CASE AUTH/2533/10/12

ANONYMOUS v BAYER

Representative call rates

Someone who appeared to be a Bayer employee complained anonymously that Bayer HealthCare's incentive scheme for representatives encouraged three calls/visits on all target customers in the second half of the year regardless of previous activity. Part of a presentation detailing the scheme was submitted.

The detailed response from Bayer is given below.

The Panel noted that the Code stated that the number of calls made on a doctor or other prescriber each year should normally not exceed three on average excluding attendance at group meetings and the like, a visit requested by the doctor or other prescriber or a visit to follow up an adverse reaction report. Thus, although a representative might proactively call on a doctor or other prescriber three times in a year, there might be more than three contacts with that health professional in the year. Briefing material should clearly distinguish between expected call rates and expected contact rates. Targets should be realistic and not such that representatives breached the Code in order to meet them.

The Panel noted that the presentation at issue, Incentive Scheme H2 2012, and a second presentation relating to the consolidated objectives of the incentive schemes were emailed to representatives. The covering email referred to the current sales performance. The email did not refer to the Code or its requirements in relation to representatives calling on doctors and other prescribers.

The H2 incentive scheme had been introduced to deliver sales. The bonus pool per representative available for the second half of 2012 for 'on target' performance was stated; higher bonus payments could be achieved for overperformance.

The scheme was active July - December 2012, but coverage and frequency commenced in June. To achieve the highest bonus representatives had to see 80% of target customers at least once. Representatives were also rewarded if they saw 50% of target customers three times with a sliding scale for coverage below that.

The final slide of the presentation noted that the terms and conditions for the pre-existing H1 incentive scheme remained in effect and in case of questions a representative should contact his/her line manager. As with the covering email, the presentation did not refer to the Code or its requirements in relation to representatives calling on doctors and other prescribers.

The second presentation, sent to representatives with the one at issue and entitled 'Consolidation Objectives for H2', began by outlining the sales targets to be achieved by the end of 2012. The national expectations for the primary care representatives was that, *inter alia*, they would see 50% of target customers three times (or more including call backs or requests for visits), with 80% to be seen at least once between June and December 2012.

The Panel noted Bayer's submission that the presentation at issue made it clear that the terms and conditions for the H1 incentive scheme remained in effect. Bayer had submitted a document '2012 Primary Care Incentive Scheme including Terms & Conditions' dated March 2012. The document did not refer to any specific requirements of the Code or company standard operating procedures (SOPs) in relation to the frequency of calls on doctors or other prescribers.

The Panel noted Bayer's submission that as a result of sales force questions about the H2 incentive scheme a document detailing frequently asked question (FAQs) was produced and certified in September. One question was 'Having seen some contacts once or twice already this year, seeing them another three times is a challenge, especially when many don't attend meetings. Is conducting four to five unsolicited calls a year compliant?', to which the answer was 'You do need to ensure that you are conducting your activity within the limit of 3 unsolicited calls per year'. The Panel was concerned that this appeared to be the only reference to the requirements of the Code in relation to call rates in any of the material relating to both the H1 and H2 incentive schemes.

The Panel noted Bayer's submission that the sales force was provided with its SOP 'The ABPI Code of Practice for Representatives', which stated, *inter alia*, that representatives could only make three promotional calls per year on an individual prescriber. Contacts made at meetings and visits made in response to a request from the prescriber were in addition to the three proactive calls. In addition, a presentation given at the initial training course for all representatives referred, *inter alia*, to this SOP and stated 'Calls are proactive – no more than 3 per [health professional] per year'.

The Panel noted Bayer's submission that, with the benefit of hindsight, the requirements of the Code in relation to call rates could have been clearer in the presentation at issue. The Panel noted that neither the presentation nor the briefing material about the H2 incentive scheme referred to the specific requirements of the Code in relation to call rates.

Although initial representative training covered these requirements the Panel considered that the material about the H2 incentive scheme, including the presentation in question, should be capable of standing alone in relation to compliance with the Code. An FAQ document provided some explanation but this was produced some two months after the initial briefing on the H2 incentive scheme.

The Panel considered that the material in question advocated a course of action which was likely to breach the Code and in that regard the material did not maintain a high standard. Breaches of the Code were ruled. The Panel noted that the Code required representatives to ensure that, *inter alia*, the frequency of their calls on health professionals did not cause inconvenience. No evidence had been submitted to establish a breach in this regard and thus no breach of the Code was ruled.

