

## **COMPLAINANT v BRISTOL-MYERS SQUIBB**

### **Promotion of Opdivo and Yervoy on LinkedIn**

**An anonymous contactable complainant complained about the alleged promotion of Opdivo (nivolumab) and Yervoy (ipilimumab) on LinkedIn by a senior named Bristol-Myers Squibb UK employee. The employee appeared to have 'liked' a LinkedIn post from a senior US employee.**

**The complainant stated that the UK employee was flagging information on prescription only medicines to members of the public and doctors in his/her connections. The mandatory information for promotion of Yervoy and Opdivo was not provided. By proactively pushing this information out the employee was also raising interest in members of the public. The link connected to a press release which was not meant for UK doctors or public so the complainant was unsure what made the company think this was OK.**

**The detailed response from Bristol-Myers Squibb is given below.**

**The Panel noted that a Bristol-Myers Squibb senior UK employee had liked a LinkedIn post which had been posted by a senior employee from its US office; the US employee had posted a link to a Twitter post on LinkedIn along with the statement 'Incredibly proud and humbled to have been part of a team that has led to this approval by the FDA, bringing a new treatment option to patients suffering with 1L mNSCLC #BMS #BmsEmployee #NSCLC #cancer'.**

**The Tweet posted on the Bristol Myers Squibb US corporate Twitter account, stated '#MEDIA: #FDA approves chemo-free first-line treatment for certain patients with advanced #lungcancer [link provided]'. The link directed readers to a press release on the news.bms.com website titled 'U.S. Food and Drug Administration Approves Opdivo® (nivolumab) + Yervoy® (ipilimumab) as First-Line Treatment of Patients with Metastatic Non-Small Cell Lung Cancer Whose Tumors Express PD-L1≥1%'.**

**The Panel considered that the 'liking' of the LinkedIn post in question would have, on the balance of probabilities, proactively disseminated the information to the employee's connections on LinkedIn which would likely include both health professionals and members of the public within the UK and therefore brought the post and its associated links within the scope of the UK Code.**

**The Panel noted that whilst the LinkedIn post did not name a specific Bristol Myers Squibb medicine, it referred to approval by the FDA bringing a new treatment option to patients suffering with 1L mNSCLC; readers were required to click the link within the LinkedIn post to be directed to a Twitter post. The Twitter post also did not mention a specific medicine but referred to the approval of chemo-free first-line treatment for patients with advanced #lungcancer. The Panel noted that upon clicking the link to the press release within the Twitter post, Opdivo and Yervoy were mentioned by name.**

In the Panel's view, the content of the LinkedIn post which referred to a 'new treatment option to patients suffering with 1L mNSCLC' and which linked to a Tweet which referred to 'chemo-free first line treatment for certain patients with advanced #lungcancer' which further linked to a press release about Opdivo and Yervoy, might have enticed a member of the public with an interest in this therapy area to click through to the press release relatively quickly and thus constituted the promotion of Opdivo and Yervoy to the public; a breach of the Code was ruled.

Further, the Panel considered that the content of the 'liked' LinkedIn post, which included the linked Tweet, constituted promotion of Opdivo and Yervoy to health professionals without the required prescribing information and thus the Panel ruled a breaches of the Code including that high standards had not been maintained.

The Panel noted that the employee appeared to be acting in contravention to the work instruction on employee personal use of social media; Bristol Myers Squibb submitted that it took steps to ensure employees were familiar with and were regularly reminded of these rules and their individual responsibilities.

The Panel considered that the particular circumstances of this case did not warrant a ruling of a breach of Clause 2 which was a sign of particular censure and was reserved for such use and no breach was ruled.

An anonymous contactable complainant complained about the alleged promotion of Opdivo (nivolumab) and Yervoy (ipilimumab) on LinkedIn by a senior Bristol-Myers Squibb UK employee. The employee appeared to have 'liked' a LinkedIn post from a senior US employee.

