

CASE AUTH/3614/2/22

EMPLOYEE v ELI LILLY

Alleged conduct of an Eli Lilly employee.

CASE SUMMARY

This case was in relation to concerns that an employee had been asked by their manager to 'dress down' so as not to be so obvious as a company representative, not raise any suspicion walking the corridors of the hospitals, and to try and see customers that way.

The Panel ruled no breach of the following Clauses of the 2021 Code because based on the evidence before it, it did not consider that the complainant had established that:

- any company representative had misled as to their identity or that of the company they represented
- the wishes of individuals on whom representatives wanted to call and the arrangements in force at any particular establishment had not been observed
- any representative had not maintained a high standard of ethical conduct in the discharge of their duties or had not complied with all relevant requirements of the Code

No Breach of Clause 17.2 (Unsuccessfully appealed)	Requirement that representatives must maintain a high standard of ethical conduct in the discharge of their duties and comply with all relevant requirements of the Code
No Breach of Clause 17.4 (Unsuccessfully appealed)	Requirement that the wishes of individuals on whom representatives call and the arrangements in force at any particular establishments must be observed.
No Breach of Clause 17.5 (Unsuccessfully appealed)	Requirement that representatives must not mislead as to their identity or that of the company they represent.

APPEAL

All of the Panel's rulings were upheld upon appeal by the complainant.

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

FULL CASE REPORT

A named employee of Eli Lilly complained about the alleged conduct of another Eli Lilly employee. The complainant stated that they had worked in the pharmaceutical industry for a number of years, the last couple being some of the most challenging. They currently worked in the field of oncology which had been hit hard by Covid and customers were very nervous about welcoming the pharmaceutical industry into clinical/office spaces in the hospital.

COMPLAINT

The complainant stated that one of the suggestions from their company manager was to 'dress down' i.e. more casually to not be so obvious as a company representative and to try and see customers that way or not to raise any [suspicious] eyes walking the corridors of the hospitals. The complainant stated that they were aware of colleagues who were doing so. One of the company's values was 'winning with integrity', which seemed incongruous with the proposal! The complainant was appalled at the idea and had said so and wondered what the views of the industry standard and public opinion would be. The complainant believed the following clauses related to the idea proposed by their manager:

Clause 17.2 stated that representatives must maintain a high standard of ethical conduct in the discharge of their duties and comply with all relevant requirements of the Code.

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 did not mislead as to their identity or that of the company they represent.

Clause 17.4 stated, among other things, that the wishes of individuals on whom representatives want to call and the arrangements in force at any particular establishment must be observed.

When writing to Eli Lilly, the Authority asked it to consider the requirements of Clauses 17.2, 17.4 and 17.5 of the 2021 Code.

RESPONSE

Eli Lilly stated that it had reviewed the complaint including the accompanying documentation. Without providing any proof or any detail as to when, where or how those conversations took place, the complainant alleged that their manager 'suggested' that they 'dress down' in order for the complainant to enter a hospital that was not allowing face-to-face meetings at the time.

Lilly took any such allegations very seriously; the company immediately initiated a grievance process upon receipt of the complaint. Lilly interviewed six employees: other members of the complainant's team, the complainant's manager and two other managers with comparable roles supporting different parts of Lilly's portfolio, to understand whether any of the allegations raised were also occurring elsewhere in Lilly's business. Lilly submitted that the complainant refused to cooperate with Lilly's investigation and did not provide further information or any documentation to support their complaint. The process was concluded with no finding; there was not sufficient evidence or information from the interviews to support the allegations raised. The outcome was sent to the complainant in March 2022 and they had the right to appeal but did not do so within the given timeline of five working days. Consequently, the process was fully concluded with no finding.

Lilly understood and fully respected the Code and strove to ensure that all its activities were in adherence with the Code at all times. Lilly had enacted robust procedures and trainings to ensure compliance with the Code, including provisions on customer interactions during the Covid-19 pandemic. Lilly submitted that its position on accessing customers during the pandemic had been robust: that as well as following the law and social distancing guidance, the wishes of local health professionals and healthcare organisations (HCOs) must be respected and prioritized. The allegations were in direct contravention of Lilly's advice to staff.

Furthermore, all interviewed employees confirmed that they were given clear guidance on accessing customers and customer interactions during the Covid-19 pandemic, which were in line with the Code requirements.

Lilly referred to the PMCPA Constitution and Procedure which required a complainant to prove their complaint on the balance of probabilities. This meant that the complainant must be able to show that the requirements set forth in the aforementioned clauses had not been complied with, e.g. maintaining a high standard of ethical conduct; representatives not misleading as to their identity or that of the company they represent.

However, in the current case the complainant had failed to submit any evidence to prove their allegations. There was no documentation or communication and no detailed explanation about any specific situation, or an example of the alleged conduct.

Consequently, the complaint had failed to prove their claims and build their case and therefore the Panel had the right to refuse to hear the allegations.