The Panel noted that initial training and an internal SOP did refer to the requirements of the Code. Whilst the Panel was very concerned about the material at issue as reflected in its comments and rulings above, on balance, it considered that the circumstances did not warrant a ruling of a breach of Clause 2, which was reserved as a sign of particular censure. No breach of that clause was ruled.

Someone who appeared to be an employee of Bayer complained anonymously about Bayer HealthCare's incentive scheme for representative calls. The complainant was non-contactable.

COMPLAINT

The complainant provided a copy of slides about the incentive scheme and alleged a breach of the Code as the scheme encouraged three calls/visits on all target customers in the second half of the year regardless of previous activity.

The complainant highlighted certain sections of the slides. In relation to primary care, firstly that the scheme was active from 1 July until 31 December with coverage and frequency to start on 1 June.

The second section highlighted related to the activity of the primary care team:

- **Frequency activity scale:**
  - 50% * 3 visits on target customers = £[X]
  - 45% * 3 visits on target customers = £[Y] amounts stated
  - 40% * 3 visits on target customers = £[Z]

There was no explanation for the asterisk.

The complainant highlighted two sections from the key account manager (KAM) presentation:

Firstly,

- Scheme Active from July 1st – December 31st
  - Coverage and frequency to commence 1st June
- Inputs Paid at Year End 2012
- Outputs Paid Quarterly

Secondly,

- **Frequency activity scale:**
  - 75% * 3 visits on target customers = £[X]
  - 65% * 3 visits on target customers = £[Y] amounts stated
  - 55% * 3 visits on target customers = £[Z]

Again there was no explanation for the asterisk.

When writing to Bayer, the Authority drew attention to Clauses 2, 9.1, 15.4 and 15.9 of the Code.

RESPONSE

Bayer HealthCare stated that the incentive scheme was launched after a review of sales force performance during the first half of 2012. It was concluded that a greater focus on sales representatives' activity was required. The H2 incentive scheme was adjusted to increase coverage of customers in accordance with the revised objectives.

Bayer submitted that the attachment accompanying the complaint was an incomplete copy of a presentation regarding an incentive scheme H2 2012. The introductory slides had not been included. The complete presentation, 'Incentive Scheme H2 2012', was emailed to the sales force together with a document 'Consolidated Objectives for H2', as briefing materials in late July. The incentive scheme was active from July to December 2012 but included coverage and frequency from June 2012. The presentation made it clear that the terms and conditions for the H1 incentive scheme, as outlined in the briefing document '2012 Primary Care Incentive Scheme including Terms and Conditions', remained in effect. The briefing document had the following statements:

- Introduction & Scheme Details – 'The scheme helps to drive performance in a manner that meets with the requirements of the ABPI Code of Practice and internal SOPs'

- 2012 Objectives – 'Focus on Corporate Governance, the ABPI Code of Practice and "Hitting The Numbers" in the Right Way'

- Eligibility – 'Employees who breach any company policy or ABPI Code of Practice that leads to formal disciplinary action will have their "Hitting the Numbers" scheme payments reviewed and reduced/stopped in accordance with company guidelines'

Members of the sales force were asked to sign the briefing document to indicate that they had read, understood and agreed to the terms and conditions. The covering email to which the briefing materials were attached instructed the sales force to speak to their line manager if they had any queries.

Bayer submitted that sales force questions were collated and discussed by senior managers at weekly teleconferences in July/August 2012. As a result a draft frequently asked questions (FAQ) document was distributed in August 2012. The final FAQ was certified in late September 2012 and included the following two questions about coverage and frequency:

1 Question – 80% coverage with a frequency of three on target customers is usually a target given at the beginning of the year, is this objective achievable at this point in the year?

   Answer – The objective is to see 50% of target customers x 3 (or more including call backs or requests for visits), 80% to be seen at least once from 1st June to 31st December 2012. Conducting meetings will support this as meetings often provide an opportunity for a planning call, a call at the meeting itself and then a follow up call.

   N.B. A Call back is defined as a visit which is requested by a doctor or other prescriber or a call that is made in order to respond to a specific enquiry.

2 Question – Having seen some contacts once or twice already this year, seeing them another three times is a challenge, especially when many don't attend meetings. Is conducting four to five unsolicited calls a year compliant?

