

CASE AUTH/3483/3/21

COMPLAINANT v ELI LILLY

Promotion to the public on LinkedIn

A complainant who described him/herself as a concerned UK health professional, complained about the promotion of an investigational medicine on LinkedIn by Eli Lilly and Company.

The complainant provided a screenshot of the LinkedIn post and stated that the announcement which had been placed on LinkedIn, outlining results for an investigational product, had been 'liked' by staff based in the UK. The complainant alleged that this promoted the product to the public in the UK.

The detailed response from Lilly is given below.

The Panel noted Lilly's submission that the LinkedIn post at issue was posted on the Eli Lilly and Company LinkedIn US account. The post included a video along with the statement 'We're sharing preliminary results of our head-to-head study for our investigational medicine in adults with type 2 #diabetes. Learn more here (link provided)'. The post was linked to a news release on the investor section of the US Lilly website headed 'Tirzepatide achieved superior A1C and body weight reductions across all three doses compared to injectable semaglutide in adults with type 2 diabetes'; the news release outlined the results of the SURPASS-2 trial. The Panel did not have the content of the video before it; Lilly made no submission in that regard.

The Panel noted Lilly's submission that despite robust and strict policies and training on personal conduct on social media, three Lilly UK employees, who held global roles and did not report to Lilly UK management, and three contracted employees, made a mistake and had 'liked' the post on the corporate LinkedIn account. The Panel considered that the UK employees' engagement with the post would have, on the balance of probabilities, proactively disseminated the material to their LinkedIn connections which would likely predominantly be within the UK, and thus brought the LinkedIn post within the scope of the UK Code.

The Panel did not know how many connections each of the employees had on LinkedIn and if they were all health professionals; the company made no submission in that regard. However, the Panel considered that, on the balance of probabilities, it was likely that the employees' connections on their personal accounts would have included members of the public as well as health professionals and other relevant decision makers.

The Panel noted that the Code prohibited the promotion of a medicine prior to the grant of its marketing authorisation and once the marketing authorisation had been granted, it prohibited the promotion of prescription only medicines to the public. The LinkedIn post

referred to the preliminary results of an investigational medicine. Tirzepatide was not a prescription only medicine at the time the LinkedIn post was 'liked' by six UK employees and on that very narrow technical point, the Panel ruled no breaches of the Code.

However, the Panel considered that the Lilly UK employees' 'like' of the LinkedIn post meant that the post and linked press release, which highlighted the positive efficacy results of Lilly's unlicensed medicine compared to injectable semaglutide in adults with type 2 diabetes, had, on the balance of probabilities, been disseminated proactively to the employees' connections. The Panel considered that this constituted promotion of the medicine prior to the grant of its marketing authorisation and a breach of the Code was ruled.

The Panel noted Lilly's submission that it had in place procedures on the use of personal social media for employees, which stated that UK employees were not permitted to interact (like, share, comment or share with comments) with any content that included Lilly products or investigational molecules because this could be perceived to be promotion. The Panel further noted Lilly's submission that upon receipt of the complaint, Lilly required the six employees to 'Unlike' the LinkedIn post and confirmed that all six employees had completed the mandatory training on the personal use of social media.

The Panel noted that Lilly's Employee Personal Social Media Use Procedure dated April 2020 stated:

'Employees from countries other than the United States may ... 'Like' content from any Lilly corporate social media account, including ... See the Social Media Job Aid for specific accounts. These Lilly corporate social media account posts may include content on Lilly and/or competitor products, corporate social responsibility, externally posted job opportunities or disease state.'

However, the Panel noted that there was a section within the Job Aid for the Northern European Hub which stated:

'Employees in the Northern European Hub must not "Like", comment, share or share with comments any content from any Lilly corporate social media account or Digital Media Spokesperson that includes content on Lilly and/or competitor products, investigational compounds, not yet approved/new indications and line extensions (NILEX) or medical devices. A list of these Lilly accounts is available in the Lilly Social Media Job Aid.'

The Panel considered that the instructions given might have been confusing, particularly if UK readers read the instructions for employees outside the US and did not read the contradictory instructions for employees in the Northern European hub.

The Panel noted its comments and rulings above and considered that high standards had not been maintained. A breach of the Code was ruled.

