

ANONYMOUS v OTSUKA

Conduct of an employee

An anonymous, non-contactable complainant alleged that a male employee of Otsuka Pharmaceuticals (UK) behaved inappropriately and provided inappropriate hospitality following a dinner at a meeting partly funded by the pharmaceutical industry. The complainant stated that he/she went from the private function area at a hotel where dinner had been held to the public hotel bar and noticed three Otsuka employees. Descriptions were provided. A female health professional, who the complainant remembered as being very drunk at the dinner, subsequently entered the bar and started talking to the Otsuka employees. Although she was obviously intoxicated a male Otsuka employee continued to ply her with drinks; his two female colleagues seemed unhappy with this.

A fourth Otsuka employee joined the female employees and this group seemed concerned about the conduct of their male colleague. The body language between the male Otsuka employee and the health professional became more intimate and flirtatious and after a number of drinks being bought by the male in question for the female health professional the two left the bar.

The complainant alleged that the conduct of the male Otsuka employee breached Clause 2; the health professional was obviously intoxicated and by continuing to buy her more drink he put her at risk and potentially brought the industry into disrepute.

The detailed response from Otsuka is given below.

The Panel noted that the Code set out detailed requirements in relation to meetings and in particular the provision of subsistence and made it clear that it should be the programme that attracted delegates and not the associated hospitality or venue. The supplementary information also stated that a useful criterion in determining whether the arrangements for any meeting were acceptable was to apply the question 'would you and your company be willing to have these arrangements generally known?'. The impression created by the arrangements for any meeting must always be kept in mind.

The Panel noted that the identity and professional status of the woman in question was unknown although according to Otsuka she had described herself as a researcher. Overall it appeared that the woman was a delegate at the meeting. The Panel disagreed with Otsuka's submission that a researcher was neither a health professional, nor a relevant decision maker and thus the relevant provisions in the Code about meetings would not apply. In the Panel's view, irrespective of whether a researcher was a health professional,

relevant decision maker (2015 Code), appropriate administrative staff (2014 Code) or member of the public, subsistence should meet the requirements of the Code in relation to meetings. This was particularly relevant as from the company's submission it was clear that it did not know the woman in question and she could have been a health professional.

The Panel accepted that company employees would want to wind down at the end of a full day at a meeting. The employees were at the conference venue as representatives of their company and as such they should continue to be mindful of the impression created by behaviour beyond the formal meeting and any associated meetings/subsistence. This was particularly important when interacting with UK health professionals and especially so in a late-night social environment.

The Panel noted that whilst there were some differences between the complaint and the company's response, including between the statements of relevant staff, there was overall much agreement. All staff present at the bar agreed that the woman had approached the senior male Otsuka employee, that she appeared intoxicated and that the senior employee required two colleagues to each buy her a drink during the evening. According to Otsuka this was contrary to company procedures which required subsistence to be purchased by the senior member of staff present which would be the man in question. One of the employees purchased two small glasses of wine at the woman's request; the other employee, contrary to the senior employee's instruction, bought her a glass of water. In addition, one member of staff referred to the woman and male employee each holding a drink prior to the aforementioned purchases. It was unclear who had purchased these. One employee said that when she came to the bar from her bedroom the senior employee bought her a drink. The account of the fourth Otsuka employee, who subsequently joined the group, was consistent.

The Panel considered that the Otsuka employees would have known that delegates from the adjoining dinner, including UK health professionals, would have been in the hotel bar and should have been mindful of the impression created by any interaction with them and aware of the public nature of their behaviour. A number of employees referred to talking to customers in the bar. The drinks were purchased by a pharmaceutical company for someone who had attended the meeting's dinner. The Panel queried whether a shared late night social environment could ever be appropriate and in particular did not consider that it was an appropriate environment for the senior employee, who was relatively new to the

therapy area, to be introduced to relevant health professionals.

In the Panel's view, the purchase of drinks for the woman in question in such circumstances was contrary to the requirements of the Code and a breach was ruled. It could not be argued that the purchase was part of the subsistence provided at the meeting. High standards had not been maintained; a further breach was ruled.

The Panel noted its rulings above and was particularly concerned about the impression given by the senior Otsuka employee organising the purchase of drinks for a delegate who was by all accounts intoxicated. The Panel noted the descriptions of the behaviour of both the senior employee and the delegate in question whilst in the public bar. The Panel considered that overall the matter brought discredit upon and reduced confidence in the pharmaceutical industry. A breach of Clause 2 was ruled.