   Answer – You do need to ensure that you are conducting your activity within the limit of three unsolicited calls per year.

Bayer stated that the importance of not exceeding the maximum number of proactive calls and inconveniencing health professionals was emphasized in sales force training. All attended an initial training course (ITC) and engaged in continuing training for Code compliance and adherence with Bayer standard operating procedures (SOPs). The SOP 'The ABPI Code of Practice for Representatives' was provided together with the ITC presentation 'BHP SOP Training for New Starters, Field Force' and a copy of the sales force training record 'GM Sales Wellards training'.

With regard to Clause 15.9, Bayer submitted that the relevant enclosures were satisfactory. It was never Bayer's intention to encourage the sales force to exceed a maximum of three proactive calls on an individual health professional. Although this point and the importance of compliance was emphasized in training and other materials, with the benefit of hindsight, this could have been made clearer in the presentation 'Incentive Scheme H2 2012' distributed in July 2012.

In order to ensure that no more than three proactive calls were made on an individual health professional (Clause 15.4), all representatives kept a real time record of their calls on iPads via the electronic customer relationship management system. Call rates were frequently monitored by the sales leadership team.

Bayer did not believe that it had brought the industry into disrepute (Clause 2) or failed to maintain high standards (Clause 9.1). In support of this submission Bayer stated that no health professionals had complained that they had been inconvenienced by calls from the sales force.

PANEL RULING

The Panel noted that the supplementary information to Clause 15.4 stated that the number of calls made on a doctor or other prescriber each year should normally not exceed three on average excluding attendance at group meetings and the like, a visit requested by the doctor or other prescriber or a visit to follow up a report of an adverse reaction. Thus although a representative might proactively call on a doctor or other prescriber three times in a year, the number of contacts with that health professional in the year might be more than that. The supplementary information advised that briefing material should clearly distinguish between expected call rates and expected contact rates. Targets should be realistic and not such that representatives breached the Code in order to meet them.

The Panel noted that the presentation at issue, 'Incentive Scheme H2 2012' (ref UK.PH.GM.2012.057), and a second presentation relating to the consolidated objectives of the incentive schemes (ref UK.PH.GM.2012.055) were emailed to representatives. The covering email referred to the current sales performance and noted, *inter alia*, that:

> 'It is now vital that you, who are in critical customer facing roles, are freed up to maximise the number of target customers seen during the second half of 2012' and
>
> 'There is nothing more important than your time on territory, the number of target customers you see and your effectiveness in each call you make. The conclusions are very clear in the objectives outlined in the H2 objectives document'

There was no mention in the email of the Code or its requirements in relation to representatives calling on doctors and other prescribers.

The Panel noted that the complete presentation in question submitted by Bayer explained that the H2 incentive scheme had been introduced to deliver sales. The presentation explained the ratio of outputs (sales) and inputs (activities and projects) required and stated the bonus pool per representative (primary care, key account managers (KAMs) and healthcare development managers (HDMs)) available for the second half of 2012 for 'on target' performance. Higher bonus payments could be achieved for overperformance. This was not quantified. The incentive schemes for the HDMs, primary care teams and KAMs and RBMs were then outlined.

The presentation noted that 40% of each primary care representative's incentive would be paid on inputs and 60% on outputs. The scheme was active from 1 July until 31 December 2012, but coverage and frequency commenced on 1 June. To achieve the highest bonus representatives had to see 80% of target customers at least once and for less coverage there was a sliding scale of reduced payments. Each team had to achieve at least 40% coverage to qualify for any bonus. Representatives were also rewarded if they saw 50% of target customers three times with a sliding scale for coverage below that. Each team had to see at least 25% of target customers three times to qualify for any bonus. The incentive scheme for the KAMs was similar.

The final slide of the presentation was entitled 'Terms and Conditions' and noted that the terms and conditions for the pre-existing H1 incentive scheme remained in effect and in case of questions a representative should contact his/her line manager. As with the covering email, the presentation did not refer to the Code or its requirements in relation to representatives calling on doctors and other prescribers.

