

ANONYMOUS v BAYER

Meeting arrangements and conduct of a representative

An anonymous general practitioner complained about the arrangements for a meeting and the conduct of a representative from Bayer Healthcare.

The complainant stated that in September 2010 she paid to attend a family planning update organised by a commercial events company linked to a university.

It was clear that Bayer had a very big influence on the content of the meeting even though this was not advertised. It was like sitting through presentations written by Bayer; they were promotional and placed Bayer's products in almost all scenarios by the presenters. This was not what the complainant had paid for.

Following the meeting the complainant alleged that she was forced to speak with the representative in question who was very aggressive in telling the complainant about how Bayer's products would suit the complainant's patients! The representative was desperate to make sure that the complainant agreed with what she said before the complainant was allowed to leave. The complainant felt undermined, compromised and very intimidated by the representative, in fact she felt bullied. The complainant stated that a few of the other delegates had told her that the representative had approached them in the same way.

There was talk of the commercial events company being an un-disclosed front for Bayer as all of the events it arranged were sponsored by the representative.

The Panel noted that the meeting was arranged by a commercial events company which invited Bayer and one other company to sponsor it. Bayer stated that it had no relationship with the events company other than to provide sponsorship for medical education events. According to Bayer it had no influence over the selection of speakers or the content of the meeting. Neither Bayer nor its representatives had invited delegates and it had neither briefed nor entered into a contract with the speaker. The sponsorship invoice referred to meeting costs, speaker fees, room hire and refreshments.

The half day meeting was entitled 'Current Challenges in General Practice' and the agenda referred to two presentations: the first entitled 'IUD/IUS Update Workshop: Putting Contraception into Practice'. The second presentation was in a different therapy area. The front page of the

invitation referred to Bayer's sponsorship. The presentation delivered was entitled 'Intrauterine methods open Surgery' and presented seven patient scenarios and discussed treatment options:

The first scenario advised that the National Institute for health and Clinical Excellence (NICE) guidance on long-acting reversible contraceptives identified copper devices containing 380mm² copper as 'the most effective.' Two devices, Tsafe 380A and Bayer's device TT380 slimline were described as 'WHO gold standard'. A photograph of each device was followed by a slide headed 'Cumulative pregnancy rates' which featured data for a range of devices and Mirena (levonorgestrel+IUD) which was a Bayer product. Subsequent scenarios referred to intrauterine devices produced by other manufacturers. Contrary to Bayer's submission its products were mentioned by brand name.

There was no evidence before the Panel that the commercial events company was acting as Bayer's agent. Nonetheless the Panel did not consider that the arrangements for the meeting were at arm's length as described by Bayer. The Panel noted that the meeting was organised by a commercial events company, featured a presentation in an area of commercial interest for Bayer, was attended by two of its representatives and was partly sponsored by Bayer as set out in the invoice. In such circumstances the Panel considered that it was beholden upon Bayer to ensure that it was an appropriate meeting to sponsor and at the very least that the overall arrangements did not circumvent the requirements of the Code.

The Panel noted its comments about Bayer's role and responsibility in relation to the meeting as described above. The Panel noted that the front page of the invitation was headed at the top with the name of the events company and stated at the bottom of the page that the meeting was sponsored by Bayer Schering Pharma. The Panel considered that the design of the invitation and the declaration of sponsorship was such that Bayer's role was sufficiently clear. No breach of the Code was ruled.

Whilst the presentation did mention Bayer's products such references appeared relevant to the scenarios described and the Panel did not consider that there was a disproportionate emphasis on them as alleged. Other products were referred to. In addition the Panel noted that the Code applied, *inter alia*, to the promotion of medicines to health

professionals and appropriate administrative staff. Medicines were defined in the Code as any branded or unbranded medicine intended for use in humans which requires a marketing authorization. The Code did not apply to the promotion of devices, save where the devices could only be used with a specific medicine. One slide, however, referred to Mirena which was a licensed medicine. Bayer had not submitted that the Code did not apply to the presentation. Irrespective of whether Bayer was responsible for the content of the presentation and taking all the circumstances into account the Panel did not consider that the presentation constituted disguised promotional material and no breach of the Code was ruled. Noting its rulings above the Panel did not consider that the company had failed to maintain high standards and ruled no breach of the Code.