The senior US employee's post stated:

'Incredibly proud and humbled to have been part of the team that has led to this approval by the FDA, bringing a new treatment option to patients suffering with 1L mNSCLC #BMS #BmsEmployee #NSCLC #cancer'

and included a link to a BMS post on Twitter.

## **COMPLAINT**

The complainant stated that the named employee was a UK employee and was flagging information on prescription only medicines to members of the public and doctors in his/her connections. The employee had not included the mandatory information that was required to promote Yervoy and Opdivo to doctors. The complainant stated that by proactively pushing this information out the employee was also raising interest in members of the public. The link connected to a press release which was not meant for UK doctors or public so he/she was unsure what made the company think this was OK.

When writing to Bristol-Myers Squibb, the Authority asked it to consider the requirements of Clauses 26.1, 9.1, 4.1 and 2 of the Code.

## **RESPONSE**

Bristol-Myers Squibb explained that in May 2020, a senior named UK-based employee used his/her personal LinkedIn account to 'like' a personal post on a named US-based colleague's personal LinkedIn account (the 'like' and the 'original LinkedIn post' respectively). The original LinkedIn post was also from May 2020. The US colleague was an employee of Bristol-Myers Squibb's US parent company and worked within a global function. In the original LinkedIn post, the US employee described feeling 'proud and humbled' by being part of a team that secured FDA approval for a new treatment option for first line non-small cell lung cancer indication in the US. The US employee was not an employee of Bristol-Myers Squibb in the UK and the original LinkedIn post was not for UK audiences; nor did it have any connection to the UK. The US employee's original LinkedIn post contained a weblink to a US Twitter post.

The US Twitter post was a post from the Bristol-Myers Squibb US corporate Twitter page, dated 15 May 2020. Again, there was no connection with the UK. The US Twitter post referred to the FDA approving a 'chemo-free first-line treatment for certain patients with advanced #lungcancer.' It did not mention any product names. The US Twitter post prominently displayed the hashtag #MEDIA, indicating the content was intended for the US media and not for the general public. It also displayed the hashtag #FDA, indicating the post related to the US approval, and therefore was not applicable to the UK population. The US Twitter post contained a further link to a US corporate press release.

The US Twitter post linked to a webpage, hosted on Bristol-Myers Squibb US's corporate website. It was part of the company's 'corporate financial news' section and the page made this clear in prominent, coloured writing directly below the headline (copy provided). It was a non-promotional corporate news story, for audiences who had an interest in the company, its financial performance and news that might affect that performance. The US corporate press release was the only point within the sequence of materials that named Opdivo and Yervoy.

Bristol-Myers Squibb submitted that the key allegation was that the UK employee's 'like' of a colleague's post amounted to the promotion of a prescription only medicine to the public. The complainant alleged that this breached Clause 26.1 and Bristol-Myers Squibb's internal policies. The UK employee 'liked' a personal post from a colleague who was 'proud and humbled' by achieving a major work milestone. Neither the 'like' nor the original post mentioned products by name, as a result the 'like' was not about products, let alone promotion. The UK employee's case was materially different to past Panel rulings in which the effect of a 'like' was to bring a press releases and/or product names directly and immediately to the attention of the public. That was not what happened here and in Bristol-Myers Squibb's view, there were important reasons why Bristol-Myers Squibb did not believe this to be the case in this instance.

1. The UK employee's 'like' was fundamentally different. Neither the 'like' nor the original post mentioned the name of a product. Nor did the US Twitter post. The only way in which members of the public could have become aware that the FDA had approved Opdivo plus Yervoy would have been if they clicked through from the UK employee's feed to the original LinkedIn post; from there clicking again to the US Twitter post; and then clicking a third time from that to the US corporate press release. Any product-related information was at least three steps removed from the original social media interaction. To reach that point, members of the public would have consciously and proactively sought out those details, including the products' names. Moreover, members of the public would have seen the prominent #FDA and #media hashtags, making the context of the links they could click-on very clear. Bristol-Myers Squibb noted that the material in question was an historic post and

'like' so the complainant would have actively had to scroll through the UK employee's LinkedIn to see the 'like'.

