CASE AUTH/3579/11/21

HEALTH PROFESSIONAL v NOVARTIS

Promotion of Glivec / Gleevec (imatinib mesylate) on LinkedIn

An anonymous, non-contactable complainant who described him/herself as a concerned UK health professional complained about the promotion of imatinib (Glivec, Gleevec) on LinkedIn by Novartis Pharmaceuticals UK Limited employees.

The complainant stated that the LinkedIn post came to his/her attention as part of his/her LinkedIn feed with an article posted by a surviving myeloid leukaemia patient. The complainant had no issue with the patient voice using social platforms, however, the US brand name Gleevec was used and was phonetically identical to the UK version, Glivec.

The complainant understood that normally this would be outside of the UK Code, however:

- **An employee of another named pharmaceutical company re-shared the patient's post advertising this to anyone connected via LinkedIn**
- **A Novartis employee then liked the shared post (imatinib was a Novartis product) which would have also posted to their connections feed a promotional message with brand name**
- **A second Novartis employee then both liked and commented on the patient's post. In the comment the Novartis employee referred to imatinib by the UK Novartis brand name 'Glivec', again a promotional message**
- **Finally, across both companies it appeared individuals were happy to 'like' posts that could be perceived as promotional in intent, given the strapline 'Once terminal, now controllable'.**

The complainant was not aware of, and had not investigated, the disclosures between Novartis, the other named pharmaceutical company and the specific patient and clinician. However, given the nature of the article and the friendly comments, the complainant queried if it was a commissioned article.

By re-sharing that post, the complainant alleged that all three UK pharmaceutical employees had, *de facto*, created promotional material (further supported by colleagues) in which an unsubstantiated main claim on patient survival and no references were made – Gleevec and Glivec were phonetically identical and the same medicine, therefore, he/she considered them one and the same for UK Code purposes. The post and comments would have reached a substantial number of LinkedIn users that were not health professionals or patients, ie the public.

The complainant stated that this was of particular importance given the message delivered within the original patient post regarding long-term survival whilst treated with imatinib with the claim 'Once terminal, Now controllable', which sounded like a

pharmaceutical industry product claim. The complainant did not believe the data supported that myeloid leukaemia was controllable for all patients on imatinib.

In addition, the Novartis employee's specific comment on the LinkedIn post 'Glivec is a lifesaver drug' used the UK brand name and would amount to a strongly worded promotional claim without substantiation.

The complainant requested that the PMCPA considered the employee of the other named pharmaceutical company and the two Novartis employees' actions on behalf of their respective companies. Both companies should be very aware of the public nature of LinkedIn (and therefore it was irrelevant that imatinib was not a product of the other named pharmaceutical company) and the use of brand names within the UK in relation of promotion to the public and, in particular, patients.

The case preparation manager only took this complaint up with Novartis as the marketing authorisation holder for Glivec and not the other named pharmaceutical company as although the individual had previously worked for Novartis, at the time he/she shared the LinkedIn post, he/she was working for the named pharmaceutical company which was not the marketing authorisation holder of Glivec.

The detailed response from Novartis is given below.

The Panel noted that the original LinkedIn post was made by a patient advocate who lived in the US and stated 'I'm blessed! 26.5 years after terminal cancer diagnosis' followed by the bold heading 'Once Terminal, Now Controllable', beneath which was a photograph of the patient advocate with a health professional followed by the text '[named patient advocate] (left) was diagnosed with chronic myeloid leukemia and was running out of time when he enrolled in a clinical trial studying Gleevec, a targeted therapy developed by [named health professional] (right)'.

The Panel noted that Employee 2's (as referred to by Novartis) comment on the original LinkedIn post stated 'Huge love to you [name] and the utmost respect to [named health professional] – Glivec is a lifesaver drug' followed by a heart emoji. The Panel noted that whilst this employee no longer worked at Novartis, he/she was still employed by Novartis at the time that he/she 'liked' and commented on the original LinkedIn post. The Panel noted Novartis' submission that as of 25 November 2021 when responding to the complaint, Employee 2 had around 200 connections on LinkedIn.

The Panel further noted from Novartis's submission that the original LinkedIn post by the patient advocate above appeared to have been shared by an employee of another named pharmaceutical company who was an ex-employee of Novartis. In sharing the post, the employee of the other named pharmaceutical company stated 'Still amazes me now… I remember the clinical trials starting in the U.K. with Imatinib, one of the first 'targeted' cancer treatments… The impact and beauty of science and innovation meet to trailblaze for the future!'.