The Panel noted that promotion prior to the grant of a marketing authorisation was an example of an activity likely to be in breach of Clause 2. The Panel noted its comments and rulings above, including its concerns with the contradictory nature of the

instructions for UK employees in the Employee Personal Social Media Use Procedure and the Northern European hub Employee Personal Social Media Use Job Aid. The Panel was concerned that 'liking' the LinkedIn post was clearly not an isolated occurrence; six employees had 'liked' the LinkedIn post in question about the company's medicine, prior to the grant of its marketing authorisation, resulting in its likely subsequent proactive dissemination to their LinkedIn connections. The Panel considered that in promoting an unlicensed medicine, Lilly had brought discredit upon and reduced confidence in the pharmaceutical industry and a breach of Clause 2 was ruled. This ruling was appealed by Lilly.

The Appeal Board noted that Lilly had accepted the Panel's ruling of a breach of the Code in that six Lilly UK employees had 'liked' the LinkedIn post at issue which had constituted the promotion of a medicine prior to the grant of its marketing authorisation. The Appeal Board noted that examples of activities likely to be in breach of Clause 2 included, *inter alia*, promotion prior to the grant of a marketing authorisation.

The Appeal Board bore in mind the additional information regarding social media training provided by Lilly in its appeal which had not been provided to the Panel. The six staff members who had 'liked' the LinkedIn post had last been trained on the relevant social media policies and procedures in April 2020; that relevant staff received mandatory annual training on the company's red book which covered social media use; and relevant staff were retrained specifically on social media every two years or when there was an update. The Appeal Board considered that whilst the guidance might not have covered all the relevant requirements of the Code, and the instructions could have been improved by making them easier to follow by all staff, it appeared that Lilly had regular training and guidance in place. Despite this, six Lilly staff had 'liked' the LinkedIn post at issue, and the Appeal Board considered that Lilly had been let down by its employees in this regard.

The Appeal Board noted that Lilly had accepted the Panel's ruling of a breach of the Code in that high standards had not been maintained. Clause 2 was reserved as a sign of particular censure. The Appeal Board considered, in the particular circumstances of this case, that a ruling of a breach of Clause 2 was not warranted and no breach of Clause 2 was ruled. The appeal on this point was successful.

A complainant who described him/herself as a concerned UK health professional, complained about the promotion of an investigational medicine on LinkedIn by Eli Lilly and Company Limited.

The LinkedIn post at issue appeared to feature a video and included the statement 'We're sharing preliminary results of our head-to-head study for our investigational medicine in adults with type 2 #diabetes. Learn more here (link provided)'.

COMPLAINT

The complainant provided a screenshot of the LinkedIn post and stated that the announcement which had been placed on LinkedIn, outlining results for an investigational product, had been 'liked' by staff based in the UK. The complainant alleged that this promoted the product to the public in the UK.

When writing to Eli Lilly, the Authority asked it to consider the requirements of Clauses 2, 3.1, 9.1, 26.1 and 26.2 of the Code.

RESPONSE

Eli Lilly stated that the Eli Lilly and Company LinkedIn account referred to in the complaint was a US-based corporate account that was owned and managed by Lilly's corporate communications team at Lilly's Indianapolis headquarters. The identifiers on the account were very clear that it was a US based account because it:

- listed the location as United States
- referred to the global corporate website, www.lilly.com
- listed company headquarter as Indianapolis, Indiana
- included US contact information
- included a map of Lilly's corporate headquarter location.

Lilly provided visuals of the LinkedIn account identifiers.

Lilly submitted that neither the LinkedIn post itself nor the corporate press release that was accessible via the link provided in the post targeted UK users. The link in the post took the user from the US LinkedIn channel to a press release on Lilly's US website's 'Investor' section.

The corporate press release accessible via the corporate LinkedIn account was issued by Eli Lilly and Company, Lilly's global headquarters, and posted on the 'Investor' section of the company's US-based website. The purpose of the press release was to make a corporate business announcement, communicating the outcome of trial data as news to the business and investor communities. Lilly provided visuals of the press release published on the Lilly corporate website.

