CASE AUTH/3518/5/21

MEMBER OF THE PUBLIC v ASTRAZENECA

AstraZeneca press releases

A concerned member of the public complained about two press releases which appeared on AstraZeneca UK Limited's website.

The complainant stated that the press releases referred to the use of AstraZeneca's vaccine in the UK, decisions taken by the UK regulatory authority and the opinions of UK experts on the vaccine and alleged that in both press releases AstraZeneca's vaccine was referred to as 'safe', multiple times.

The complainant stated that a recent peer-reviewed article in the Lancet which pointed out that the efficacy claims being made for the Covid-19 vaccines were based on relative risk reduction (RRR) and not absolute risk reduction (ARR) which was a vastly smaller number. The complainant referred the PMCPA to the two UK press releases including one from AstraZeneca in which efficacy results from its studies were discussed and noted that in both press releases only the RRR results were presented, with no mention of ARR.

The detailed response from AstraZeneca is given below.

The Panel noted AstraZeneca's submission that the first press release (30 December 2020) was a Regulatory News Release (RNS) and was distributed to appropriate media outlets and posted on the AstraZeneca global corporate website. The second press release (18 March 2021) was a Corporate Business Release (CBR) and was distributed to appropriate media outlets, predominately the same outlets as per the first press release, in common with standard practice for CBRs, the second press release was also posted on the AstraZeneca global corporate website. The Panel did not know the precise role of those individuals listed on the distribution lists but noted that it did not appear that all were based at media outlets associated with a financial and investor audience.
The Panel noted that whilst the broad general public interest in the content of and importance of the press releases was apparent, the press releases did not identify their business importance as required by the relevant supplementary information. In the absence of such a description the impression given was that it was for a broader circulation. In the Panel's view, there was nothing in the content of either press release that indicated that they were solely for a financial or investor audience; indeed the content of each appeared to be of broader public interest.

The Panel noted that given the nature of certain media outlets, the ultimate audience would go beyond a financial and investment audience and might potentially include members of the public such as tabloid newspaper readers, and it was therefore particularly important to be cautious with reference to whether matters such as the content was balanced.

The Panel noted that the press releases at issue referred to the Covid AstraZeneca vaccine as safe. The Panel noted that the first press release dated 30 December 2020 and titled 'AstraZeneca's COVID-19 vaccine authorised for emergency supply in the UK' stated in the opening paragraph 'This regimen was shown in clinical trials to be safe and effective at preventing symptomatic COVID-19…', a quote from a senior member of the vaccine group and an investigator of the Oxford Vaccine Trial that 'The regulator's assessment that this is a safe and effective vaccine is a landmark moment'. The second press release dated 18 March 2021 featured the prominent heading 'UK and EU regulatory agencies confirm COVID-19 Vaccine AstraZeneca is safe and effective'. The Panel considered that the unqualified use, and in the press release dated 30 December, repeated use of the word safe, particularly noting its comments above about the ultimate audience and the weight that the ultimate audience might attach to the authors of the quotations, was such that the press releases were not balanced as required by the supplementary information to Clause 26.2. The Panel also queried whether the repeated use of the word 'safe' rendered the press release dated 30 December 2020 promotional in any event given the very broad definition of promotion in the Code. In the Panel's view, taking into account all of its relevant comments above, AstraZeneca had not established that either press release satisfied the Supplementary Information to Clause 26.2 and therefore the Panel considered that the Code was applicable and, for the reasons set out in its comments above, ruled a breach of the Code in relation to the use of the word safe in each press release.

The Panel noted AstraZeneca's submission that efficacy data for the vaccine was not included in the main body of the first press release dated 30 December 2020 titled 'AstraZeneca's COVID-19 vaccine authorised for emergency supply in the UK'. However, a link to the interim analysis published in the Lancet which supported the MHRA and EMA rolling assessment of data was included in the main body. In the subsection titled 'AZD1222', the following statement was included 'As announced on 23rd November 2020, the primary efficacy endpoint based on a pooled analysis showed that the vaccine was 70.4% (confidence interval: 54.8% to 80.6%) effective at preventing symptomatic COVID-19 occurring more than 14 days after receiving two doses of the vaccine'. According to AstraZeneca, the pre-specified primary endpoints for Covid-19 Vaccine studies defined Vaccine Efficacy as 1 minus the Relative Risk or 1 minus the Hazard Ratio. The Panel noted AstraZeneca's explanation that the rationale for using a relative reduction in risk was that it was invariant to the level of the underlying risk of infection whereas the absolute risk reduction could change depending on the underlying risk level. Therefore, unlike absolute risk reduction, any differential Vaccine Efficacy on the relative risk scale could be interpreted without being confounded by the observed risk at the time of the analysis as well as for individuals with different risk levels. This was especially important for clinical trials assessing Covid-19 vaccines given the nature of the pandemic where transmission of the virus changed regionally and over time. Therefore, the absolute risk reduction was not presented given it was not generally interpretable because it could change, not because of differential vaccine efficacy but due to the timing of the analyses as well as an individual's underlying risk of Covid infection.

Whilst noting AstraZeneca's submission about the difficulties associated with the calculation and inclusion of absolute risk reduction, noting that the results of the study were at a specific timepoint, the Panel considered that the relevant supplementary information, 'reference to absolute and relative risk', and compliance with it should be

interpreted in light of its associated clause which required that materials etc should not be, *inter alia*, misleading and material must be sufficiently complete to enable the recipient to form their own opinion of the therapeutic values of the medicine.

The Panel noted that the cited Lancet source presented the efficacy of the vaccine as a relative risk reduction, but also included absolute values required to calculate the absolute risk reduction, in brackets: 'Overall vaccine efficacy across both groups was 70.4% (95.8% CI 54.8 – 80.6; 30 [0.5%] of 5807 vs 101 [1.7%] of 5829)'. In the Panel's view, whilst noting AstraZeneca's submission that the press release did provide some details about the study, including the overall numbers of participants and symptomatic cases, the Panel considered that further details, such as the number of cases and subjects in each arm, would help certain sectors of the ultimate audience to interpret the absolute risk and form their own opinion of the efficacy of the medicine. The Panel considered that in the absence of any explanation in the press release, some readers, such as members of the public, might assume that the efficacy rate was, in effect, an absolute rate and that was not so. A breach of the Code was ruled.

The Panel noted that whilst according to AstraZeneca its Covid-19 vaccine had been granted a temporary authorisation in the UK to permit its supply, the vaccine had not been granted a marketing authorisation and so had not been legally classified as a prescription only medicine when the two press releases at issue were published. The Panel noted that Clause 26.2 only applied to prescription only medicines and on that very narrow technical point, no breach of the Code was ruled. This ruling was upheld on appeal by the complainant.

The Panel noted its comments and rulings above and considered that AstraZeneca had failed to maintain high standards and a breach of the Code was ruled.

The Panel noted the unique circumstances of the Covid-19 pandemic and the trial. The Panel did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 which was a sign of particular censure and no breach was ruled. This ruling was upheld on appeal by the complainant.

A concerned member of the public complained about two press releases which appeared on AstraZeneca UK Limited's website.

COMPLAINT

The complainant alleged that in both press releases AstraZeneca's vaccine was referred to as 'safe', multiple times. These press releases referred to the use of AstraZeneca's vaccine in the UK, decisions taken by the UK regulatory authority and the opinions of UK experts on the vaccine. Furthermore, the contact details of the media relations team producing these press releases were provided in a link given in the press releases and clearly demonstrated that this material originated in the UK. Thus, these documents fell within the scope of the Code and were, therefore, in breach of Clauses 7.9 and 26.2. Clause 7.9 specifically prohibited the use of the word 'safe' to describe any medicinal products and Clause 26.2 required that information be presented in a factual and balanced way.

The complainant stated that a recent peer-reviewed article in the Lancet which pointed out that the efficacy claims being made for the Covid-19 vaccines were based on relative risk reduction

(RRR) and not absolute risk reduction (ARR) which was a vastly smaller number. The complainant referred the PMCPA to the two UK press releases one from AstraZeneca and one from another company in which efficacy results from their studies were discussed and links were provided. In both press releases only the RRR results were presented, with no mention of ARR. This was a breach of Clause 7.2 of the Code which specifically required that any discussion of RRR must include presentation of ARR results too. As this was information to the public, which had not been presented in a factual and balanced way, the complainant also considered this to be in breach of Clause 26.2. If companies were found to have breached the Code in this regard then surely any sanction must include them being required to issue a further press statement pointing out this 'error' and including the relevant ARR results which the complainant believed were in the order of 1.3% for the AstraZeneca study.

When writing to AstraZeneca, the Authority asked it to consider the requirements of Clauses 7.9 and 26.2 of the Code as cited by the complainant in relation to point 1 and Clauses 7.2 and 26.2 of the Code as cited by the complainant in relation to point 2. In addition, AstraZeneca was also asked to bear in mind the requirements of Clauses 9.1 and 2.

RESPONSE

AstraZeneca submitted that the first press release at issue was published on 30 December 2020 and the second published on 18 March 2021. The complainant made two allegations. The first allegation applied to both press releases and related to the use of the word 'safe' when describing the safety profile of the vaccine. The second allegation applied only to the first press release and related to an alleged omission of absolute risk reduction.

The first press release (30 December 2020) was a Regulatory News Release (RNS) and was distributed to appropriate media outlets and posted on the AstraZeneca global corporate website. The second press release (18 March 2021) was a Corporate Business Release (CBR) and distributed to appropriate media outlets, predominately the same outlets as per the first press release: in common with standard practice for CBRs, the second press release was also posted on the AstraZeneca global corporate website.

AstraZeneca's Disclosure Committee (DC) reviewed and approved both releases. In relation to the first release, this review was required in order to ensure compliance with applicable financial regulations and because of the potential impact on shareholder value. For the second release, AstraZeneca deemed the information to be of significant importance to the Company and stakeholders, and therefore of significance to investors.

First Allegation: Use of the word 'safe' in the context of the safety profile of the medicine (applicable to both press releases)

AstraZeneca refuted all allegations that either press release breached the Code in relation to the use of the word 'safe' on the grounds that:

- The press releases were intended for an investor/financial audience and complied with Clause 26.2 Supplementary Information: Financial Information: as a result, they were not subject to Clause 7 of the Code; and

- These statements, and the use of the word 'safe' within them, were fair and balanced and were justified on the basis that these statements were intended to summarise and

be aligned with the decisions and statements of other public health and regulatory agencies, which was an important consideration in the context of a global public health situation where all such statements were heavily analysed and commented upon.