The Panel noted Novartis' submission that this shared post was also liked by a former Novartis employee (Employee 1 as referred to by Novartis) who had already left Novartis at the time he/she liked the shared post but had not updated his/her LinkedIn profile to reflect this. The Panel therefore did not consider that this individual's actions, nor the

actions of the other named pharmaceutical company employee who shared the original LinkedIn post, were within the scope of the Code as far as Novartis was concerned and it therefore made no rulings in this regard.

The Panel noted that the complainant included a screenshot of reactions to the post on LinkedIn, which included a 'like' from a further individual who was a current Novartis employee (Employee 3 as referred to by Novartis). The Panel noted Novartis' submission that as of 25 November 2021 when responding to the complaint, Employee 3 had around 200 connections on LinkedIn. It was unclear to the Panel from the complainant's submission whether Employee 3's 'like' was in relation to the original LinkedIn post or the shared LinkedIn post. The Panel, however, noted Novartis' submission that Employee 3 had liked the shared post which appeared on his/her feed, as a connection of the other named pharmaceutical company employee.

The Panel noted Novartis' submission that the connections of Employee 2 and Employee 3, both employed by Novartis at the time they interacted with the original and shared LinkedIn post, appeared to be made up of both members of the public and health professionals.

The Panel noted the complainant's concern that the data did not support the claim within the original post regarding long-term survival whilst treated with imatinib: 'Once terminal, Now controllable'; the complainant did not believe the data supported that myeloid leukaemia was controllable for all patients on imatinib. The Panel noted that Novartis did not specifically respond in this regard except that the post was independently authored and shared by the patient advocate, with no input nor influence from Novartis UK. In the Panel's view, the claim 'Once terminal, Now controllable' might misleadingly imply to readers that this was the case for all patients on imatinib which in the Panel's view was incapable of substantiation as alleged. The Panel therefore ruled breaches of the Code.

The Panel considered that Employee 2's comment on the original LinkedIn post by the patient advocate, that Glivec was a 'lifesaver drug', was in effect a strong promotional claim. The Panel considered that the claim was unequivocally an exaggerated claim that was unbalanced and incapable of substantiation and ruled breaches of the Code as acknowledged by Novartis.

The Panel noted that Employee 3 in 'liking' the shared post and Employee 2 in 'liking' and commenting on the original LinkedIn post had, on the balance of probabilities, disseminated the posts and comment to the employees' individual networks, which included members of the public. Noting the content of the original LinkedIn post, Employee 2's comment on it and the content of the shared post 'liked' by Employee 3, the Panel considered that a prescription only medicine had been promoted to the public. The Panel therefore ruled a breach of the Code in relation to each of Employee 2 and Employee 3's activities as acknowledged by Novartis.

The Panel noted that the activities of Employee 2 and Employee 3 might encourage members of the public to ask their health professionals for imatinib. The Panel further noted Novartis' submission that Employee 2's comment that Glivec was a 'lifesaver drug' in the context of the title of the original post raised unfounded hopes of successful

treatment. The Panel therefore ruled a breach of the Code in relation to Employee 2's activity as acknowledged by Novartis and in relation to Employee 3's activity.

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

In relation to Employees 2 and 3, the Panel noted Novartis' submission that there was no instruction from Novartis for the employees to like or comment on the LinkedIn posts. The Panel further noted Novartis submission that all three Employees were instructed by Novartis as soon as it received the complaint to 'unlike' the posts and to remove any comments, and it confirmed that this had happened.

The Panel did not consider that the LinkedIn posts failed to recognise the special nature of medicines or respect the professional standing or otherwise of the audience to which they were directed or were likely to cause offence. The Panel therefore ruled no breach of the Code.

The Panel noted Novartis' submission that the original LinkedIn post was independently authored and posted by a patient advocate and shared by an employee from another named pharmaceutical company without any involvement from Novartis UK. The Panel further noted that it would have been clear that the posts had been disseminated on LinkedIn by the actions of Employee 2 and 3. The Panel, noting its comments above therefore ruled no breach of the Code.

The Panel did not consider that there was evidence that Novartis' representatives did not receive adequate training and no breach was ruled.

The Panel noted Novartis' submission that it was not involved in the preparation or creation of the posts. The Panel, however, considered that in disseminating the LinkedIn posts to their connections, Employee 2 and 3 had, in effect, created their own piece of promotional material. The Panel noted Novartis' submission regarding its Social Media Policy and that the company had provided extensive online, face-to-face and live training as well as numerous internal communications on the appropriate personal use of social media. Additionally, there were several standard operating procedures (SOPs), policies and learning tools which Novartis submitted it had put in place to address the risks associated with the use of personal social media and that its training records confirmed a 98.18% completion rate of the social media training module amongst UK employees. In the Panel's view, there was no evidence that the employees had not received relevant training as alleged and no breach of the Code was ruled.

