

CASE AUTH/3662/6/22

COMPLAINANT v NOVARTIS

Concerns about certification of an article and social media templates

CASE SUMMARY

This case was in relation to the certification of an article published in MailOnline and associated social media templates by Novartis Pharmaceuticals UK Ltd.

The Panel ruled no breach of the following Clauses of the 2021 Code in relation to the narrow allegation that Novartis had failed to certify the article at issue on the basis that it would be shared; the share buttons were an integral part of the certified material.

No Breach of Clause 8.3	Requirement to certify educational material for the public
No Breach of Clause 5.1	Requirement to maintain high standards

The Panel ruled a breach of the following Clauses of the 2021 Code for not certifying the social media templates generated by clicking on the various share buttons in the article at issue, noting that each template would be used to disseminate educational information to the general public, thus making it particularly important that they were captured by the approval system and certified in accordance with the Code.

Breach of Clause 5.1	Failing to maintain high standards
Breach of Clause 8.3	Failing to certify educational material for the public

The Panel ruled no breach of the following Clause of the 2021 Code because although it considered that a robust certification procedure underpinned self-regulation and noting its rulings above, it 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	Requirement that activities or materials must not bring discredit upon, or reduce confidence in, the pharmaceutical industry
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**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 from an anonymous, contactable complainant about the certification of an article published in the MailOnline by Novartis Pharmaceuticals UK Ltd.

COMPLAINT

The complainant alleged that Novartis had commissioned a multiple sclerosis (MS) article in the Daily Mail newspaper, which was educational disease awareness information for the public and thus needed certification. However, the version certified on the approval system was different to the version that appeared on the Daily Mail website (making the article uncertified). The complainant provided a link to the article. There were options to share the article at the top of the page and at the bottom of the page. The article had been shared 39 times. The complainant alleged that the certified article on Veeva was not approved to share as part of the final form and as the share option of this article was across a variety of media, each of the different final forms for each different medium (eg Twitter, Facebook, etc.) should have been certified separately. The complainant alleged that as the share option at the top and the bottom of the page was not part of the certified in-house content, the article in the Daily Mail was uncertified. Also, as the article had been shared 39 times, it was concerning that Novartis had not certified the content for these separate media beforehand (including the option to email). Novartis should have checked the content certified matched the content that actually ended up appearing on the Daily Mail website. As the content certified on the review system was different to the article that appeared in the Daily Mail article due to the share options, the complainant alleged breaches of Clauses 8.3, 5.1 and 2. Transparency and integrity in following the compliance frameworks were severely lacking due to constant restructures. There was no appetite for enhancing compliance understanding or following the spirit of the Code which the complainant stated was simply shocking.

When writing to Novartis, the Authority asked it to consider the requirements of Clauses 2, 5.1 and 8.3 of the 2021 Code as cited by the complainant.

RESPONSE

Novartis submitted that the complainant alleged that Novartis had made several breaches of the ABPI Code pertaining to a multiple sclerosis article (the 'MS Article') on the Daily Mail website. As requested by the PMCPA, in responding to the complaint, Novartis had borne in mind the requirements of Clauses 2, 5.1 and 8.3 of the Code.

The complaint cited the 'Daily Mail' and the 'Daily Mail website'. The correct name for the website was 'MailOnline' (referred to herein by Novartis). The 'Daily Mail' was the print newspaper only.

1 **Background**

The complainant alleged that the MS Article was uncertified, that Novartis had not certified the content for separate mediums and that it should have checked the content. Finally, the complainant criticised the Novartis compliance frameworks and understanding. Novartis strongly refuted all the allegations. Novartis explained the approval process and how this related to dynamic content such as the MailOnline article. The purported Code breaches were then addressed in turn.

Novartis had contracted a named public relations and communications agency, to support a Novartis employee on Neuroscience communication projects in the UK. The named agency, acting on behalf of Novartis, was responsible for the day-to-day project management and

ongoing liaison with MailOnline to support with sponsored MS article development, publication and to provide performance evaluation metrics.

2 Approval Process

There was an established process for approving an article before it was published on the MailOnline. These steps were followed by Novartis in respect of the MS Article as explained below:

- i) Prior to publication, MailOnline sends a URL to the article owner/company which links to the article. The article is 'live' but not 'searchable or promoted to a target audience'; it is not 'published'. This meant that the article was hosted in an incorrect location and was not searchable via Google or other search engines. The only way to access the article would be via the specific URL, or if a user were to type very specific keywords into the MailOnline's search bar (such as the full title of the article).