First Press Release: 'AstraZeneca's COVID-19 vaccine authorised for emergency supply in the UK' (30 December 2020)

Drafts of the first press release were shared with The Medicines and Healthcare products Regulatory Agency (MHRA) as part of the pre-vetting process to ensure alignment and gain agreement because the information in the press release was considered a 'landmark moment' in the fight against COVID-19, with the potential to have a significant impact on public health, not just within the UK but globally. However, AstraZeneca acknowledged that the MHRA chose not to vet the final draft as such.
The release was reviewed and approved by the AstraZeneca Disclosure Committee. There were over 1,000 words in the press release and the word 'safe' was only used at two points. These were:

1 in the opening paragraph, where it stated: '*This regimen was shown in clinical trials to be safe and effective at preventing symptomatic COVID-19*…', and

2 in the quote by a senior member of the vaccine group and an investigator of the Oxford Vaccine Trial he/she stated: '*The regulator's assessment that this is a safe and effective vaccine is a landmark moment…'.*

The rationale for the inclusion of the word 'safe' in the opening paragraph was to align with, and summarise, the clinical trial results which were reported in the interim analysis in the Lancet (copy provided), and the rationale for its inclusion in the external expert quote was to align on the messaging. The quote provided by a senior member of the vaccine group and an investigator of the Oxford Vaccine Trial was mirrored in both the Oxford University press release and the AstraZeneca press release published on the same day. The decision to mirror quotes across the organisations also applied to the Chief Executive Officer of AstraZeneca's quote. Context and balance was provided by the details of the MHRA's review process, the references to their assessment and the ongoing data that would be collected and reviewed. It was important to ensure that statements like this had such alignment in the context of a globally important public health situation where all such statements were heavily analysed and commented upon.

Second Press Release: 'UK and EU regulatory agencies confirm COVID-19 Vaccine AstraZeneca is safe and effective' (18 March 2021)

The second press release included the use of the word 'safe' twice as part of a statement that ran to over 600 words. Only one of these used (bullet point 1 below) was in the context of the safety profile of the medicine:

1 In the title of the press release '*UK and EU regulatory agencies confirm COVID-19 Vaccine AstraZeneca is safe and effective'.*

2 In the 4th paragraph, 2nd sentence, '*The Company recognises and will implement the recommendations of PRAC, including the update of the product information, whilst continuing to understand the nature and relevance of these*

events to ensure the safe delivery of the vaccine continues during this public health crisis'.

The Disclosure Committee made the decision that it was appropriate to include the phrase 'safe and effective' in the title. An extensive review of the safety data in conjunction with the MHRA and European Medicines Agency's (EMA) Pharmacovigilance Risk Assessment Committee had been performed, and based on their independent assessments, both regulatory bodies had separately concluded that the benefits of the vaccine outweighed the risks.

The Disclosure Committee considered the impact of the press release to an international financial/investor audience, taking into account the potential for it to be covered by relevant media and investor outlets, and the underlying public health importance of public confidence in the vaccine programmes. Again, it was important to ensure that a statement such as this could accurately summarise and be aligned with the statements of the regulators in the context of a globally important public health situation where all such statements were heavily analysed and commented upon. Context and balance were provided by the details of the MHRA and EMA's review processes, the references to their rigorous assessment processes and the ongoing work that would be done to collect and analyse data and work with the regulatory authorities. This important safety update was relevant in more than 160 countries to whom AstraZeneca had supplied vaccine versus a UK-only audience.

No breach of Clause 26.2

AstraZeneca stated that Clause 26.2 stated that information about prescription only medicines which is available to the public either directly or indirectly must be factual and presented in a balanced way. It must not raise unfounded hopes of successful treatment or be misleading with respect to the safety of the product.

Statements must not be made for the purpose of encouraging members of the public to ask their health professional to prescribe a specific prescription only medicine.

Furthermore, the supplementary information to Clause 26.2 stated that '*information made available in order to inform shareholders, the Stock Exchange and the like by way of annual reports and announcements etc may relate to both existing medicines and those not yet marketed. Such information must be non-promotional, accurate, presented in a factual and balanced way and not misleading, taking into account the information needs of the target audience.* ***Clause 7 shall not apply to such information****. Business press releases should identify the business importance of the information and should only be aimed at the intended financial and investment audience*'. (Emphasis added by AstraZeneca).

At the time of the first and second press release, the AstraZeneca vaccine had the status of temporary supply authorisation in the UK (as related in the press release of 30 December 2020) and the product did not yet benefit from a marketing authorisation, meaning communications about the vaccine had to be authorised by the MHRA. In the case of the press release, although AstraZeneca submitted drafts for vetting, the MHRA informed it that they would not require this. Although there was widespread media coverage of both stories, the intended target audience for both these press releases was the global investor and financial sector in order to provide AstraZeneca's response directly to these interested groups. AstraZeneca's Disclosure Committee considered that the language used to describe the information was non-promotional, accurate, factual and balanced, and was not misleading in any way.

For the second press release, AstraZeneca's Disclosure Committee considered that the language was not misleading and was appropriate to provide a factual and balanced summary of the analysis undertaken by the regulatory authorities and the decisions made as a result. This statement was conveyed directly to a financial and investor audience in a manner that would be consistent with the public pronouncements of the regulatory bodies in order to complement public health messaging from governments in relation to the vaccine programs. This was particularly important at a time when those governments and regulatory bodies were anxious to ensure clear and balanced coverage of the EMA and MHRA reviews as part of their efforts to maintain confidence in their vaccine programs.

It was clear from the points above, and from the language of the press releases themselves, that the statements did not seek to promote the use of the vaccine to the public but rather simply report relevant data and regulatory decisions to a financial/investor audience in a factual and balanced way. For these reasons, AstraZeneca refuted any breach of Clause 26.2 in relation to the first allegation.

No breach of Clause 7.9

Since these press releases were intended for a financial and investor audience, and as per the supplementary information for Clause 26.2, AstraZeneca asserted that Clause 7 did not apply to these press releases and so it refuted any breach of Clause 7.9.

Second Allegation: Omission of absolute risk reduction (applicable to first press release only)

AstraZeneca refuted the allegation that the first press release breached the Code because it omitted to give an absolute risk reduction on the grounds that:

- The press release was intended for an investor/financial audience and complied with Clause 26.2 Supplementary Information: Financial Information: as a result, it was not subject to Clause 7 of the Code; and

- An absolute risk reduction in the context of a clinical study for a vaccine in cases such as this, would not have been meaningful, and it would have been misleading if AstraZeneca had sought to provide one.

First Press Release: 'AstraZeneca's COVID-19 vaccine authorised for emergency supply in the UK' (30 December 2020)

The efficacy data for the vaccine was not included in the main body of the press release. However, a link to the interim analysis published in the Lancet (copy provided) which supported the MHRA and EMA rolling assessment of data was included in the main body. In the subsection entitled 'AZD1222', the following statement was included '*As announced on 23rd November 2020, the primary efficacy endpoint based on a pooled analysis showed that the vaccine was 70.4% (confidence interval: 54.8% to 80.6%) effective at preventing symptomatic COVID-19 occurring more than 14 days after receiving two doses of the vaccine*'.

No breach of Clause 26.2

AstraZeneca referred again to the supplementary information for Clause 26.2 Financial Information presented above in its response to Clause 26.2 for the first allegation.

AstraZeneca believed the information presented in the first press release was non-promotional, accurate, appropriate to convey a factual and balanced appreciation of vaccine efficacy and support its appropriate use, and the information was not misleading in any way. AstraZeneca refuted a breach of Clause 26.2 in relation to the second allegation.

AstraZeneca explained below, in relation to the alleged breach of Clause 7.2, that the inclusion of an absolute risk reduction would itself have been misleading and would go against the spirit and intention of this clause in the Code. AstraZeneca presented this information as a supporting argument because information provided in financial releases meeting the requirements of the supplementary information to Clause 26.2 did not have to meet the requirements of Clause 7.

No breach of Clause 7.2

Firstly, AstraZeneca submitted it was important to note that the vaccine efficacy as the primary endpoint was specified in the statistical analysis plan (SAP) and was finalised with extensive feedback from national and international regulators (including the MHRA [UK] and the European Medicines Agency [EU]). The absolute risk reduction was not included in the SAP.

The pre-specified primary endpoints for COVID-19 Vaccine studies defined Vaccine Efficacy as 1 minus the Relative Risk or 1 minus the Hazard Ratio.

The rationale for using a relative reduction in risk was that it was invariant to the level of the underlying risk of infection whereas the absolute risk reduction could change depending on the underlying risk level. Therefore, unlike absolute risk reduction, any differential Vaccine Efficacy on the relative risk scale could be interpreted without being confounded by the observed risk at the time of the analysis as well as for individuals with different risk levels. This was especially important for clinical trials assessing COVID-19 vaccines given the nature of the pandemic where transmission of the virus changes regionally and over time.

Therefore, the absolute risk reduction was not presented given it was not generally interpretable because it could change, not because of differential vaccine efficacy but due to the timing of the analyses as well as an individual's underlying risk of COVID infection.

With respect to the requirements of Clause 7.2 and reference to absolute risk and relative risk, the Code stated that 'Referring only to relative risk, especially with regard to risk reduction, can make a medicine appear more effective than it actually is. In order to assess the clinical impact of an outcome, the reader also needs to know the absolute risk involved. In that regard relative risk should never be referred to without also referring to the absolute risk. Absolute risk can be referred to in isolation'. AstraZeneca had outlined the arguments why it had not included absolute risk reduction and why it did not think inclusion of ARR was helpful to the reader to draw the necessary conclusion about the efficacy of the vaccine. Indeed, to provide an absolute risk reduction in this context would be somewhere between meaningless and misleading and go against the spirit and intention of this clause in the Code. AstraZeneca refuted the allegation of breach of Clause 7.2.

Taking into account Points 1 and 2 raised by the complainant, AstraZeneca addressed Clauses 9.1 and 2.

No breach of Clause 9.1

For the reasons set out above, AstraZeneca refuted any breach of Clause 26.2 or Clause 7. For this reason, and because of the thorough review that was conducted before these statements were released, AstraZeneca contended that the organization had maintained high standards throughout and refuted the allegation of a breach of Clause 9.1.

