CASE AUTH/3495/3/21

ANONYMOUS EMPLOYEE v SANOFI

Allegations regarding gaining consent for email from health professionals

An anonymous, non-contactable complainant who described him/herself as a Sanofi employee complained about the pressure being exerted by Sanofi on employees to gain consent to email (e-permissions) health professionals.

The complainant stated that he/she was concerned at the direction Sanofi employees were receiving from a senior manager, despite his/her consistent push back and that Sanofi employees had been driven to gain consent, to email health professionals. The complainant alleged that by targeting and bonusing that parameter, Sanofi effectively penalised any representative whose health professionals denied consent which could have prompted representatives to continue to ask/harass health professionals for consent, in fear of being penalised by the company. The complainant provided screenshots in relation to information used by one of the senior managers with employees and referred to bonus letters which stated that bonus was paid to eligible representatives who hit their e-permission target. The complainant alleged multiple clauses were breached and that similar cases had been wilfully ignored.

The detailed response from Sanofi is given below.

The Panel noted that the original slides provided by Sanofi included, in very small font in the footer of the first slide only, reference to the requirements of the Code, with the instruction of no more than 3 unsolicited face to face calls per annum; Sanofi submitted that the slides also included reference to the relevant briefing documents for collecting e-permissions. Each slide asked readers to ensure that they had read, understood and signed the referenced briefing documents before requesting e-permissions from customers.

The Panel noted Sanofi's submission that the ePermissions part of the bonus plan was capped and did not represent an undue proportion of the representatives' remuneration. Sanofi stated that the bonus incentive plan was reviewed to ensure that it was in line with the Code and ethical standards, and that the bonus incentive scheme sat outside the representatives' end of year appraisal. The Panel also noted Sanofi's submission that e-permissions did not form part of the relevant business unit scheme for 2021.

The Panel disagreed with Sanofi's submission that the slides did not constitute briefing material and therefore did not require certification. In the Panel's view, the slides, which provided ePermission targets for representatives and included weightings on whom to target and instructions on calls made per customer, did constitute briefing material. Further, the slides might encourage representatives to breach the Code in order to reach their targets in relation to e-permissions; the reference to Clause 15.4 was in very small font and referred only to face to face calls whereas e-permission could also be obtained

via video or telephone calls. The Panel queried whether the directions to obtain email consent were therefore sufficiently qualified. The Panel noted that the slides had not been certified and therefore ruled a breach of the Code.

The Panel considered that the failure to recognise that the slides constituted briefing material and required certification raised concerns about the company's governance of such matters. The Panel further considered that certification underpinned self-regulation and that Sanofi had not maintained high standards and ruled a breach of the Code. The Panel, however, considered that the complainant had not discharged his/her burden of proof that the incentive scheme placed undue pressure on representatives, such that it meant that representatives had 'harassed' or inconvenienced health professionals as alleged and therefore the Panel ruled no breaches of the Code.

An anonymous, non-contactable complainant who described him/herself as a Sanofi employee complained about the pressure being exerted by Sanofi on employees to gain consent to email (e-permissions) health professionals.

COMPLAINT

The complainant stated that he/she was concerned at the direction Sanofi employees were receiving from a senior manager, identified by role, despite his/her consistent push back and reference to previous Code breaches. At the end of 2020 and in 2021, Sanofi employees had been driven to gain consent, to email (e-permissions) its health professionals. The complainant stated that the contradictory information the employees had been given was to do this compliantly, but that the employees would be measured and bonused against this activity. The complainant submitted that by targeting and bonusing that parameter, Sanofi effectively penalised any representative whose health professionals denied consent which could have prompted representatives to continue to ask/harass health professionals for consent, in fear of being penalised by the company. The complainant stated that he/she had personally dealt with such issues as, in his/her area, the level of consent gained was lower than national. The complainant stated that he/she had discussed his/her concerns with two senior managers both late in 2020 and in 2021 but had been ignored. By way of evidence, the complainant provided screenshots of when one of the senior managers took the employees through that information late in 2020 via Zoom. Also, quarter 4, 2020 bonus letters clearly stated that bonus was paid for this for eligible representatives who hit their e-permission target. The complainant alleged that it breached multiple clauses and of bigger concern was that similar cases had been wilfully ignored.