Lilly submitted that the UK company had no involvement in the preparation or communication of the press release accessible via the corporate LinkedIn account because those materials were not intended for UK users. Consequently, Lilly UK did not conduct any review or approval of the LinkedIn post and the press release accessible via the Lilly corporate LinkedIn account. The LinkedIn post and the content available therein were reviewed and approved in line with the applicable laws and regulations in the US, and with the relevant company standards and procedures applicable for Lilly headquarters.

Lilly stated that it was thus clear that Lilly UK had no intention or act of promoting an investigational product to public. As such the company denied breaches of Clauses 26.2, 26.1, 3.1 and 2.

Lilly stated that as per its Procedure on Employee Personal Social Media Use and the Job Aid, UK employees were not permitted to interact ('like', share, comment or share with comments) with any content that included Lilly products or investigational molecules because that could be perceived to be promotion:

- employees must not 'Like', comment, share or share with comments any content from any Eli Lilly corporate social media account or Digital Media Spokesperson that includes content on Eli Lilly's and/or competitor products, investigational compounds, not yet approved/new indications and line extensions (NILEX) or medical devices. A list of these Lilly accounts is available in the Eli Lilly Social Media Job Aid.
- employees cannot 'Like', comment, share or share with comments any externally created content on Eli Lilly's or competitor products, investigational compounds, not yet approved/new indications, and line extensions (NILEX) or medical devices.

Lilly submitted that based on the internal fact-finding processes conducted in relation to this complaint, it had identified that three UK employees, all of which held global roles and did not report to Eli Lilly UK management and three contracted employees (six in total) 'liked' the post on the Lilly corporate LinkedIn account. Upon receipt of the complaint, Lilly immediately required the six employees to 'Unlike' the LinkedIn post and it confirmed that all six employees had completed the mandatory training on Lilly Procedure on Employee Personal Social Media Use and the Job Aid.

In addition, all six employees had completed Lilly's mandatory Red Book training. The Red Book was Lilly's code of business conduct. It set clear expectations for operating consistent with Lilly's long-established values of integrity, excellence and respect for people. It was based on the 11 corporate policies governing all business areas and supported by an infrastructure of more detailed materials to guide the company's daily work. One of the corporate policies was on communicating honestly and covered personal use of social media. It clearly stated that 'No employees might engage with Eli Lilly or competitor product, investigational compounds, medical devices or new indication and line extension (NILEX) content'. Lilly provided visuals of the Red Book training.

Eli Lilly submitted that it understood and fully respected the Code and strove to ensure that all its activities were in adherence with the Code at all times. Lilly was disappointed that despite robust and strict policies and training on personal conduct on social media, six of its employees made an honest mistake and 'liked' a non-UK LinkedIn post without any intention of causing a breach of the Code.

Eli Lilly stated that it had started an investigation of its employees' conduct in relation to this case with the aim of having a robust corrective and preventive action plans.

As explained in detail above:

- The LinkedIn account subject to the complaint was a corporate social media account owned and managed by Eli Lilly headquarters in US
- Eli Lilly UK did not own or manage the LinkedIn account subject to the complaint
- Eli Lilly UK had no involvement in the preparation, approval or communication of the press release accessible via the corporate LinkedIn account

- The press release accessible via the link provided in the LinkedIn post did not target UK users
- Eli Lilly UK had a Procedure on Employee Personal Social Media Use and Job Aid, which required employees not to engage, interact ('like', share, comment or share with comments) with any content that included Eli Lilly products or investigational molecules because that could be perceived to be promotion
- Eli Lilly UK mandated all employees to take the training on Procedure on Employee Personal Social Media Use and the Job Aid and the Red Book.

For the reasons stated, Eli Lilly denied breaches of Clauses 26.2, 26.1, 9.1, 3.1 and 2 of the Code. Eli Lilly understood and fully respected the Code and strove to ensure that all of its activities were in adherence to the Code at all times.