The Panel ruled no breach of the Code as it did not consider that the complainant had raised a concern in relation to the requirement in the Code to provide accurate and relevant information about the medicines which the company markets to health professionals and other relevant decision makers upon reasonable request.

The Panel noted Novartis' submission that Employee 2 interacted with the Post entirely of his/her own volition and such conduct was not associated with any activity endorsed by Novartis. According to Novartis, Employee 2 was trained on the social media policy in autumn 2018 and Novartis had reinforced the rules and principles of this policy through extensive training which had been provided since 2018 to both existing and new joiners.

The Panel further noted Novartis' submission that it had also disseminated numerous communications on the appropriate personal use of social media but Employee 2 had failed to comply with Novartis' policies and instructions. The Panel considered that it was particularly important that information made available to the public about such a sensitive issue as myeloid leukaemia was fair and balanced and did not raise unfounded hopes of successful treatment. Whilst the Panel was concerned with Employee 2's reference to Glivec being a 'lifesaver drug', the Panel, on balance, did not consider that the particular circumstances of this case warranted 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, non-contactable complainant who described him/herself as a concerned UK health professional complained about the promotion of imatinib (Glivec, Gleevec) on LinkedIn by Novartis Pharmaceuticals UK Limited employees.

COMPLAINT

The complainant stated that the LinkedIn post came to his/her attention as part of his/her LinkedIn feed (his/her profile had peers, colleagues and patient groups connected along with non-clinical colleagues and friends) with an article posted by a surviving myeloid leukaemia patient. The complainant had no issue with the patient voice using social platforms, however, the US brand name Gleevec was used and was phonetically identical to the UK version, Glivec.

The complainant understood that normally this would be outside of the UK Code, however:

- An employee of another named pharmaceutical company re-shared the patient's post advertising this to anyone connected via LinkedIn
- A Novartis employee then liked the shared post (imatinib was a Novartis product) which would have also posted to their connections feed a promotional message with brand name.
- A second Novartis employee then both liked and commented on the patient's post. In the comment the Novartis employee referred to imatinib by the UK Novartis brand name 'Glivec' , again a promotional message.
- Finally, across both companies it appeared individuals were happy to 'like' posts that could be perceived as promotional in intent, given the strapline 'Once terminal, now controllable'.

The complainant was not aware of, and had not investigated, the disclosures between Novartis, the other named pharmaceutical company and the specific patient and clinician. However, given the nature of the article and the friendly comments, the complainant queried if it was a commissioned article.

By re-sharing that post, the complainant alleged that all three UK pharmaceutical employees had, *de facto*, created promotional material (further supported by colleagues) in which an unsubstantiated main claim on patient survival and no references were made – Gleevec and Glivec were phonetically identical and the same medicine, therefore, he/she considered them one and the same for UK Code purposes. The post and comments would have reached a substantial number of LinkedIn users that were not health professionals or patients, ie the general public.

The complainant submitted that this was of particular importance given the message delivered within the original patient post regarding long-term survival whilst treated with imatinib with the claim 'Once terminal, Now controllable', which sounded like a pharmaceutical industry product claim. The complainant did not believe the data supported that myeloid leukaemia was controllable for all patients on imatinib.

In addition, the Novartis employee's specific comment on the LinkedIn post 'Glivec is a lifesaver drug' used the UK brand name and would amount to a strongly worded promotional claim without substantiation.

Therefore, the complainant requested that the PMCPA investigated and considered the employee of the other named pharmaceutical company and the two Novartis employees' actions on behalf of their respective companies. Both companies should be very aware of the public nature of LinkedIn (and therefore it was irrelevant that imatinib was not a product of the other named pharmaceutical company) and the use of brand names within the UK in relation of promotion to the general public and, in particular, patients that sought online support.

It was the complainant's express preference not to be named in raising this complaint and to remain anonymous given the size and influence of the two companies involved. However, it was the complainant's firm belief that there must be some control of medicines being promoted, particularly given social media's sometimes pervasive influence in shaping patient decisions and views without the consultation of a qualified health professional.

The case preparation manager only took this complaint up with Novartis as the marketing authorisation holder for Glivec and not the other named pharmaceutical company as although the individual had previously worked for Novartis, at the time he/shared the LinkedIn post, he/she was working for another named pharmaceutical company who was not the marketing authorisation holder of Glivec.

