

ANONYMOUS v SOBI

Email sent by a medical science liaison (MSL)

An anonymous, non-contactable individual alleged, on behalf of a hospital haematology team, that an unsolicited email sent to his/her NHS email address by a named employee of Swedish Orphan Biovitrum Ltd (Sobi) was inappropriate. The complainant believed the email was sent to gain an interaction/meeting at a time that was not appropriate given the workload health professionals were currently working under addressing the response to COVID-19. The complainant did not know the Sobi employee and so was surprised to receive the email.

The complainant considered that the person who sent the email had acted in poor judgement and thus placed a burden on the haematology team. The complainant stated that if he/she required information or data from Sobi he/she would contact the medical information department and request it. The complainant noted that patients were currently asked only to visit the hospital department in an emergency, so there were many emails from them to deal with; the team did not need additional unrequested emails from pharmaceutical companies trying to offer their services. The complainant believed by just sending the email the representative had promoted his/her product and services at a time when the team had made it clear that such was not welcomed.

The detailed response from Sobi is given below. Sobi confirmed that the named employee was a medical science liaison (MSL) and provided redacted copies of relevant emails.

The Panel noted that the complainant had not provided a copy of the email that he/she received. The Panel also noted that the complainant had referred to emails promoting products/services being unwelcome but had provided no details as to how such a view had been communicated to pharmaceutical companies.

The Panel noted that a Sobi medical department communication to Sobi staff (12 March 2020) listed several hospitals that had started to limit on-site access due to COVID-19 and advised staff to respect those restrictions and to contact health professionals ahead of time to confirm if planned face-to-face activities within those trusts could still go ahead.

The Panel noted that Sobi briefed medical staff on 26 March with a suggested template for a Sobi medical contact email to be sent to their assigned health professionals. The intent was to show professional support and care, so health professionals did not feel suddenly abandoned. Staff were advised to adapt the communication as appropriate eg if they already had a relationship with the health professional then they should specifically reference it in the email. Staff were reminded to ensure that their communication was permitted (ie the recipients were on the customer relation management (CRM) system), and that the message overall was short, professional,

respectful, accurate and non-promotional. The email recommended that medical staff contact everyone they had seen/engaged with in the past 6 months and also those health professionals at sites where interaction was planned/expected in the next three months.

The Panel noted that although the redacted copies of the emails sent by the MSL differed slightly to account for personal circumstances from the template suggested by Sobi, they did not differ in substance. Before stating his/her name, the MSL had stated 'Hopefully we can meet in the future'.

The Panel noted its comments above and did not consider that the email briefing with the suggested email template advocated any course of action which would be likely to lead to a breach of the Code. Staff were given guidance on adapting the template, when to send the 'Making contact' email, who to send it to and to ensure that the message overall was short, professional and non-promotional. The Panel therefore ruled no breach of the Code.

The Panel noted that the complainant had not provided evidence that the email he/she had received was inappropriate. The redacted copies of the emails sent by the MSL and provided by Sobi had closely mirrored the suggested template and did not differ in substance. Although the emails referred to a hope of meeting in the future, the Panel did not consider that the emails placed a burden on recipients as alleged. There was no reference to products as implied by the complainant. The complainant had not provided any evidence to show that the MSL should have known that, at the time, the hospital team did not welcome such emails. Overall, the Panel did not consider that it had evidence before it to suggest that, in sending the emails, the MSL had not maintained a high standard of ethical conduct; no breach of the Code was ruled.

The Panel noted its comments and rulings above and considered that high standards had been maintained; no breaches of the Code were ruled including of Clause 2.

An anonymous, non-contactable individual complained, on behalf of a hospital haematology team, about an unsolicited email sent to his/her NHS email address from a named individual in the medical department of Swedish Orphan Biovitrum Ltd (Sobi). The complainant did not provide a copy of the email. Sobi focussed on rare diseases in haematology and immunology.

COMPLAINT

The complainant stated that some of his/her colleagues agreed that the email was not appropriate in the current climate. The complainant stated that he/she had clear guidance that the doctors and nurses, currently under great stress due to the workload addressing the response to COVID-19, were not to be contacted.

The complainant believed the email in question was sent to gain an interaction/meeting with him/her and his/her team at a time that was not appropriate. The complainant did not welcome this type of communication at this time and believed that the Sobi employee had sent this as a blanket email to everyone who might be interested in his/her product. The complainant personally did not know the Sobi employee and so was surprised to receive the email. The complainant stated that he/she would also be interested to know who else had received the email.