2. The original LinkedIn post and the subsequent 'like' were not intended to be product promotion in any sense. LinkedIn users who saw the UK employee's 'like' could only have understood it for what it was: a show of support from one senior colleague to another congratulating him/her and his/her team on an important milestone. It was a colleague-to-colleague interaction, operating on a personal rather than company or product level; this was especially important in these socially distanced times during the Covid-19 pandemic. Colleagues were increasingly using LinkedIn to communicate between themselves in ways they might otherwise have done face-to-face. Bristol-Myers Squibb trusted the Panel would appreciate and understand that such dialogue had necessarily had to move online. Whilst that created challenges, it would be wrong to characterise it as product promotion. With the rapidly evolving nature of digital and social media, it was important to appreciate how these technology and platforms were utilised, so that Bristol-Myers Squibb could stay current within the context of this evolving world. It was further important to note that the UK employee did not further comment on or share, or repost the original LinkedIn post.

Bristol-Myers Squibb denied a breach of Clause 26.1.

With regard to Clause 4.1, Bristol-Myers Squibb stated that neither the original LinkedIn post in question, nor indeed the US Twitter post it linked out to, referred to any company products within either the text nor the hashtags used. They were not promotional in intent or nature and were not directed to nor intended for an UK audience, therefore it did not fall within the scope of the Code and did not require prescribing information.

The press release was issued by the US parent company and hosted on the Bristol-Myers Squibb US corporate website. The content referred to approval of medicines in the US only and it was not directed to nor intended for a UK audience, therefore it did not fall within the scope of the Code and prescribing information would not be required.

Bristol-Myers Squibb denied a breach of Clause 4.1.

Bristol-Myers Squibb submitted that as the Panel had ruled in the past, companies had a duty to set clear and unambiguous internal guidelines and take reasonable steps to ensure employees were aware of those rules and the need to meet them. Bristol-Myers Squibb submitted that it had met that standard and it strongly rejected the alleged breaches of Clauses 9.1 and 2.

Bristol-Myers Squibb stated that it had set clear standards and published unambiguous guidelines to its employees on the personal use of social media, both at the global and UK/Ireland level (copies provided). These guidelines prominently instructed employees not to use personal LinkedIn accounts to 'like' or otherwise endorse content about Bristol-Myers Squibb medicines, regardless of the source. Bristol-Myers Squibb took steps to ensure employees were familiar with, and were regularly reminded of these rules and their individual responsibilities.

In addition to these robust guidelines, Bristol-Myers Squibb was dedicated to ensuring it provided appropriate training and guidance to all UK/Ireland employees regarding the personal use of social media. Bristol-Myers Squibb stated that it had significantly increased and

enhanced its efforts in this area as a key learning point from Case AUTH/3372/8/20, in August 2020. In particular:

- Since the previous complaint, Bristol-Myers Squibb had organised further Code training on social media on 10 December 2020 with an external provider; made available to the entire UK/Ireland organisation.
- In addition, and ahead of the receipt of this complaint, a company-wide communication was issued to all UK/Ireland employees on 15 March 2021 as a reminder of the company's social media policy and expectations of the Code (copies provided).

Notwithstanding the additional steps outlined above, the issues raised in this complaint underlined the importance of continuing to educate employees and remind them of their responsibilities when using social media. Bristol-Myers Squibb UK/Ireland had additionally scheduled a series of mandatory training sessions on the personal use of social media throughout April 2021, following which a personal use social media guidelines booklet would be created and provided to all employees. Bristol-Myers Squibb considered that it was doing all that it could to reinforce the message to all employees.

In past cases that involved complex issues, such as employees' personal LinkedIn use, the Panel had stated that companies 'needed to ensure that they took reasonable steps to highlight the potential compliance issues that might arise from [employees] 'liking' certain posts if such posts could thereby potentially be pushed to their connections' feed.' and further that 'companies needed to issue specific and unambiguous guidance on personal use of social media.' (Case AUTH/3038/4/18). While there was always room to learn and improve, Bristol-Myers Squibb considered it had taken reasonable steps to remind employees of their compliance responsibilities and had issued clear and unambiguous guidance, which was in place at the time of the complaint. Bristol-Myers Squibb stated that it firmly believed it had met the standards the Panel had set.

