

## **COMPLAINANTS v NOVO NORDISK**

### **Allegations about transfers of value and activities**

#### **CASE SUMMARY**

This case was in relation to transfers of value and activities relating to a training provider and a pharmacy services provider.

There was a complainant appeal of four of the Panel's rulings of no breaches of the Code in relation to the allegation that Novo Nordisk promoted Wegovy to the general public via the pharmacy services provider.

The outcome under the 2019 and 2021 Code was:

<b>Breach of Clause 9.1 (2019 Code)</b>	<b>Failing to maintain high standards</b>
<b>Breach of Clause 24.4 (2019 Code)</b>	<b>Failing to make disclosures annually in respect of each calendar year in the first six months after the end of the calendar year in which the transfers of value were made</b>
<b>Breach of Clause 5.1 (x2) (2021 Code) [1x Panel no breach ruling overturned at appeal]</b>	<b>Failing to maintain high standards</b>
<b>Breach of Clause 5.5 (2021 Code)</b>	<b>Failing to be sufficiently clear as to the company's role</b>
<b>Breach of Clause 28.1 (2021 Code)</b>	<b>Failing to document and publicly disclose annually certain transfers of value made directly or indirectly to health professionals, other relevant decision makers and healthcare organisations</b>
<b>Breach of Clause 31.1 (x2) (2021 Code)</b>	<b>Failing to make disclosures annually in respect of each calendar year in the first six months after the end of the calendar year in which the transfers of value were made</b>

<b>No Breach of Clause 19.2 (2019 Code)</b>	<b>Requirements relating to the provision of medical and educational goods and services in the form of donations, grants and benefits in kind</b>
<b>No Breach of Clause 24.1 (2019 Code)</b>	<b>Requirement to document and publicly disclose annually certain transfers of value made directly or indirectly to health professionals, other relevant decision makers and healthcare organisations</b>
<b>No Breach of Clause 24.8 (2019 Code)</b>	<b>Requirement for a transfer of value made to an individual health professional or other relevant decision</b>

	maker indirectly via a healthcare organisation to be disclosed once only, preferably as a transfer to the individual concerned
No Breach of Clause 24.9 (2019 Code)	Requirement for transfers of value to be disclosed on an aggregate basis where recipients of such transfers cannot be identified for legal reasons
No Breach of Clause 5.1 (x2) (2021 Code) [1x Panel no breach ruling upheld at appeal]	Requirement to maintain high standards
No Breach of Clause 10.9 (2021 Code)	Requirement to disclose when events/meetings are sponsored by pharmaceutical companies
No Breach of Clause 12.1 (2021 Code) [Panel no breach ruling upheld at appeal]	Requirement to include prescribing information
No Breach of Clause 26.1 (2021 Code) [Panel no breach ruling upheld at appeal]	Requirement to not advertise prescription only medicines to the public
No Breach of Clause 28.1 (2021 Code)	Requirement to publicly disclose certain transfers of value made directly to healthcare organisations located in Europe
No Breach of Clause 28.4 (2021 Code)	Requirement for a transfer of value made to an individual health professional or other relevant decision maker indirectly via a healthcare organisation, to be disclosed once only, preferably as being a transfer to the individual concerned
No Breach of Clause 28.5 (2021 Code)	Requirement for transfers of value to be disclosed on an aggregate basis where recipients of such transfers cannot be identified for legal reasons

**This summary is not intended to be read in isolation.  
For full details, please see the full case report below.**

## **FULL CASE REPORT**

A complaint was received about Novo Nordisk Ltd from two complainants who described themselves as a university professor and a university senior lecturer, who were colleagues at separate universities, about the publication of transfers of value and certain activities.

## **COMPLAINT**

The complainants submitted that in Case AUTH/3525/6/21 – Complainant v Novo Nordisk, Concerns about sponsored courses offered on LinkedIn, the PMCPA ruled that Novo Nordisk had breached the following Clauses of the 2019 ABPI Code: 2, 4.1, 9.1, 9.10, 12.1, 18.1 and 22.4. The breaches resulted in the ABPI Board suspending Novo Nordisk's membership.

However, the complainants stated the PMCPA did not consider whether Novo Nordisk had also breached the ABPI Code requirements regarding disclosure of payments to health professionals and healthcare organisations as stipulated in Clause 24 of the 2019 Code and Clause 28 of the 2021 Code. The complainants submitted that they had made the following observations regarding Novo Nordisk's disclosures in Disclosure UK related to this case.

- 1 Based on the case description in Case AUTH/3525/6/21, the complainants understood that one of the healthcare organisations involved in providing the webinar advertised on LinkedIn was [named training provider]. In the Disclosure UK online search engine, accessed on 13 April 2023, Novo Nordisk reported 'event sponsorship' payments to '[named training provider]' in 2020 (£168,000) and 2021 (£42,900). In addition, Novo Nordisk reported two 'service fee' payments to this healthcare organisation in 2020 worth £750 and £11,040. In total, the **four** payments amounted to £222,690.

Contrastingly, in the 2019-2021 Disclosure UK databases downloaded on 13 April 2023, Novo Nordisk also reported the 'event sponsorship' payments to the healthcare organisation '[named training provider]' in 2020 (£168,000) but did not report the other 'event sponsorship' payment (£42,900) in 2021. The two other service fee payments, worth £750 and £11,040, were the same as in the online search engine. Overall, the **three** payments were worth £179,790.

Consistency between the Disclosure UK online search engine and databases was not a trivial matter; on the contrary, it was a key pillar of public trust in the self-regulatory system of payment disclosure. Therefore, the complainants asked the PMCPA, firstly, to investigate how the discrepancy between the Novo Nordisk payments reported in Disclosure UK search engine and in the Disclosure UK databases came about and which record (the online search engine or the downloadable database) was correct. Secondly, to investigate and correct any similar discrepancies that might have occurred in payments reported in 2019-2021 by other companies reporting their payments under the applicable clauses of the ABPI Code.

- 2 Following up on the point above, the complainants stated that they had a copy of the Disclosure UK database downloaded on 12 August 2022, ie, over two months after the original publication of the Disclosure UK 2021 dataset, in which **none** of the payments mentioned above were registered.