The complainant alleged that, following the meeting whilst in conversation with the representative, she had felt undermined, compromised and very intimidated. Bayer, however, submitted that the representative identified by the complainant had spoken to just two delegates before the meeting started and had left by the end of the meeting. The second representative, had remained at the exhibition stand throughout the meeting and thus had only spoken to delegates who proactively approached him. According to Bayer he did not notice a negative reaction from any delegate following their interaction with him.

The Panel noted that great dissatisfaction was usually necessary on the part of a health professional before he/she was moved to submit a complaint. Nonetheless in such circumstances it was impossible to determine where on the balance of probabilities the truth lay. The Panel thus ruled no breach of the Code including no breach of Clause 2.

An anonymous and non-contactable general practitioner complained about the arrangements for a meeting and the conduct of a representative from Bayer Healthcare.

COMPLAINT

The complainant stated that in September 2010 she paid to attend a family planning update organised by a commercial events company which was linked to a university. The complainant attended so that she could keep up to date with changes in family planning which was becoming more important in her practice and as the only female partner she saw most of the patients regarding this.

At the meeting it was clear that Bayer had a very big influence on the content of the meeting even though this was not advertised. During the seminar it was like sitting through presentations

written by Bayer; they were promotional and placed Bayer's products in almost all scenarios by the presenters. This was not what the complainant had paid for.

Following the meeting the complainant was forced to speak with the representative in question who had organised the meeting and she was very aggressive in telling the complainant about how Bayer's products would suit the complainant's patients! Again the complainant had not paid to attend this meeting to be sold to like a timeshare tout did to a holiday maker. The complainant was a captive audience and the representative was desperate to make sure that the complainant agreed with what she said before the complainant was allowed to leave. The complainant felt undermined, compromised and very intimidated by the representative, in fact she felt bullied.

The complainant stated that a few of the other delegates had told her that the representative had approached them in the same way and that she worked with a primary care trust (PCT). The complainant queried whether the representative had influenced them in a similar manner too. This was completely wrong. A representative should only provide information about their company's product to let doctors decide if those products were suitable to use for the patient and should not pressurise doctors into thinking otherwise.

There was talk of the commercial events company being an un-disclosed front for Bayer as all of the events it arranged were sponsored by the representative; perhaps she was profiting from them? The complainant thought this should be investigated.

The complainant would not attend any more training organised by the commercial events company and would not attend any organised by the university if they were supported by Bayer. She would travel outside of the area to avoid the hard sell she had had to endure; she had stopped seeing representatives from all companies following this incident.

When writing to Bayer, the Authority asked it to respond in relation to Clauses 2, 9.1, 12.1, 15.2 and 19.3 of the 2008 Code.

RESPONSE

Bayer stated that as the complainant had not given a specific date or venue it assumed that the meeting at issue was one that was held on 30 September, 2010. This meeting was attended by two of Bayer's representatives, one of which was the representative named by the complainant. The named representative had been interviewed by the national sales director, to gain an account of the meeting and to allow her to reply to the complainant's specific allegations. The representative refuted all claims made by the complainant.

Bayer stated that its relationship with the events company was one of sponsor only. Bayer was one of four companies which had agreed to sponsor eight meetings in 2010. The meeting was sponsored by Bayer and a devices company. The invoice issued by the events company showed that this sponsorship was used toward meeting costs, speaker fees, room hire and refreshments. Other than the provision of sponsorship for medical education events, Bayer did not have any business connection with the events company, and the complainant's suggestion that the events company was a 'front' for Bayer was completely misplaced. Likewise the representative in question had no personal connection with the events company and strongly refuted the allegation that she obtained a financial benefit, either directly or indirectly, from Bayer's sponsorship of the company.

The meeting was arranged and organised by the events company. Bayer and a devices company were only involved as financial co-sponsors of the meeting at the request of the events company; neither company had any direct involvement in the organisation of the event and in particular they had no influence over the selection of the speakers or the content of the meeting. As such Bayer had no reason to brief or enter into a contract with the speaker involved in this event. The company's sponsorship was clearly stated on the invitation and the agenda. Bayer noted that no delegate was asked to pay to attend this meeting. The £10 deposit requested by the events company was refunded to every delegate who attended on the day.

