

CASE AUTH/3681/8/22

COMPLAINANT v TILLOTTS

Conduct of a representative

CASE SUMMARY

This case was in relation to the conduct of a Tillotts' representative.

The Panel ruled a breach of the following Clauses of the 2021 Code because it considered that the wishes of the pharmacist were not observed and the interaction had caused inconvenience to the pharmacist and therefore, the representative had not complied with all relevant requirements of the Code:

Breach of Clause 17.2	Representatives failing to maintain a high standard of ethical conduct in the discharge of their duties and failing to comply with all relevant requirements of the Code
Breach of Clause 17.4	Failing to observe the wishes of individuals on whom representatives call and the arrangements in force at a particular establishment

The Panel ruled no breach of the following Clauses of the 2021 Code because it did not consider that it had been established that the representative had misled as to their identity or that of the company they represented as alleged, and its rulings of breaches of the Code adequately covered the matter and so in the particular circumstances of this case, an additional ruling of a breach of Clause 5.1 would be disproportionate and a ruling of a breach of Clause 2 was not warranted:

No Breach of Clause 2	Requirement that activities or materials must not bring discredit upon, or reduce confidence in, the pharmaceutical industry
No Breach of Clause 5.1	Requirement to maintain high standards
No Breach of Clause 17.5	Requirement that representatives must not mislead as to their identity or that of the company they represent.

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

FULL CASE REPORT

A contactable complainant who had an NHS email account and worked for an integrated care board raised concerns following the receipt of a complaint from a pharmacist at a local GP Practice about the conduct of a Tillotts' representative who promoted Octasa (mesalazine).

Octasa 400mg modified-release tablets were indicated for the treatment of: Ulcerative Colitis: for the treatment of mild to moderate acute exacerbations. For the maintenance of remission and Crohn's ileo-colitis: for the maintenance of remission.

COMPLAINT

The complainant explained that they had received a complaint from a pharmacist at one of the local GP practices. The pharmacist explained that they had a visit at the surgery from a named Octasa representative in August 2022. The representative initially claimed to be from a named hospital and was coming to talk to the surgery about the shortage of Asacol. The representative then asked whether the surgery had experienced any problems with the shortage of Asacol and went on to say that they had been in discussion with a named Clinical Commissioning Group (CCG) about using Octasa instead of Asacol and was just coming round to communicate the message on behalf of the CCG. The pharmacist pointed out that the CCG was quite capable of communicating with the surgery by email; the pharmacist explained that they had been told that the representative was a pharmacist from the named hospital and that they *did not* speak to representatives. The CCG/Integrated Care Board (ICB) had not asked for this company to communicate messages on their behalf.

When writing to Tillotts, the Authority asked it to consider the requirements of Clauses 2, 5.1, 17.2, 17.4 and 17.5 of the 2021 Code.

RESPONSE

Tillotts explained that it had taken this matter very seriously and had conducted a full investigation involving the named representative, their manager, the heads of sales and medical affairs and the managing director. Tillotts had a team of over 21 customer-facing sales staff and had done for many years, and this was the first such complaint Tillotts had received. Therefore, Tillotts was naturally concerned, both to ensure its representatives behaved in an appropriate manner and also that its customers were never inconvenienced. Part of the company values were to be a trusted partner for its health professional customers.

Tillotts explained that the named representative had been with the company since late 2020 and passed his/her ABPI examination in 2021. Their experience as a pharmaceutical representative was, therefore, somewhat limited, but Tillotts considered them to be competent, enthusiastic, diligent and successful. The representative's manager reported that they had developed good relationships with the customers on their territory.

The representative's initial training covered the importance of a clear introduction to the customer, regardless of whether the customer was already known to the representative. It was an important measure, during Tillotts' sales call validation process, that the customer understood clearly who they were talking to and the purpose of the representative visit. The representative in question successfully passed this training and validation in late 2020 and Tillotts were pleased with their performance to date.