The complainant considered that the person who sent the email had acted in poor judgement and thus placed a burden on the haematology team at the hospital (the complainant referred to the geographical location of the hospital). The complainant stated that if he/she required information or data from Sobi he/she would contact medical information and request it. The complainant noted that patients were currently asked only to visit the hospital department in an emergency, so there were many emails from them to deal with; the team did not need additional unrequested emails from pharmaceutical companies trying to offer their services. The complainant believed by just sending the email the representative had promoted his/her product and services at a time when the team had made it clear that such was not welcomed.

The complainant stated that he/she strongly believed that the medical representative had shown very poor judgment and should recall his/her email and provide a blanket apology to whomever had received it.

The complainant stated that he/she would take the matter up with the clinical director at his/her trust.

When writing to Sobi, the Authority asked it to consider the requirements of Clauses 15.2, 15.9, 9.1 and 2 of the Code.

RESPONSE

Sobi noted that the complainant was concerned about receiving an unrequested email and considered that it was inappropriate in the current climate. The complainant also stated that he/she had clear guidance that health professionals should not be contacted during the current COVID-19 environment. However, as neither a copy of the alleged email nor a copy of the guidance referred to by the complainant had been provided it was difficult to provide specific responses to the allegations. It appeared that no evidence to support the allegations of breaches of the Code had been provided.

Sobi noted that the complainant considered that the email was sent to gain an interaction/meeting with him/her and his/her team, and that it had been sent as a blanket email to everyone who might be interested in the Sobi employee's product. The complainant reported that he/she shared the email content with other colleagues but did not report if any of the colleagues had received the same email directly from a Sobi employee. Sobi noted that the complainant had not provided any evidence to support his/her assertion that it was a blanket email.

Sobi further noted the complainant's view that just by sending the email, the Sobi employee had promoted a product and services at a time when it had been made clear it was not welcomed.

Sobi noted that the employee named by the complainant was a medical scientific liaison (MSL) and that upon reviewing all recent emails sent by him/her, he/she had not sent any unsolicited emails requesting a meeting to any hospital haematology unit in the named geographical location since 1 March. The employee used an email template to send personalised emails to seventeen health professionals in the particular geographical location to inform them that ongoing support was available from the Sobi medical team via the MSL, whilst now working from home. This approved email template was created for the medical team, it was non-promotional in content and intent and made no request for a meeting or interaction. The template email offered the services of the MSL in relation to medical/scientific questions; it did

not promote any specific medical services, nor mention any product. This activity was permissible within the Code. Sobi believed there was no breach of Clauses 15.2, 15.9 or 9.1.

Sobi noted the complainant's concern that the email was sent in poor judgement and had placed a burden on the hospital staff and the allegation that the email was a way of trying to get to see him/her or his/her team at a time that was not appropriate. The complainant had stated that his/her team did not need additional unrequested emails from pharmaceutical companies trying to offer services.

Sobi stated that whilst it was troubled to read the allegation and the upset described by the complainant, he/she had provided no evidence that the haematology team had been sent additional unrequested emails nor of content that was a way of trying to see them. Sobi stated that since the beginning of pandemic, it had received a significant number of enquiries from health professionals in relation to a range of topics, from medicines supply, safety of medicines during COVID-19, clinical trials and educational support for those self-isolating or unable to work for other reasons. In response to this, and because there had been recent staff changes within the medical team, a template email was produced, to be sent as a support and introduction email. Sobi had received warm and grateful responses from several health professionals in response to messages that used the email template. Therefore, Sobi believed there had been no breach of 15.2, 15.9 or 9.1.

Further, Sobi stated that it was acutely aware of the extremely challenging time that the NHS and its staff were experiencing in relation to COVID- 19. Prior to instructing Sobi field teams (medical and commercial) to work from home from 16 March, the company was already instructing field teams to follow the guidance that was coming out on a regular basis from hospital trusts about their individual restrictions on site.

Sobi stated that its submission above demonstrated that it had, throughout, taken its responsibilities and commitment to the Code, both in spirit and in letter, seriously. Sobi believed there was no evidence of a breach of Clause 2.

Sobi provided copies of the seventeen emails sent by the named employee to hospitals in the geographical location identified by the complainant. Personal details had been redacted.

PANEL RULING

The Panel noted the complainant's allegation that an email was sent to gain an interaction/meeting with him/her and his/her team at a time that was not appropriate. The Panel noted that the parties' accounts differed in this regard.