For the reasons stated and due to the lack of evidence provided, Lilly denied breaches of Clauses 17.2, 17.4 and 17.5 of the Code.

PANEL RULING

The Panel noted that it appeared that 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. In this case the complainant had provided no material to support their position. A judgement had to be made on the available evidence.

The complainant alleged that their manager suggested they 'dress down' i.e. more casually to not be so obvious as a company representative and to try and see customers that way and not raise any suspicion walking the corridors of the hospitals. The Panel noted that there was no evidence in this regard. The Panel noted Lilly's submission that all interviewed employees confirmed that they were given clear guidance on accessing customers and customer interactions during the Covid-19 pandemic, which were in line with the Code requirements. The Panel noted the relevant communication and guidance to staff provided by Lilly in this regard. An email sent to staff in January 2022 stated that all face-to-face interactions with customers should continue to follow government guidance but also asked staff to ensure that they were following all health professional and institutional guidance regarding face-to-face interactions with health professionals as well. The email stated that if after consideration of the wishes of your customers, government guidance and your personal situation, face-to-face interactions aren't possible, please utilise our virtual capabilities..'. Information provided on the company intranet updated in January 2022 further stated 'We must honour the preferences of our

customers and recognize that local or organizational requirements may be stricter than national guidance. Please continue to reach out to your customers about upcoming meetings to understand their preferences and be ready to switch to virtual alternatives if needed. Based on the evidence before it, the Panel did not consider that the complainant had established that any company representative had misled as to their identity or that of the company they represented; that the wishes of individuals on whom representatives wanted to call and the arrangements in force at any particular establishment had not been observed or that any representative had not maintained a high standard of ethical conduct in the discharge of their duties or had not complied with all relevant requirements of the Code as alleged. The Panel therefore ruled **no breach of Clauses 17.2, 17.4, and 17.5.**

APPEAL BY THE COMPLAINANT

The complainant appealed the Panel's rulings of no breach of Clauses 17.2, 17.4 and 17.5. The complainant stated that the appeal was based on the grounds that why would a person talk and discuss dressing down to avoid detection in the UAE and admit this to the Lilly Grievance committee and verbally ask the complainant to do the same but have no case to be held. The admission was documented by Lilly in the grievance review in 2022.

ELI LILLY RESPONSE TO THE APPEAL

Lilly submitted below its responses to the appeal:

1. As was the case for the initial complaint, the complainant had failed to submit any evidence to prove their allegations and arguments for the appeal. There was no documentation or communication, and no detailed explanation about any specific situation, or an example of the alleged conduct.
2. There was no admission by the complainant's manager of a discussion on the dressing down to avoid detection in the UAE. The complainant's manager was transparent and very cooperative during the investigation, and denied the allegations raised by the complainant. It was clearly reported in the Grievance Hearing Outcome that the complainant's manager stated during the interview that 'he had shared an anecdote of a trip he had made to the Middle East in a previous role where the representative had asked him to dress in a polo shirt and shoes for a field visit. The complainant's manager stated that he highlighted this as an example of cultural differences when it came to what representatives wore in different countries around the world rather than direction on what the team should wear here in the UK'.

The complainant had refused to cooperate with Lilly's investigation and did not provide further information or any documentation to support their complaint. The grievance process was concluded with no finding; there was not sufficient evidence or information from the interviews to support the allegations raised. The complainant had the right to appeal but did not do so within the given timeline. Consequently, the grievance process was fully concluded with no finding.

3. For the reasons stated in Lilly's response to the complaint and above and due to the lack of evidence provided, Lilly denied a breach of Clauses 17.2, 17.4 and 17.5 of the Code.

FINAL COMMENTS FROM THE COMPLAINANT

The complainant stated that in the absence of written evidence, they would use the legal concept of beyond reasonable doubt.

The complainant alleged that a document compiled by [named Lilly employee] (see below) clearly stated the complainant's manager in conversation with the complainant discussed dressing down to avoid detection in the United Arab Emirates. This was not discussed in cultural terms. The complainant queried why such a conversation in the UK would refer to the Middle East Healthcare system (a healthcare system paid through insurance company payments, and in the complainant's opinion a reason for dressing down in that country to avoid detection). The complainant also pointed to the use of the term 'blend in' as highlighted in the extract of the grievance document (below). The complainant stated that the comments 'blend in' together with the statement of 'dressing down' showed that the point was to avoid detection. The complainant stated that although there was no written instruction it was reasonable to conclude that the complainant's manager did make this statement and had beyond doubt asked the complainant to enter hospitals during the height of Covid to access oncology customers, breaking both the rules and instructions of the local hospitals and also the rules sent to all Lilly Representatives by its Managing Director.

The complainant alleged that during the same period a sales colleague had gone to a [named hospital], one of the hospitals covered by the complainant. The complainant said that the sales colleague was in hospital for personal reasons but then tried to gain consultant appointments via oncology secretaries. The complainant stated that this was evidence that the complainant's manager had asked other team members to avoid detection.