PANEL RULING

The Panel noted that LinkedIn was different to some other social media platforms in that it was a business and employment-orientated network and was primarily, although not exclusively, associated with an individual's professional heritage and current employment and interests; its application was not limited to the pharmaceutical industry or to health care. In the Panel's view, it was of course not unacceptable for company employees to use personal LinkedIn accounts; the Code would not automatically apply to all activity on a personal account. The Panel noted that compliance challenges arose when the personal use of social media by pharmaceutical company employees overlapped with their professional responsibilities or the interests of the company. The Panel noted that material could be disseminated or highlighted by an individual on LinkedIn in a number of ways, by posting, sharing, commenting or liking. The Panel understood that if an individual 'liked' a post it increased the likelihood that the post would appear in his/her connections' LinkedIn feeds, appearing as '[name] likes this'. In the Panel's view, activity conducted on social media that could potentially alert one's connections to the activity might be considered proactive dissemination of material. In addition, an individual's activity and associated content might appear in the individual's list of activities on his/her LinkedIn profile page which was visible to his/her connections; an individual's profile page was also potentially visible to others outside his/her network depending on the individual's security settings. Company employees should assume that such activity would, therefore, potentially be visible to both those who were health professionals or other relevant decision makers and those who were members of the public. In that regard it was imperative that they acted with extreme caution when using all social media platforms, including LinkedIn, to discuss or highlight issues which impinged on their professional role or the commercial/research interests of their company. Whether the Code applied would be determined on a case-by-case basis, taking into account all of the circumstances including, among other things, content and distribution of the material. If an employee's personal use of social media was found to be in scope of the Code, the company would be held responsible. The Panel considered that companies should assume that the Code would apply to all work-related, personal LinkedIn posts/activity by their employees unless, for very clear reasons, it could be shown otherwise. Any material associated with a social media post, for example a link within a post, would be regarded as being part of that post. Companies must have comprehensive and up to date social media policies that provide clear and unequivocal guidance on what was, and what was not, acceptable and it was extremely important that employees were trained upon them and followed them.

The Panel noted Lilly's submission that the LinkedIn post at issue was posted on the Eli Lilly and Company LinkedIn US account. The post included a video along with the statement 'We're sharing preliminary results of our head-to-head study for our investigational medicine in adults with type 2 #diabetes. Learn more here (link provided)'. The Panel noted that the post was linked to a news release on the investor section of the US Lilly website headed 'Tirzepatide achieved superior A1C and body weight reductions across all three doses compared to injectable semaglutide in adults with type 2 diabetes'; the news release outlined the results of the SURPASS-2 trial. The Panel did not have the content of the video before it; Lilly made no submission in that regard.

The Panel understood that employees might feel inclined to endorse their company's corporate social media posts but noted that depending on the content such activity might or might not fall within the scope of the Code. Companies would be well advised to cover the possibility of that activity in their social media policies. This was particularly important if UK employees were likely to follow the social media accounts of affiliates that had codes, laws and regulations that differed to the UK.

The Panel noted Lilly's submission that despite robust and strict policies and training on personal conduct on social media, three Lilly UK employees, who held global roles and did not report to Lilly UK management, and three contracted employees, made a mistake and had 'liked' the post on the corporate LinkedIn account. The Panel considered that the UK employees' engagement with the post would have, on the balance of probabilities, proactively disseminated the material to their LinkedIn connections which would likely predominantly be within the UK, and thus brought the LinkedIn post within the scope of the UK Code.

The Panel did not know how many connections each of the employees had on LinkedIn and if they were all health professionals; the company made no submission in that regard. However, the Panel considered that, on the balance of probabilities, it was likely that the employees' connections on their personal accounts would have included members of the public as well as health professionals and other relevant decision makers.

The Panel noted that Clause 3.1 prohibited the promotion of a medicine prior to the grant of its marketing authorisation. Once the marketing authorisation had been granted, Clause 26.1 prohibited the promotion of prescription only medicines to the public.

The Panel noted that Clauses 26.1 and 26.2 only applied to prescription only medicines. The LinkedIn post referred to the preliminary results of an investigational medicine. The Panel noted that tirzepatide was not a prescription only medicine at the time the LinkedIn post in question was 'liked' by six UK employees. On that very narrow technical point, the Panel ruled no breach of Clauses 26.1 and 26.2 of the Code.