Considering this, the complainants asked the PMCPA to investigate and clarify when these payments were added to the database by Novo Nordisk as this might have important implications in relation to Case AUTH/3525/6/21. The complainants also asked the PMCPA/ABPI to start publishing, as an additional transparency measure, an audit trail of any changes made to the Disclosure UK database between the yearly publication of new datasets.

- 3 Novo Nordisk reported all payments to '[named training provider]' as 'event sponsorship' and 'service fee'. However, as demonstrated in Case AUTH/3525/6/21, payments were made by Novo Nordisk that were not for the event sponsorship or constituted service fees but were 'funding to individual health professionals'. The complainants asked the PMCPA to investigate if these payments had been fully and correctly registered in the database, including if the correct sums, recipients and categories had been reported. Given the

importance of the case, and in the interest of transparency, the complainants believed it was crucial for payments related to the case to be correctly reported in Disclosure UK.

- 4 The complainants requested that the PMCPA investigate why Novo Nordisk had not disclosed any payments to [named pharmacy services provider], which seemed to be the second healthcare organisation involved in Case AUTH/3525/6/21. The complainants noted that [named pharmacy services provider] on its website stated that ‘Novo Nordisk has sponsored the initial development of the [named pharmacy services provider] Weight Management eTool’.

The use of the term ‘sponsorship’ suggested that the relevant sums should have been reported in Disclosure UK under Clauses 19 and 24 of the 2019 ABPI Code.

- 5 Finally, the complainants requested that the PMCPA investigate whether, in light of Case AUTH/3525/6/21 and Novo Nordisk’s sponsorship of the [named pharmacy services provider] Weight Management eTool:
  - a) [Named pharmacy services provider]’s weight management advertising material should have disclosed Novo Nordisk’s sponsorship, and;
  - b) [Named pharmacy services provider]’s patient-facing website constituted inappropriate and disguised direct-to-consumer advertising for Wegovy indirectly supported by Novo Nordisk. The complainants noted that this website, among other things, stated that ‘Wegovy is a weekly weight loss injection made famous by celebrities such as [named celebrity] . If Wegovy is suitable for you, your pharmacist will be able to provide it once it launches in the UK’ and ‘Wegovy has been available in the US since 2021 and became known as a “celeb” weight loss drug, or “skinny jab”, because celebrities such as [named celebrities] have reportedly used it for weight loss’.
  - c) Overall, the complainants questioned whether sponsorship of, and purchases from, [named pharmacy services provider] were consistent with high standards given the way it marketed Novo Nordisk’s prescription medicines to patients.

When writing to Novo Nordisk, the Authority asked it to consider the requirements of Clauses 5.1, 28.1, 28.4, 28.5 and 31.1 of the 2021 Code in relation to payments and activities in 2021 and Clauses 9.1, 24.1, 24.4, 24.8 and 24.9 and Clause 19.2 (as cited by the complainants) of the 2019 Code in relation to payments and activities in 2020. In addition, in relation to the allegation regarding Novo Nordisk’s sponsorship of the [named pharmacy services provider] Weight Management eTool and the subsequent currently available materials as referred to by the complainant, Novo Nordisk was also asked to bear in mind Clauses 5.5, 10.9, 26.1, 12.1 and 5.1 of the 2021 Code.

## **RESPONSE**

### **Transfers of value to [named training provider]**

Novo Nordisk submitted that the complainants in this case were concerned that there was a payment made by Novo Nordisk to [named training provider] in 2021 that appeared in the online version of Disclosure UK, but not the version that could be downloaded. They also raised a concern that none of the payments made to [named training provider] in 2020 and 2021 appeared in the downloaded version of Disclosure UK accessed on 12 August 2022.

As part of the internal investigation into Case AUTH/3525/6/21, it was identified that the transfers of value to [named training provider] had not been disclosed in the first 6 months after the end of the calendar year in which they were paid. [Named training provider] had not been categorised as a healthcare organisation within the finance system and therefore any payments made to them had not been included in the transfer of value reports.

For this reason, submission of the transfers of value to [named training provider] to Disclosure UK was delayed and this explained why the complainants were not able to see any of the transfers of value referred to on Disclosure UK on 13 August 2022. The payments made in 2020 were submitted on 17 November 2022; specifically, these were:

- £168,000 for sponsorship
- £750 fee for service
- £11,040 fee for service.

The payment made to [named training provider] in 2021 was submitted on 22 December 2022; specifically, this was:

- £42,900 for sponsorship.

Thus, the transfers of value made by Novo Nordisk to [named training provider] had been disclosed, and they, therefore, denied any breach of Clause 24.1 of the 2019 Code and Clause 28.1 of the 2021 Code. However, disclosure of transfers of value made in both years were not made within the first six months after the end of the calendar year in which they were paid, and Novo Nordisk, therefore, acknowledged a breach of Clause 24.4 of the 2019 Code (2020 transfers of value) and Clause 31.1 of the 2021 Code (2021 transfers of value) in that regard.

Novo Nordisk noted the complainants' allegations of inconsistencies between the online and downloadable versions of Disclosure UK, although they had provided no evidence in that regard. Novo Nordisk had disclosed the relevant transfers of value, albeit at a date later than was required by the Code and, as the complainants acknowledged, the payments appeared in the online version of Disclosure UK. Novo Nordisk could not be held responsible for any discrepancies there might be between the content of the online and downloadable versions of Disclosure UK; Novo Nordisk thus denied any breaches of Clause 24.1 of the 2019 Code (2020 transfers of value) or Clause 28.1 of the 2021 Code (2021 transfers of value) in that regard.

Novo Nordisk also noted that the complainants referred to Clause 19 of the 2019 Code; however, this related to the provision of grants and donations, was therefore not relevant and Novo Nordisk denied any breach of this Clause.

### ***Categorisation of payments to [named training provider]***

Novo Nordisk noted that the complainants alleged that certain payments to [named training provider] were ultimately 'funding for individual HCPs'. This was the case and ideally, in such circumstances, the transfers of value should be disclosed, wherever possible, against the individual health professional; however, Novo Nordisk noted that the main requirement of the relevant clauses of the Code (Clause 24.8 of the 2019 Code and Clause 28.4 of the 2021 Code) was that the transfer of value was disclosed only once; disclosure against the individual was

stated to be a preference rather than an exact requirement. Novo Nordisk therefore considered that it had met the requirements of the Code and denied any breach in that regard.