No breach of Clause 2

For the reasons set out above, AstraZeneca refuted any breach of Clauses 26.2, 7 or 9.1. AstraZeneca was committed to maintaining high standards in everything it did. AstraZeneca submitted that it worked hard to ensure that the information it was sharing with the media and investors was accurate, balanced, up-to-date and that it was being fully transparent with the data it was able to share at specific regulatory milestones or at *ad hoc* times when related to a specific safety issue. AstraZeneca was committed to upholding the reputation of the pharmaceutical industry. As an organisation, AstraZeneca had worked tirelessly throughout the COVID-19 pandemic to advance scientific knowledge and accelerate the development of new medicines to reduce the profound suffering and extensive loss of life caused by the virus. AstraZeneca's commitment to broad, equitable access to vaccines was held up as a model for the industry in such critical times. AstraZeneca's approach and collaboration in this press release was testament to its commitment to doing the right thing for patients and the public and in doing so, upheld the reputation of the pharmaceutical industry. AstraZeneca absolutely refuted the allegation of a breach of Clause 2.

In summary, the two press releases were non-promotional communications, specifically intended for a global financial and investor audience, and approved for external release by AstraZeneca's Disclosure Committee. The information in the press releases was factual, presented in a balanced way, of clear commercial importance and used appropriate language to inform the investment decisions of the targeted audience to whom the information was directed.

In response to a request for further information, AstraZeneca provided the distribution lists for the press releases sent on 30 December 2020 and 18 March 2021.

AstraZeneca provided links where the press releases were posted on the Media Centre on www.astrazeneca.com (global website)

PANEL RULING

AstraZeneca submitted that both press releases were intended for a financial and investor audience and complied with Clause 26.2 Supplementary Information: Financial Information and were therefore not subject to Clause 7 of the Code. The Panel noted that it had to decide whether the press releases satisfied the relevant requirements of the supplementary information to Clause 26.2 such that Clause 7 did not apply.

The supplementary information to Clause 26.2 Financial Information stated 'Information made available in order to inform shareholders, the Stock Exchange and the like by way of annual reports and announcements etc may relate to both existing medicines and those not yet

marketed. Such information must be non-promotional, accurate, presented in a factual and balanced way and not misleading, taking into account the information needs of the target audience. Clause 7 shall not apply to such information. Business press releases should identify the business importance of the information and should only be aimed at the intended financial and investment audience'.

The Panel noted that the complainant had alleged a breach of Clause 7.9 in relation to the unqualified use of the word 'safe'. In the Panel's view, if AstraZeneca wished to establish that the press releases could take the benefit of the relevant supplementary information to Clause 26.2 as part of its rebuttal of the allegation it needed to establish that each press release satisfied the relevant requirements on the balance of probabilities. It did not appear that AstraZeneca had addressed each requirement in detail. The Panel noted AstraZeneca's submission that the first press release (30 December 2020) was a Regulatory News Release (RNS) and distributed to appropriate media outlets and posted on the AstraZeneca global corporate website. The second press release (18 March 2021) was a Corporate Business Release (CBR) and was distributed to appropriate media outlets, predominately the same outlets as per the first press release: in common with standard practice for CBRs, the second press release was also posted on the AstraZeneca global corporate website. The Panel did not know the precise role of those individuals listed on the distribution lists but noted that it did not appear that all were based at media outlets associated with a financial and investor audience such as the Daily Mail. The relevant supplementary information referred to information made available to inform shareholders and the stock exchange.

The Panel noted that whilst the press release dated 30 December stated that 'This announcement contains inside information', neither press release stated the intended audience including that it was intended only for an investor/financial audience.

The Panel noted that the supplementary information to Clause 26.2 Financial information required that business press releases should identify the business importance of the information and considered that whilst the broad general public interest in the content of and importance of the press releases was apparent the press releases did not identify their business importance as required by the relevant supplementary information. The Panel also noted that in correspondence with the MHRA about the press release dated 30 December 2020, AstraZeneca did not directly or indirectly refer to the press release as being directed solely at a financial and investment audience. In the absence of such a description the impression given was that it was for a broader circulation. In the Panel's view, there was nothing in the content of either press release that indicated that they were solely for a financial or investor audience; indeed the content of each appeared to be of broader public interest.

The Panel noted that the supplementary information also required the press releases to be non-promotional, accurate, presented in a factual and balanced way and not misleading, taking into account the information needs of the target audience. The Panel noted that given the nature of certain media outlets, the ultimate audience would go beyond a financial and investment audience and might potentially include members of the public such as tabloid newspaper readers, and it was therefore particularly important to be cautious with reference to whether matters such as the content was balanced.

The Panel noted that the press releases at issue referred to the AstraZeneca Covid vaccine as safe. The Panel noted that the first press release dated 30 December 2020 and titled 'AstraZeneca's COVID-19 vaccine authorised for emergency supply in the UK' stated in the

opening paragraph *'This regimen was shown in clinical trials to be safe and effective at preventing symptomatic COVID-19*…', a quote by a senior member of the vaccine group and an investigator of the Oxford Vaccine Trial that '*The regulator's assessment that this is a safe and effective vaccine is a landmark moment'.* The second press release dated 18 March 2021 featured the prominent heading 'UK and EU regulatory agencies confirm COVID-19 Vaccine AstraZeneca is safe and effective'. The Panel considered that the established interpretation of the standards set out in Clause 7 was helpful when deciding whether a press release was balanced or inaccurate as referred to in the supplementary information to Clause 26.2, whilst bearing in mind the ultimate audience. The Panel, bearing in mind Clause 7.9, considered that the unqualified use, and in the press release dated 30 December, repeated use of the word safe, particularly noting its comments above about the ultimate audience and the weight that the ultimate audience might attach to the authors of the quotations, was such that the press releases were not balanced as required by the supplementary information to Clause 26.2. The Panel also queried whether the repeated use of the word 'safe' rendered the press release dated 30 December 2020 promotional in any event given the very broad definition of promotion at Clause 1.2 of the Code. In the Panel's view, taking into account all of its relevant comments above, AstraZeneca had not established that either press release satisfied the Supplementary Information to Clause 26.2 and therefore the Panel considered that Clause 7 was applicable and, for the reasons set out in its comments above, ruled a breach of Clause 7.9 in relation to each press release.

The Panel noted AstraZeneca's submission that efficacy data for the vaccine was not included in the main body of the first press release dated 30 December 2020 titled 'AstraZeneca's COVID-19 vaccine authorised for emergency supply in the UK'. However, a link to the interim analysis published in the Lancet which supported the MHRA and EMA rolling assessment of data was included in the main body. In the subsection titled 'AZD1222', the following statement was included '*As announced on 23rd November 2020, the primary efficacy endpoint based on a pooled analysis showed that the vaccine was 70.4% (confidence interval: 54.8% to 80.6%) effective at preventing symptomatic COVID-19 occurring more than 14 days after receiving two doses of the vaccine*'. The Panel noted AstraZeneca's submission that inclusion of absolute risk reduction would have been misleading and would go against the spirit and intention of Clause 7.2. According to AstraZeneca, the pre-specified primary endpoints for Covid-19 Vaccine studies defined Vaccine Efficacy as 1 minus the Relative Risk or 1 minus the Hazard Ratio. The Panel noted AstraZeneca's explanation that the rationale for using a relative reduction in risk was that it was invariant to the level of the underlying risk of infection whereas the absolute risk reduction could change depending on the underlying risk level. Therefore, unlike absolute risk reduction, any differential Vaccine Efficacy on the relative risk scale could be interpreted without being confounded by the observed risk at the time of the analysis as well as for individuals with different risk levels. This was especially important for clinical trials assessing Covid-19 vaccines given the nature of the pandemic where transmission of the virus changed regionally and over time. Therefore, the absolute risk reduction was not presented given it was not generally interpretable because it could change, not because of differential vaccine efficacy but due to the timing of the analyses as well as an individual's underlying risk of Covid infection.

The Panel noted its comments above that, in its view, AstraZeneca had not established that either press release satisfied the Supplementary Information to Clause 26.2 and therefore the Panel considered that Clause 7 was applicable. The Panel noted the requirements of Clause 7.2 including the supplementary information to Clause 7.2 which highlighted areas where particular care should be taken by companies including, *inter alia*, reference to absolute risk and

relative risk. It stated that referring only to relative risk, especially with regard to risk reduction, could make a medicine appear more effective than it actually was. In order to assess the clinical impact of an outcome, the reader also needed to know the absolute risk involved. In that regard, relative risk should never be referred to without also referring to the absolute risk. Absolute risk could be referred to in isolation.

Whilst noting AstraZeneca's submission about the difficulties associated with the calculation and inclusion of absolute risk reduction, noting that the results of the study were at a specific timepoint, the Panel considered that the relevant supplementary information, 'reference to absolute and relative risk', and compliance with it should be interpreted in light of its associated clause, Clause 7.2, which required that materials etc should not b*e*, *inter alia*, misleading and material must be sufficiently complete to enable the recipient to form their own opinion of the therapeutic values of the medicine.

The Panel noted that the cited Lancet source presented the efficacy of the vaccine as a relative risk reduction, but also included absolute values required to calculate the absolute risk reduction, in brackets: 'Overall vaccine efficacy across both groups was 70.4% (95.8% CI 54.8 – 80.6; 30 [0.5%] of 5807 vs 101 [1.7%] of 5829)'. In the Panel's view, whilst noting AstraZeneca's submission that the press release did provide some details about the study, including the overall numbers of participants and symptomatic cases, the Panel considered that further details, such as the number of cases and subjects in each arm, would help certain sectors of the ultimate audience to interpret the absolute risk and form their own opinion of the efficacy of the medicine. In addition, the Panel noted that the status of the ultimate audience was relevant and it was particularly important to be clear about such matters in circumstances where the ultimate audience might include members of the public. The Panel considered that in the absence of any explanation in the press release, some readers, such as members of the public, might assume that the efficacy rate was, in effect, an absolute rate and that was not so. A breach of Clause 7.2 was ruled.

The Panel noted that whilst according to AstraZeneca its Covid-19 vaccine had been granted a temporary authorisation in the UK to permit its supply, the vaccine had not been granted a marketing authorisation and so had not been legally classified as a prescription only medicine when the two press releases at issue were published. The Panel noted that Clause 26.2 only applied to prescription only medicines and so, on that very narrow technical point, no breach of Clause 26.2 was ruled in relation to each press release.

The Panel noted its comments and rulings above and considered that AstraZeneca had failed to maintain high standards and a breach of Clause 9.1 was ruled.

The Panel noted the unique circumstances of the Covid-19 pandemic and the trial. The Panel did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 which was a sign of particular censure and no breach was ruled.