Based on the evidence provided above, Bristol-Myers Squibb strongly denied a breach of Clause 9.1 and Clause 2.

Finally, although Bristol-Myers Squibb respected and supported the right to bring historical complaints before the Panel, it had deep concerns with this particular complainant's actions and motives.

Having 'liked' the original LinkedIn post, the UK employee did not further comment on, share or repost any content. From Bristol-Myers Squibb's understanding, LinkedIn only made posts visible on the news feed for a duration of 30 days, and comments and 'likes' on other member's updates for 14 days. So, in all likelihood, the reason the complainant had become aware of the 'like' now was because he/she had systematically trawled through 39 historical posts on the UK employee's LinkedIn feed, going back 10 months, and then further clicked through various links and secondary links, before identifying an opportunity to raise a complaint. It was disappointing that the complainant had felt the need to do this.

Bristol-Myers Squibb noted that the complainant stated that the UK employee was 'again... flagging information on prescription only medicines.' Bristol-Myers Squibb was unaware of any other complaint against the UK employee. If the complainant had referred to the unpublished Case AUTH/3372/8/20, that concerned a different employee. However, the complainant's comment indicated he/she was aware of the earlier complaint or perhaps held a personal

grudge against the UK employee. Since the August 2020 complaint in Case AUTH/3372/8/20, Bristol-Myers Squibb had made significant strides in improving its internal guidance and training for employees regarding social media. The LinkedIn post and the 'like' in this complaint predated the earlier Case AUTH/3372/8/20, and Bristol-Myers Squibb would question what the complainant sought to achieve by bringing it up so late, after resolution of the previous case and raised serious question marks about the complainant's motives; which fundamentally appeared to be a vexatious one and perhaps improper. There was nothing meaningful to be gained from this complaint in terms of improving the company's compliance, protecting patient safety or preserving confidence in the industry, nor did it align to the spirit of the Code. That was important context.

Bristol-Myers Squibb strongly considered that a complaint of this nature went against the fundamental principles of self-regulation which was a critical component of the way the pharmaceutical industry worked in the UK, and Bristol-Myers Squibb was deeply committed to it. However, effective self-regulation required companies and complainants alike to behave responsibly and not abuse the process. It also required a proportionate approach to triaging and managing complaints. Bristol-Myers Squibb stated that its concern was that a negative ruling in this case would provide precedence and encourage complainants to dredge through historical LinkedIn posts with the sole objective of trolling and targeting people and companies they disliked. Allowing this to happen would, in Bristol-Myers Squibb's view, undermine the process the industry worked hard to protect and preserve.

The Panel had made clear that the Code did not automatically apply to all activity on a personal account and that 'whether the Code applied would be determined on a case-by-case basis taking into account all the circumstances including: the content, any direct or indirect reference to a product, how the information was disseminated on LinkedIn, the company's role in relation to the availability of the content and whether such activity was directed or encouraged by the company.' (Case AUTH/3151/6/18).

Bristol-Myers Squibb respectfully asked the Panel to uphold its commitment to making a case-by-case assessment and take a proportionate and circumspect approach and maintain a sense of proportionality and relevance to the realm of social media. It concerned a single action, over 10 months ago, by one individual employee, who acted with no ill intent and no intention to promote.

Bristol-Myers Squibb stated that it had always been open to listening to the Panel's views and working with complainants and authorities in a direction that improved Bristol-Myers Squibb's systems and its approach to compliance. Bristol-Myers Squibb stated that it understood that the digital and social media landscape was ever evolving and challenging and it was aware that representatives of the industry, including Bristol-Myers Squibb, had requested to engage in further discussion with the PMCPA on these challenges. Bristol-Myers Squibb stated that it would welcome the opportunity to support and work with the PMCPA. Nonetheless, Bristol-Myers Squibb considered that complaints of this kind were not constructive and it was concerned that the openness of the self-regulatory system was being exploited.