Bayer provided a copy of the invitation. As meetings approval was done electronically, the e-mail trail which demonstrated business manager approval of this meeting in line with Bayer's standard operating procedure (SOP) was provided as was the SOP-101 and the associated meeting authorization form. No follow up materials were issued after the meeting and therefore no approvals were required.

Bayer also provided a copy of the events company agenda. As this was an arm's length arrangement Bayer did not need to approve the speaker slides. However Bayer had obtained a copy of the slide set used by the speaker, an associate specialist from a local community sexual health team. As could be seen from the invitation and agenda the other topic was nicotine replacement; Bayer did not have a copy of those slides.

Bayer submitted that no materials were prepared for representatives and as such no approvals were carried out.

The meeting was attended by eighteen nurses and doctors. In terms of the tone of the meeting, the consolidated feedback supplied by the events company showed that the average score was 4.8/5 for the session which Bayer assumed the complainant had referred to. Bayer believed,

contrary to the complainant's view, that this suggested a very high degree of satisfaction from the delegates. If an individual was emotionally affected as suggested in the complaint this might have been a very good opportunity to make that known anonymously via the feedback questionnaire.

Having looked at the speaker's slides Bayer believed that they covered the whole range of long-acting reversible contraception methods as well as emergency contraception and oral contraception in a balanced way and did not mention Bayer's products by brand name, despite most of its competitors being mentioned by brand name.

Bayer stated that the representative was understandably deeply hurt by the complainant's comments that she'd been spoken to 'in an aggressive manner akin to a timeshare tout' and considered her professionalism had been questioned. The representative was at the meeting to ensure that the Bayer stand was set up in the correct place and that everything was there that was needed. The representative had spoken with only two delegates before the meeting started and on neither occasion did she consider she was aggressive or rude. One delegate was a GP that the representative knew and they discussed the recent death of the customer's father; the other delegate said 'Hello' to the representative and moved on to talk with her colleague without further conversation. The complainant mentioned that she was 'forced to speak with the representative after the meeting'. The representative had left the meeting by then so it was difficult to see how the complainant or indeed any other delegate could have been forced to speak with her.

Bayer had never doubted the representative's professionalism or integrity. She was a valued and highly competent member of Bayer's field based team and as such it was very surprised to see these allegations made against her.

The representative was employed as a healthcare development manager and as such a large part of her role required her to work with members of a PCT's management team such as pharmaceutical advisors and medicine management personnel. Bayer was therefore not surprised to hear that the representative worked with the local PCT. Like all Bayer's HDMs the representative worked within the Code and was updated to ensure compliance.

In summary, Bayer did not consider there were grounds to uphold the complaint. It denied the implication that the meeting or the representative's conduct failed to maintain the 'high standards' required by Clauses 9.1 and 15.2. Bayer also refuted that the meeting was disguised promotion (Clause 12.1). This was evidenced by the invitation, agenda and delegate feedback where both the subject matter and Bayer's sponsorship were clear and prominent (Clause 19.3). Therefore it followed

that Bayer also did not consider there to be any justification to support a breach of Clause 2.

In response to a request for further information Bayer confirmed the identity of the second representative attending the meeting and that he was present at the conclusion of the meeting and did speak with a number of delegates.

Bayer confirmed that the second representative spoke with a number of delegates throughout the course of the meeting and discussed the company's promoted brands in line with the Code. He remained at the Bayer stand throughout and thus the only customers he spoke to were those who had pro-actively approached the stand. He did not recall noticing any negative reaction from any delegate following his conversations with them.

Finally Bayer confirmed that neither representative invited health professionals or selected invitees.

PANEL RULING

The Panel noted that the meeting at issue was arranged by a commercial events company which invited Bayer and one other company to sponsor it. Bayer stated that it had no relationship with the events company other than to provide sponsorship for medical education events. According to Bayer it had no influence over the selection of speakers or the content of the meeting. Neither Bayer nor its representatives had invited guests and it had neither briefed nor entered into a contract with the speaker. The sponsorship invoice referred to meeting costs, speaker fees, room hire and refreshments.

