo-go.com/hcp/covid-19-update>) were reinstated as live pages. The aforementioned web pages were dormant and hidden from 11 November 2020 until 27 January 2021. To ensure that any future website maintenance did not lead to historic pages being displayed, Britannia had instructed its website host to permanently delete those links.

Britannia stated that it had requested that the website host provided details as to how future website updates would be managed to ensure that historic website pages were not made visible without Britannia's knowledge. Moreover, Britannia had requested full oversight and to ensure that Britannia was notified of when those updates were due to take place to make provisions to test and check the website.

Britannia stated that it notified all patients and healthcare organisations of the change in telephone number in writing on 22 December 2020 (copy provided). The NHS Shared Care Guidelines provided by Ever Pharma were NHS documents; Britannia had no authority or control over those documents.

Britannia stated that it had not provided the call charges to Ever Pharma as the documents were commercially sensitive. Britannia provided the 2020 summary for the Panel's perusal only. Britannia had committed to ensuring that refunds were processed if requested.

In summary, Britannia stated that it had not continued to direct patients or health professionals to the original 0844 telephone number and it had taken every action possible to ensure that the new freephone number was communicated to its patients and health professionals/healthcare organisations.

Britannia regretfully acknowledged that the uncertified webpages were reinstated in error by the website host. Britannia stated that it took full responsibility for its supplier however it firmly refuted that that was a breach of Clause 2.

Britannia stated that it had taken Ever Pharma's allegations seriously although it did not consider that they were within the scope of the Code. Britannia provided the technical helpline as an additional level of support for its patients and the health professionals overseeing their care. Britannia had taken the appropriate actions to install a freephone telephone number and that it understood that it had a moral and legal obligation to ensure that additional support was provided at no extra charge to the caller.

## **PANEL RULING**

The Panel considered that contrary to Britannia's submission, the technical support line was within the scope of the Code. It was to provide additional support to patients and health professionals in relation to the use of Britannia's product, alongside Britannia's nurse and medical information.

The Panel noted Ever Pharma's allegation that Britannia had brought the industry into disrepute, in breach of Clause 2, for two reasons. Firstly, for providing the APO-go Technical Support Line via an 0844 number which charged patients for the service without informing them.

The Panel noted the call charges and phone numbers section of the gov.uk website and the Ofcom site guidance accessed during its consideration of this case. The government guide indicated that an 0844 number was a business rate number and that such numbers were made up of a service charge up to 7 pence per minute plus an access charge from the telephone company. The range of charges for the service charge was the same whether calling from a landline or a mobile telephone. According to Ofcom guidance when a service charge was levied this must be clearly displayed wherever the phone number was advertised or promoted. It appeared that some arrangements included the access charge as part of the contract whereas other arrangements did not.

The Panel also noted the outcome of Case AUTH/3281/11/19 which was published and e-alerted on 20 July 2021 and related to the use of a business rate number for medical information enquiries.

The Panel noted Ever Pharma's submission that Britannia had committed that the 0844 number would be removed from circulation or updated by 29 January 2021 and changes made online before 31 December 2020. The Panel noted from Britannia's response that following inter-company discussions with Ever Pharma that it had changed the arrangement for its business rate number for the technical support line, replacing it with a freephone number and implementing an automated voice message advising of the number change on 17 November 2020. It appeared that arrangements were changed and in place by the end of 2020. The Panel thus considered that the matter had been dealt with during inter-company dialogue and therefore made no ruling in relation to Britannia's initial use of the business rate number.

The Panel noted Ever Pharma's allegation that a website which was certified after the undertaking Britannia had provided to Ever Pharma included the 0844 business rate telephone number. Ever Pharma had provided a video and screenshot of the website taken on 9 February 2021. The Panel noted that the job bag number and date of preparation was not visible on

these materials which appeared to be the contact us page from the apo-go.com website. Ever Pharma stated that at that time it had a job bag number of APO-1-0420-11048 and date of preparation of December 2020 and alleged that the second reason Britannia had brought the industry into disrepute, in breach of Clause 2 was for breaching the undertaking it had given as part of inter-company dialogue. The Panel noted that the outcome of inter-company dialogue was a matter for companies. The fact that a company might have not honoured its inter-company commitments was not necessarily a breach of the Code. Such a commitment was not the same as a formal undertaking given to the PMCPA by a company ruled in breach of the Code.

The Panel noted Britannia's submission that the APO-go website was updated with the freephone number as per the commitment made to Ever Pharma, and the updated version was certified for use on 22 December 2020. The Panel further noted Britannia's submission that the website was kept in 'maintenance mode' until certified whilst undertaking the updates and on 12 November 2020 its website host broke the links that led to the www.apo-go.com website to ensure that the pages could not be accessed and the associated pages were hidden.

The Panel noted Britannia's submission, however, that two hidden website pages which included the business rate number were in error reinstated as live pages on 27 January 2021 by Britannia's website host when performing an update. The Panel noted that whilst Britannia provided a number of webpages from the apo-go.com website, it had not provided these two webpages. None of the webpages provided by Britannia included the job bag number referred to by Ever Pharma but the date of preparation of each was December 2020 and appeared to be from the certified updated website. The Panel considered that it was likely that the two reinstated pages had the incorrect date of preparation of December 2020 because of the update to the apo-go website which used a new footer. There was no evidence that Britannia had certified pages with the business rate number after its agreement with Ever Pharmaceuticals.

Whilst the Panel was concerned that according to Britannia the business rate number was given on the two hidden webpages that had been reinstated in error by its website host which was contrary to Britannia's commitment following the inter-company dialogue, according to Britannia anyone who telephoned the business rate number from 17 November 2020 would be redirected to a freephone number. This would also be so for those who had found the business rate number on the two webpages which were reinstated in error.

The Panel noted that following its identification of the webpages above, Ever Pharma did a search for other evidence of persistence of the number as a component of the APO-go support package and subsequently identified that the number continued to be included in multiple materials. Ever Pharma stated that the 0844 telephone number continued to feature in many NHS shared care guidelines. In this regard, the Panel noted Britannia's submission that NHS Shared Care Guidelines provided by Ever Pharma were NHS documents and that Britannia had no authority or control over those documents. The Panel noted that according to Britannia it wrote to all patients and health professionals on 23 December 2020, notifying them of the telephone number change and further anyone who telephoned the business rate number from 17 November 2020 would be redirected to a freephone number.

The Panel noted its comments and concerns above and the actions taken by Britannia following inter-company dialogue. Whilst the Panel considered that high standards had not been maintained in relation to the reinstatement of the webpages containing the business rate number, it did not consider that the particular circumstances of this case brought discredit upon,

or reduced confidence in, the pharmaceutical industry as alleged. An alternative freephone number was made available by Britannia and callers to the business rate number would have been directed to it at the time the webpages with the business rate number at issue were reinstated in error in 2021 and the complaint was made. The Panel therefore ruled no breach of Clause 2 of the Code.

**Complaint received**      **19 February 2021**

**Case completed**        **19 August 2021**