Given that transfers of value were recorded and disclosed against [named training provider] rather than individuals, Novo Nordisk did not consider Clause 24.9 (2019 Code) and Clause 28.5 (2021 Code) to be relevant and denied any breach in that regard.

### **[Named pharmacy services provider]**

In November 2021, Novo Nordisk entered into a contract with [named pharmacy services provider] for the sponsorship by Novo Nordisk of a number of activities, including the weight management e-tool referred to by the complainants. Novo Nordisk referred to [the agreement between Novo Nordisk and [named pharmacy services provider]].

#### ***Transfers of value***

At the time of initiating the project with [named pharmacy services provider], the organisation was not identified as a healthcare organisation within the finance system and therefore any payments made to them had not been included in the transfer of value reports. For this reason, no such transfers of value were submitted to Disclosure UK and Novo Nordisk therefore acknowledged a breach of Clauses 28.1 and 31.1 of the 2021 Code. A deviation had been logged and this was being rectified. The project was initiated in November 2021, therefore, the 2019 Code was not relevant.

#### ***Disclosure of Novo Nordisk's involvement***

The link provided by the complainants appeared to be to the [named pharmacy organisation] website which referenced a [named pharmacy services provider] 'Weight Management Service PGD Package'. Sections 3.4 and 3.5 of the contract with [named pharmacy services provider] was very clear that Novo Nordisk's sponsorship of material/communications associated with the weight management service must be made clear from the outset and provided an example statement in that regard, stipulating that this must be 'placed on the [named pharmacy services provider] webpages and individual resources referencing the weight management education ...'. Novo Nordisk was, therefore, disappointed that [named pharmacy services provider] failed to ensure that this obligation was met by [named pharmacy organisation]. However, Novo Nordisk acknowledged that, in this instance, their involvement in the weight management e-tool was not clear, contrary to the requirements of Clause 5.5 and accepted a breach in that regard.

Given that the contract between Novo Nordisk and [named pharmacy services provider] was clear that Novo Nordisk's involvement with the e-tool must be declared, they did not consider that this amounted to a failure to maintain high standards and denied a breach of Clause 5.1. Novo Nordisk's sponsorship did not relate to any meetings organised by [named pharmacy services provider], therefore, they did not consider that Clause 10.9 was relevant and denied a breach in that regard.

#### ***[Named pharmacy services provider]'s patient-facing website***

The sponsorship arrangement with [named pharmacy services provider] did not include the [named pharmacy services provider] website and Novo Nordisk had confirmed that none of the sponsorship provided supported the website, including the section about Wegovy. A

confirmation email from the Chief Executive Officer of [named pharmacy services provider] confirming this was provided. Therefore Novo Nordisk denied any breach of the Code in relation to this.

Novo Nordisk referred to an enclosure for information on their UK process for tracking and disclosing transfers of value.

During the investigation of this complaint, it became apparent that the original proposal from [named pharmacy services provider], received in July 2021, appeared to suggest that the arrangement between [named pharmacy services provider] and Novo Nordisk was not at arms-length, although this was not reflected in the final contract between the two organisations. Novo Nordisk was looking into the events and documentation from receipt of the proposal to signing the contract. In the meantime Novo Nordisk had logged this as a deviation.

## **PANEL RULING**

The Panel noted that its role was to judge the subject matter of the complaint in relation to the requirements of the Code. The Panel noted that the complainants' request for the PMCPA to investigate and correct any similar alleged discrepancies in payments reported in 2019-2021 by other companies; in this regard, the Panel noted that it was not an investigatory body and, as such, could only consider the subject matter of the complaint in relation to the requirements of the Code. The Panel, noting the complainants bore the burden of proof, considered the complaint did not refer to other named companies nor had any evidence about other companies been provided. Similarly, in relation to the complainants' comments about a request for an audit trail of any changes made to the Disclosure UK database between the yearly publication of new datasets, the Panel noted that the request was not a complaint under the Code and thus the Panel had no powers in relation to such a request and made no comment in that regard.

The Panel noted that the complaints referred to a previous case, Case AUTH/3525/6/21, which concerned courses sponsored by Novo Nordisk and offered on LinkedIn by [named training provider]. The PMCPA had ruled breaches of the following Clauses of the 2019 ABPI Code: 2, 4.1, 9.1, 9.10, 12.1, 18.1 and 22.4, which resulted in, amongst other things, the ABPI Board suspending Novo Nordisk's membership of the ABPI.

### **Transfers of Value to [named training provider]**

In relation to the complainants' allegation that the database downloaded on 12 August 2022 did not contain certain payments made in 2020 and 2021, the Panel noted Novo Nordisk's submission that transfers of value to [named training provider] had not been disclosed in the first 6 months after the end of the calendar year in which the transfers of value were made as [named training provider] had not been categorised as a healthcare organisation within the finance system and therefore any payments made to it had not been included in the transfer of value reports. The Panel noted that, as a result, the payments made in 2020 (£168,000 for sponsorship, £750 fee for service and £11,040 fee for service) were submitted to Disclosure UK on 17 November 2022 and the payment made in 2021 (£42,900) for sponsorship was submitted to Disclosure UK on 22 December 2022.

The Panel noted Clause 24.4 of the 2019 Code and Clause 31.1 of the 2021 Code broadly stated disclosures must be made annually in respect of each calendar year and must be made in the first six months after the end of the calendar year in which the transfers of value were

made. The Panel noted that the disclosure of transfers of value to [named training provider] made in 2020 and 2021 were not made within the first six months after the end of the calendar year in which the transfers of value were made as required by the Code. The Panel therefore ruled, as acknowledged by Novo Nordisk, **a breach of Clause 24.4 of the 2019 Code** in relation to the delayed disclosure of the 2020 transfers of value and **a breach of Clause 31.1 of the 2021 Code** in relation to the delayed disclosure of the 2021 transfer of value.

The Panel noted that Clause 24.1 of the 2019 Code and similarly Clause 28.1 of the 2021 Code required companies to document and publicly disclose annually certain transfers of value. The Panel noted that the transfers of value to [named training provider] had nonetheless been disclosed, albeit not within the required 6-month time period referred to above, and on these grounds the Panel therefore **ruled no breach of Clause 24.1 of the 2019 Code** in relation to transfers of value made in 2020 and **no breach of Clause 28.1 of the 2021 Code** in relation to the transfer of value made in 2021.