The following timeline set out the steps that took place on 7 December 2021 in accordance with the above process:

- At 10.13 Novartis confirmed with the named agency that the MS Article had been reviewed in 'FUSE' (the Novartis system for approving and certifying materials) and requested a 'live' link to be shared to facilitate certification.
 - Email at 10.18 – The named agency confirmed to MailOnline that the PDF of the MS Article was approved in FUSE at review stage with no more comments from the Novartis project owner and medical signatory. Therefore, it was ready for certification stage.
 - Email at 10.43 – MailOnline shared with the named agency the link to the view the article (live but not published, as explained above) for the purpose of certification.
 - At 10.45 the named agency shared the URL and informed Novartis that a meeting would be arranged.
- ii) Each channel of the MailOnline had a different colour scheme; Science was orange, Money was purple, Femail was pink, Health was teal etc. When an article was hosted in the incorrect location, the colour was deliberately incorrect (usually pink). Prior to publication, an article was always reviewed in the incorrect location.

Novartis (project owner and medical signatory), the named agency and the MailOnline had a meeting to conduct a review of the live MS Article for certification purposes, which was the incorrect location (Femail, coloured pink). This review included testing all the links within the article which were directing the audience to relevant Novartis-owned content (Ready to Talk MS | Living Like You UK). This content was certified in a separate FUSE asset (UK | December 2021 | 172623).

A screenshot of the article that was reviewed at this stage was provided which showed the MS Article with pink colours.

In addition, Novartis had checked the colour change with the MailOnline in light of this complaint.

- iii) Share buttons were operational prior to publication of an article, and these were dynamic content (explained below). Each share button facilitated a user to share the article via a different platform. The order of the share buttons changed according to the user viewing the article. This was a function of the MailOnline and was available on all articles across the website; a company/article owner had no control over this. Clicking on a share button generated suggested content taken from the article and two examples were provided below:
- a) Facebook share button: clicking on this directed the user away from MailOnline website to first log into their personal Facebook account. Only once a user had logged in, a Facebook post was drafted from their profile which could be edited/deleted/added to. The post would initially contain content from the certified article (eg the title and first line of the article) with a link to the article on the MailOnline.
 - b) Email share button: if a user were to click the email share button, a new window would pop up (usually in Outlook) with a suggested email drafted. The subject and text in the body of the email were taken directly from the certified article followed by a link to the article. There was then a section of 'most read articles' which was autogenerated for the user based on live analytics of most read articles on MailOnline and cookies. The user could edit/deleted/add to the email.

The other share buttons operated similarly, and this was dynamic content (explained below).

Certification took place at 12.25 on 7 December 2021 and the certificate was provided.

When reviewing the MS Article, the Novartis certifier saw the share buttons, they were in the screenshot and the article link provided. Due to the nature of the website being dynamic content, a certifier needed to consider the context in which the material appeared. As explained below, each possible combination did not need to be certified according to the Code and this applied to the share buttons. The MS Article was intended for the public and use on public platforms, including social media. Novartis was aware that the MS Article would be shared.

The Novartis communications team was aware at the time (via the named agency) that the share buttons existed on all MailOnline articles. This was confirmed by the agency.

- iv) Following company sign-off, an article was published in the correct channel of the website and the colour was automatically updated to reflect this. The article became 'searchable and promoted' (promoted by the MailOnline). This meant that it could be searched via Google and other search engines. It was also promoted across MailOnline so that the public were made aware of the existence of the article.

The following also took place on 7 December 2021:

- Email at 12:31 from the named agency to MailOnline confirmed that the MS Article had been approved in its final form (ie, certified) and was ready to be published and promoted to the public. The agency then asked whether the link would change so that it sat in the correct channel – Health rather than Femail.
 - Email at 13:07 – Novartis was informed that the link was published in the Health Channel via email from the named agency.
 - Email at 13:24 – MailOnline provided a screenshot of the article being promoted on the website.
- v) Once published, content could be checked by the company.

The MS Article was reviewed post-publication by Novartis and the named agency together.

At 13:24 on 7 December 2021 Novartis then shared the published article internally.

Furthermore, the article functionality was updated on 14 December 2021 at 12:20; the content was no longer being actively promoted by the MailOnline from this point (as views had reached the agreed threshold of 10,000). Therefore an 'update' was shown on the link to the MS Article. The text read: '**PUBLISHED:** 10:40 BST, 7 December 2021 | **UPDATED:** 12:20 BST, 14 December 2021'.