APPEAL BOARD 28 April 2022

APPEAL BY COMPLAINANT

The complainant stated that he/she was extremely pleased to read the Panel rulings and was content with the breaches of Clauses 7.9, 7.2 and 9.1. The complainant stated that whilst he/she was not happy about the decision of no breach of Clause 26.2 on the basis of 'a narrow

technical point' he/she saw little to be gained in disputing it at this stage and had no wish to appeal that decision [*Please note this ruling was subsequently appealed in relation to the second press release – see further below*]. However, he/she appealed the ruling of no breach of Clause 2. The explanation given for no breach of Clause 2 was

> 'The Panel noted the unique circumstances of the Covid-19 pandemic and the trial. The Panel did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 which was a sign of particular censure and no breach was ruled.'

The reasons given by the complainant for appealing this decision, particularly with regard to the misuse of the word 'safe' were as follows.

The complainant stated that the Panel had established that these materials could not claim Code exemptions available to purely financial information. Furthermore, they were press releases and not essential, mandatory or regulatory information such as SPCs or 'Dear Doctor' letters. Thus, the complainant alleged that one had to conclude that AstraZeneca proactively chose to write and distribute these documents, it did not have to do so. In doing so, the company chose to take on the responsibility to ensure compliance with the Code. Indeed, AstraZeneca appeared to have gone to a lot of trouble in terms of internal review and approval in order to produce and distribute them. The complainant failed to see therefore what any 'unique circumstances of the Covid-19 pandemic and the trial' could possibly contribute in terms of mitigation. In addition, the Panel had commented on the potentially overtly promotional nature of the materials 'The Panel also queried whether the repeated use of the word 'safe' rendered the press release dated 30 December 2020 promotional in any event given the very broad definition of promotion at Clause 1.2 of the Code'. It was therefore impossible not to conclude that the content of these materials had either a) been developed and approved very **deliberately** in order to exaggerate and mislead regarding the safety profile of AstraZeneca's product or b) been developed and approved very **negligently**, resulting in an exaggerated and misleading impression of AstraZeneca's product's safety profile (emphasis added by complainant). According to the complainant, either of these must surely justify a ruling of a breach of Clause 2.

The complainant stated that documents such as codes of practice, ethical guidelines etc were usually written at times of relative calm and stability when there was opportunity to reflect on principles, what was important, the kind of organisations, institutions or even societies that we want to be. This was done so that we had them to call upon in times of panic and worry. Times when people could be pressured, worried or even panicked into making bad, even dangerous, decisions. Many would argue that many of the circumstances of the Covid-19 pandemic, in terms of high levels of concern generated amongst the general public, were the responsibility of the government together with the pharmaceutical industry, using vehicles such as press releases like these, aided and abetted by the press and media. Whether one agreed with this position or not, that there had been raised levels of anxiety, and therefore vulnerability to misleading messages, amongst the general public, over the past couple of years was surely undeniable. The complainant questioned therefore was it not even more important that, in such times, pharmaceutical companies should make extra strenuous efforts to ensure that their staff were familiar with the standards required of them, ensure that they complied with key requirements of the Code and did not mislead potentially vulnerable people? This should particularly be the case when one was dealing with matters relating to the safety of medicines and to repeatedly describe and promote a medicine as safe in press releases in such 'unique circumstances' was surely even more reprehensible than in normal times, not less so. Indeed

this case presented a perfect example of why such cavalier use of the word safe required a breach of Clause 2 as a sanction: the Appeal Board would recall that not long after these press releases were distributed, concerns about blood clots and bleeding associated with use of the AstraZeneca Covid-19 vaccine caused the JCVI to issue advice that, for adults under 40 years of age, it was preferable for people to have a vaccine other than AstraZeneca's vaccine. The Code specifically prohibited the use of the word safe, or its derivatives, without qualification, for good reason.

* * * * *

The complainant was provided with certain redacted enclosures to AstraZeneca's response to the complaint which had not been previously provided, consisting of MHRA correspondence, and invited to provide any further appeal submission in relation to it.

* * * * *

The complainant stated that the additional information within the attachments did not influence his/her decision to appeal the ruling of no breach of Clause 2, nor the rationale which he/she had already given. However, as a result of reading the email correspondence from AstraZeneca, the complainant had further comments as follows.

The complainant was slightly confused by these attachments as it appeared that some of the AstraZeneca defence would apparently rely upon the interaction it had with the MHRA as part of the required MHRA pre-vetting process in advance of the press release being issued. However, it appeared to the complainant that, on 10 December 2020, having originally declined the opportunity to pre-vet the first press release, the MHRA nevertheless went ahead and reviewed it on 23 December 2020. The MHRA then made some comments/suggestions about the press release, but whether it was formally approved by the MHRA for release was unclear. The complainant queried if this was standard MHRA pre-vetting procedure and if not, did it mean that the press release was a joint AstraZeneca MHRA initiative.

However, the complainant stated that the involvement or otherwise of the MHRA in pre-vetting and approving this press release should be irrelevant to this appeal. More importantly, the document 'Memorandum of understanding' between the ABPI, PMCPA and MHRA, within the section entitled 'Consistency of Decisions' stated that 'The ABPI Code covers and extends beyond UK law and it is thus possible that material pre-vetted and approved by the MHRA might subsequently be ruled in breach of the ABPI Code'.

The complainant stated that the MHRA document which gave guidance on medicines advertising regulations in the UK, The Blue Guide, had several things to state about the standards expected from both promotional and non-promotional material in the UK. Amongst those most relevant to this case were:

> **Section 4.3 Quality *standards*** 'By regulation 280 of the Regulations, an advertisement must: (1) comply with the particulars listed in the summary of product characteristics (SPC); (2) **encourage the rational use of the product by presenting it objectively and without exaggerating its qualities**; and (3) not be misleading.' (Emphasis added by the complainant)

> **Section 6.6 Safety messages given in advertising**. 'Advertising which states or implies that a product is 'safe' is unacceptable. All medicines have the potential for side-effects and no medicine is completely risk free as individual patients respond differently to treatment'.

The complainant realised that press releases should not be advertisements. This was what the Blue Guide said about the pre-vetting of non-promotional material by the MHRA:

> '8.2 Vetting of advertising material
>
> The MHRA also expects non-promotional items, such as press releases and risk management materials, to be submitted for review to ensure that these are not promotional. All materials to be vetted should have already undergone a full set of internal quality control and compliance checks before submission to the MHRA.'

The complainant alleged that the two key points which he/she took from this statement were:

1. When pre-vetting such materials the MHRA was principally concerned with determining whether they were promotional or not. Having determined that they were non-promotional, it did not appear to have any responsibility for an assessment of the quality of their content above and beyond the assessment required to determine their non-promotional nature.

2. Any material submitted to the MHRA for pre-vetting should have already undergone 'a full set of internal quality control and compliance checks'. The complainant interpreted 'full' as meaning AstraZeneca should/would have considered that the material was ready for final approval or certification before submitting it to the MHRA. He/she therefore found it strange that AstraZeneca's email to the MHRA dated 22 December 2020 stated 'We'd be grateful if you can confirm any comments or feedback before 5PM tomorrow 23 December if possible as this release requires further approval steps from our side.'

In summary, the complainant alleged that whilst he/she was disappointed that the MHRA did not point out to AstraZeneca that the use of the word safe in its press release was not acceptable, it seemed to him/her that it was inappropriate for AstraZeneca to rely upon that failure as a defence. The current rules and regulations clearly stated that MHRA pre-vetting was not synonymous with Code compliance, that no medicinal product should be described as 'safe' and that it was the clear responsibility of AstraZeneca to ensure that the material was Code compliant before submitting it to the MHRA. From reading published case reports it seemed that misuse of the word 'safe' in materials was considered to be a very grievous breach of the Code and in normal circumstances was very often, perhaps predominantly, associated with a ruling of a breach of Clause 2. As noted above, in a time of heightened societal anxiety, concern and worry it was even more important that pharmaceutical companies did not mislead or exaggerate the properties of their products to the general public. This was not a trivial matter, mistrust and suspicion of information from the pharmaceutical industry, the media and government about Covid-19 vaccines was already leading to reduced uptake in several other established and essential vaccine programmes for children and adults. A decision of a breach of Clause 2 was entirely warranted here.

* * * * *

The complainant subsequently submitted an appeal of the ruling of no breach of Clause 26.2. The PMCPA had to consider whether this should be treated as a fresh complaint, potentially resulting in two cases and published case reports about the press releases at issue or allowed to proceed out of time as part of the present appeal. Taking all the circumstances into account, including the need for proportionate regulation, the PMCPA's established practice in such circumstances, and that the subject matter of the present appeal was in relation to a broad ruling of no breach of Cause 2, it was decided to allow the complainant's concerns to proceed as an appeal in the present case.

* * * * *

The complainant explained that he/she had become aware that there was a factual error in the Panel ruling:

> 'The Panel noted that whilst according to AstraZeneca its Covid-19 vaccine had been granted a temporary authorisation in the UK to permit its supply, the vaccine had not been granted a marketing authorisation and so had not been legally classified as a prescription only medicine when the two press releases at issue were published. The Panel noted that Clause 26.2 only applied to prescription only medicines and so, on that very narrow technical point, no breach of Clause 26.2 was ruled in relation to each press release.'

The complainant stated that it appeared that this statement might be true for the first press release but it was not true for the second press release. The information provided by the MHRA on their website regarding the AstraZeneca vaccine, stated the following:

> 'On 24 June 2021, the MHRA issued a Conditional Marketing Authorisation (CMA) for COVID-19 Vaccine AstraZeneca in Great Britain (GB). A CMA issued by the European Medicines Agency has had effect in Northern Ireland since 29 January 2021.'

The complainant stated that the vaccine had had a conditional marketing authorisation in Northern Ireland (part of the UK) since 29 January 2021. The complainant had checked with the PMCPA last month whether a CMA would be considered to be a marketing authorisation for the purposes of Clause 26.2 and it was confirmed on the 18 February that it did '...once a product has a marketing authorisation, conditional or not, it will be subject to the requirements of Clause 26 if it is a prescription only medicine'. The second press release was issued on 18 March 2022, seven weeks after the CMA had been issued in Northern Ireland. Hence, on this very narrow technical point, at the time the second press release was issued, the AstraZeneca vaccine did in fact have a marketing authorisation in the UK and so a breach of Clause 26.2 should have been ruled. In view of this error, the complainant requested that the Appeal Board reconsider the Panel's decision of no breach of Clause 26.2 for the reason explained above.