In relation to the complainants' allegations of inconsistencies between the online and downloadable versions of Disclosure UK, the Panel noted the complainants' statement that the payments appeared in the online version of Disclosure UK and that none of the payments appeared in the database downloaded by the complainants on 12 August 2022. The Panel also noted that it did not have a copy of the database downloaded on 12 August 2022 and Novo Nordisk's submission that it could not be held responsible for any discrepancies there might be between the content of the online and downloadable versions of Disclosure UK. Whilst the Panel was very concerned about the stated discrepancies between the online and downloadable versions of Disclosure UK, the Panel noted that, as stated above, the relevant payments were ultimately published and appeared in the online version and noted its comments and rulings above on that matter. The Panel did not consider that the complainants had established on the balance of probabilities that Novo Nordisk was responsible for the discrepancy and had thereby failed to maintain high standards. The Panel therefore, **on balance, ruled no breach of Clause 5.1 of the 2021 Code** in this regard.

In relation to the allegation that, as demonstrated in Case AUTH/3525/6/21, payments were made by Novo Nordisk to [named training provider] that were not for event sponsorship or service fees but were 'funding to individual health professionals', the Panel noted Clause 28.4 of the 2021 Code and 24.8 of the 2019 Code stated that when a transfer of value is made to an individual health professional or other relevant decision maker indirectly via a healthcare organisation, such a transfer should be disclosed once only, preferably as being a transfer to the individual concerned. The Panel noted Novo Nordisk's submission that disclosure against the individual was stated to be a preference rather than an exact requirement and, given that transfers of value were recorded and disclosed against [named training provider] rather than individuals, Novo Nordisk did not consider Clause 24.9 (2019 Code) and Clause 28.5 (2021 Code) to be relevant and denied any breach in that regard.

The Panel noted that a direct transfer of value was one made directly by a company for the benefit of a recipient. An indirect transfer of value was one made on behalf of a company for the benefit of a recipient or through an intermediary and where the company knew or could identify the recipient that would benefit from the transfer of value. The Panel noted that it was desirable for companies to publish as fully as possible details of transfers of value at a named individual level where they are lawfully able to do so.



The Panel noted that according to the published report of Case AUTH/3525/6/21, the sponsorship provided by Novo Nordisk to the training provider was for the period from February 2020 to December 2021 and was intended to support the cost per attendee for a training course for 13,000 health professionals about obesity and 'how to provide a weight management service', as a webinar or an e-learning module, and in addition the cost of provision of a 1-year Patient Group Direction (PGD) to prescribe Saxenda to those health professionals who had completed the course and who wished to offer Saxenda as part of their weight management service.

The Panel noted that the complainants' concerns on this point were limited to indirect transfers of value via [named training provider]. The Panel considered that in the interest of transparency when an indirect transfer of value was made via a healthcare organisation companies should use reasonable endeavours to disclose those transfers of value against health professionals whilst noting that it was not mandatory to do so. The Panel noted that whilst it appeared from Case AUTH/3525/6/21 that Novo Nordisk may have been able to identify at least some of the health professionals at issue, Novo Nordisk made no comment on this point. In this regard, the Panel also noted that the complainants bore the burden of proof and noted the complainants had referred to Case AUTH/3525/6/21. Whilst the Panel was disappointed that disclosure had not been made against individual health professionals, it noted that such disclosure was not mandatory. It followed that the Panel considered the complainants had not established that Novo Nordisk had failed to satisfy the requirements of **Clause 24.8 of the 2019 Code and 28.4 of the 2021 Code**, and **no breach of each Clause was ruled accordingly**.

The Panel noted that Clause 28.5 of the 2021 Code and Clause 24.9 of the 2019 Code stated that where recipients of transfers of value cannot be identified for legal reasons, the amount attributable to such transfers must be disclosed on an aggregate basis. Noting its comments above that Novo Nordisk had not commented on whether it could identify the health professionals at issue in Case AUTH/3525/6/21, that the complainants bore the burden of proof, and the Panel's rulings of no breach of Clauses 24.8 (2019 Code) and 28.4 (2021 Code) above, the Panel did not consider that Clause 28.5 was applicable and thus ruled **no breach of Clause 28.5 (2021 Code) and Clause 24.9 (2019 Code)**.

The Panel noted that, irrespective of its concerns set out above, it appeared that the total sums paid had been disclosed against [named training provider] as noted by the Panel's rulings of no breach of Clauses 28.1 of the 2021 Code and 24.1 of the 2019 Code above.

The Panel noted that when commenting on payments to [named training provider] Novo Nordisk submitted that Clause 19 of the 2019 Code related to the provision of grants and donations and was not applicable. The Panel noted however that the complainants had referred to Clause 19 of the 2019 Code solely in relation to [named pharmacy services provider].

#### **ToV to [named pharmacy services provider]**

The Panel noted the complainants' allegation that Novo Nordisk had not disclosed any payments to [named pharmacy services provider], the second healthcare organisation involved in Case AUTH/3525/6/21, and the declaration of sponsorship, 'Novo Nordisk has sponsored the initial development of the [named pharmacy services provider] Weight Management eTool' on the [named pharmacy services provider] website.

The Panel noted Novo Nordisk's submission that [named pharmacy services provider] was not identified as a healthcare organisation within its finance system and therefore any payments made to [named pharmacy services provider] had not been included in the transfer of value reports to Disclosure UK. The Panel noted that the project was initiated in November 2021 and therefore the 2021 Code applied, rather than the 2019 Code as cited by the complainants. The Panel therefore **ruled a breach of Clauses 28.1 and 31.1 of the 2021 Code**, as acknowledged by Novo Nordisk.

The Panel noted the complainants stated use of the term 'sponsorship' also suggested that the relevant sums should have been reported in Disclosure UK under Clause 19 and 24 of the 2019 ABPI Code. The Panel considered Clause 19 of the 2019 Code referred to Medical and Educational Goods and Services (MEGS) whilst Clause 24 referred to transfers of value. The Panel considered that the activity therefore would not be considered as a medical or education good or service; further, 'MEGS' were no longer referred to in the 2021 Code which was relevant when the project was initiated. The Panel therefore considered Clause 19.2 of the 2019 Code did not apply and **ruled no breach of Clause 19.2**.