The meeting in question involved a visit to a GP surgery on the Isle of Wight in August 2022. Noone from Tillotts had ever visited this practice before. The specific visit to the GP practice was not planned but the representative was on the Isle of Wight for a planned meeting at a named hospital. The representative used the time remaining in the day to visit a number of GP practices in the surrounding area. Tillotts did not operate a call rate or contact rate system for

its representatives, who were required to focus on the quality of interactions rather than the quantity. To this end, speculative calls were discouraged. The representative in this case undertook a number of unscheduled calls in order to make constructive use of the time invested in travelling to the island.

At the GP practice in question, the representative was aware of the specific interaction and had already relayed the details to their manager prior to the receipt of the complaint letter. The representative's summary of the interaction, which lasted less than a minute, was as follows: the representative introduced themselves to the receptionist of the practice, who had just concluded their own conversation with an agitated patient. The representative introduced themselves by name and made clear that they were not a patient but were from Tillotts Pharma. The representative was carrying their Medical Industry Accreditation card on their waist band and a company branded iPad, but these were not proactively shown to the receptionist. The representative wanted to relay information to the practice pharmacist, following previous conversations they had at a named hospital and with a named CCG. This information was promotional in nature and needed to be given directly to the health professional. The information related to changing brand of mesalazine tablets, due to a key competitor brand being out of stock. The competitor product (Asacol) and Tillotts' own (Octasa) were interchangeable and they had received calls to their offices from the Department of Health, CCGs and health professionals, as well as patients and their representatives, regarding the Asacol out of stock situation. Tillotts had been reassuring all stakeholders that Octasa stock levels were sufficient to ensure patients were able to access treatment.

Tillotts explained that the representative asked the practice receptionist if they could see the pharmacist and the receptionist agreed to request that the pharmacist came to meet them. The receptionist brought the pharmacist to the reception area. The representative again introduced themselves. The pharmacist stated that they had believed the representative to be from a named hospital and made clear that they did not want the interaction, as they did not see representatives. The representative tried again to explain why they were there, but the pharmacist repeated that they did not want to interact with them and if the CCG wanted to share information, they would do so themselves. The representative apologised and left the practice.

The representative recognised that they initiated the interaction and bore responsibility for the outcome but felt there was a genuine misunderstanding. The representative was adamant that there was no attempt to mislead the receptionist or pharmacist as to their identity or employer and was genuinely surprised that they had received the complaint. However, the representative regretted sincerely that they had upset or inconvenienced the pharmacist, the receptionist and anyone else at the practice or CCG. Tillotts also regretted this outcome and had written separately to the practice manager to express this and to apologise for any inconvenience caused.

Having reviewed the representative's account of the interaction, considered their training and record of performance and behaviour to date, it was Tillotts' conclusion that it was highly likely that there was a misunderstanding between the representative, the receptionist and the pharmacist. It was Tillotts' belief, based on the representative's account, that no wilful attempt was made to mislead a customer as to the representative's identity or employer. This was supported by the complainant identifying the representative by name along with their employer. Tillotts noted that both were specified in the complaint letter, suggesting that both were made clear to the people at the practice during the short interaction.

Having reviewed the complaint, which was not written by the pharmacist, but contained the opinion of the pharmacist, Tillotts accepted that the interaction might have caused inconvenience (Clause 17.4) and apologised if this were so. By definition, Tillotts understood that this might also represent a failure to uphold high standards at all times (Clause 5.1), however, it did seem to be an incident of very minor consequence and the misunderstanding might have been circumstantial given the busy nature of the practice.

Tillotts did not accept that there was a failure during an interview of the representative to maintain high standards of ethical conduct (Clause 17.2) nor a failure to take reasonable steps to ensure their identity and employer were known (Clause 17.5). The representative was adamant that they stated their name and employer to both the receptionist and pharmacist, and the complaint contained these specific details, indicating that this information was made known. Tillotts did not believe that this interaction represented an example of bringing discredit upon, or reducing confidence in, the industry (Clause 2).

Tillotts submitted that due to the conclusions drawn from its own investigation and the nature of the complaint received, Tillotts would conduct refresher training with their customer-facing teams. This would re-emphasise the importance of ensuring a clear introduction to customers, particularly at the very first time of meeting. Tillotts would also reiterate the company's position on unplanned sales calls and that appointments should always be made.