When writing to Novartis, the Authority asked it to consider the requirements of Clauses 2, 5.1, 5.2, 5.5, 6.1, 6.2, 9.1, 9.3, 14.1, 14.2, 14.4, 18.1, 26.1 and 26.2 of the 2021 Code as cited by the complainant.

RESPONSE

Novartis stated that it was concerned to receive the complaint, which it took very seriously, particularly in light of previous complaints concerning the conduct of Novartis' employees on LinkedIn (Cases AUTH/3038/4/18 and AUTH/3421/11/20 (together, the 'Previous Cases'). Novartis submitted that as an organisation, it was doing everything it could to manage the risks around the personal use of social media by its employees and to ensure that they were using social media correctly. As Novartis highlighted in its response (particularly in section 2 below), it had clear and unequivocal policies in place, as well as regular training and communications (including company-wide emails) on social media use for all of its employees. Novartis was therefore deeply disappointed to receive this complaint in light of the numerous steps it had taken to address the appropriate use of personal social media by employees.

Novartis submitted that the complaint related to the actions of two former employees and one current employee of Novartis, all of whom were based in the UK. 'Employee 1' left Novartis in summer 2021. Employee 1 had left Novartis when he/she liked the Shared Post at issue and had not updated his/her LinkedIn profile to reflect that he/she had left Novartis. In light of the

fact that Employee 1 had left Novartis at the time that he/she liked the post, Novartis believed that his/her actions fell outside the scope of the complaint.

A former employee ('Employee 2') no longer worked for Novartis since autumn 2021. Employee 2 was still employed by Novartis at the time that he/she 'liked' the post (and posted a comment) on LinkedIn which was the subject of this complaint.

'Employee 3' was a current employee of Novartis. Novartis confirmed that Employees 2 and 3 (together referred to as the 'Employees') and their actions fell within the scope of the complaint.
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The complaint also referred to the conduct of the other named pharmaceutical company employee who was employed by Novartis but was not an employee as relevant to the timelines of this complaint.

Novartis submitted that all of the Employees (but not the employee of the other named pharmaceutical company) were contacted by Novartis as soon as it received the complaint to instruct them to 'unlike' the Posts and to remove any comments, and it confirmed that these steps had been taken.

The PMCPA asked Novartis to provide information on the number of connections of the Employees and the proportion of those connections that were members of the public or health professionals. As of 25 November 2021 when responding to the complaint, Employee 2 had around 200 connections and Employee 3 had around 200 connections on LinkedIn. Novartis confirmed that the Employees' connections appeared to be made up of both members of the public and health professionals. It was very difficult for Novartis to provide more specific proportions as it simply did not know all of the Employees' connections and their status in this regard. Novartis hoped that its acknowledgement that both members of the public and health professionals were connections of the Employees was sufficient for the purposes of the complaint.

1 Clauses 5.5, 6.1, 6.2, 9.1, 9.3, 14.1, 14.2, 18.1, 26.1 and 26.2

Novartis submitted that the complaint focussed on the conduct of the Employees in relation to a post on LinkedIn by a patient advocate and chronic myeloid leukemia (CML) survivor who lived in the US. The post was a screenshot of the patient advocate and CML survivor standing with a named doctor and described a clinical trial that he/she was enrolled in studying Gleevec. Novartis noted that Gleevec was the brand name for imatinib in the US; whereas Glivec was the brand name for imatinib in the UK. The headline of the screenshot was 'Once Terminal, Now Controllable' (the 'Original Post'). The Original Post was independently authored, and shared by, the patient advocate and CML survivor on LinkedIn, with no input or influence from Novartis UK. The Original Post was then subsequently shared by the other named pharmaceutical company Employee (the 'Shared Post'). Despite the assertion of the complainant, the Shared Post was posted of the other named pharmaceutical company Employee's own volition, with no input or influence from Novartis or the Employees. The Original Post and Shared Post were provided and shall hereafter together be referred to as the 'Posts'.

Employee 2 'liked' and commented on the Original Post and Employee 3 liked the Shared Post which appeared on his/her feed, as a connection of the other named pharmaceutical company Employee. In both cases, there was no intent or instruction from Novartis for the Employees to

like the Posts. The Employees interacted with the Posts entirely of their own volition and such conduct was not associated with any activity endorsed by Novartis. Novartis recognised, however, that this conduct brought the Code into scope and consideration for the complaint, and it addressed each alleged clause breach below.