RESPONSE FROM ASTRAZENECA

AstraZeneca expressed its disappointment that Case AUTH/3518/5/21 was now subject to an appeal board hearing. This was an anonymous complaint [sic, the complainant was not anonymous but his/her identity was not provided to AstraZeneca] to which AstraZeneca responded in full transparency and had already provided assurances via a signed undertaking.

From AstraZeneca's perspective, the sequence of these events was both unusual and unsatisfactory.

Regardless, AstraZeneca submitted that its position in this case remained unchanged; the two press releases were intended for an investor/financial audience. The press releases were not intended for a health professional or general public audience and were only issued to a controlled list of financial personnel at the media outlets as specified in AstraZeneca's original response. The content of the two press releases were non-promotional, accurate and balanced. Furthermore, specific content was justified on the basis that some statements were intended to be aligned with the decisions and statements of other public health bodies, regulatory agencies, and vaccine development partners - this was a critical factor in the context of a global public health crisis. At the time, the public health landscape in relation to the Covid-19 pandemic was complex and fragile, and all statements about vaccines and vaccination policy were heavily analysed and commented upon. Following the Panel's ruling on this case, and as a reflection of AstraZeneca's commitment to the UK Code, AstraZeneca accepted breaches of Clause 7.2 and 7.9 and amended the two press releases on its Global corporate website in accordance with a signed undertaking. AstraZeneca supported the Panel's decision of no breach of Clause 26.2 and Clause 2 and submitted it was imperative that these rulings were upheld.

AstraZeneca refuted the complainant's appeal of no breach of Clause 26.2, in relation to the second press release, where the individual stated that the vaccine was under a European conditional marketing authorisation (CMA) in Northern Ireland, and thus capable of being promoted to health professionals. The complainant's information was not correct. The UK Department of Health and Social Care (DHSC) and the MHRA issued a temporary authorisation under Regulation 174 for the United Kingdom of Great Britain and Northern Ireland on 30 December 2020. This authorisation applied to the supply of vaccine, within the United Kingdom of Great Britain and Northern Ireland and was still in effect as of 7 April 2022 ie AstraZeneca had not ever applied, nor indeed needed to apply, to supply the vaccine under the European CMA in Northern Ireland. The authorisation to supply the vaccine that was in place under MHRA's Regulation 174 did not constitute a marketing authorisation and therefore the medicine had never been available as a licensed medicine, and thus was not capable of being promoted to health professionals. The vaccine had always been delivered from manufacturing sites directly to designated NHS bodies or NHS contractors who had the capacity to store the vaccine before subsequent local distribution. Further publicly available information on the temporary supply authorisation was available.

With respect to the complainant's insistence of a breach of Clause 2, AstraZeneca reiterated that its intention for both press releases was to provide non-promotional, accurate and balanced information to the financial sector about the vaccine authorisation status and the on-going assessment of the efficacy and safety profile by the European Medicines Agency. Firstly, and most importantly, the temporary supply authorisation for the vaccine was in place at the time of both press releases, and administration and distribution within the UK was strictly controlled by the Department of Health. AstraZeneca stated with absolute certainty that it was never its intention to promote the vaccine to health professionals or the general public nor to mislead them. To the contrary, AstraZeneca had worked tirelessly to provide a Covid-19 vaccine at no profit to the entire world (in excess of 3.5 billion doses) – there would be no benefit to it whatsoever, financial or otherwise, in doing anything untoward. AstraZeneca's only motivation throughout the pandemic had been the desire to save lives, hence the need to align the releases with the decisions and statements of other public health bodies and regulatory agencies.

AstraZeneca submitted that there was literally no aspect to this case that could be perceived as bringing discredit upon or reducing confidence in the pharmaceutical industry. AstraZeneca strongly disagreed with the complainant's accusations, and respectfully requested the Appeal Board to uphold the Panel's original ruling on the case.

FINAL COMMENT FROM THE COMPLAINANT

The complainant stated that the response from AstraZeneca appeared to be a combination of inaccuracy, ignorance and irrelevance. As such, he/she could not see that it advanced AstraZeneca's case for no breaches of Clauses 2 and 26.2.

The complainant stated that AstraZeneca got off to a bad start with the initial false assertion that this was an anonymous complaint. The complainant had provided the PMCPA with his/her contact details and name. The complainant was aware that his/her identity had not been communicated to AstraZeneca but it was his/her understanding that, where a complainant was a member of the general public, this was the default position of the Panel.

The complainant noted that AstraZeneca might find the normal complaints procedure of the PMCPA to be 'unsatisfactory' in this regard but the complainant failed to see why it would find it 'unusual'. However, the complainant failed to see the relevance of this dissatisfaction to the AstraZeneca defence in this appeal, which related specifically to alleged breaches of Clauses 2 and 26.2.

The complainant also failed to see how the signing by AstraZeneca of any undertaking relating to its breaches of Clauses 7.2 and 7.9 (breaches which it had accepted) followed by an appeal hearing, sought by the complainant, of findings of no-breach of Clauses 2 and 26.2, could in any way represent an 'unusual' 'sequence' of events. Once again, the complainant could see why AstraZeneca might find this sequence of events 'unsatisfactory' as he/she was certain AstraZeneca would have been happier had he/she not appealed.

The complainant found AstraZeneca's second paragraph noted below regarding the findings of the Panel in this case concerning. The complainant reminded the Appeal Board (and AstraZeneca) that the Panel had ruled AstraZeneca to be in breach of Clause 7.2 (misleadingly representing the efficacy of its Covid-19 vaccine) and of Clause 7.9 (misleadingly representing the safety profile of their Covid-19 vaccine by describing it as 'safe'). These were findings which AstraZeneca had accepted. The purpose of this appeal was to review only the decisions of the Panel's ruling of no breach of Clauses 2 and 26.2. Despite the findings of the Panel, however, AstraZeneca's second paragraph stated:

> 'Regardless, AstraZeneca's position in this case remains unchanged; the two press releases were intended for an investor / financial audience. The press releases were not intended for a Healthcare Professional (HCP) or general public audience, and were only issued to a controlled list of financial personnel at the media outlets as specified in AstraZeneca's original response. The content of the two press releases were non-promotional, accurate and balanced.'
>
> **'AstraZeneca's position in this case remains unchanged'** (emphasis added by the complainant)

The complainant alleged that this was a concerning statement and invited the Appeal Board to read the statement above again and then have a look at what the Panel had already decided on these matters.

Thus, the complainant stated that all of the points raised in the first few sentences of AstraZeneca's statement above (intended audience, promotional nature, accuracy and balance) had already been the subject of Panel decisions and queried why AstraZeneca was raising these matters again now? This was a particularly important question when viewed in the context of the final section of AstraZeneca's second paragraph that AstraZeneca accepted breaches of Clauses 7.2 and 7.9 and amended the two press releases housed on its Global corporate website in accordance with a signed undertaking. The complainant asked AstraZeneca the following questions:

1. Why in an appeal regarding no breach of Clauses 2 and 26.2 was AstraZeneca referring to two rulings already decided by the Panel which it had accepted (Clauses 7.2 and 7.9)?

2. If AstraZeneca had truly accepted that it had breached Clauses 7.2 and 7.9 then why did it still state that its position in this case remained unchanged?

3. Was the written undertaking, which AstraZeneca signed and AstraZeneca's acceptance of the Panel's rulings actually sincere. The complainant was unimpressed by the recent changes which AstraZeneca had been forced to make to its press releases - which were first released 12 months and 16 months ago, and so any misleading information would no doubt have already had all the impact which he/she believed AstraZeneca originally intended and wanted.

Moving on, the complainant stated that AstraZeneca's submissions were extremely disturbing and he/she did not think that it reflected well on the industry and how much confidence the general public could place on the independence, accuracy or even honesty of statements made by its leaders and spokespersons. Statements which might often purport to be science-based or evidence-based. AstraZeneca casted doubt on its credibility with its submission that: Furthermore, specific content was justified on the basis that some statements were intended to be aligned with the decisions and statements of other public health bodies, regulatory agencies and vaccine development partners.

The complainant did not know exactly what this meant as AstraZeneca had not provided any detail regarding exactly what 'specific content' and 'statements' it was referring to. However, admissions such as these must only enhance suspicion amongst the public that information being given to them by the pharmaceutical industry might be guided more by political (and commercial) expediency, along with a desire to be in lockstep with those in positions of political power who were driving the current political orthodoxy, than by considerations of an ethical, scientific or clinical nature. The complainant reminded AstraZeneca that in the UK, pharmaceutical companies were not simply constrained in their activities by medicines regulations but also by the Code.

The complainant alleged that it appeared to be a fundamental principle of the Code, and system of self-regulation, that not only did it encompass UK law but that it also extended beyond it. Thus, in many circumstances, in the UK, pharmaceutical companies were required to adhere to standards above and beyond those required of others with whom they might wish to partner, eg

politicians, civil servants, public health professionals, regulatory authorities etc. Many claims, or 'statements' made by civil servants and other UK government employees over the past couple of years had fallen well short of the high standards set out in the Code and apparently therefore expected of UK pharmaceutical companies. The complainant provided a snapshot of a newspaper article entitled 'It's incredibly safe – everything you need to know about vaccines for kids' as an example of an advertisement placed and funded by the UK government last year designed to promote the use of a Covid-19 vaccine for school children.

The complainant did not expect that any UK pharmaceutical company would, for example, wish to align themselves in any way with the use of the phrase 'incredibly safe' as used in the advertisement referred to above. This advertisement was promoting the use of a vaccine other than the AstraZeneca vaccine but the principle and the point being made remained the same. The desire of any UK pharmaceutical company to align themselves with content, decisions or statements of external partners surely could not exempt them from the higher standards required by the Code nor could they expect the expression of such a desire to act as a defence, or even mitigation, when they had, as in this case, already been judged guilty of failing to adhere to those high standards.

The complainant considered that there appeared to be essentially rather a simple binary decision to be made here. Either AstraZeneca had been issued with a marketing authorisation applicable in all, or part, of the UK, at the time the second press release was issued, or it had not. The complainant did not dispute that AstraZeneca's vaccine was issued with a temporary use authorisation under Reg 174 (although it was actually first issued on 29 Sept 2020 and not on 30 December 2020 as stated). However, the MHRA website contained a list of documents relating to that approval. At the bottom of that page was a section headed 'Details' which opened with the following statement:

> 'On 24 June 2021, the MHRA issued a Conditional Marketing Authorisation (CMA) for COVID-19 Vaccine AstraZeneca in Great Britain (GB). **A CMA issued by the European Medicines Agency has had effect in Northern Ireland since 29 January 2021.'** [Emphasis added by the complainant].

