Case AUTH/3604/1/22

COMPLAINANT v NOVO NORDISK

Concerns about promoting to the public on LinkedIn

CASE SUMMARY

This case was in relation to a LinkedIn post by an individual based in the UK and contracted to work for Novo Nordisk A/S via a third-party company. The LinkedIn post mentioned a study that was to be conducted on Novo Nordisk's treatment, oral semaglutide and included a linked article.

The Panel ruled a breach of the following Clause(s) of the 2021 Code for failing to certify the promotional LinkedIn post in line with Clause 8.1:

Breach of Clause 5.1	**Failure to maintain high standards**

The Panel ruled no breach of the following Clause(s) of the 2021 Code on the basis that the LinkedIn post was promotional and that oral semaglutide 50mg was not classified as a prescription only medicine at the time:

No Breach of Clause 8.3	**Requirement to certify non-promotional material**
No Breach of Clause 26.1	**Requirement to not advertise prescription only medicines to the public**
No Breach of Clause 5.1	**Requirement to maintain high standards**
No Breach of Clause 2	**Requirement that activities or material must not bring discredit upon, or reduce confidence in, the pharmaceutical industry**

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 described him/herself as a concerned UK health professional complained about a post on LinkedIn by an individual contracted to work for Novo Nordisk A/S via a third party company.

The post stated:

> 'Fridays approval covers injectable semaglutide, but Novo already has its sights set on more convenient dosing in the future. Novo aims to enroll about 1,000 patients for a phase 3a trial testing the safety and efficacy of oral semaglutide 50 mg…' followed by a link to an article published on fiercepharma.com, the title of which was 'Novo Nordisk's semaglutide

set to tackle obesity with hotly-anticipated FDA green light' and was included within the LinkedIn post below an image of three flags with Novo Nordisk's logo on them.

COMPLAINT

The complainant provided a screenshot of the LinkedIn post and stated that the post by a UK member of staff mentioned a study that was to be conducted on Novo Nordisk's licensed treatment, oral semaglutide. The complainant alleged that the material promoted a prescription only medicine to the public and most likely had not been certified for this use. The complainant further alleged that this also failed to maintain high standards.

When writing to Novo Nordisk, the Authority asked it to consider the requirements of Clauses 26.1, 8.3, 5.1 and 2 of the Code.

RESPONSE

Novo Nordisk stated that the LinkedIn post provided by the complainant was made by the individual in approximately June 2021. The individual was not an employee of Novo Nordisk. At the time the LinkedIn post was made, he/she was employed by a company that provided talent acquisition services and was contracted to work for Novo Nordisk's headquarters, Novo Nordisk A/S, in Denmark. In respect of the work he/she carried out with the talent acquisition services company for Novo Nordisk A/S, the individual's main contact/reporting line was to a senior employee who was also employed by Novo Nordisk A/S in Denmark. The individual was not employed nor contracted by the UK affiliate, Novo Nordisk Limited. At the time of writing Novo Nordisk's response in February 2022, the individual was no longer employed by the third party talent acquisition agency.

Novo Nordisk submitted that the individual had over 5,000 followers and 500+ connections via his/her LinkedIn profile. Those that followed this LinkedIn account were primarily individuals searching for career opportunities.

Novo Nordisk Limited submitted that it did not instruct the individual to make the post, and it had no knowledge of it. Novo Nordisk submitted that neither the post nor the linked article made any reference to the availability or use of semaglutide in the UK. The post was not certified. The post was liked by three people, none of whom were employed by Novo Nordisk Limited:

- One like was by a consultant who was not employed by Novo Nordisk A/S.
- Two likes were by employees of the third party talent acquisition agency, one of whom was contracted to work for Novo Nordisk A/S.

As a result of the above, Novo Nordisk submitted that the complaint was out of scope of the Code.

A copy of Novo Nordisk Limited's Social Media Policy was provided which Novo Nordisk stated had not been assigned to the individual in question as he/she was not (and never had been) contracted to provide services to Novo Nordisk Limited.