An anonymous, non-contactable complainant was concerned about the conduct of an Otsuka Pharmaceuticals (UK) Ltd employee following the dinner at a British clinical group meeting which took place in Ireland in January 2015.

COMPLAINT

The complainant stated that he attended the gala dinner held on the Thursday evening. The meeting was held in a private area, away from the general public and was funded by health professionals and the pharmaceutical industry.

During the evening the complainant stated that he/she left the private function area and went to the hotel bar which was open to all including the public. At the bar the complainant stated that he/she noticed three individuals, two of whom he/she knew worked for Otsuka and the third the complainant found out later also worked for Otsuka. Descriptions were provided. During the evening a health professional entered the bar; the complainant named the hospital where he/she believed the health professional worked. The complainant particularly remembered the individual as she was very drunk at the dinner. Whilst at the bar she struck up a conversation with the Otsuka employees. Despite the fact that she was obviously intoxicated a male Otsuka employee continued to ply her with drinks. The two female employees seemed unhappy with this and comments were exchanged.

The complainant stated that a fourth Otsuka employee joined the two females. This group of three seemed concerned and a number of looks and comments were made regarding the conduct of the male in question. During the evening the body language between the male and the health professional became more intimate and flirtatious. Eventually after a number of drinks having being bought by the male in question for the female health professional they left the bar within minutes of each other.

The complainant stated that it was not for him/her to comment on the action of two individuals and what might or might not have transpired at the end of the evening. However he/she alleged that the Otsuka employee made a clear breach of Clause 2. The health professional was obviously intoxicated when entering the public bar, yet Otsuka continued to provide her with more drink, putting her at risk and potentially bringing the industry into disrepute.

When writing to Otsuka the Authority asked it to bear in mind the requirements of Clauses 2, 9.1 and 22.1 of the 2015 Code. Although the alleged incident took place during the transition period between the 2014 Code and 2015 Code, the relevant requirements of both Codes were the same. This case would thus be considered under the 2015 Code.

RESPONSE

Otsuka submitted that it set high ethical standards for all employees and expected them to be maintained at all times so it was disappointed to receive such a complaint, particularly from an anonymous complainant.

Otsuka investigated the events of the night of the alleged incident and the level of hospitality offered to health professionals attending the dinner.

There were five Otsuka UK personnel at the meeting, a senior employee and four managers. The senior employee was at the meeting throughout and was responsible for managing the UK team, managing the promotional stand, ensuring that the Otsuka symposium was delivered to plan and, as he was relatively new to the area, meeting some of the health professionals at the meeting.

Otsuka UK had also sponsored two health professionals, one from the UK and another from Italy to attend the meeting and to present at the Otsuka symposium. The sponsorship included economy flights, accommodation, registration and subsistence in line with Clause 22.1. Otsuka stated that it had no involvement in the arrangements for, or the sponsorship of, the gala dinner although it did purchase two tickets for it.

On the night of the alleged incident two managers attended the dinner whilst the senior employee and the two other managers took the two sponsored health professionals for a meal as part of subsistence. On return to the hotel the health professionals and one manager went to their rooms. The other four Otsuka UK employees met in the public bar. Otsuka noted the complainant's description and stated it was clear that the complainant was referring to this group.

Both before and after dinner, a few drinks were bought at the public bar by the Otsuka UK team for their consumption. There were also two glasses of wine bought for the woman as described; none for the sponsored health professionals or any other health professional. The bar bill for all four employees throughout the evening was £127. Having reviewed the individual bills, as well as the

drinks price list of the hotel, Otsuka submitted that this equated to around four drinks per employee throughout the course of the evening (pre- and post-dinner).

Each of the Otsuka employees who were in the bar was interviewed separately by the company and transcripts of their description of the evening were provided. Otsuka submitted these were generally consistent with each other and with the complainant's version of events. They all referred to the woman who appeared to have been drinking and approached the senior employee in the public bar. She was flirtatious and tactile and the senior Otsuka employee in question spent some time talking to her. He also asked one of the managers to buy drinks for the woman, which the manager did. Lastly, there was consistency in that the woman left the public bar on her own and that the senior employee left the bar to go to his room shortly afterwards. However, Otsuka submitted there were two important factual differences between the interviewees and the complainant's versions of events.