When writing to Sanofi, the Authority asked it to consider the requirements of Clauses 9.1, 15.2, 15.4 and 15.9 of the Code.

RESPONSE

Sanofi noted that the complainant raised concerns that use of e-permissions, as part of the measurement of the field team, could lead representatives to 'continue to ask/harass health professionals for consent'. Sanofi had investigated both the structure of the bonus incentive scheme referred to by the complainant and how it was tracked and managed over this period of time.

Details of the breakdown of the bonus incentive scheme were provided. Sanofi submitted that the e-permissions was capped and did not represent an undue proportion of the representatives' remuneration. This could be seen in the evidence provided by the complainant. The bonus incentive plan was reviewed by the internal Bonus Committee and the Business Unit Leadership team to ensure that it was in line with all Code requirements and ethical standards, particularly during the Covid-19 pandemic, and the decision was made to have e-permissions only form a small part of any bonus incentive scheme. For further clarification, the bonus incentive scheme sat outside the annual performance measures used in the representatives' end of the year appraisal.

The evidence provided by the complainant appeared to be a cropped screen shot of two slides which were missing certain information. Sanofi provided the original version of those slides. The presentation was prepared and finalised by two senior managers and disseminated to the managers, following approval by the leadership team. The managers were asked to use the approved slides to inform the representatives of the details of the bonus incentive scheme in local meetings.

As could be seen, the original version contained the Sanofi name and logo and included the following statement in the footer of the slide: 'Provision must be taken in accordance with Clause 15.4 of the Code whereby no more than 3 unsolicited face to face calls can be made per annum. If the customer reaches this limit with no offer of request to re-visit or attendance at a group meeting this customer may no longer be visited in 2020'. The slides also referred to the relevant briefing documents and stated 'Please ensure that you have read, understood and signed the following briefing documents before requesting e-permissions from customers'.

Copies of the certified UK e-permission briefing documents were provided. Sanofi strongly believed that the briefing documents provided complied with Clause 15.9 and instructed representatives about how to obtain e-permission as well as what to do if the health professional did not agree.

Whilst reminding the audience of the Code requirements and referring to the relevant briefing documents, the bonus incentive scheme slides were intended to exclusively detail the structure of the bonus incentive scheme rather than instructing sales representatives on a product or how to interact with health professionals. Sanofi did not consider that the slides constituted a briefing document and therefore did not require separate certification. As such, Sanofi did not consider that Clause 15.9 was relevant to the presentation.

Sanofi noted that the complainant had stated that he/she had discussed his/her concerns with two senior managers. Sanofi stated that it had interviewed both senior managers but neither could recall any employee raising concerns they had with e-permissions being included as part of the bonus incentive scheme for July to December ('H2') 2020 (Sanofi asked them not to disclose any names if someone had approached them, in order to ensure the anonymity of the complainant). During 2020, there was an additional senior manager in the same role as one of the above but he/she had subsequently left the company, so Sanofi was unable to discuss the matter with them. Sanofi stated that unless the complainant was willing to provide further detail, it could not investigate this point further.

One of the identified senior managers had also confirmed that the bonus incentive scheme was introduced in August 2020, not as the complainant had stated '… late last year…'.

Implementing a bonus incentive scheme any later in the year would have been ineffective for representatives to have sufficient time to action.

As an additional part of the investigation, Sanofi randomly selected a number of the representatives to ask them if they felt any undue pressure to obtain e-permissions, as part of the bonus incentive scheme, and this was found not to be the case. The feedback from these random interviews identified that there were no regular updates of the number of e-permissions obtained and that they had other elements of the bonus incentive scheme to focus on.

For transparency, e-permissions did not form part of the bonus incentive scheme for 2021 and Sanofi made this statement in reference to the complainant's point that he/she had raised this issue again '… this year …'.