Novartis therefore rejected the complainant's insinuation that the content was not checked.

3 Dynamic Content (Supplementary Information to Clause 8.1)

Novartis was confident that the steps outlined above were entirely in accordance with the requirements of the Code, in particular Clause 8.3 (explained below) and the Supplementary Information to Clause 8.1. Referring to the latter, Novartis emphasised the final statement of the supplementary information to Clause 8.1 that 'each possible combination does not need to be certified'. Indeed, as this was dynamic content which was constantly changing it was impossible for Novartis to foresee all possible combinations. A clear example of this was the most read articles section which could change by the minute pre- and/or post-publication. Further, users could edit/delete/add as they wished. Neither the MailOnline nor Novartis would ever see what a user chose to write and post on their own personal platforms; it was outside the scope of what could be considered reasonable to review. Novartis rejected the complainant's statement that the content for separate mediums should have been certified separately.

4 Clause 8.3

The complainant alleged that the version certified on the approval system was different to the version that appeared on the MailOnline. For clarity, 'Veeva', referred to by the complainant, was used by Novartis as an internal customer relationship management system for the salesforce to record interactions with customers. FUSE was the approval system for materials at Novartis. The content of the article in FUSE and the article published on the MailOnline were identical. Novartis acknowledged that the colours were different, and the rationale for this had been explained above. Further, the material clearly stated in bold the date of preparation and unique code in the standard Novartis UK format: UK | December 2021 | 170788. The material was certified on 07/12/2022 in FUSE by a final signatory on behalf of Novartis, in the

appropriate manner in accordance with Clause 8.1. The individual that certified the material was a registered UK pharmacist, and was not the person responsible for either developing or drawing up the material in question. The certificates were provided as evidence to support this position.

The MS Article was educational material for the public issued by Novartis which related to the disease area of multiple sclerosis. The intention was to permit the sharing of this disease awareness content on social media platforms. Novartis had precisely followed the approval process, with special consideration given to the approval of dynamic content. The MS Article was certified in advance of publication in the manner provided for by Clause 8.1 of the Code. Accordingly, Novartis refuted any breach of Clause 8.3.

5 Clause 5.1

The MS Article was certified according to the Code. Novartis had explained the robust and efficient approval processes above evidencing respect for, and compliance with, the Code.

Novartis refuted any breach of Clause 5.1; high standards had been maintained at all times.

6 Clause 2

Novartis saw no evidence that the article brought discredit upon, or reduced confidence in, the pharmaceutical industry. Novartis did not accept a breach of Clause 2.

7 Conclusion

Novartis' view was that there had been no breach of Clauses 2, 5.1 and 8.3 of the Code.

Novartis had clearly demonstrated why the assertion made by the complainant as to the technical requirements to approve material of this type was without foundation. Novartis had a robust process to ensure that material of this kind was properly vetted and compliant with the Code. That process had been followed here.

The complainant based further allegations about internal ways of working at Novartis on 'constant restructures'. Novartis reorganised its business in 2020 and the new organisation structure had been in place since 1 January 2021. Given the straightforward rebuttal of the specific grounds of the complaint Novartis provided, the complainant's further assertions were unevicenced and therefore entirely speculative. Sweeping statements using inflammatory language which questioned integrity and transparency in the wider compliance 'framework' and 'understanding' at Novartis were unsupported and unhelpful.

PANEL RULING

The Panel noted that the complaint related to a multiple sclerosis educational disease awareness article commissioned by Novartis which was published on the 'Daily Mail' website.

The Panel noted that the complainant provided a link to the published article, titled 'Are YOU ready to talk MS? How those living with multiple sclerosis can access the help they need', which appeared on MailOnline within the Health section of the website, parts of which were teal in colour. Below the tabs at the top of the webpage was a banner with a Novartis logo, stating

'ready to talk MS. Making the most of your MS consultations' followed by a sponsorship statement. A prominent blue italics statement 'Ad Feature by Novartis Pharmaceuticals Ltd' appeared to be followed by various clickable logos representing sharing platforms for the article, including Facebook, Facebook Messenger, WhatsApp, Twitter, Flipboard, Email and a Share logo, followed by '39 shares' in bold font. Beneath the article, at the bottom of the page, was a statement in bold font 'Share or comment on this article: Are YOU ready to talk MS? How those living with multiple sclerosis can access the help they need', underneath which the same share buttons appeared as at the top of the page. Share buttons also appeared at the bottom of highlighted boxes within the article.