- 1 The woman who was alleged to be a health professional by the complainant described herself to the Otsuka staff as a researcher at a named UK hospital.
- 2 The drinks bought for this woman were two small glasses of wine (one red, one white) and a glass of water. These were ordered and paid for by an employee at the request of the senior employee.

Otsuka submitted that the meeting was a multidisciplinary meeting attracting health professionals from many specialties, but also basic scientific researchers in oncology. Such researchers were not all 'health professionals' as defined by Clause 1.4 of the Code as they would not, in the course of their professional activities, administer, prescribe, purchase, recommend or supply a medicine, nor would they all be considered as 'other relevant decision makers' as defined in Clause 1.5.

Otsuka did not deny that the senior employee spoke to a woman in the public bar nor that she was flirtatious and tactile. It was also clear that the senior employee asked a member of his team to purchase alcoholic drinks for this woman, on her own request, and two small glasses of wine were purchased by an employee. These facts (corroborated by all interviewees) were not consistent with the complainant's assertion that 'despite the fact that she was obviously intoxicated the senior male Otsuka employee continued to ply her with drinks'.

Even if the woman were a health professional, which was denied, Otsuka did not believe that this was an unreasonable level of hospitality to provide in the course of an evening associated with a scientific meeting. Thus Otsuka submitted that the senior employee's actions did not constitute a breach of Clause 22.1, were it to apply to this case.

Although there was consistency in the accounts that the woman was flirtatious and tactile, the evidence of how the senior employee behaved towards her

was inconclusive and neither the complainant nor the Otsuka employees present heard any of the conversation between the two parties. Accordingly, there was no clear evidence that he acted inappropriately. Therefore, Otsuka submitted that his actions did not constitute a breach of Clause 9.1, were it to apply to this case.

As this was an anonymous complaint and the name of the woman was not provided and she was not known by any of the Otsuka UK employees, there was no way to confirm whether she was a health professional or other relevant decision maker. Since Otsuka UK was of the view that the woman was not a health professional, or other relevant decision maker, the fact that the senior employee asked a direct report to buy her drinks, paid for by Otsuka UK, had resulted in the company commencing an internal disciplinary process.

In the circumstances, Otsuka submitted that the complainant had not established a prima facie case for it to answer.

PANEL RULING

The Panel noted that the complainant was anonymous and non-contactable. As stated in the introduction to the Constitution and Procedure, anonymous complaints were accepted and like all complaints, judged on the evidence provided by the parties. Complainants had the burden of proving their complaint on the balance of probabilities. The Panel noted that it was not possible to ask the complainant for further information.

Clause 22.1 stated that hospitality must be strictly limited to the main purpose of the event and must be secondary to the purpose of the meeting ie subsistence only. The level of subsistence offered must be appropriate and not out of proportion to the occasion. Clause 22.1 applied to scientific meetings, promotional meetings, scientific congresses and other such meetings and training. The supplementary information to Clause 22.1, in addition, referred, *inter alia*, to training and investigator meetings for clinical trials. The supplementary information also made it clear that the provision of hospitality was limited to refreshments/subsistence (meals and drinks), accommodation, genuine registration fees and the payment of reasonable travel costs which a company might provide to sponsor a delegate to attend a meeting. In determining whether a meeting was acceptable or not consideration needed to be given to the educational programme, overall cost, facilities offered by the venue, nature of the audience, subsistence provided and the like. It should be the programme that attracted delegates and not the associated hospitality or venue. The supplementary information also stated that a useful criterion in determining whether the arrangements for any meeting were acceptable was to apply the question 'would you and your company be willing to have these arrangements generally known?'. The impression that was created by the arrangements for any meeting must always be kept in mind.

The Panel noted that in addition to the requirements in the Code regarding meetings and the provision of hospitality companies were required to have a written document setting out their policies on meetings and hospitality and associated allowable expenditure. The Panel noted that company policies and procedures had to be in line with the Code. A company's policies might be even more restrictive than the Code.