The complainant stated that he/she could not compete with AstraZeneca, or the Panel for that matter, in terms of the amount of expertise or resources in regulatory matters. However, the complainant alleged that the second sentence of the above statement seemed fairly clear and unequivocal to his/hers untrained eye. This might seem to be a 'narrow technical point' to some, but from his/her point of view it was no more of a 'narrow technical point' than that upon which the original, and he/she would contend erroneous, Panel ruling was made.

Finally, the complainant noted AstraZeneca's submission that it was never its intention to promote its vaccine to health professionals or the general public, or to mislead them. It was always difficult to ascribe intentions to a perpetrator in cases such as these. However, the Code was clear and detailed about the systems which needed to be in place, and the processes and procedures which needed to be followed in order to minimise the chances that serious breaches of the Code would take place. The complainant alleged that that such serious breaches were however able to occur, and in some instances on repeated occasions, must at least raise the suspicion of some intention to obtain maximum commercial gain from this opportunity, an intention which might have overridden the need to comply with the requirements of the Code. AstraZeneca seeks however, to dispel any suspicion that this might have been the case by claiming the moral high ground of the purest of motives. AstraZeneca claimed that it had

worked tirelessly to provide a Covid-19 vaccine at no profit to the entire world' and that 'there would be no benefit to us whatsoever, financial or otherwise, in doing anything untoward' and just to emphasise the totally charitable and philanthropic intentions of AstraZeneca, one of the largest and most commercially successful corporations on the planet, it claimed that its 'only' motivation throughout the entire pandemic had been 'the desire to save lives'. The complainant referred the Appeal Board to an article in the Financial Times published on 12 November 2021 and entitled 'AstraZeneca to take profits from Covid vaccine sales'. It discussed AstraZeneca's move away from the 'non-profit' model put in in place (as part of its agreement with its development partners at Oxford University) during the product's launch. The article explained that AstraZeneca had signed its first for-profit deals for its Covid-19 vaccine and 'The Anglo-Swedish drugmaker is now expecting the vaccine will move to 'modest profitability as new orders are received'. The article then went on to state that 'The move comes after AstraZeneca announced it was creating a vaccine and immune therapies unit, to bring together its Covid-19 products and its other treatments for viral respiratory illnesses.' and points out that AstraZeneca did not have a significant vaccine business before its partnership with Oxford' and also that 'The profits from vaccine sales in the fourth quarter will cover the costs of investment in AstraZeneca's antibody treatment for Covid-19.' The complainant was no expert in pharmaceutical marketing but in most other commercial sectors a successful product launch, with rapid uptake or adoption, was often key to future commercial success. The complainant was sure AstraZeneca was also familiar with the term 'loss-leader'. Therefore, although it might not be possible to determine definitively the intentions of AstraZeneca in this case, it was wrong of it to state that there were no financial, commercial or other business incentives for it to mislead health professionals and the general public regarding the efficacy and safety profiles of its product.

APPEAL BOARD CONSIDERATION - 28 APRIL 2022

The Appeal Board initially considered and ruled upon the appeal of no breach of Clause 2 but this was subsequently set aside pending resolution of the Clause 26.2 ruling (see below).

The Appeal Board then considered the appeal of no breach of Clause 26.2 in relation to the press release dated 18 March 2021. A central issue in the appeal was whether the AstraZeneca Covid-19 vaccine was a prescription only medicine within any part of the UK by 18 March 2021. The Appeal Board was concerned that AstraZeneca had not responded more fully to the comments made by the complainant on the impact of the granting of the conditional marketing authorisation in Europe on 29 January 2021, and was concerned that the company representatives were not able to provide a definitive detailed answer about the legal classification of the AstraZeneca Covid-19 vaccine at the relevant date or now. The company representatives appeared to focus on the fact that the company had not used the European conditional marketing authorisation, rather than addressing the question of whether the European marketing authorisation altered the legal status of the vaccine. After detailed discussion about the legal classification of the AstraZeneca vaccine, the various approaches to its supply, (either under a temporary supply authorisation or under a conditional marketing authorisation), the Appeal Board decided it needed further information from AstraZeneca before it could reach a decision. It identified a number of matters for AstraZeneca to comment on as follows. The AstraZeneca representatives were asked about some but not all of these points at the appeal however it was considered that all of the information should be provided in writing. The Appeal Board asked AstraZeneca six questions and considered that in the interests of transparency and fairness the complainant should be asked to comment on AstraZeneca's

response to those questions. Any comments from the complainant would be provided to AstraZeneca for information only. The questions were as follows:

1 To confirm the legal classification of the AstraZeneca Covid-19 vaccine on 18 March 2021 when the second press release at issue in the appeal was issued. If its legal classification was not a prescription only medicine, what was its legal classification?

2 The European Medicines Agency issued a conditional marketing authorisation for the AstraZeneca Covid -19 vaccine on 29 January 2021.

i. What effect did this have (i) upon the vaccine's legal classification in GB, irrespective of whether it was actually supplied in GB under that conditional marketing authorisation and (ii) upon the vaccine's legal classification in Northern Ireland (ie part of the UK) irrespective of whether it was actually supplied in Northern Ireland under that conditional marketing authorisation.

ii. The AstraZeneca representatives at the appeal referred to the need to ratify the conditional marketing authorisation in Northern Ireland. What was meant by that and how would that affect the legal classification?

iii. What additional action, if any, would AstraZeneca have to take to provide the vaccine under the EMA conditional marketing authorisation in Great Britain and/or in Northern Ireland?

3 The MHRA issued a conditional marketing authorisation for the AstraZeneca Covid -19 vaccine in Great Britain on 24 June 2021. There appears to be a GB product licence number on the summary of product characteristics.

i. What impact did that conditional marketing authorisation have on its legal classification in GB, irrespective of whether the vaccine was actually supplied under that conditional marketing authorisation?

ii. What additional action, if any would AstraZeneca have to take to provide the vaccine under the MHRA conditional marketing authorisation?

4 The Electronic Medicines Compendium (eMC) for the AstraZeneca Covid -19 Vaccine gives the legal classification as prescription only medicine (POM). Is this correct and was it so described on 18 March 2021?

5 Does AstraZeneca accept that the definition of a prescription only medicine in the Human Medicines Regulation 2012 is the definition that should be applied in relation to this case? If not, what definition should be applied.

6 AstraZeneca's response to the appeal only refers to the availability of the medicine **to date** as temporary supply authorisation. Why did AstraZeneca not comment on the impact of the conditional marketing authorisations issued by the EMA and MHRA on the legal status for its Covid-19 vaccine in relation to the above when it responded to the appeal?

The Appeal Board considered that as the appeal was part heard it would need the same members when it reconvened to complete the consideration of the appeal. The Chair directed Appeal Board members not to undertake any research on this matter before the matter was considered. If after receipt of responses from the parties the Appeal Board considered that it required further clarification or expert assistance, then, the Chair could obtain expert assistance under Paragraph 4.5 of the Constitution and Procedure.

Following the Appeal Board's discussion regarding the appeal of the Panel's ruling of no breach of Clause 26.2 and its decision to ask for further information from AstraZeneca regarding the legal status of its vaccine at relevant time points (see above) before making a ruling in relation to Clause 26.2, the Appeal Board decided that it would now reserve its decision regarding the appeal of no breach of the overall Clause 2 ruling. The previous decision on Clause 2 was formally set aside pending resolution of the Clause 26.2 matter. The appeal of no breach of Clause 2 would be considered when the Appeal Board reconvened to consider the appeal regarding Clause 26.2 and its consideration of this point was complete.

RESPONSE TO APPEAL BOARD QUESTIONS FROM ASTRAZENECA

Question 1

AstraZeneca submitted that as at 18 March 2021, its COVID-19 vaccine had no legal classification, as it was provided to UK Government under a temporary authorisation to supply, known as 'Regulation 174'. Regulation 174 permitted a temporary authorisation to supply only and was not a Marketing Authorisation. Regulation 174 of the Human Medicines Regulation fell under Part 10 – 'Exceptions' and it was an exemption from Regulation 46 which stated that 'A person may not sell or supply, or offer to sell or supply, a medicinal product otherwise than in accordance with the terms of a marketing authorisation'. The terms of Regulation 174 had been confirmed by the MHRA.

Furthermore, AstraZeneca confirmed that no legal classification was stated in the Conditions for Authorisation of the Regulation 174 authorisation. Schedule 1, Part 1(h) of the Human Medicines Regulation stated that MHRA might attach a condition to the authorisation to define the medicine as a Prescription Only Medicine ('a product which is authorised by the licensing authority on a temporary basis under regulation 174, in circumstances where the licensing authority has attached a condition to that authorisation to the effect that, for the duration of the temporary authorisation'). However, in this instance, no conditions or legal classifications were included in the Conditions for Authorisation for the AstraZeneca COVID-19 Vaccine.

AstraZeneca submitted that, as stated in previous correspondence, the supply of the AstraZeneca COVID-19 Vaccine within the United Kingdom (including Northern Ireland (NI)) was managed through a central UK Government contract, under which distribution was decided solely by UK Health Security Agency (UKHSA), formerly called Public Health England (PHE). Importantly, this meant that the AstraZeneca COVID-19 Vaccine was not available for public or private purchase under any circumstances, even with a prescription.

Question 2

AstraZeneca submitted that the EMA conditional marketing authorisation issued on 29 January 2021 was only applicable to EU countries. Therefore, the authorisation was not valid in Great Britain (GB) and there was no impact on the legal classification in GB.

AstraZeneca submitted that the issuance of the EMA conditional marketing authorisation on 29 January 2021 meant there would have been a valid POM licence in Northern Ireland (NI), in addition to the authorisation to supply under Regulation 174. Following the EMA CMA, there was no requirement to, nor any request from UK Government, to change the supply of vaccine to GB or NI. AstraZeneca, in partnership with MHRA and PHE, therefore continued to supply to both GB and NI under Regulation 174, with no legal status under said provision.
AstraZeneca submitted that its representatives at the appeal on 28 April 2022 meant that it was not possible to simply alter the supply chain from temporary authorisation to supply under Regulation 174 to an 'EU product' after the EMA's CMA. Changing the product supply from Regulation 174 material to the new stock would have taken fundamental changes to supply chain and supporting systems, which would have taken months to deliver and would likely have led to critical delays in getting the EU-authorised vaccine into NI. Delays of this nature would not have been acceptable to AstraZeneca or UK Governments whilst in the midst of a pandemic. As a result, and as stated above, AstraZeneca, in partnership with MHRA and PHE, agreed to continue to supply NI and GB under Regulation 174 (.