The half day meeting was entitled 'Current Challenges in General Practice' and the agenda referred to two presentations: the first entitled 'IUD/IUS Update Workshop: Putting Contraception into Practice'. The second presentation was in a different therapy area. The front page of the invitation referred to Bayer's sponsorship.

The presentation delivered was entitled 'Intrauterine methods open Surgery' and presented seven patient scenarios and discussed treatment options: A range of devices were referred to including Nova-T380 produced by Bayer.

The first scenario advised that the National Institute for health and Clinical Excellence (NICE) guidance on long-acting reversible contraceptives identified copper devices containing 380mm² copper as 'the most effective.' Two devices, Tsafe 380A and TT380 slimline were described as 'WHO gold standard'. A photograph of each device was followed by a slide headed 'Cumulative pregnancy rates' which featured data for a range of devices and Mirena (levonorgestrel+IUD) which was a Bayer product. Subsequent scenarios referred to intrauterine devices produced by other manufacturers. Contrary to Bayer's submission its

products were mentioned by brand name.

There was no evidence before the Panel that the commercial events company was acting as Bayer's agent. Nonetheless the Panel did not consider that the arrangements for the meeting were at arm's length as described by Bayer. The Panel noted that the meeting was organised by a commercial events company, featured a presentation in an area of commercial interest for Bayer, was attended by two of its representatives and was partly sponsored by Bayer as set out in the invoice. In such circumstances the Panel considered that it was beholden upon Bayer to ensure that it was an appropriate meeting to sponsor and at the very least that the overall arrangements did not circumvent the requirements of the Code.

The Panel noted its comments about Bayer's role and responsibility in relation to the meeting as described above. The Panel noted that the front page of the invitation was headed at the top with the name of the events company and stated at the bottom of the page that the meeting was sponsored by Bayer Schering Pharma. The Panel considered that the design of the invitation and the declaration of sponsorship was such that Bayer's role was sufficiently clear. No breach of Clause 19.3 was ruled.

Whilst the presentation did mention Bayer's products such references appeared relevant to the scenarios described and the Panel did not consider that there was a disproportionate emphasis on them as alleged. Other products were referred to. In addition the Panel noted that the Code applied, *inter alia*, to the promotion of medicines to health professionals and appropriate administrative staff. Medicines were defined in Clause 1.3 as any branded or unbranded medicine intended for use in humans which requires a marketing authorization. The Code did not apply to the promotion of devices, save where the devices could only be used with a specific medicine. One slide, however, referred to Mirena which was a licensed medicine. Bayer had not submitted that the Code did not apply to the presentation. Irrespective of whether Bayer was responsible for the content of the presentation and taking all the circumstances into account the Panel did not consider that the presentation constituted disguised promotional material and no breach of Clause 12.1 was ruled. Noting its rulings above the Panel consequently ruled no breach of Clauses 9.1 and 2 in this regard.

The Panel noted that in relation to the complainant's allegation about her conversation with a representative the parties' accounts differed. It was difficult in such circumstances to determine precisely where the truth lay. The complainant was anonymous and non contactable. Anonymous complaints were accepted and like all complaints were judged on the evidence provided by the parties. The complainant had the burden of proving their complaint on the balance of probabilities.

The complainant alleged that, following the meeting whilst in conversation with the representative, she had felt undermined, compromised and very intimidated. Bayer, however, submitted that the representative identified by the complainant had spoken to just two delegates before the meeting started and had left by the end of the meeting. The second representative, had remained at the exhibition stand throughout the meeting and thus had only spoken to delegates who proactively approached him. According to Bayer he did not notice a negative reaction from any delegate following their interaction with him.

The Panel noted that great dissatisfaction was usually necessary on the part of a health professional before he/she was moved to submit a complaint. Nonetheless in such circumstances it was impossible to determine where on the balance of probabilities the truth lay. The Panel thus ruled no breach of Clauses 2, 9.1 and 15.2.

Complaint received **15 February 2011**

Case completed **7 April 2011**