The Panel noted that there was a discrepancy regarding that date of the gala dinner. The complainant stated it was on a Thursday. Otsuka stated it was on a Wednesday. The Otsuka employees stated it was on a Thursday. The Panel noted the identity of the woman in question was unknown and thus it was not possible to confirm her professional status. According to three of the four unsigned witness statements provided by Otsuka the woman had described herself as a researcher from a named UK hospital. The fourth witness statement referred to the presence of the woman in question at the dinner and subsequently at the bar. Other witness statements also made reference to the woman at the gala dinner and at educational parts of the meeting. It thus appeared that the woman was a delegate at the meeting. The Panel disagreed with Otsuka's submission that a researcher was neither a health professional, nor a relevant decision maker and thus Clause 22 would not apply. The Panel noted that the supplementary information to Clause 22.1 Meetings and Hospitality referred to investigator meetings for clinical trials at which, in the Panel's view, researchers might be present. The Panel noted that the supplementary information to Clause 26.2, Information to the Public stated that meetings organised for or attended by members of the public, journalists and patient organisations must comply with Clause 22. Similar requirements also applied to patient organisation meetings supported by pharmaceutical companies (Clause 27.2). Thus, Clause 22 was of broader application than inferred by Otsuka and applied to meetings irrespective of whether the attendees were health professionals or journalists or other members of the public. Thus, in the Panel's view, irrespective of whether a researcher was a health professional, relevant decision maker (2015 edition of the Code), appropriate administrative staff (2014 Code) or member of the public subsistence should meet the requirements of Clause 22.1. This was particularly relevant as the company's submission was clear that the woman was not known to them and she could of course have been a health professional.

The Panel noted that the provision of hospitality and other interactions between the pharmaceutical industry and health professionals outside the formal meeting proceedings was a subject that attracted much public scrutiny and criticism. Companies should be mindful of the impression given by such interactions and ensure that when applicable such activity complied with the UK Code. The meeting took place in Ireland and thus other codes might also be relevant.

The Panel accepted that company employees would want to wind down and discuss conference matters

at the end of a full day at a meeting. The employees were in the conference city as representatives of their company for business reasons and as such they should continue to be mindful of the impression created by behaviour beyond the formal meeting and any associated meetings/subsistence. This was particularly important when interacting with UK health professionals and especially so in a late-night social environment.

The Panel noted that whilst there were some differences between the complaint and the company's response, including between the statements of relevant staff, there was overall much agreement. All staff present at the bar agreed that the woman had approached the senior male Otsuka employee and all agreed that she appeared intoxicated. It was also agreed that the senior male Otsuka employee required two female employees to each buy her a drink at different points in the evening. According to Otsuka this was contrary to its SOP which required subsistence to be purchased by the senior member of staff present which would be the man in question. One of the employees purchased two small glasses of wine at the woman's request; one red and one white. Subsequently, the other employee and contrary to the senior employee's instruction provided the woman in question with a glass of water. In addition, one member of staff referred to the woman and male employee in question each holding a drink prior to the aforementioned purchases. It was unclear who had purchased these. One employee stated that when she came to the bar from her bedroom the senior employee bought her a drink. The account of the fourth Otsuka employee, who subsequently joined the group, was consistent.

The Panel considered that the Otsuka employees would have known that delegates from the adjoining gala dinner including UK health professionals would have been in the hotel bar and should have been mindful of the impression created by any interaction with them and aware of the public nature of their behaviour. A number of employees referred to talking to customers in the bar. The drinks were purchased by a pharmaceutical company for someone who had attended the dinner. The Panel queried whether a shared late night social environment could ever be appropriate and in particular did not consider that it was an appropriate environment for the senior employee who was relatively new to the therapy area to be introduced to relevant health professionals.

In the Panel's view, the purchase of drinks for the woman in question in such circumstances was contrary to the requirements of Clause 22.1 of the Code. It could not be argued that the purchase was part of the subsistence provided at the meeting. A breach of Clause 22.1 was ruled. High standards had not been maintained. A breach of Clause 9.1 was ruled.

The Panel noted its rulings above and was particularly concerned about the impression given by the senior Otsuka employee organising the purchase of drinks for a delegate who was by all accounts

intoxicated. The Panel noted the descriptions of the behaviour of both the senior employee and the delegate in question whilst in the public bar. The Panel considered that overall the matter brought discredit upon and reduced confidence in the pharmaceutical industry. A breach of Clause 2 was ruled.

Complaint received **17 March 2015**

Case completed **28 April 2015**