Given the very serious concerns raised above, Bristol-Myers Squibb respectfully urged the Panel to take a proportionate approach in the determination of this case.

## **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 that a Bristol-Myers Squibb senior UK employee had liked a LinkedIn post which had been posted by a senior employee from its US office.

The Panel noted that the Bristol-Myers Squibb US employee had posted a link to a Twitter post on LinkedIn along with the statement 'Incredibly proud and humbled to have been part of a team that has led to this approval by the FDA, bringing a new treatment option to patients suffering with 1L mNSCLC #BMS #BmsEmployee #NSCLC #cancer'.

The Twitter post, posted on the Bristol Myers Squibb US corporate Twitter account, stated '#MEDIA: #FDA approves chemo-free first-line treatment for certain patients with advanced #lungcancer [link provided]'. The link directed readers to a press release on the news.bms.com website titled 'U.S. Food and Drug Administration Approves Opdivo® (nivolumab) + Yervoy® (ipilimumab) as First-Line Treatment of Patients with Metastatic Non-Small Cell Lung Cancer Whose Tumors Express PD-L1≥1%'.

The Panel noted the complainant's allegation that the UK employee, by liking the US employee's LinkedIn post, had proactively pushed out information about Opdivo and Yervoy to members of the public and health professionals, without the required mandatory information.

The Panel considered that the 'liking' of the LinkedIn post in question would have, on the balance of probabilities, proactively disseminated the information to the employee's connections on LinkedIn which would likely include both health professionals and members of the public within the UK and therefore brought the post and its associated links within the scope of the UK Code.

The Panel noted that whilst the LinkedIn post at issue did not name a specific Bristol Myers Squibb medicine, it referred to approval by the FDA bringing a new treatment option to patients suffering with 1L mNSCLC; readers were required to click the link within the LinkedIn post to be directed to a Twitter post. The Twitter post also did not mention a specific medicine but referred to the approval of chemo-free first-line treatment for patients with advanced #lungcancer. The Panel noted that upon clicking the link to the press release within the Twitter post, Opdivo and Yervoy were mentioned by name.

The Panel noted that it was an accepted principle under the Code that it was possible, given the broad definition of promotion, for material to be promotional without mentioning a product by name.

In the Panel's view, the content of the LinkedIn post which referred to a 'new treatment option to patients suffering with 1L mNSCLC' and which linked to a Tweet which referred to 'chemo-free first line treatment for certain patients with advanced #lungcancer' which further linked to a press release about Opdivo and Yervoy, might have enticed a member of the public with an interest in this therapy area to click through to the press release relatively quickly and thus constituted the promotion of Opdivo and Yervoy to the public. A breach of Clause 26.1 was ruled.

Further, the Panel considered that the content of the 'liked' LinkedIn post, which included the linked Tweet, constituted promotion of Opdivo and Yervoy to health professionals without the required prescribing information and thus the Panel ruled a breach of Clause 4.1.

High standards had not been maintained and a breach of Clause 9.1 was ruled.

The Panel noted that the employee appeared to be acting in contravention to the UK/Ireland Work Instruction on employee personal use of social media which was effective at the time he/she 'liked' the LinkedIn post at issue. The work instruction stated, *inter alia*, that employees must not post, like, share or comment on any information, or links to information, on their social media accounts about: BMS medicines or medicine classes; claims relating to BMS medicines (even if the medicine name/brand was not mentioned); BMS clinical trials, clinical data, pipeline assets; or BMS competitors, their medicines, clinical data and/or pipeline assets. The Panel noted Bristol Myers Squibb's submission that it took steps to ensure employees were familiar with and were regularly reminded of these rules and their individual responsibilities.

The Panel noted its comments and rulings above and considered that the particular circumstances of this case did not warrant a ruling of a breach of Clause 2 which was a sign of particular censure and was reserved for such use and no breach was ruled.



<b>Complaint received</b>	<b>22 March 2021</b>
<b>Case completed</b>	<b>17 January 2022</b>