The Panel noted the complainant's allegation that the version certified on the approval system was different to the version that appeared on the 'Daily Mail' website and their concern in this regard appeared to be limited to the allegation that the article was not approved to share, as part of the final form. The complainant further alleged that the content within the sharing options across a variety of different media had not been certified.

The Panel noted Novartis' submission that the content of the article certified in its approval system and the article published on the MailOnline were identical. The Panel, however, noted Novartis' acknowledgement that the colours were different; in the certified version provided by Novartis, the article in question appeared in the Femail section of the MailOnline which was pink in colour. The Panel noted Novartis' explanation that prior to publication an article was always hosted in an incorrect location and the colour was deliberately incorrect (usually pink); a live link in the incorrect location, was provided by the MailOnline to Novartis, to conduct a review of the live MS Article for certification, which was certified as a separate asset (UK | December 2021 | 172623). The Panel noted, however, that the complainant had made no allegation or comment regarding any differences in colour and thus the Panel made no ruling on this point.

In relation to the share buttons, the Panel noted that the share buttons appeared on the certified pdf version of the article provided by Novartis, albeit in a different order to the published version of the article provided by the complainant. The Panel noted Novartis' submission that share buttons were operational prior to publication of an article, and these were dynamic content and the order of the share buttons changed according to the user viewing the article. The Panel noted Novartis' submission that when reviewing the MS Article, the Novartis certifier saw the share buttons.

Clause 8.3 stated, among other things, that educational material for the public or patients issued by companies which related to diseases or medicines but was not intended as promotion for those medicines, must be certified in advance in a manner similar to that provided for by Clause 8.1. In relation to the dynamic order of the share buttons, the Panel noted the supplementary information to Clause 8.1 Certifying Dynamic Content stated, amongst other things, that as the final form was not static, consideration needed to be given to the context in which it appeared but each possible combination did not need to be certified.

The Panel, noting Novartis' comments above and the relevant supplementary information to Clause 8.1 about the arrangements for certification, did not consider that Novartis had failed to certify the article, on the basis that it would be shared, as alleged. The share buttons were an integral part of the certified material and on this narrow allegation, the Panel ruled **no breach of Clause 8.3** and consequently **no breach of Clause 5.1**.

With regard to the complainant's allegation that as the share option of this article was across a variety of media, each of the different final forms for each different medium (eg Twitter, Facebook, etc) should have been certified separately, the Panel noted Novartis' submission that the share buttons were operational prior to publication of the article, and these were dynamic content. Each share button facilitated a user to share the article via a different platform, which was a function of the MailOnline and was available on all articles across the website; a company/article owner had no control over this. Clicking on a share button generated suggested content taken from the article and Novartis provided examples of the templates generated when a user clicked the Facebook or Email share buttons. The Panel noted Novartis' submission that when reviewing the MS article, the Novartis certifier saw the share buttons, and due to the nature of the website being dynamic content, a certifier needed to consider the context in which the material appeared.

The Panel noted the requirements for Clause 8.1 and its supplementary information as set out above. The Panel noted Novartis' submission that it had certified the pdf version of the MS article and tested all the links within the article which directed the audience to relevant Novartis-owned content (Ready to Talk MS | Living Like You UK), which was certified as a separate asset. The Panel noted that Novartis made no submission with regard to checks being performed on the templates generated by clicking on the various share buttons to ensure that the requirements of the Code were met. The Panel noted that each template would be used to disseminate educational information for the public and, therefore, in the Panel's view, fell within Clause 8.3 of the Code.

The Panel noted Novartis' submission that the share buttons were a function of the MailOnline and that an article owner had no control over this. Nonetheless, the Panel considered that given that the share buttons were an integral part of Novartis' article, it had a responsibility to ensure that the templates complied with the Code. The Panel considered that certifying the main article on the basis that it would be shared, and having sight of the share buttons, was insufficient to demonstrate that the templates themselves had been certified in accordance with the Code. The templates were not part of the material appended to the certificate nor were separate certificates provided. The Panel, on the evidence before it, considered that it appeared that Novartis had not certified the various templates and therefore ruled **a breach of Clause 8.3** in this regard. The Panel considered that high standards had not been maintained; given that such templates would be used to disseminate material to the general public, it was particularly important that they were captured by the approval system and certified in accordance with the Code; **a breach of Clause 5.1** was therefore ruled.

The Panel considered that a robust certification procedure underpinned self-regulation and although noting its comments and ruling above, it 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 was ruled**.

Complaint received **18 June 2022**

Case completed **19 July 2023**