However, the Panel considered that the Lilly UK employees' 'like' of the LinkedIn post meant that the post and linked press release, which highlighted the positive efficacy results of Lilly's unlicensed medicine compared to injectable semaglutide in adults with type 2 diabetes, had, on the balance of probabilities, been disseminated proactively to the employees' connections. The Panel considered that this constituted promotion of the medicine prior to the grant of its marketing authorisation and a breach of Clause 3.1 was ruled.

The Panel noted Lilly's submission that it had in place procedures on the use of personal social media for employees, which stated that UK employees were not permitted to interact (like,

share, comment or share with comments) with any content that included Lilly products or investigational molecules because this could be perceived to be promotion. The Panel further noted Lilly's submission that upon receipt of the complaint, Lilly immediately required the six employees to 'Unlike' the LinkedIn post and confirmed that all six employees had completed the mandatory company training on the personal use of social media.

The Panel noted that Lilly's Employee Personal Social Media Use Procedure dated April 2020 stated:

'Employees from countries other than the United States may ... 'Like' content from any Lilly corporate social media account, including those of Digital Media Spokespersons. See the Social Media Job Aid for specific accounts. These Lilly corporate social media account posts may include content on Lilly and/or competitor products, corporate social responsibility, externally posted job opportunities or disease state.'

However, the Panel noted that there was a section within the Job Aid for the Northern European Hub which stated:

'Employees in the Northern European Hub **must not** "Like", comment, share or share with comments any content from any Lilly corporate social media account or Digital Media Spokesperson that includes content on Lilly and/or competitor products, investigational compounds, not yet approved/new indications and line extensions (NILEX) or medical devices. A list of these Lilly accounts is available in the Lilly Social Media Job Aid.'

The Panel considered that the instructions given might have been confusing, particularly if UK readers read the instructions for employees outside the US and did not read the contradictory instructions for employees in the Northern European hub within the Employee Personal Social Media Use Job Aid.

The Panel noted its comments and rulings above and considered that high standards had not been maintained. A breach of Clause 9.1 was ruled.

The Panel noted that promotion prior to the grant of a marketing authorisation was an example of an activity likely to be in breach of Clause 2. The Panel noted its comments and rulings above, including its concerns with the contradictory nature of the instructions for UK employees in the Employee Personal Social Media Use Procedure and the Northern European hub Employee Personal Social Media Use Job Aid. The Panel was concerned that 'liking' the LinkedIn post was clearly not an isolated occurrence; six employees had 'liked' the LinkedIn post in question about the company's medicine, prior to the grant of its marketing authorisation, resulting in its likely subsequent proactive dissemination to their LinkedIn connections. The Panel considered that in promoting an unlicensed medicine, Lilly had brought discredit upon and reduced confidence in the pharmaceutical industry and a breach of Clause 2 was ruled.

APPEAL BY LILLY

Lilly appealed the ruling of a breach of Clause 2 for the reasons set out below.

1. The Panel's ruling of a breach of Clause 2 was based on unsubstantiated assumptions and conflicted with more than a dozen of the Panel's rulings on similar LinkedIn cases.

Lilly submitted that the Panel ruling stated that 'liking' the LinkedIn post was clearly not an isolated occurrence; six employees had 'liked' the LinkedIn post in question about the company's medicine, prior to the grant of its marketing authorisation, resulting in its likely subsequent proactive dissemination to their LinkedIn connections. Lilly submitted that this statement was based on false assumptions.

Lilly submitted that the 'liking' was relevant to one post only and there had not been any prior complaint made with regard to Lilly employees' use of social media. On receiving the complaint, which pertained to one individual only, Lilly investigated internally, proactively disclosed the additional 'likes' and acted immediately to take corrective actions with the employees concerned. Lilly had acted in good faith to ensure the appropriate training was both robust and had been effectively delivered. Lilly submitted that it should not be penalised further for diligence in ensuring it had worked to improve the upholding of high standards.

Lilly submitted that on LinkedIn if you 'like' a post, your liking of the post was not notified to your connections, in contrast to when a post was actively shared. More importantly, there were many other factors that caused content to be visible by others (such as commenting, sharing, spending time by reading) so it was not possible to conclude that a mere 'liking' would result in a proactive dissemination of content to the LinkedIn user's connections.