The complainants alleged that [named pharmacy services provider]'s weight management advertising material should have disclosed Novo Nordisk's sponsorship. The Panel considered this matter in relation to the specific website identified by the complainants noting that they bore the burden of proof.

The Panel noted Novo Nordisk's submission that the complainants had provided a link to a page on the [named pharmacy organisation] website which referred to [named pharmacy services provider]'s 'Weight Management Service PGD Package' and to a discount ('Save £250 on Weight Management PGD') offered by [named pharmacy services provider] to all [named pharmacy organisation] members. Novo Nordisk submitted that Sections 3.4 and 3.5 of its contract with [named pharmacy services provider] were very clear that Novo Nordisk's sponsorship of material/communications associated with the weight management service must be made clear from the outset. In this regard, the Panel noted that Section 3.5 of the contract stated that the disclosure of sponsorship statements provided in Section 3.4 should be prominent on, amongst other things, materials where the [named pharmacy services provider] weight loss e-tool was promoted. The Panel noted that it had little information before it in relation to the role of [named pharmacy services provider] and the material published on the [named pharmacy organisation] website but noted that Novo Nordisk appeared to accept that it was [named pharmacy services provider]'s material as envisaged by the contract and thereby appeared to accept responsibility in relation to the omission of a declaration of sponsorship. The Panel, noting the omission of the declaration of sponsorship, **ruled a breach of Clause 5.5 of the 2021 Code**, as acknowledged by Novo Nordisk.

The Panel noted Novo Nordisk's submission that its sponsorship did not relate to any meetings organised by [named pharmacy services provider], therefore, it did not consider that Clause 10.9 was relevant. The Panel noted that the sponsorship appeared to relate solely to the [named pharmacy services provider] weight loss e-tool and accordingly **ruled no breach of Clause 10.9 of the 2021 Code**.

In relation to the allegation that [named pharmacy services provider]'s patient-facing website constituted inappropriate and disguised direct-to-consumer advertising for Wegovy indirectly supported by Novo Nordisk the complainants noted that the website in question among other things, stated that 'Wegovy is a weekly weight loss injection made famous by celebrities. If

Wegovy is suitable for you, your pharmacist will be able to provide it once it launches in the UK' and 'Wegovy has been available in the US since 2021 and became known as a "celeb" weight loss drug, or "skinny jab", because celebrities have reportedly used it for weight loss'.

The Panel noted Novo Nordisk's submission that the sponsorship arrangement with [named pharmacy services provider] did not include the [named pharmacy services provider] website and none of the sponsorship provided supported the website, including the section about Wegovy. The Panel noted that the Support of Services Agreement referred to the development and marketing of the [named pharmacy services provider] weight loss eTool, there was no mention of sponsorship of the patient facing website. In this regard the Panel noted that the complainants bore the burden of proof and had not established that Novo Nordisk was responsible for the patient facing website in question as alleged and the Panel therefore ruled **no breach of Clauses 26.1 and 5.1 of the 2021 Code**.

The Panel noted that Novo Nordisk had been asked to respond in relation to Clause 12.1 of the 2021 Code which related to prescribing information. In the Panel's view, the complainants had not raised an allegation about prescribing information and thus on this narrow ground the Panel ruled **no breach of Clause 12.1 of the 2021 Code**.

Overall, the complainants questioned whether sponsorship of, and purchases from, [named pharmacy services provider] were consistent with high standards given the way it marketed Novo Nordisk's prescription medicines to patients. The Panel noted that that Novo Nordisk had not responded on this matter. The Panel however noted its comments above regarding Novo Nordisk's submission that the sponsorship arrangement with [named pharmacy services provider] did not include the [named pharmacy services provider] website and none of the sponsorship provided supported the website. The Panel noted that the complainants bore the burden of proof and considered that they had not established that Novo Nordisk had sponsored the [named pharmacy services provider] website and the Panel therefore **ruled no breach of Clause 5.1 of the 2021 Code**.

### **Overall**

In relation to the complainants' general governance concerns the Panel noted that it was important to maintain public confidence in the financial arrangements between pharmaceutical companies, health professionals and healthcare organisations and in this regard publication of transfers of value was particularly important. The Panel considered that companies should have robust governance procedures in place to ensure that all relevant transfers of value were captured and published within the timelines set out in the Code. In this regard the Panel was concerned that Novo Nordisk's systems failed to classify certain organisations as healthcare organisations and failed to disclose the transfers within the first six months after the end of the calendar year in which the transfers of value were made, or at all.

The Panel noted that transfers of value made in 2020 and 2021, amounting to £222,690 were submitted to Disclosure UK at the end of 2022, after Case AUTH/3525/6/21 was considered by the Code of Practice Appeal Board and the ABPI Board on 15 September 2022 and 18 October 2022 respectively. The Panel, noting that in relation to Case AUTH/3525/6/21 Novo Nordisk was at the relevant time the subject of ongoing sanctions, was particularly concerned that compliance did not appear to have been front of mind. The Panel was concerned about the apparent lack of governance on transfers of values and the company's apparent poor approach to compliance. The Panel noted that it had not been asked to consider this matter in relation to

Clause 2. Noting its comments above, the Panel considered that high standards had not been maintained and ruled **a breach of Clause 9.1 of the 2019 Code and Clause 5.1 of the 2021 Code.**

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During its consideration of this case, the Panel noted the complainants' comments about [named pharmacy services provider] and noted that the Code covered the conduct of pharmaceutical companies only. The Panel noted that the complainants could raise their concerns with the MHRA, which is responsible for the administration of UK law.

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## **APPEAL FROM THE COMPLAINANT**

The appeal from the complainant is reproduced below:

### **1. 'Failure to disclose payments in time, or at all Panel's ruling and Novo Nordisk's explanation**

NN has admitted to breaching obligations related to the disclosure of payments to two HCOs connected to case AUTH/3525/6/21. NN attributes this to categorisation issues within the company's finance system. The Panel accepted NN's admission and commented that it "was concerned about the apparent lack of governance on transfers of values and the company's apparent poor approach to compliance". However, the Panel also noted "that it had not been asked to consider this matter in relation to Clause 2."