Clauses 5.5, 14.2 and 9.1

Novartis submitted that as the Posts were independently authored and posted by a patient advocate and the other named pharmaceutical company Employee without any involvement whatsoever from Novartis UK, it did not believe that there was any requirement for Novartis to declare its involvement in the context of the Posts or to provide references. Novartis was unaware of the Posts until the complaint was brought to its attention by the PMCPA. Novartis therefore did not believe that Clauses 5.5 and 14.2 and their requisite requirements were relevant to the complaint. Similarly, Novartis did not view Clause 9.1 as relevant to the complaint, as it was not involved in the preparation or creation of the Posts. Novartis therefore believed that it had not acted in breach of Clauses 5.5, 14.2 and 9.1 of the Code.

Clauses 6.1 and 6.2

With regard to the claim made by Employee 2 in the comments on the Original Post, Novartis acknowledged that this regrettably amounted to breaches of Clauses 6.1 and 6.2 of the Code.

Clause 9.3

Novartis submitted that it had not acted in breach of Clause 9.3 of the Code and had discharged the requirement imposed by the Code to provide representatives with 'adequate training' and to have sufficient knowledge to provide full and accurate information about the medicines which they promoted. 'Representative' as defined by the Code, would include the conduct of Employee 2, but not Employee 3 who was not in a customer-facing role. Employee 2 was in service at Novartis for 25 years and as such, would be fully aware of Novartis' policies and procedures, and would have had sufficient knowledge to provide full and accurate information on Novartis' medicines. Employee 2 was trained on the social media policy in autumn 2018 2018, but unfortunately, in this instance, Novartis was disappointed that Employee 2 had neglected its training and instructions, despite his/her wealth of experience. Novartis noted that the PMCPA previously noted in Case AUTH/3421/11/20 that Novartis had '*requisite policies*' in place, and its instructions on what associates could and could not do in this context were '*clear and unambiguous*'. A copy of Employee 2's training record, showing training relevant to this complaint was provided. Novartis did not view the rogue acts of Employee 2 as indicative of its representative's behaviour, who did follow its training and instructions, as set out in section 2 below.

Clause(s) 14.1 and 14.4

In relation to Clause 14.1, Novartis disagreed that there had been a comparison made in the complaint. The Original Post referenced US Gleevec and the comment of Employee 2 on the Original Post referred to Glivec, which, as the complainant noted, was phonetically identical and was the UK equivalent. Novartis therefore did not see Clause 14.1 as relevant to the complaint and consequently believed that there had been no breach. In contrast, Novartis acknowledged and agreed that unfortunately, there had been a breach of Clause 14.4, as the comment on the Original Post by Employee 2 was an exaggerated claim about Glivec which had not been

substantiated. Employee 2 made this claim independently without knowledge or instruction from Novartis, and Novartis was deeply disappointed by Employee 2's actions, particularly in light of his/her role and experience, as noted under Clause 9.3 above.

Clause 18.1

With regard to Clause 18.1, Novartis submitted that its requirements were not applicable to the complaint. Clause 18.1 provided that it covers situations where a company provides accurate and relevant information about the medicines that it markets *upon reasonable request.* However, the conduct of the Employees was of their own volition and was not provided in response to a request for information. Novartis therefore did not believe that it had breached Clause 18.1, as it was not applicable to the complaint.

Clauses 26.1 and 26.2

Novartis accepted that there had unfortunately been a breach of Clause 26.1 as a result of the Employees conduct. By liking or commenting on the Original Post or Shared Post, which mentioned a medicine and indication, the Employees had inadvertently made the Posts visible to their individual networks which had resulted in promotion to the public. Furthermore, Novartis acknowledged and accepted a breach of Clause 26.2 with regard to the conduct of Employee 2; whereby Employee 2 made a claim about the product which was not factual or presented in a balanced manner. In the context of the title of the Original Post, Novartis acknowledged that such a comment could be construed as raising unfounded hopes of successful treatment with respect to the product in question. Novartis regretted that the Employees had failed to comply with Novartis' policies and instructions, however, it had ensured a consistent approach to employee conduct on social media use throughout its organisation as described below in section 2.

2 Clauses 5.1 and 5.2

Novartis disagreed with the complainant that it had breached Clauses 5.1 and 5.2 by failing to maintain high standards. As an organisation, Novartis set and expected extremely high standards of its employees to comply with the Code, and it did not believe that the conduct of the Employees amounted to a failure by Novartis to maintain high standards in light of the points it set out below.