PANEL RULING

The Panel noted that it appeared that much of this case related to one person's word against another. It was difficult in such cases to determine where the truth lay. As stated in the introduction to the Constitution and Procedure, a complainant had the burden of proving their complaint on the balance of probabilities and a judgement had to be made on the available evidence, bearing in mind the extreme dissatisfaction usually necessary on the part of an individual before they were moved to actually submit a complaint.

Clause 17.5 stated that in an interview, or when seeking an appointment for one, representatives must, at the outset, take reasonable steps to ensure that they do not mislead as to their identity or that of the company they represent.

The Panel noted Tillotts' submission that the named representative had relayed the details about this interaction to their manager prior to the receipt of the complaint. The Panel noted that according to the representative, during the interaction, which lasted less than a minute, they introduced themselves by name to the practice receptionist and made clear that they were not a patient but were from Tillotts Pharma. The Panel further noted that, according to the representative, whilst not proactively shown to the receptionist, the representative was carrying their Medical Industry Accreditation card on their waist band and a company branded iPad. The representative wanted to relay information to the practice pharmacist, following previous conversations they had at a named hospital and with a named CCG. The Panel noted that there was no information in front of it as to how the practice receptionist had conveyed the request for an interview to the pharmacist. The Panel noted that, according to the representative, the receptionist brought the pharmacist to the reception area and the representative introduced themselves again, the pharmacist stated that they had believed the representative to be from a named hospital and made clear that they did not want the interaction, as they did not see representatives. The Panel noted Tillotts' submission that Tillotts considered that, based on the representative's account, there was no wilful attempt

made to mislead a customer as to the representative's identity or employer which was supported by the complainant identifying the representative by name along with their employer; both were specified in the complaint letter, suggesting that both were made clear to the people at the practice during the short interaction. On the evidence before it, the Panel did not consider that it had been established that the representative had misled as to their identity or that of the company they represented as alleged and **no breach of Clause 17.5** was ruled.

Clause 17.4 stated, among other things, that representatives must ensure that the frequency, timing and duration of calls on health professionals and other relevant decision makers in hospitals, the NHS and other organisations, together with the manner in which they were made, did not cause inconvenience. The wishes of individuals on whom representatives wanted to call and the arrangements in force at any particular establishment must be observed.

The Panel noted Tillotts' submission that the specific visit to the GP practice was not planned; Tillotts did not operate a call rate or contact rate system for its representatives and, to this end, speculative calls were discouraged. The Panel noted the representative's account that when the receptionist brought the pharmacist to the reception area, the representative introduced themselves to the pharmacist and the pharmacist stated that they had believed the representative to be from a named hospital and made clear that they did not want the interaction, as they did not see representatives. The representative tried again to explain why they were there, but the pharmacist repeated that they did not want to interact with them. It thus appeared to the Panel that the representative persisted with the interaction despite being told that the pharmacist did not interact with representatives. The Panel thus considered that the wishes of the pharmacist were not observed and the interaction had caused inconvenience to the pharmacist and a **breach of Clause 17.4** was ruled as acknowledged by Tillotts. The Panel, therefore, considered that the representative had not complied with all relevant requirements of the Code as required by **Clause 17.2 and a breach** of that clause was ruled.

The Panel noted that the representative regretted that they had upset or inconvenienced the pharmacist, the receptionist and anyone else at the practice or CCG. Tillotts also regretted this outcome and had written separately to the practice manager to express this and to apologise for any inconvenience caused. The Panel further noted Tillotts' submission that due to the conclusions drawn from its own investigation and the nature of the complaint received, it would conduct refresher training with its customer facing teams which would re-emphasise the importance of ensuring a clear introduction to customers, and Tillotts would also reiterate the company's position on unplanned sales calls and that appointments should always be made.

The Panel noted its comments and rulings above and considered that the rulings of breaches of the Code adequately covered this matter and in the particular circumstances of this case, an additional ruling of a breach of Clause 5.1 would be disproportionate and a ruling of a breach of Clause 2 was not warranted. The Panel therefore ruled **no breach of Clauses 5.1 and 2**.

Complaint received **10 August 2022**

Case completed **24 July 2023**