The second presentation which was sent to representatives with the one at issue was entitled 'Consolidation Objectives for H2' and began by outlining the sales targets to be achieved by the end of 2012. It noted, *inter alia*, the expectations for the primary care team and the KAMs. The national expectations for the primary care representatives was that, *inter alia*, they would see 50% of target customers three times (or more including call backs or requests for visits), with 80% to be seen at least once between 1 June and 31 December 2012. The slide covering the expectations of the KAM team covered the administrative expectations, meeting expectations and compliance expectations. The latter required, *inter alia*, a thorough knowledge of the Code and other appropriate guidelines including company SOPs, although no specific requirements were referred to.

The Panel noted Bayer's submission that the presentation at issue made it clear that the terms and conditions for the H1 incentive scheme remained in effect. Bayer had submitted a document '2012 Primary Care Incentive Scheme including Terms & Conditions' (ref UK.PH.GM.X.2012.055c) dated March 2012. It appeared that this document related to the general medicine team, although it was unclear whether it applied to the KAMs. The introduction stated that the scheme helped to drive performance in a manner that met with the requirements of the Code and internal SOPs. The objectives section required representatives to, *inter alia*, focus on corporate governance, the Code and 'Hitting The Numbers' in the right way. The document did not refer to any specific requirements of the Code or company SOPs in relation to the frequency of calls on doctors or other prescribers.

The Panel noted Bayer's submission that as a result of sales force questions about the H2 incentive scheme an FAQ document was produced and certified on 27 September (ref UK.PH.GM.2012.079). One question in the primary care representative section was '80% coverage with a frequency of 3 on target customers is usually a target given at the beginning of the year, is this objective achievable at this point in the year?'. The answer provided was 'The objective is to see 50% of target customers x 3 (or more including call backs or requests for visits), 80% to be seen at least once from 1st June to 31st December 2012. Conducting meetings will support this as meetings often provide an opportunity for a planning call, a call at the meeting itself and then a follow up call. On most territories there are [X] [primary care representatives] and there is also the support provided by the KAM's via the meeting in a box objective in order to drive the frequency that it required'.

A further question, which appeared in the KAM section of the FAQ document, was 'Having seen some contacts once or twice already this year, seeing them another three times is a challenge, especially when many don't attend meetings. Is conducting four to five unsolicited calls a year compliant?', to which the answer was 'You do need to ensure that you are conducting your activity within the limit of 3 unsolicited calls per year'. The Panel was concerned that this appeared to be the only reference to the requirements of the Code in relation to call rates in any of the material relating to both the H1 and H2 incentive schemes.

The Panel noted Bayer's submission that all of the sales force were provided with its SOP 'The ABPI Code of Practice for Representatives' (BHC-BP-UK-SOP-117) which stated in section 3.2.1.2, Call Frequency, *inter alia*, that representatives could only make three promotional calls per year on an individual prescriber. Contacts made at meetings and visits made in response to a request from the prescriber were in addition to the three proactive calls. In addition, a presentation given at the initial training course for all representatives (ref UK.PH.MG.2012.016), *inter alia*, referred to this SOP and stated 'Calls are proactive – no more than 3 per [health professional] per year'.

The Panel noted Bayer's submission that, with the benefit of hindsight, the requirements of the Code in relation to call rates could have been clearer in the presentation at issue. The Panel noted that neither the presentation in question nor the briefing material in relation to the H2 incentive scheme referred to the specific requirements of the Code in relation to call rates. Although initial representative training covered these requirements the Panel considered that the material about the H2 incentive scheme, including the presentation in question, should be capable of standing alone in relation to compliance with the Code. An FAQ document provided some explanation, however this was produced some two months after the initial briefing on the H2 incentive scheme.

The Panel considered that the material in question advocated a course of action which was likely to breach the Code. A breach of Clause 15.9 was ruled. The Panel noted that Clause 15.4 required representatives to ensure that, *inter alia*, the frequency of their calls on health professionals did not cause inconvenience. No evidence had been submitted to establish a breach of this clause and thus no breach of Clause 15.4 was ruled.

The Panel considered that by advocating a course of action which was likely to breach the Code, the material at issue did not maintain a high standard and a breach of Clause 9.1 was ruled.

The Panel noted that initial training and an internal SOP did refer to the requirements of the Code. Whilst the Panel was very concerned about the material at issue as reflected in its comments and rulings above, on balance it considered that the circumstances did not warrant a ruling of a breach of Clause 2, which was reserved as a sign of particular censure. No breach of that clause was ruled.

Complaint received	**11 October 2012**
Case completed	**27 November 2012**