AstraZeneca submitted that that in order for the vaccine to be supplied to NI under the EMA CMA, it would have had to recreate the supply chain, including changing numerous integral systems and processes. This process would take many months to test and to deliver to a high standard. At a minimum, the following actions would have been required:

1) proactive interaction with the UK Government Vaccine Taskforce to agree to a substantial change to the already well-operating supply chain infrastructure
2) establish a new pharmaceutical supply chain for the EU product, including new supply routes that comply with post-Brexit requirements
3) completely new financial and master-data systems for the new EU product
4) create unique traceability codes to share with wholesalers.

AstraZeneca submitted that the EMA CMA issued on 29 January 2021 was only applicable to EU countries, and therefore would not apply to GB.

Question 3

AstraZeneca submitted that whilst it was out of scope of the complaint, as it related to a time after the two press releases had been issued, the issuance of the GB conditional marketing authorisation on 24 June 2021 meant there was a valid POM licence in GB, in addition to the pre-existing Regulation 174 authorisation. Regardless, COVID-19 Vaccine AstraZeneca was supplied to GB and NI under Regulation 174 until May 2022, when it was changed to a supply under the MHRA's CMA, a process which took 11 months to alter from approval. Under Regulation 174, there was no requirement to withdraw supply, in either GB or NI, upon other regulatory body approvals, including MHRA and EMA CMA, and so AstraZeneca continued to supply to PHE under this tried and trusted provision, until updating it in May 2022.

AstraZeneca submitted that only as recently as May 2022 had it made the Vaxzevria CMA available in GB and NI. NI provision was under an MHRA exemption to supply the GB packs to

NI for 6 months since the EU pack was not available. Note that this was 11 months after MHRA's issuance of the CMA.

In order to reach this position, AstraZeneca stated that it followed similar processes to those set out above in Question 2, working closely with MHRA and UK Governments. Together, AstraZeneca had ensured that appropriate product information/labelling was registered and publicly available on eMC; furthermore, AstraZeneca continued to work with the Vaccines Taskforce (VTF) to ensure that prescribers/healthcare professionals were aware of the changes in the design and product information that came with the new CMA pack.

Question 4

AstraZeneca submitted that the legal classification description of the vaccine on the electric medicines compendium (eMC) as a prescription only medicine (POM) was not correct as under Regulation 174, there was no legal classification of the AstraZeneca COVID-19 Vaccine. The CMA for GB came into effect on 24 June 2021, and the legal classification of the vaccine would only become 'POM' when the vaccine became supplied under the CMA. The AstraZeneca Covid -19 vaccine was not supplied under CMA until May 2022.

AstraZeneca submitted that initially, it was not required to upload the product information for COVID-19 Vaccine AstraZeneca to the eMC, since it was not a licensed product. However, following a request from MHRA it, in conjunction with DHSC, requested that information for the vaccine be hosted on the eMC website. The eMC worked closely with both MHRA and AstraZeneca to detail the specific information to use on the system and provided a mock-up to guide AstraZeneca. The final upload onto eMC took place on 6 April 2021, approximately 3 weeks after 18 March 2021.

AstraZeneca submitted that the eMC wanted the information to follow a standard template, with all parties agreeing for it to be made clear that the product was under a temporary supply authorisation (Regulation 174). One of the fields in the template is for the legal status - AstraZeneca wanted to select a 'blank' option, in line with the fact there was no legal classification for the vaccine. However, such an option was not available; the only legal categories provided on eMC were: 'POM', 'P' or 'GSL'. Given the lack of a viable option, the categorisation that was selected for COVID-19 Vaccine AstraZeneca was 'POM', however, as stated above, this was not correct, as it was not aligned with the lack of legal status for supply under Regulation 174.

Question 5

AstraZeneca submitted that the POM definition should not be applied in this case. The vaccine was supplied under Regulation 174 until May 2022, under which it had no legal status or conditions. This was beyond dispute and had been confirmed by the MHRA (copy provided). Moreover, the AstraZeneca COVID-19 Vaccine was not available for public/private purchase under any circumstances, even with a prescription. The vaccine supply within the UK (including NI) was managed under a central UK government contract and distribution thereafter was decided solely by PHE. The definition of a 'POM' under the Human Medicines Regulation 2012 was not relevant.

Question 6

AstraZeneca submitted in its response at the Appeal, the company stated that the EMA CMA was not relevant to this case because AstraZeneca had supplied the vaccine to GB and NI exclusively under Regulation 174. Furthermore, the MHRA CMA, which was issued on June 2021, did not come into effect until months after the complaint. This was not raised in AstraZeneca's response at the appeal because it was not relevant to the case – AstraZeneca continued to supply the vaccine to GB & NI under Regulation 174 until May 22, more than 14 months after the subject of the complaint.

Closing remarks

AstraZeneca submitted that it now hoped that the PMCPA understood the extent to which AstraZeneca had collaborated extensively with UK Governments, Departments of Health, the Vaccine Task force and Regulatory agencies throughout the last 2 years to allow it to collectively bring COVID-19 Vaccine AstraZeneca to the people of GB and NI, with total equality. AstraZeneca trusted that it had provided all of the information needed and more - AstraZeneca now hoped that the Appeal Board had what it needed to be able to uphold the Panel's original ruling.

* * * * * *

Following its response, the PMCPA noted that AstraZeneca's answer to question 1 was that 'As at 18 March 2021, COVID-19 vaccine AstraZeneca had no legal classification as it was provided to UK Government under a temporary authorisation to supply, known as 'Regulation 174'. AstraZeneca's answer to question 1 cited Appendix A which included an email to the MHRA from AstraZeneca dated 18 May stating '…please could you confirm what legal status was applied to COVID-19 Vaccine AstraZeneca Regulation 174 authorisation?'. Please clarify the difference between 'legal classification' and 'legal status'. The Appeal Board's question made no reference to the Regulation 174 authorisation or how the vaccine was supplied. AstraZeneca was therefore asked to confirm the legal classification of the AstraZeneca Covid-19 vaccine on 18 March 2021 when the second press release was issued. AstraZeneca was asked to confirm that the valid prescription only medicine licence in Northern Ireland existed alongside the Regulation 174 Temporary Supply Authorisation as at 18 March 2021.

* * * * *

FURTHER RESPONSE FROM ASTRAZENECA

In response AstraZeneca submitted that there was no difference intended between the terms 'legal classification' or 'legal status' in the question sent to MHRA – that was simply the question that AstraZeneca had asked the MHRA. AstraZeneca restated the importance of Regulation 174, because understanding the relevance of it was critical - under this regulation, the vaccine had NO legal classification – it was NOT a 'POM' nor was it any other legal classification (emphasis added by AstraZeneca).

AstraZeneca submitted that the issuance of the EMA CMA on 29 January 2021 meant that there could have been a POM classification in NI on 18 March 2021, if the EU licensed product was supplied to NI under the EMA CMA. However, as AstraZeneca clearly stated above, it had supplied to NI under Regulation 174 for the entire time from GB stock, and under this provision, the vaccine had NO legal classification.

* * * * *

AstraZeneca's response was provided to the complainant for any further comment.

RESPONSE FROM THE COMPLAINANT

The complainant made some comments in response to the answers which AstraZeneca provided to the questions which they were asked after the April 2022 appeal hearing. In addition the complainant made comments about the questions themselves and the process by which they were asked. The complainant summarised his/her own understanding of where we were with this case/complaint and requested that he/she be informed if his/her understanding was incorrect.

AstraZeneca had been judged by the Panel to have misled the general public by misrepresenting the efficacy of its Covid vaccine which was a breach of Clause 7.2, to have misled the general public by misrepresenting the safety profile of their Covid vaccine by describing it as 'safe' (without qualification) which was a breach of Clause 7.9 and that it had failed to maintain high standards which was a breach of Clause 9.1.

AstraZeneca had not disputed these judgements in that it had not appealed them and it had signed an undertaking which the complainant understood to mean that it accepted them.

The complainant noted that following the appeal hearing, AstraZeneca was asked a number of questions and given a further month to answer them. Meanwhile, despite repeated requests, the Appeal Board refused to allow the complainant to know what these questions were until AstraZeneca had had an opportunity to answer them. It was the complainant's understanding that the questions asked of AstraZeneca all related to his/her appeal regarding an alleged breach of Clause 26.2.

The complainant stated that his/her original appeal was based solely on the belief that misleading the general public about the efficacy and particularly the safety of AstraZeneca's Covid- 19 vaccine was generally something that would lead to a breach of Clause 2. This appeared to be the case from reading of a number of completed cases on the PMCPA website and those breaches alone (particularly the misleading use of 'safe') should of themselves be sufficient to justify a breach of Clause 2. The 'unique circumstances' should place greater responsibility on pharmaceutical companies to comply with the Code, not less. However, AstraZeneca clearly had learned nothing from its other recent case in which it was also judged to have brought the industry into disrepute by misusing press releases to promote its unlicenced covid vaccine to the general public. The complainant noted Case AUTH/3430/11/20 where AstraZeneca was ruled in breach of Clauses 2, 9.1 and 3.1.

The complainant alleged the justification for rejecting a Clause 26.2 breach (and the Panel had used it several times in a number of cases over the past couple of years) to be a little odd. Resorting to the justification of a 'very narrow technical point' seemed inconsistent with the 'spirit of the Code' which was explained on the PMCPA website:

> 'The spirit of the ABPI Code is about individuals and companies ensuring high ethical standards are applied in addition to following the literal interpretation of the Code. The impression created by materials, items and activities should be born in mind.'

The complainant found it difficult to reconcile this statement with the Panel's decision based on a 'very narrow technical point'. The Panel had decided that AstraZeneca had misled the general public by promoting and misrepresenting the safety and efficacy of a product which was approved by the UK government for widespread use in the UK then surely that was the important consideration here. The complainant alleged that when it came to promoting to the general public, highly technical, detailed, even arcane regulatory discussion of the precise regulatory status of the product, which seemed to have been encouraged here, seemed to be missing the point entirely. From the point of view of an average member of the general public, precise legalistic definition of terms such as temporary authorisation, conditional marketing authorisation, prescription-only etc had very little meaning. Surely it was the case that the general public simply saw a product which was approved by the government, promoted by the government and only administered by government-authorised professionals. In this context, the spirit of the Code might be expressed by the general public as 'if it looks like a duck, swims like a duck and quacks like a duck, then it's probably a duck'.