Following a request for further information, Novo Nordisk submitted that at the time the post was made, the individual's LinkedIn profile indicated his/her residence as being in England. Novo Nordisk submitted that it was unable to provide specific information on the demographic of

his/her LinkedIn connections in relation to their countries of residence; based on the individual's education and employment history, it was not unreasonable to assume that he/she would have a large number of global connections.

Novo Nordisk further submitted that the marketing authorisation dates for Wegovy (semaglutide FlexTouch solution for injection in pre-filled pen) were 10 May 2022 for Great Britain and 23 June 2022 for Northern Ireland.

PANEL RULING

The Panel noted Novo Nordisk's submission that it did not instruct the individual to make the post nor did it have knowledge of it; neither the post nor the linked article made any reference to the availability or use of semaglutide in the UK and whilst it was liked by three people, none of them were employed by Novo Nordisk Limited. Therefore, in Novo Nordisk's view, the LinkedIn post did not fall within the scope of the ABPI Code.

The Panel noted that it was an established principle that pharmaceutical companies were responsible for the acts and omissions of their third parties which came within the scope of the Code, even if such acts and omissions were contrary to the instructions which they had been given. Furthermore, UK companies were responsible for the acts and omissions of their overseas affiliates that came within the scope of the Code. It therefore followed that Novo Nordisk Limited would be responsible for any acts or omissions of Novo Nordisk A/S and/or its third parties that came within the scope of the Code.

Firstly, the Panel had to decide whether the LinkedIn post in question which included the linked article were subject to the Code. The Panel considered that companies should assume that the Code would apply to, and that companies would be responsible for, all work-related personal social media activity by their employees and individuals working for the company via a third party unless, for very clear reasons, it could be shown otherwise. Any material associated with a social media post, for example a link within it, would be regarded as being part of that post.

The Panel noted Novo Nordisk's submission that the LinkedIn post had been posted by an individual in June 2021 who was at the time of posting an employee of a third-party company that was contracted to work for Novo Nordisk's headquarters in Denmark. The Panel noted that at the top of the LinkedIn post, immediately beneath the individual's name it stated that he/she was a sourcing specialist 'at Novo Nordisk via [talent acquisition agency acronym]'. The Panel noted that the individual in question resided in the UK. The Panel thus considered that, on the balance of probabilities, a significant number of the individual's connections would be UK residents and therefore the LinkedIn post at issue, had, on the balance of probabilities, been directed towards a UK audience. The Panel considered that the proactive dissemination of information regarding Novo Nordisk's medicines to a UK audience brought the LinkedIn post within the scope of the UK Code.

The Panel considered that, on the balance of probabilities, not all of the third-party employee's connections on LinkedIn would meet the Code's definition of a health professional or other relevant decision maker and therefore the information had likely been made available to members of the public based in the UK.

The Panel noted that the LinkedIn post at issue stated:

> 'Friday's approval covers injectable semaglutide, but Novo already has its sights set on more convenient dosing in the future. Novo aims to enroll about 1,000 patients for a phase 3a trial testing the safety and efficacy of oral semaglutide 50mg…' and linked to an article on fiercepharma.com, a 3 min read, titled 'Novo Nordisk's semaglutide set to tackle obesity with hotly-anticipated FDA green light'.