In summary, Sanofi strongly believed its bonus incentive scheme was appropriate, ethical and refuted any breach of Clauses 9.1, 15.2, 15.4 and 15.9.

PANEL RULING

The Panel noted that the complainant was anonymous and non-contactable and therefore could not be contacted for further information. The Constitution and Procedure stated that anonymous complaints would be accepted but that like all other complaints, the complainant had the burden of proving his/her complaint on the balance of probabilities.

The Panel noted Sanofi's submission that the evidence provided by the complainant appeared to be a cropped screen shot of two PowerPoint slides which were missing certain information. The original slides provided by Sanofi included the following statement in very small font in the footer of the first slide only: 'Provision must be taken in accordance with clause 15.4 of the ABPI code of practice whereby no more than 3 unsolicited faces to faces calls can be made per annum. If the customer reaches this limit with no offer of request to re-visit or attendance at a group meeting this customer may no longer be visited in 2020'; Sanofi further submitted that the slides also included reference to the relevant briefing documents for collecting online, hard copy and CRM e-permissions. Each slide asked readers to ensure that they had read, understood and signed the referenced briefing documents before requesting e-permissions from customers.

The Panel noted Sanofi's submission that ePermissions constituted a certain percentage (details provided) of a representatives' bonus incentive plan, was capped and did not represent an undue proportion of the representatives' remuneration. The Panel further noted Sanofi's submission that the bonus incentive plan was reviewed to ensure that it was in line with the Code and ethical standards, particularly during the Covid-19 pandemic and that the bonus incentive scheme sat outside the annual performance measures utilised in the representatives' end of the year appraisal. The Panel also noted Sanofi's submission that e-permissions did not form part of the relevant business unit scheme for 2021.

The Panel disagreed with Sanofi's submission that the slides were intended to detail the structure of the bonus incentive scheme rather than instructing sales representatives on a product or how to interact with healthcare professionals and did not constitute a briefing document and therefore did not require certification. The Panel noted that Clause 15.9 stated, *inter alia*, that companies must prepare detailed briefing material for medical representatives on the technical aspects of each medicine which they will promote which must comply with the relevant requirements of the Code and in particular, was subject to the certification requirements

of Clause 14. The supplementary information stated that the detailed briefing material referred to in Clause 15.9 consisted of both the training material used to instruct medical representatives about a medicine and the instructions given to them as to how the product should be promoted. The Panel noted that Clause 15.9 further stated that briefing material for representatives must not advocate, either directly or indirectly, any course of action which would be likely to lead to a breach of the Code.

The Panel noted that the PowerPoint slides provided ePermission targets for representatives, including weightings on whom to target, and provided instructions on calls made per customer; the Panel considered, therefore, that the slides did in fact constitute briefing material. Further, in the Panel's view, the slides might encourage representatives to breach the Code in order to reach their targets in relation to e-permissions; the reference to Clause 15.4 was in very small font and referred only to face to face calls whereas e-permission could also be obtained via video or telephone calls and the principles of Clause 15.4 would apply. The Panel queried whether the directions to obtain email consent were therefore sufficiently qualified. The Panel noted that the slides had not been certified and therefore did not comply with that relevant requirement of the Code as required by Clause 15.9. The Panel therefore ruled a breach of Clause 15.9.

The Panel was concerned that Sanofi did not consider the slides in question to constitute briefing material that required certification.

The Panel considered that the failure to recognise that the slides in question constituted briefing material and required certification raised concerns about the company's governance of such matters. The Panel further considered that certification underpinned self-regulation and considered that Sanofi had not maintained high standards; a breach of Clause 9.1 was ruled accordingly.

The Panel, however, considered that the complainant had not discharged his/her burden of proof that the incentive scheme placed undue pressure on representatives, such that it meant that representatives had 'harassed' or inconvenienced health professionals as alleged and therefore that representatives had not maintained a high standard of ethical conduct. The Panel therefore ruled no breach of Clauses 15.4 and 15.2.

Complaint received **24 March 2021**

Case completed **19 October 2021**