CASE AUTH/2195/12/08 GENERAL PRACTITIONERS v OTSUKA

Conduct of representative

COMPLAINT

A general practice complained about an email sent by a representative from Otsuka Pharmaceuticals (UK) Ltd to the practice manager.

The representative had been allowed to come to the surgery on numerous occasions and the practice was extremely distressed to find that this was how she viewed the GPs within it. She also referred to the assistant practice manager as well although not by name. This sort of communication was not appropriate and was intolerable. As a direct result the practice wished to have neither the representative in question nor any other from Otsuka on its premises again.

The part of the email at issue stated:

‘I am still up and working! I was so sad to hear what hell you have being going through. In the business that I am in. I have to deal with arseholes like this all the time! Always out for their best interest and step on anyone to achieve their goals. Well my view point is that she has got to be shagging one of the GPs! Anyway, its shoite going through all of this, but you must remember, that you are a really good person, filled with concern and kindness for others. I believe in Karma, what goes around comes around! She has behaved really badly. I am telling you now; this will come back to the GPs, when they wonder why they are losing money. A good practice manager needs a shit load of skills, which you have in abundance. You leaving will be a good thing in the end, as she will be so ill equipped to deal with anything from a strategic level. I have seen this time and time again. One leaves and there the worst person ever. Another takes over, and they cannot do the job. Well GPs………. I think it may be expedient to stop here! Ha What is the saying ? Yes……. Take heart! God you two are so young! Such an opportunity! The children are grown up………..OMG, this could turn into such an adventure for you both, you could grow your beard, buy a camper van! How ace is that! She has done you a huge favour! Trust me! I personally believe that we are sprits going on a human journey. I work with loads of reps and they are the most self absorbed arseholes that I have ever met in life, oh and doctors, interested in what is in it for me etc. You must see this event as an absolute opportunity for you and your loved one to take stock and do. If you are unsure what you want to do, just sit on your own, by yourself, for as long as it takes, and it will come to you. Trust me! ……’

The email had been sent in response to an email from the practice manager requesting financial support for the purchase of medical equipment.

When writing to Otsuka, the Authority asked it to respond in relation to Clauses 2, 8.2 9.1 and 15.2 of the Code.

RESPONSE

Otsuka stated it received a copy of the complaint from the practice together with a copy of the email from its representative on 15 December. The representative had also alerted her manager to the potential for a customer complaint. The managing director was greatly disturbed to read the correspondence. To discover that a representative could behave in such a manner was extremely shocking and disappointing. On receipt of the complaint a meeting with the representative and her line manager took place to identify and clarify the facts. It appeared that the representative had a personal friendship with the recipient.

The representative had previously worked in several practices within the area as a locum primary care manager and as such developed a close network of colleagues which she maintained after she left to work as a representative. She believed that she was conducting a personal communication by sending an email in her own time (circa 2:30am) which was intended as a message of support and which did not refer to the company, a company product or any business matters. The understanding was that the recipient was away and that their email account had been set to redirect messages in their absence, which was how the message came to the partners’ attention. The behaviour was completely out of character; the company had no reason in the past to be concerned about this representative or her performance. Recently she had a number of personal issues ongoing and these might have impaired her judgement. The company had been unable to confirm this point of view. The representative’s use of company equipment and systems to transmit her opinions was entirely unacceptable and infringed IT policy. This policy allowed incidental personal use but stated that such emails were subject to the same guidelines as business emails. It specifically prohibited the use of ‘profanity, obscenity, slander or libel’. The policy was given to all staff during their company induction and they had to read and sign their agreement. On the basis of the initial fact-finding meeting it was clear that there was sufficient information to instigate disciplinary proceedings. A formal disciplinary meeting was held, the outcome of which was that the representative was to be dismissed. However, the representative subsequently resigned.

After concluding the disciplinary proceedings and given the seriousness of the matter Otsuka wrote to the practice to apologise and express its concern over the behaviour of the representative. Otsuka advised the action taken and the resulting outcome. Otsuka received a reply accepting the prompt action and agreeing to accept representatives from the company in the future. The practice mentioned that it viewed the actions being of an individual and that the matter had been resolved with no ill feeling towards the company.

As a result of this matter the company reminded all staff of their responsibilities when using email in terms of both the Code and its own internal email policy. A copy of Otsuka’s IT policy for review and further agreement had been sent to them. The company was updating this document so further training would be expected when available. This would be followed with additional Code training, with a focus on conduct and appropriate use of email.

The company was extremely disappointed about the behaviour of the individual. As an organisation it aimed to work to ethical and professional standards, in line with its Japanese heritage. Staff were carefully recruited and turnover was low. Representatives were trained on the Code during their initial training course and regularly updated. It had had no such complaints in the six years in which Otsuka had operated in the UK. Its record with regard to the Code was a good one with few complaints.

Otsuka acknowledged that the representative did not maintain high standards in breach of Clause 15.2, and, in line with its responsibilities under the Code the company accepted responsibility for this representative’s actions. The representative’s comments disparaged practice staff in breach of Clause 8.2. As a result of the representative’s action and despite Otsuka’s best efforts it acknowledged the company had failed to maintain high standards on this occasion in breach of Clause 9.1. There might have been some mitigating circumstances in this case. Nevertheless, it acknowledged, with very deep regret, that on this occasion this representative’s conduct fell short of being competent care for her customers. Her actions had discredited the company and the industry in breach of Clause 2.

To conclude, Otsuka was genuinely sorry for these breaches of the Code, especially the breach of Clause 2. The actions it had taken demonstrated the level of commitment to the Code, the seriousness with which it regarded such breaches, and that such behaviour and non-compliance would not be tolerated in Otsuka.

PANEL RULING

The Panel was extremely concerned about the content of the email from the representative to the practice manager. The Panel noted that the representative was a personal friend of the recipient. Representatives had to be extremely careful in such circumstances to ensure that all relevant communication was appropriate. The email had been sent from one work email address to another. It addressed matters which had arisen within the recipient’s practice and which were thus related to the representative’s professional role. The representative had made comments about the GPs in the practice which the Panel considered were disparaging and a breach of Clause 8.2 was ruled.

The representative had not maintained a high standard of ethical conduct. The email was most unprofessional. Nor had the representative complied with relevant requirements of the Code. A breach of Clause 15.2 was ruled.

The Panel also ruled a breach of Clause 9.1 as high standards had not been maintained. The Panel noted that Otsuka had acknowledged these breaches of the Code. With regard to Clause 2, the Panel noted that it was used as a sign of particular censure and reserved for such use. The supplementary information to Clause 2 gave examples, including when conduct of employees fell short of competent care.

The Panel was extremely concerned about the email in question. The representative was acting outside company instructions but this was the company’s responsibility. On balance the Panel did not consider that the circumstances warranted a ruling of a breach of Clause 2.

Complaint received 22 December 2008

Case completed 12 February 2009