If companies are not faced with the most serious of sanctions for maintaining poor disclosure records, particularly in cases as important for public health as this one, Disclosure UK will fail to meet its fundamental stated goal of "ensur[ing] that patients and others have confidence that this relationship [between the industry and the healthcare sector] is open and transparent" (<https://www.abpi.org.uk/reputation/disclosure-uk/>).

### **2. NN and [named pharmacy services provider]'s promotion of Wegovy to the public Panel's ruling and Novo Nordisk's explanation**

The Panel acknowledged and accepted NN's submission "that the sponsorship arrangement with [named pharmacy services provider] did not include the [named pharmacy services provider] website and none of the sponsorship provided supported the website, including the section about Wegovy."

Specifically, the Panel considered "that the sponsorship **appeared to relate solely** to the [named pharmacy services provider] weight loss e-tool and accordingly ruled no breach of Clause 10.9 of the 2021 Code (emphasis added)." However, this seems to be an overly narrow interpretation of the sponsorship arrangement because the contract provided by NN shows that the company had also sponsored several other "activities" (p. 26; see image below) which were not sufficiently described. Indeed, in its response, NN explicitly states that in November 2021, it "entered into a contract with [named pharmacy services provider] for the sponsorship by Novo Nordisk **of a number of**

**activities**, including the weight management e-tool referred to by the complainant (emphasis added).”

In its letter dated 01 June 2023, NN does not provide specific details about these other activities and whether they are related to the [named pharmacy services provider] website directly or indirectly. As detailed below, our contention is that, based on the contract and additional publicly available information gathered, **it is evident that certain aspects of this sponsorship were used to attract members of the public to visit the [named pharmacy services provider] website that promoted Wegovy.**

We therefore respectfully challenge the Panel’s ruling and ask the Appeal Board to consider multiple breaches. Crucially, in our complaint we asked the Panel to investigate “inappropriate and disguised direct-to-consumer advertising for Wegovy indirectly supported by Novo Nordisk”, which the Panel interpreted overly narrowly as only **5.1** (High Standards), **12.1** (prescribing information), **26.1** (Direct to consumer advertising).

Our request reflects the established PMCPA Social Media Guidance and associated Q&A document which, among other things, clarify pharmaceutical companies’ **comprehensive responsibility for actions taken by its third parties**, such as [named pharmacy services provider] in this case:

“With regards to the ABPI Code, a pharmaceutical company is responsible for all material disseminated/activities carried out by it on any social media channel that comes within the scope of the ABPI Code **including by a third party acting on its behalf even if that third party acts beyond the scope of its contract and potentially material/activities sponsored by it.**”

“As the case examples (CASE AUTH/3226/7/19 and CASE AUTH/3583/11/21) used during the training illustrate, a pharmaceutical company **might be considered to be responsible for the actions of its third-party even after the end of the contract.** For this reason, it is important that companies **have appropriate contracts in place and exercise oversight over their third- parties with particular focus on contract termination and robust follow-up procedures** which might include obtaining confirmation from the third party in relation to material destruction, where relevant, upon cessation of the contract.”

“Generally, if a non-promotional post e.g. disease awareness linked to a promotional website for a product, this is unlikely to meet the definition of disease awareness and may be **considered disguised promotion.**”

“Any websites or other materials linked to a social media post to promote disease awareness **must also be non-promotional**”.

***[Named pharmacy services provider’s] illicit marketing of Wegovy in 2023***

It is evident from the attached MHRA ruling, resulting from a separate complaint we filed, that the [named pharmacy services provider] patient-facing website promoted Wegovy directly to consumers and in an off-label manner during 2023.

Prior to the MHRA ruling in November 2023, the header appearing on all webpages of

the website had the following appearance: [image of the [named pharmacy services provider] logo on the left of the header and the following hyperlinks on the right: 'Wegovy®', 'Who we are', 'Blog', 'Login | Register', 'Services'].

By clicking on the 'Wegovy®' link, patients were directed to a blog post titled 'About Wegovy weight loss injections,' dated **22 February 2023**. This post is still accessible on the website despite the MHRA ruling in November 2023 at [link provided]. Within this Wegovy blog post, there are highly concerning statements that promote NN's product, including making reference to celebrities:

- “Wegovy is a weekly weight loss injection made famous by celebrities such as [named celebrity]. If Wegovy is suitable for you, your pharmacist will be able to provide it.”
- “With celebrity fans and proven weight management benefits, Wegovy is the weight loss jab that has everyone talking. So what actually is Wegovy? And is it really a good option for weight loss? Here we answer five common questions about Wegovy...”
- “Wegovy has been available in the US since 2021 and became known as a ‘celeb’ weight loss drug, or ‘skinny jab’, because [named celebrities] have reportedly used it for weight loss. Though it may have a Hollywood reputation, Wegovy is a licensed medical treatment. Experts are keen to make it clear that it’s not a quick fix or a replacement for healthy eating and exercise, and should only be offered with supervision from a medical professional such as a pharmacist.”
- “Wegovy is a prescription strength treatment for adults who are struggling with their weight and have a BMI (body mass index) of at least 27. In the UK, about 1 in 4 adults are considered obese. Apart from the impact this can have on self-esteem, being overweight or obese can increase the risk of other health issues too.”

Against this background, it is vital to consider that the claim that Wegovy is indicated for “adults who are struggling with their weight and have a BMI (body mass index) of at least 27” also constitutes **off-label promotion**. According to the SmPC, the relevant indication here is:  $\geq 27 \text{ kg/m}^2$  to  $< 30 \text{ kg/m}^2$  (overweight) in the presence of at least one weight-related comorbidity. This is not the same as “struggling with their weight”.

Finally, there is no information on the website about side-effects (in violation of Clause **12.1**).

***NN sponsoring of material on [named pharmacy services provider's] promotional website and its online advertising campaign***

NN submitted its sponsorship had no connection to the [named pharmacy services provider] website (“The sponsorship arrangement with [named pharmacy services provider] did not include the [named pharmacy services provider] website and we have confirmed that none of the sponsorship provided supported the website including the section about Wegovy”.)