Lilly submitted that with this in mind, the Panel had previously only ruled a breach of Clause 2 in five cases where either an 'employee commented on a LinkedIn post', or 'a senior employee placed an uncertified promotional post' or 'a promotional material had been posted on a social media platform by an employee'. In six other cases where the activity was limited to 'liking' a LinkedIn post of promotional content or of content about an unlicensed medicine, no breach of Clause 2 was ruled. Lilly therefore viewed the Panel's finding as disproportionate and inconsistent with prior rulings as no senior employees were involved, and Lilly's investigations did not find any evidence of commenting or sharing the post.

2. The Panel linked its ruling of a breach of Clause 2 to its concerns with the contradictory nature of the instructions for UK employees in the Employee Personal Social Media Use Procedure and the Northern European hub Employee Personal Social Media Use Job Aid.

Lilly wished to clarify this misunderstanding by the Panel:

- It was very clearly stated in the attached Lilly Procedure on the Governance of Policies and Procedures that employees must follow local job aids for country-specific governance processes and restrictions.
- All employees were trained on the Lilly Procedure on the Governance of Policies and Procedures; therefore, Lilly UK employees actively trained on the need to follow specific additional local job aids that documented specific country restrictions.

- In addition, training on procedure updates included very specific guidance on social media for the UK. Lilly referred to slides (provided), which clearly stated:

‘You cannot engage with or create content about Lilly or competitor products, investigational compounds, not yet approved or new indications and line extensions (NILEX), medical devices, or a disease state. This content is strictly off limits. This includes liking, commenting, sharing or sharing with comment.’

And

‘No employees can engage with Lilly or competitor product, investigational compounds, medical devices or NILEX content. This includes liking, commenting, sharing or sharing with comment.’

Lilly was of the opinion that all Lilly employees were trained and understood the need for supplemental job aids that detailed the local requirements, above and beyond globally set policies. The Lilly Procedure on Employee Personal Social Media Use and the Job Aid, read together in line with its company standards, was very clear and required employees not to refer or engage with any posts related to company products or investigational compounds, new indications or line extensions that were not yet approved.

Lilly submitted that in conclusion, based on previous Panel findings, and the provision of additional information on the overarching governance and training on the difference between global procedures and local job aids, that the policies were clear and that the case in question was down to individual actions and not a failure of the company. Lilly submitted that it continued to work to uphold high standards and to take the learnings from this isolated incident. On this basis, Lilly submitted that it was neither fair nor reasonable to conclude that it had brought discredit upon and reduced the confidence in the pharmaceutical industry.

COMMENTS FROM THE COMPLAINANT

There were no comments from the complainant.

APPEAL BOARD RULING

The Appeal Board noted that Lilly had accepted the Panel’s ruling of a breach of Clause 3.1 in that six Lilly UK employees had ‘liked’ the LinkedIn post at issue which had constituted the promotion of a medicine prior to the grant of its marketing authorisation. The Appeal Board noted that the supplementary information to Clause 2 stated that examples of activities likely to be in breach of this clause included, *inter alia*, promotion prior to the grant of a marketing authorisation.

The Appeal Board bore in mind the additional information regarding social media training provided by Lilly in its appeal which had not been provided to the Panel. The Appeal Board heard from Lilly at the appeal that the six staff members who had ‘liked’ the LinkedIn post had last been trained on the relevant social media policies and procedures in April 2020; that relevant staff received mandatory annual training on the company’s red book which covered social media use; and relevant staff were retrained specifically on social media every two years or when there was an update. The Appeal Board considered that whilst the guidance might not have covered all the relevant requirements of the Code, and the instructions could have been

improved by making them easier to follow by all staff, it appeared that Lilly had regular training and guidance in place. Despite this, six Lilly staff had 'liked' the LinkedIn post at issue, and the Appeal Board considered that Lilly had been let down by its employees in this regard.

The Appeal Board noted that Lilly had accepted the Panel's ruling of a breach of Clause 9.1 in that high standards had not been maintained. Clause 2 was reserved as a sign of particular censure. The Appeal Board considered, in the particular circumstances of this case, that a ruling of a breach of Clause 2 was not warranted and no breach of Clause 2 was ruled. The appeal on this point was successful.

Complaint received **4 March 2021**

Case completed **18 January 2022**