The introduction to the Constitution and Procedure stated that a complainant had the burden of proving his/her complaint on the balance of probabilities. The Panel noted, however, that a high degree of dissatisfaction was usually required before an individual was moved to submit a formal complaint. The Panel noted that the complainant had not provided a copy of the email that he/she received so the Panel did not know what it stated. The Panel also noted that the complainant had referred to emails promoting products/services being unwelcome but had provided no details as to how such a view had been communicated to pharmaceutical companies.

The Panel noted that a Sobi medical department communication to Sobi staff, sent on 12 March 2020, listed several hospitals that had started to limit on-site access due to COVID-19 and advised staff to be respectful of the restrictions in place at those hospital trusts and to contact health professionals ahead of time to confirm if planned face-to-face activities within those trusts could still go ahead.

The Panel noted that Sobi further emailed a briefing to medical staff on 26 March with suggested wording for a Sobi medical contact email to be sent to their assigned health professionals within the following 10 days. The intent was to show professional support and care, so the health professionals did not feel suddenly abandoned. Staff were advised to adapt the communication as appropriate, ie where they already had some kind of relationship with the health professional, then they should specifically refer to it in the email. Staff were reminded to ensure that their communication was permitted (ie the recipients were on the customer relation management (CRM) system), and that the message overall was short, professional, respectful, accurate (no typos) and non-promotional. The email recommended that medical staff contact everyone they had seen/engaged with in the past 6 months and also those health professionals at sites where interaction was planned/expected in the next three months. The suggested wording stated:

‘Email title: Making contact – from Sobi UK&ROI medical team

Dear “Dr/ name”,

I realise that your work life and home life has undoubtedly changed significantly over the past few weeks. Firstly, I wanted to wish you well and to let you know we are thinking of you are your colleagues at this difficult time.

Of course, I do not want to be getting in your way during this busy time, however I also would like to let you know that I am [still] here (now working from home) and would be happy to answer any [Sobi/ Haemophilia/ Immunology] medical scientific questions that I can, or support you with access to various learning resources.

Also, please do let me know if there are ways in which I might assist you, your team or your patients, on behalf of Sobi, which we may not have considered or indeed may not have been relevant previously.

Should you wish to contact me, you can reach me on [Mobile xxxxx] or by email, at your convenience.’

The Panel noted that although the redacted copies of the emails sent by the named MSL differed slightly to account for personal circumstances from the email suggested above, they did not differ in substance. Before stating his/her name, the MSL had stated ‘Hopefully we can meet in the future’. Most of the emails had been sent on 9 April.

The Panel noted that Clause 15.9 stated, *inter alia*, that companies must prepare detailed briefing material for medical representatives on the technical aspects of each medicine which they would promote. Briefing material must comply with the relevant requirements of the Code and must not advocate, either directly or indirectly, any course of action which would be likely to lead to a breach of the Code.

The Panel noted its comments above and did not consider that the email briefing with the suggested email template advocated any course of action which would be likely to lead to a breach of the Code in relation to calls and contacts with health professionals and other relevant decision makers, and observing the wishes of individuals and the arrangements in force in any particular establishment. Staff were given guidance on adapting the template, when to send the 'Making contact' email, who to send it to and to ensure that the message overall was short, professional and non-promotional. The Panel therefore ruled no breach of Clause 15.9.

Clause 15.2 states that representatives must at all times maintain a high standard of ethical conduct in the discharge of their duties and must comply with all relevant requirements of the Code.

The Panel noted that Clause 15.4 stated that representatives must ensure that the frequency, timing and duration of calls on health professionals and other relevant decision makers in hospitals and NHS and other organisations, together with the manner in which they were made, did not cause inconvenience. The wishes of individuals on whom representatives wished to call and the arrangements in force at any particular establishment, must be observed.

The Panel noted that the complainant had not provided evidence that the email he/she had received from the named MSL was inappropriate. The redacted copies of the emails sent by the MSL and provided by Sobi had closely mirrored the suggested template and did not differ in substance. Although the emails referred to a hope of meeting in the future, the Panel did not consider that the emails placed a burden on recipients as alleged. There was no reference to products as implied by the complainant. The complainant had not provided any evidence to show that the MSL should have known that, at the time, the hospital team did not welcome such emails. Overall, the Panel did not consider that it had evidence before it to suggest that, in sending the emails, the MSL had not maintained a high standard of ethical conduct; no breach of Clause 15.2 was ruled.

The Panel noted its comments and rulings above and considered that high standards had been maintained. No breach of Clause 9.1 was ruled. The Panel consequently also ruled no breach of Clause 2.

Complaint received **18 April 2020**

Case completed **26 November 2020**