Yet, contrary to this, the NN/[named pharmacy services provider] contract mentions the sponsorship of "5 SEO [Search Engine Optimised] pneumococcal blog posts." The contract specifies (highlighted below) that this would involve "researching key terms, medical writing, and art-working in-house by [named pharmacy services provider], then **publishing on the [named pharmacy services provider] patient website and across the [named pharmacy services provider] B2C** [Business-to-consumer = Patients, as opposed to B2B = HCPs] **social media channels** (emphasis added)."

Even more importantly, according to the NN/[named pharmacy services provider] contract, NN also agreed to sponsor a "12 months online weight services campaign" (see the image above). To provide a comprehensive understanding of this campaign, we draw the Appeal Board's attention to how [named pharmacy services provider] describes its weight-management service package to pharmacies. Notably, [named pharmacy services provider] asserts that it is "running a **huge online advertising campaign**, signposting patients" to its patient-facing website and subsequently to its customer pharmacies (emphasis added).

The Appeal Board can inspect some of the voluminous online advertising material attached. While certain aspects of this material should be subject to separate criticism (such as the illegibility of some NN sponsorship statements in the videos due to their brief display, small font size, and colour, as shown in the video image further below from the [named pharmacy services provider] twitter account, especially as videos are promoted on social media platforms that people interact with using small screens), our emphasis here is to highlight that **a substantial portion of this material has been sponsored by NN**, as acknowledged on the videos, social media posts, single ads, posters, and patient leaflet attached to this complaint.

The objective of the NN-sponsored "**huge advertising campaign**" is clear – to guide and direct potential patients to the [named pharmacy services provider] website and, from there, to pharmacies that prescribe NN products.

For instance, NN-sponsored videos conclude by encouraging viewers to visit the [named pharmacy services provider] website. Moreover, certain social media posts and carousel ads provide a "book now" option that directs individuals to the [named pharmacy services provider] website. As recent as January 2023, new material was launched as part of a **post-New Year's weight-loss campaign**, actively urging people to "book now" on the [named pharmacy services provider] website (screenshot provided from the [named pharmacy services provider] Facebook page). This demonstrates a continuous effort, facilitated by NN-sponsored content, to channel individuals toward the [named pharmacy services provider] website.

***NN sponsored material on [named pharmacy services provider] social media channels that simultaneously promoted Wegovy***

[named pharmacy services provider] has consistently used patient-targeting social media platforms such as Facebook, Instagram and Twitter(X) (links provided) to promote the Wegovy-related blog post published on its website to the public.

Below, we provide two examples of how **NN sponsored material**, which was part of

the **huge online advertising campaign**, was used on [named pharmacy services provider] social media channels that simultaneously promote Wegovy as well as the [named pharmacy services provider] website in question, including the Wegovy-related blog post.

This is a critical point of consideration, as it shows that [named pharmacy services provider] utilised various NN-sponsored marketing material to attract potential customers to visit the [named pharmacy services provider] website, which, as evidenced above, was actively promoting Wegovy during this period, in violation, in each instance, of the ABPI Code.

First, we want to draw attention to the **Facebook posts** immediately preceding (24 Feb 2023) and following (13 Feb 2023) the advertised Wegovy blog post (23 Feb 2023), as these include marketing material **explicitly stated to be sponsored by NN** (see images below were taken from [named pharmacy services provider]'s Facebook page). The juxtaposition and timing of these sponsored materials is particularly significant. If a member of the public clicked on these NN-sponsored posts in late February 2023 or any time thereafter, they were directed to the [named pharmacy services provider] website, where Wegovy was prominently marketed. This establishes the direct link between NN's sponsored content and the promotion of Wegovy on the [named pharmacy services provider] platform and its website.

Second, we want to draw attention to two **Twitter posts** on the “[named pharmacy services provider] for patients” and “[named pharmacy services provider] for pharmacists” twitter accounts, published on **14 March 2023**, i.e., **several weeks after** the Wegovy-related blog was first published on **22 February 2023**. The post on the top clearly promotes Wegovy and encourages viewers to visit the [named pharmacy services provider] website. The post on the bottom is re-post of a **promotional video sponsored by NN which ends by encouraging viewers to visit the [named pharmacy services provider] website**. Again, this establishes a clear link between NN's sponsored content and the promotion of Wegovy on the [named pharmacy services provider] website.

### **Conclusion**

While it may be true that NN did not influence specific Wegovy website content published in February 2023 or thereafter, the proximity in timing between NN/[named pharmacy services provider]'s New Year's campaign and the Wegovy promotion, coupled with [named pharmacy services provider]'s concomitant use of various NN-sponsored material and its aggressive Wegovy marketing on social media platforms and its website, should be enough to refute NN's assertion of having no involvement with the [named pharmacy services provider] website.

Significantly, pharmaceutical companies bear the responsibility to ensure that third parties refrain from marketing the company's products to consumers online during or after the collaboration concludes, as clarified in the PMCPA's Social Media Guidance, which NN has evidently failed to follow. The persistence of NN-sponsored material on [named pharmacy services provider]'s social media platforms means that individuals clicking on it since at least February 2023 would have been directed to the Wegovy-



promoting website. This is the case even today!

Lastly, we draw the Appeal Board's attention to the broader context and timing of this marketing campaign. Many weight-management clinics owe their existence and business in part to NN's sponsorship, having been recruited and provided free, biased training on Saxenda and free PGD as an inducement to prescribe, as established in AUTH/3525/6/21 and AUTH/3711/11/22. They have also been equipped with the [named pharmacy services provider] eTool and advertising material sponsored by NN, as well as being delivered customers via the [named pharmacy services provider] website, as explained here. While we do not claim a breach of undertaking in relation to previous cases, it would be reasonable to expect that if NN had taken the damaging criticism of the Appeal Board and the ABPI Board seriously in relation to case AUTH/3525/6/21, including the two-year suspension from membership in the ABPI, it would have terminated the collaboration instead of actively supporting [named pharmacy services provider]'s marketing campaign throughout 2022 and early 2023.'

## **NOVO NORDISK'S RESPONSE TO THE COMPLAINANT'S APPEAL**

Novo Nordisk's response to the complainant's appeal is reproduced below:

'We note that the relevant aspect of the original complaint relating to this appeal was that Novo Nordisk had sponsored the content of the [named pharmacy services provider] website, alleging that this was direct-to-consumer advertising. In their appeal, the complainants now allege that material sponsored by Novo Nordisk and posted by [named pharmacy services provider] on social media directed the public to the [named pharmacy services provider] website.