In 2018, Novartis created and maintained a Social Media Policy (copy provided). Novartis had reinforced the rules and principles of this policy through extensive online, face-to-face and live training to associates, which had been provided since 2018 to both existing and new joiners. Novartis had also disseminated numerous internal communications on the appropriate personal use of social media. The details of these activities were provided together with the specific communications sent to employees. Additionally, there were several standard operating procedures (SOPs), policies and learning tools which had been put in place to address the risks associated with the use of personal social media (copies provided). Novartis submitted that this multi-faceted approach to messaging around the risks of social media had deeply embedded the Social Media Policy in its culture and working practices.

As of November 2021, Novartis' internal training records confirmed a 98.18% completion rate of the social media training module amongst UK employees (copy provided). A redacted list of

Novartis employees together with completion dates was also provided to further illustrate the scope and outreach of its internal training programme on this topic (copy provided).

Novartis acknowledged that the PMCPA previously noted in Case AUTH/3421/11/20 that Novartis' instructions to employees to '*not refer to company products on social media or "like" posts that made any reference to a specific medicine either directly or indirectly were clear and unambiguous'*. Since the Previous Cases Novartis had maintained significant engagement on social media use across its organisation, including a number of company-wide emails (copies provided) where the importance of using social media channels strictly in accordance with its Social Media Policy had been unequivocal.

In light of this, it was Novartis' submission that it had effective measures in place to address the risks associated with the personal use of social media by associates. Novartis submitted that a reasonable assessment of the approach would determine that the thorough and diligent efforts that Novartis had taken (as set out above and in copies provided) would be regarded as maintaining high standards, and in the circumstances, Novartis had been let down by the actions of the current and previous employees acting of their own volition in contravention of Novartis' clear policies, training and procedures in this area.

3 Clause 2

Novartis understood that Clause 2 was a sign of particular censure and was reserved for such use, and it submitted that Novartis had the '*requisite policies in place*' to address the risks associated with employee conduct on their personal LinkedIn accounts.

Novartis maintained that it had adequate measures in place as described in section 2 above, and had taken all possible lawful, proportionate and reasonable steps to avoid breaches of the Code in this area, and as such, submitted that it had not breached Clause 2. It was not possible to control or provide an absolute guarantee that employees would not perform this conduct in a personal capacity. As highlighted by Novartis in Case AUTH/3421/11/20, if Novartis was to impose more stringent restrictions on associates use of their personal social media accounts, this would result in difficult legal and ethical questions of employment law, data protection, and human rights – notably, an individual's right to liberty, private life, freedom of expression and their right of self-determination.

The actions of rogue employees who failed to follow Novartis' policies, training and procedures did not, and should not, reflect the diligent efforts that Novartis and its associates conducted to comply with the Code, and as such it did not believe that the conduct of the employees in this complaint brought discredit upon, or reduce confidence in, the industry, and it was committed to maintaining high standards on appropriate engagement in this area.

PANEL RULING

The Panel noted that the original LinkedIn post was made by a patient advocate who lived in the US and stated 'I'm blessed! 26.5 years after terminal cancer diagnosis' followed by the bold heading 'Once Terminal, Now Controllable', beneath which was a photograph of the patient advocate with a health professional followed by the text '[named patient advocate] (left) was diagnosed with chronic myeloid leukemia and was running out of time when he enrolled in a clinical trial studying Gleevec, a targeted therapy developed by [named health professional] (right)'.

The Panel noted that Employee 2's (as referred to by Novartis) comment on the original LinkedIn post stated 'Huge love to you [name] and the utmost respect to [named health professional] – Glivec is a lifesaver drug' followed by a heart emoji. The Panel noted that whilst this employee no longer worked at Novartis, he/she was still employed by Novartis at the time that he/she 'liked' and commented on the original LinkedIn post. The Panel noted Novartis' submission that as of 25 November 2021 when responding to the complaint, Employee 2 had around 200 connections on LinkedIn.

The Panel further noted from Novartis's submission that the original LinkedIn post by the patient advocate above appeared to have been shared by an employee of another named pharmaceutical company who was an ex-employee of Novartis. In sharing the post, the employee of the other named pharmaceutical company stated 'Still amazes me now… I remember the clinical trials starting in the U.K. with Imatinib, one of the first 'targeted' cancer treatments… The impact and beauty of science and innovation meet to trailblaze for the future!'.