The complainant stated that they did not know if this was their manager's idea or that of their manager's manager.

The complainant provided an extract of the grievance procedure document compiled by [named Lilly employee] which included the following:

'[the complainant's manager] explained to me that he recalled having an informal discussion with you about dress code and how it had changed to meet Eli Lilly's customer needs but categorically denied saying to you or anyone else to "dress down". He said he had shared an anecdote of a trip he had made to the Middle East in a previous role where the Representative had asked him to dress in a polo shirt and shoes for a Field Visit. He stated that he highlighted this as an example of cultural differences when it came to what Representatives wore in different countries around the world rather than direction on what the team should wear here in the UK. He repeated many times he did not say to "dress down".

There was one member of the team who said that at a team meeting [the complainant's manager] had made reference to "blending in" when visiting hospitals and not coming across [in the hospital] in the place as Representatives.'

APPEAL BOARD HEARING AND RULING

The Appeal Board considered that it was extremely helpful when independent complainants attended an appeal.

The complainant asked the Appeal Board to apply the legal threshold of beyond reasonable doubt. However, the Appeal Board was bound by Paragraph 2.2 of the Constitution and Procedure which clearly stated that 'Rulings are made on the basis that a complainant has the burden of proving their complaint on the balance of probabilities.'

At the Appeal Board hearing the complainant stated that at the time when their colleague approached secretaries in the oncology unit, the Trust was not allowing access to representatives.

At the Appeal Board hearing the Lilly representative stated that the sales colleague had been interviewed and had confirmed that they had attended a different department for personal reasons while in business attire at the end of their working day. After that they had gone on to try to set up an appointment for a Multi-Disciplinary Team (MDT) meeting, but no appointments were available. The Lilly representative at the appeal acknowledged that it was not good practice. The sales colleague confirmed they had never been told by the complainant's manager to 'dress down' to gain access to see customers and there was no suggestion that the sales colleague had done this on this occasion. The sales colleague had stated that at the time representative visits to the hospital were not barred.

The Appeal Board accepted that Lilly had interviewed employees who confirmed that they were given clear guidance on accessing customers and customer interactions during the Covid-19 pandemic, which was in line with Code requirements.

The Appeal Board noted the relevant communication and guidance to staff provided by Lilly. In particular, an email sent to staff in January 2022 stated that all face-to-face interactions with customers should continue to follow government guidance, and staff must follow all health professional and institutional guidance regarding face-to-face interactions with health professionals. The email stated that 'If after consideration of the wishes of your customers, government guidance and your personal situation, face-to-face interactions aren't possible, please utilise our virtual capabilities..'. Information provided on the company intranet updated in January 2022 further stated 'We must honour the preferences of our customers and recognize that local or organizational requirements may be stricter than national guidance. Please continue to reach out to your customers about upcoming meetings to understand their preferences and be ready to switch to virtual alternatives if needed.'

The Appeal Board asked why only 3 of the 9 complainant's team members were interviewed. The Lilly representative at the appeal explained that they had taken a proportionate approach, and that the position seemed clear once they had checked that there had been no complaints about such behaviour and spoken to 3 people. The Appeal Board noted evidence that the complainant's manager had made reference to 'blending in' when visiting hospitals and not coming across in the place as representatives. The Appeal Board noted that only an extract of the Grievance procedure report had been submitted, and they had not seen the whole report. The Lilly representative at the appeal stated that the reference to 'blending in' was about dressing in a similar way to customers, such as not wearing a tie. The Lilly representative at the appeal stated that no-one was told to dress down in order to enable them to inappropriately gain access to customers as alleged. The Lilly representative confirmed that at the relevant time sales representatives were not financially incentivised for customer calls.

The Appeal Board was restricted to considering the clauses which had been considered by the Panel. The Appeal Board studied the wording of Clauses 17.2, 17.4 and 17.5, which all related

to the conduct of representatives (a term which was defined in the Code). Clause 17.4 also included a burden on the company that 'When briefing representatives, companies should distinguish between expected call rates and expected contact rates.'

The Appeal Board found that the date and surrounding context of the disputed communication between the complainant and their manager was unclear. Although it was common ground that a comment had been made about another culture, and about blending in, the Appeal Board considered that might have been in the context of dressing more like customers. The Appeal Board accepted Lilly's submission that once a representative had gained access to a customer, they would be required to identify themselves and the company to continue the interaction. The Appeal Board considered that there was insufficient evidence to prove that the complainant had been asked to dress down by their manager in order to inappropriately gain access to customers. There was insufficient evidence that any company representative had misled as to their identity or that of the company they represented, or that the wishes of individuals or arrangements in force at any particular establishment had not been observed or that any representative had not maintained a high standard of ethical conduct in the discharge of their duties or had not complied with all relevant requirements of the Code as alleged.

The Appeal Board upheld the Panel's ruling of **no breach of Clauses 17.2, 17.4 and 17.5** of the Code. The appeal was unsuccessful.

Complaint received **24 February 2022**

Case completed **20 April 2023**