Our position is the same as that provided in our response to this complaint, in that none of the sponsorship provided by Novo Nordisk to [named pharmacy services provider] was intended for, or used to, support any content on the latter's website and we deny any breach of Clause 5.1 in that regard.

On a point of clarity, in their reference to the PMCPA guidance on social media activities, the complainants imply that, when posting certain material on social media, [named pharmacy services provider] was acting on behalf of Novo Nordisk. This is not and has never been the case. In relation to the material used by [named pharmacy services provider] in certain social media activities highlighted by the complainants, the arrangements between Novo Nordisk and [named pharmacy services provider] were that of sponsorship.

As stated in our initial response to this complaint, in November 2021, Novo Nordisk entered into a contract with [named pharmacy services provider] for the sponsorship by Novo Nordisk of a number of activities. We provided this agreement with our initial response and include again for the convenience of the Appeal Board.

One of the activities included in Schedule 3 of this agreement was to support a '12 month online weight loss service online ad campaign budget (paid & organic)' [sic]. Contrary to the complainants' allegation that the purpose of this campaign was to 'direct potential patients to the [named pharmacy services provider] website', our understanding is that the intention was for [named pharmacy services provider] to develop a series of

communications to be used by [named pharmacy services provider] on social media to inform the public that they could now obtain advice on weight management from their local pharmacy. Indeed, this objective appears to be supported by the example social media posts that include Novo Nordisk sponsored material provided by the complainants, which for the most part make reference to 'help from your local pharmacy' to achieve weight loss. In these posts there is no reference, indirect or otherwise, to a prescription-only medicine (POM).

The complainants also provide other social media posts from what they claim to be the [named pharmacy services provider] Facebook account. These posts do appear to make reference to Wegovy, however these posts do not utilise any material produced as a result of the Novo Nordisk sponsorship. The complainants appear to consider that the juxtaposition of the posts including the non-promotional Novo Nordisk-sponsored material with other posts that refer to Wegovy render Novo Nordisk responsible for the latter. We fail to understand the logic in this assumption and can only reiterate that the material that Novo Nordisk sponsored made no reference to POMs and the manner in which they appear to have been utilised by [named pharmacy services provider] on social media also makes no reference to POMs. Novo Nordisk's sponsorship of certain [named pharmacy services provider] social media activities cannot and does not render Novo Nordisk responsible for ALL [named pharmacy services provider] social media activity.

Having reviewed in detail all of the material provided by the complainants that appears to have been developed as a result of Novo Nordisk's sponsorship, it seems that only the videos direct a reader to the [named pharmacy services provider] website, specifically the weight management section of the website [link provided]. It also appears that at some point this section made explicit reference to Wegovy. Whilst again reiterating that Novo Nordisk had no input in to the content of the [named pharmacy services provider] website, we do acknowledge that a company could be held responsible under the Code for website content should that company direct readers to that website. However, in this case, [named pharmacy services provider] has confirmed that for the duration of the Novo Nordisk sponsorship (Nov 21-Nov 22) there was no reference to Wegovy on this section or any other section of the [named pharmacy services provider] website; such reference only appeared in Feb 2023 . We therefore do not consider that Novo Nordisk can be held responsible for directing readers to content of the website that was published after the end of our sponsorship agreement with [named pharmacy services provider]. Our sponsorship statement remained on the material in order to reflect our funding of its initial development but we do not consider that we can be held responsible for how the material was used beyond the term of our sponsorship agreement with [named pharmacy services provider].

With the above in mind, we do not consider that any material or activities produced or conducted as a result of Novo Nordisk's sponsorship of [named pharmacy services provider] promotes a POM to the public and we deny any breach of Clauses 26.1 and 5.1 in that regard.

Given that the material in question was non-promotional and aimed at the public, we do not consider that Clause 12.1 is relevant and deny any breach of that clause.'

## **FINAL COMMENTS FROM THE COMPLAINANT**

There were no final comments from the complainant.

## APPEAL BOARD RULING

The Appeal Board took account of Novo Nordisk's submission that its sponsorship agreement with [named pharmacy services provider], active from November 2021 to October 2022, included a '12 month online weight loss service online ad campaign budget (paid & organic)' [sic] and a series of social media communications to inform the public that they could obtain advice on weight management from their local pharmacy. Novo Nordisk submitted that the sponsored posts contained no reference, indirect or otherwise, to a prescription only medicine.

The Appeal Board noted that the contract stated, 'No Materials - whether available on [named pharmacy services provider] Weight Loss eTool, social media, magazines or other means - shall make express reference to the Product, with the exception of material available to patients who have been already prescribed with the Products in compliance with Applicable laws'.

Novo Nordisk accepted that video content on social media, which was created within the terms of the sponsorship contract, directed people to the [named pharmacy services provider] website. The Appeal Board took account of Novo Nordisk's submission that content regarding Wegovy was added to the weight management section of the [named pharmacy services provider] website in February 2023, several months after the sponsorship contract had ended in October 2022, and that certain videos developed as a result of Novo Nordisk's sponsorship still directed readers to this section of the website.

While the Appeal Board accepted that the content of [named pharmacy services provider]'s patient facing website referred to Wegovy, such references appeared several months after the end of the contractual agreement, and therefore the Appeal Board determined that Novo Nordisk could not be held responsible for the content of the website at this time. In the Appeal Board's view, on the evidence before it, [named pharmacy services provider] was acting on its own accord and the Appeal Board upheld the Panel's rulings of **no breach of Clauses 5.1, 12.1 and 26.1 of the 2021 Code**. The appeal on these points was unsuccessful.

The Appeal Board was concerned that the contractual arrangements meant [named pharmacy services provider] could use material created during the period of the sponsorship after the contract had ended to direct people to its website, without Novo Nordisk having any control or oversight of the website, or the way in which the sponsored material was used. The Appeal Board determined that Novo Nordisk's poor governance in relation to the contractual arrangements was such that high standards had not been maintained and it **ruled a breach of Clause 5.1**. The appeal on this point was successful.

The Appeal Board considered that the matters above should be borne in mind as part of the upcoming October 2024 re-audit required by the ABPI Board (Case AUTH/3525/6/21).

**Complaint received**      **26 April 2023**

**Case completed**         **21 June 2024**