The Panel noted Novartis' submission that this shared post was also liked by a former Novartis employee (Employee 1 as referred to by Novartis) who had already left Novartis at the time he/she liked the shared post but had not updated his/her LinkedIn profile to reflect this. The Panel therefore did not consider that this individual's actions, nor the actions of the other named pharmaceutical company employee who shared the original LinkedIn post, were within the scope of the Code as far as Novartis was concerned and it therefore made no rulings in this regard.

The Panel noted that the complainant included a screenshot of reactions to the post on LinkedIn, which included a 'like' from a further individual who was a current Novartis employee (Employee 3 as referred to by Novartis). The Panel noted Novartis' submission that as of 25 November 2021 when responding to the complaint, Employee 3 had around 200 connections on LinkedIn. It was unclear to the Panel from the complainant's submission whether Employee 3's 'like' was in relation to the original LinkedIn post or the shared LinkedIn post. The Panel, however, noted Novartis' submission that Employee 3 had liked the Shared Post which appeared on his/her feed, as a connection of the other named pharmaceutical company Employee.

The Panel noted Novartis' submission that the connections of Employee 2 and Employee 3, both employed by Novartis at the time they interacted with the original and shared LinkedIn post, appeared to be made up of both members of the public and health professionals.

Clause 6.1 stated, *inter alia*, that information, claims and comparisons must be accurate, balanced, fair, objective and unambiguous and must be based on an up-to-date evaluation of all the evidence and reflect that evidence clearly. They must not mislead either directly or by implication, by distortion, exaggeration or undue emphasis. Clause 6.2 further stated that any information, claim or comparison must be capable of substantiation. Clause 14.4 stated that promotion must encourage the rational use of a medicine by presenting it objectively and without exaggerating its properties.

The Panel noted the complainant's concern that the data did not support the claim within the original post regarding long-term survival whilst treated with imatinib: 'Once terminal, Now controllable'; the complainant did not believe the data supported that myeloid leukaemia was controllable for all patients on imatinib. The Panel noted that Novartis did not specifically respond in this regard except that the post was independently authored and shared by the

patient advocate, with no input nor influence from Novartis UK. In the Panel's view, the claim 'Once terminal, Now controllable' might misleadingly imply to readers that this was the case for all patients on imatinib which in the Panel's view was incapable of substantiation as alleged. The Panel therefore ruled breaches of Clauses 6.1 and 6.2.

The Panel considered that Employee 2's comment on the original LinkedIn post by the patient advocate, that Glivec was a 'lifesaver drug', was in effect a strong promotional claim. The Panel further noted Novartis' submission that Employee 2 made a claim about the product which was not factual or presented in a balanced manner. The Panel considered that the claim was unequivocally an exaggerated claim that was unbalanced and incapable of substantiation. The Panel accordingly ruled breaches of Clauses 6.1, 6.2 and 14.4 as acknowledged by Novartis.

The Panel noted that Employee 3 in 'liking' the shared post and Employee 2 in 'liking' and commenting on the original LinkedIn post had, on the balance of probabilities, disseminated the posts and comment to the employees' individual networks, which included members of the public. Noting the content of the original LinkedIn post, Employee 2's comment on it and the content of the shared post 'liked' by Employee 3, the Panel considered that a prescription only medicine had been promoted to the public. The Panel therefore ruled a breach of Clause 26.1 in relation to each of Employee 2 and Employee 3's activities as acknowledged by Novartis.

The Panel noted that the activities of Employee 2 and Employee 3 might encourage members of the public to ask their health professionals for imatinib. The Panel further noted Novartis' submission that Employee 2's comment that Glivec was a 'lifesaver drug' in the context of the title of the Original Post could be construed as raising unfounded hopes of successful treatment with respect to the product in question. The Panel therefore ruled a breach of Clause 26.2 in relation to Employee 2's activity as acknowledged by Novartis and in relation to Employee 3's activity.

The Panel noted its comments and rulings of breaches above and considered that high standards had not been maintained in this regard and a breach of Clause 5.1 was ruled.

Clause 14.1 listed the criteria under which a comparison was permitted in promotional material including that it must not be misleading, and no confusion must be created between the medicine advertised and that of a competitor or between the advertiser's trademarks, brand names, other distinguishing marks and those of a competitor. The Panel noted that it did not appear that a comparison had been made in the original LinkedIn post or Employee 2's comment on it nor in the shared post. The Panel therefore considered that Clause 14.1 was not relevant and no breach of Clause 14.1 was ruled.

Clause 14.2 stated when promotional material refers to published studies, clear references must be given. The Panel did not consider that there was any evidence nor implication that the original LinkedIn post or the comment on it or the shared post referred to published studies. The Panel therefore ruled no breach of Clause 14.2.