The Panel noted that the article linked to from the post stated, *inter alia*, 'With obesity widespread, undertreated and largely misunderstood, Novo Nordisk has been gunning to overhaul the field with semaglutide, a drug originally approved to treat diabetes. On Friday, it won its coveted FDA green light in obesity. Now christened Wegovy, the drug has been under FDA review just since December-a speedy trip through the agency, thanks to a priority review voucher that kicked the process into high gear. Armed with this "game changer" approval, Novo is set to disrupt the massive and largely untapped obesity market, where patients have long suffered from a few attractive treatment options'. It further stated that 'the FDA approve the drug, as an addition to diet and exercise, based on phase 3 data showing Wegovy helped one-third of patients lose more than 20% of their body weight over the 68-week trial period. Patients without diabetes lost 17% to 18% of their weight on average' and 'Novo's other approved weight loss drug, Saxenda, helps patients lose around 5% of their body weight on average. That's already clinically meaningful, [named Novo Nordisk senior employee, North America] said, but with the impressive weight loss figures Wegovy has demonstrated, "we're seeing significant signs of improvements in cardiovascular disease, as well as heart failure, "plus reduction in type 2 diabetes"'. The article ended with 'Friday's approval covered injectable semaglutide, but Novo already has its sights set on more convenient dosing in the future. In the second half of 2021, Novo aims to enrol about 1000 patients for a phase 3a trial testing the safety and efficacy of oral semaglutide 50mg vs placebo in overweight or obese patients with comorbidities'.

The Panel, noting the content of the LinkedIn post which included the article, considered that the LinkedIn post was promotional.

The Panel noted that Novo Nordisk had been asked to respond in relation to Clause 8.3 which required that certain non-promotional materials must be certified in advance in a manner similar to that provided by Clause 8.1 which covered the certification of promotional material. The Panel noted its view above that the LinkedIn post was promotional and therefore considered that Clause 8.3 was not relevant and therefore **no breach of Clause 8.3 was ruled**. The Panel, however, noted Novo Nordisk's submission that the LinkedIn post had not been certified and considered that failure to certify the promotional LinkedIn post in line with Clause 8.1 meant that high standards had not been maintained and **a breach of Clause 5.1 was ruled**.

The Panel noted that Clauses 3.1 and 11.1 prohibited the promotion of a medicine prior to the grant of its marketing authorisation. Once the marketing authorisation had been granted Clause 26.1 prohibited the promotion of prescription only medicines to the public. The complainant referred to the mention of a study that was to be conducted on Novo Nordisk's licensed treatment, oral semaglutide and alleged that the material promoted a **prescription only medicine** to the public (emphasis added by the Panel). The case preparation manager had therefore raised Clause 26.1 and the Panel therefore made its rulings in this regard.

The Panel noted that at the time the LinkedIn post was made Novo Nordisk marketed oral semaglutide (Rybelsus 3mg, 7mg and 14mg tablets) which was indicated for the treatment of adults with insufficiently controlled type 2 diabetes mellitus to improve glycaemic control as an adjunct to diet and exercise as monotherapy when metformin was considered inappropriate due

to intolerance or contraindications; and in combination with other medicinal products for the treatment of diabetes.

The LinkedIn post made reference to a 'phase 3a trial testing the safety and efficacy of oral semaglutide 50mg vs placebo in overweight or obese patients with comorbidities'. The Panel noted that it did not appear that Novo Nordisk marketed oral semaglutide 50mg at the time the LinkedIn post was made and therefore it was not classified as a prescription only medicine at the time. Clause 26.1 only applied to prescription only medicines. Whilst the Panel had some concerns about certain aspects of the LinkedIn post including the linked article, based on the very narrow allegation and the reasons set out above, the Panel considered that the complainant had not established that a prescription only medicine had been promoted to the public as alleged and **no breach of Clause 26.1 was ruled** in that regard.

The Panel noted the circumstances of this case and, in particular, that the complainant had made a very narrow allegation in relation to whether the post appeared to be promoting Novo Nordisk's prescription only medicine oral semaglutide 50mg to the public. The Panel considered that Novo Nordisk had been let down by an employee of a third-party agency working on behalf of its overseas head office resulting in the dissemination of information about Novo Nordisk's medicines. Nonetheless, noting its rulings of no breach in relation to promotion to the public above and the very narrow nature of the complaint, the Panel considered that the complainant bore the burden of proof and did not consider that he/she had established that Novo Nordisk had failed to maintain high standards and **no breach of Clause 5.1 was ruled**.

The Panel noted its rulings above and 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. **No breach of Clause 2 was ruled**.

Complaint received **20 January 2022**

Case completed **20 February 2023**