In relation to Employees 2 and 3, the Panel noted Novartis' submission that there was no instruction from Novartis for the employees to like or comment on the LinkedIn posts. The employees interacted with the posts entirely of their own volition and such conduct was not associated with any activity endorsed by Novartis. The Panel further noted Novartis submission that all three Employees (Employee 1, 2 and 3 as referred to by Novartis) were contacted by Novartis as soon as it received the complaint to instruct them to 'unlike' the posts and to remove

any comments, and it confirmed that these steps had been taken. The Panel noted Novartis' submission that it regretted that the employees had failed to comply with Novartis' policies and instructions, however, it had ensured a consistent approach to employee conduct on social media use throughout its organisation.

The Panel did not consider that the LinkedIn posts failed to recognise the special nature of medicines or respect the professional standing or otherwise of the audience to which they were directed or were likely to cause offence. The Panel therefore ruled no breach of Clause 5.2.

Clause 5.5 of the Code stated that material relating to medicines and their uses, whether promotional or not, and information relating to human health or diseases which is sponsored by a pharmaceutical company or in which a pharmaceutical company has any other involvement, must clearly indicate the role of that pharmaceutical company. The Panel noted Novartis' submission that the original LinkedIn post was independently authored and posted by a patient advocate and shared by an employee from another named pharmaceutical company without any involvement from Novartis UK. The Panel further noted that it would have been clear that the posts had been disseminated on LinkedIn by the actions of Employee 2 and 3. The Panel, noting its comments above therefore ruled no breach of Clause 5.5.

The Panel noted Novartis' submission that it had discharged the requirement imposed by the Code to provide representatives with 'adequate training' and to have sufficient knowledge to provide full and accurate information about the medicines which they promoted. The Panel did not consider that there was evidence that Novartis' representatives did not receive adequate training as required by Clause 9.3 and no breach was ruled.

The Panel noted that in raising Clause 9.1, the complainant alleged that as staff appeared to have "liked/commented" and created de facto promotional material surely, they were trained on social media. Clause 9.1 stated all relevant personnel, including representatives, and members of staff, and others retained by way of contract, concerned in any way with the preparation or approval of material or activities covered by the Code must be fully conversant with the Code and the relevant laws and regulations. The Panel noted Novartis' submission that it was not involved in the preparation or creation of the posts. The Panel, however, considered that in disseminating the LinkedIn posts to their connections, Employee 2 and 3 had, in effect, created their own piece of promotional material. The Panel noted Novartis' submission that it had created and maintained a Social Media Policy and had reinforced the rules and principles of this policy through extensive online, face-to-face and live training to associates, which had been provided since 2018 to both existing and new joiners. The Panel noted Novartis' submission that it had also disseminated numerous internal communications on the appropriate personal use of social media. Additionally, there were several standard operating procedures (SOPs), policies and learning tools which had been put in place to address the risks associated with the use of personal social media. Novartis submitted that this multi-faceted approach to messaging around the risks of social media had deeply embedded the Social Media Policy in its culture and working practices. According to Novartis, as of November 2021, its internal training records confirmed a 98.18% completion rate of the social media training module amongst UK employees. In the Panel's view, there was no evidence that the employees had not received relevant training as alleged and no breach of Clause 9.1 was ruled.

Clause 18.1 stated upon reasonable request, a company must promptly provide health professionals and other relevant decision makers with accurate and relevant information about

the medicines which the company markets. The Panel did not consider that the complainant had raised a concern in this regard and it therefore ruled no breach of Clause 18.1.

The Panel noted Novartis' submission that Employee 2 interacted with the Post entirely of his/her own volition and such conduct was not associated with any activity endorsed by Novartis. According to Novartis, Employee 2 was trained on the social media policy in autumn 2018 and Novartis had reinforced the rules and principles of this policy through extensive online, face-to-face and live training to associates, which had been provided since 2018 to both existing and new joiners. The Panel further noted Novartis' submission that it had also disseminated numerous internal communications on the appropriate personal use of social media but Employee 2 had failed to comply with Novartis' policies and instructions. The Panel considered that it was particularly important that information made available to the public about such a sensitive issue as myeloid leukaemia was fair and balanced and did not raise unfounded hopes of successful treatment. Whilst the Panel was concerned with Employee 2's reference to Glivec being a 'lifesaver drug', the Panel, noting its comments and rulings above, on balance, did not consider that the particular circumstances of this case warranted 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.

Complaint received **8 November 2021**

Case completed **9 November 2022**