Similarly, the complainant alleged that AstraZeneca had now been given the opportunity to argue that its Covid-19 vaccine was not a prescription only medicine by also resorting to a number of very narrow technical points. This despite the fact that in AstraZeneca's latest response it admitted that at the time of the second press release its Covid-19 vaccine had *a* 'valid POM licence [MA] in NI' and was now listed as a POM in the eMC. AstraZeneca's Covid-19 vaccine also fulfilled all of the criteria for a POM listed in the Human Medicines Regulations 2012. Furthermore, condition 16 stated that the authorisation did not preclude an 'authorised prescriber' from administering the vaccine in specified circumstances. Essentially, it seemed to the complainant that AstraZeneca's entire defence appeared to be that if a medicine was not a POM, even if it had a marketing authorisation, until that product was distributed under that authorisation or even more absurdly a medicine did not have a marketing authorisation, even if it had a marketing authorisation, until that product was distributed under that authorisation. The complainant submitted that he/she had a certain amount of sympathy with AstraZeneca in that it was the Panel who first descended into this rabbit hole of regulatory minutiae with its 'very narrow technical point' and it seemed that the Appeal Board had now been dragged in after it.

The complainant alleged concerns about how this part of the appeal had been conducted in a way which he/she alleged had placed him/her at a significant and unfair disadvantage compared to AstraZeneca, details were provided. The complainant always suspected that the questions, and therefore the answers might have been of a technical nature therefore he/she wanted to see them as early as possible so that he/she would have time to try and understand them and also prepare him/herself to try and understand the answers. This opportunity was denied to him/her and the complainant thought this was unfair and had placed him/her at a significant disadvantage. The complainant stated that the Panel would probably want to offer him/her extra time to make comments but that was not something which he/she would accept. This case had already been in the hands of the PMCPA for over 12 months and even on the current timelines the complainant stated that he/she could now not expect a decision before the middle of next month. Any further extension to his/her time to respond would simply put this timeline out further which was just not acceptable – it should not be acceptable to anyone either.

The complainant alleged that denying him/her access to 8 out of 9 of the documents which AstraZeneca was relying upon in its defence was effectively further denying him/her a fair opportunity to examine, interrogate and challenge their responses.

The complainant noted that he/she had to either do the best that he/she could with what he/she had been given in the short time he/she had or wait even longer for a final decision. The complainant chose the former. Therefore, his/her reservations about the actual need for the supplemental information notwithstanding, below appeared a few, necessarily limited, specific comments on the AstraZeneca responses to the individual questions:

Question 1

The complainant noted that AstraZeneca referred to a document which he/she did not have access to and stated that importantly, this meant that COVID-19 Vaccine AstraZeneca was not available for public or private purchase under any circumstances, even with a prescription. The complainant alleged that this appeared to be the case if one wanted to procure the vaccine from AstraZeneca. However, the complainant presumed that a prescriber could if he/she wished obtain the vaccine from PHE/UKHSA. The complainant stated that furthermore, point 16 of the Conditions for authorisation document stated that *'This authorisation does not preclude an authorised prescriber administering this vaccine to a patient.....'*. An authorised prescriber was someone who was authorised to prescribe ie. to issue prescriptions for medicines, including those which were only available on prescription.

Question 2

The complainant noted that AstraZeneca submitted that that after 29 January 2021 there would have been a valid POM licence in NI. This was the most important piece of information in this entire document.

There was plenty of other discussion about how, when and why product was distributed in a particular way or as a result of a particular approval status but this was the key fact. If the Panel were able to reject a Clause 26.2 breach on one very narrow technical (and as it turned out erroneous) point then surely this accurate narrow technical point should have some validity in this appeal. The complainant generally had little regard for these narrow technical regulatory points, he/she thought overall impressions given to the general public were more important considerations. However, if those were the rules and standards which had been set by the PMCPA regarding very narrow technical points, then surely they needed to be implemented with consistency and fairness.

Question 3

The complainant had no comments other than that he/she understood why, in the context of this line of questioning, the question regarding the impact the conditional marketing authorisation granted by the MHRA on 24 June 2021 had on the legal classification of AstraZeneca's Covid-19 vaccine in GB was asked and he/she did not think it was completely irrelevant. The complainant suspected the answer might be relevant to, and could be compared with, decisions taken for NI 6 months earlier.

Question 4

The complainant noted that there were a lot of references to Appendices in AstraZeneca's response to this question which he/she did not have any access to so it was very difficult for him/her to comment meaningfully on it.

The complainant alleged that the eMC clearly considered the distinction between a POM and whatever legal status (or none) which AstraZeneca wished to invent for its Covid-19 vaccine to be a fine and unnecessary one. The eMC was clearly happy that its readers and users would understand what was meant by a POM and that the AstraZeneca Covid-19 vaccine fulfilled the definition of such a medicine. The complainant queried if the eMC had or had not subsequently changed its fields in order to accommodate AstraZeneca's mysterious and unique manufactured new status for its Covid-19 vaccine, possibly in anticipation of future similar situations, or was it happy that its readers and users actually knew what a POM was when they saw one.

The complainant submitted that this entire post-hearing discussion related solely to the accusation of the promotion of a medicinal product to the general public. If a covid vaccine was promoted to the general public, a member of the public was unlikely to decide that he/she wanted the Regulation 174 version and not the CMA version or vice versa. To the general public such a distinction was meaningless, to them it was just the AstraZeneca vaccine. Thus, promotion was designed to increase the uptake/consumption of AstraZeneca product whether that be supplied under a CMA or Regulation 174. The point here was surely that the agreed existence of a marketing authorisation (CMA) endowed this Covid-19 vaccine with the status of a POM and brought its promotion within the scope of Clause 26.2, irrespective of whether any CMA stock was ever supplied or not.

Question 5

The complainant noted that AstraZeneca had claimed that its Covid-19 vaccine had no conditions or legal status, and that this was beyond dispute and as confirmed by the MHRA. AstraZeneca had cited a document as substantiation which, the complainant did not have. The complainant stated that the absence of a condition specifying a legal status was not the same as the presence of a condition specifying no legal status.

Unlike AstraZeneca the complainant alleged that that the definition of a POM under the Medicines Act 2012 62(3) was very relevant to this case. The complainant referred back to his/her earlier comments about the spirit of the Code. The precise wording of the clause included reference specifically to a POM medicine. The Panel ruled no breach of Clause 26.2, as the clause applied to POM medicines. The complainant would prefer to state that the clause referred to POM medicines because surely the intention, the spirit, of Clause 26.2 was actually to prevent the illegal promotion of any medicine to the general public which was intended only to be provided on prescription, whether that medicine currently had a marketing authorisation or not. These were actually the criteria for a POM defined within the Medicines Act:

> A UK marketing authorisation must be granted subject to a condition that the product to which the authorisation related was to be available only on prescription if the licensing authority considers that the product:
>
> a) Is likely to present a direct or indirect danger to human health, even when used correctly, if used without the supervision of a doctor or dentist
> b) Is frequently and to a very wide extent used incorrectly, and as a result is likely to present a direct or indirect danger to human health
> c) Contains substances, or preparations of substances, of which the activity requires, or the side effects require, further investigation; or
> d) is normally prescribed by a doctor or dentist for parenteral administration'

The complainant was sure that the Appeal Board would agree that AstraZeneca's Covid-19 vaccine fell well within that legal definition of a POM and therefore should be encompassed by Clause 26.2.

In summary the complainant alleged that:

- Clause 2 was warranted simply on the basis that AstraZeneca had been found to have misused press releases to repeatedly mislead the general public regarding the safety and efficacy profiles of its Covid-19 vaccine
- In addition, a breach of Clause 26.2 had been demonstrated because:
    - the AstraZeneca Covid-19 vaccine undisputedly had a marketing authorisation and POM status in part of the UK at the time of the second press release
    - the vaccine fulfilled all of the criteria for the legal definition of a POM
    - the nature, distribution and use of the Covid-19 vaccine were such as to be reasonably interpreted by an ordinary lay member of the general public as being characteristic of a POM
- A breach of Clause 26.2 further enhanced the case for a breach of Clause 2
- By denying the complainant access to the supplemental questions at the same time as AstraZeneca the PMCPA had denied him/her the opportunity to properly comment on the AstraZeneca responses
- By denying the complainant access to all but one of the appendices cited by AstraZeneca in its response to the complainant's appeal AstraZeneca and the PMCPA had denied the complainant the opportunity to properly comment on the AstraZeneca responses.

The complainant did not now wish to be given extra time to comment on AstraZeneca responses.

On request from the PMCPA, AstraZeneca provided redacted copies of its remaining enclosures except one that it agreed could be shared with the complainant. The Chair of the Appeal Board noted that AstraZeneca did not have permission to disclose the last enclosure and decided that on the assumption that AstraZeneca's position remained the same, that enclosure should be removed from the documentation for Appeal Board members. Remaining redacted enclosures were provided to the complainant for any comments, and none were provided.

APPEAL BOARD RULING – 7 JULY 2022

The Appeal Board considered AstraZeneca's response to its questions and the complainant's comments regarding the appeal of no breach of Clause 26.2 in relation to the press release dated 18 March 2021.

The Appeal Board accepted that the European Medicines Agency (EMA) conditional marketing authorisation granted on 29 January 2021 meant that there would have been a valid 'EU' POM licence in Northern Ireland (NI), as acknowledged by AstraZeneca. This licence was in addition to the authorisation to supply under Regulation 174 within the UK (including Northern Ireland). The Appeal Board took account of notes from a meeting with the MHRA and Public Health England (PHE) in April 2021 in which the MHRA had commented that due to label differences, 'EU' and 'GB' vaccines were two different products. According to AstraZeneca the 'GB' vaccine was in distribution across the entire UK (including NI) under a temporary authorisation to supply

from when it was first available. The Appeal Board accepted AstraZeneca's submission that following the EMA conditional marketing authorisation, there was no requirement to, nor any request from UK Government to change the supply of the vaccine to GB or NI such that it was being supplied as a POM rather than being supplied under Regulation 174. According to AstraZeneca changing the product supply from Regulation 174 to the new 'EU' stock would have required fundamental changes to the supply chain and supporting systems, which would have taken months to deliver and would likely have led to critical delays in getting the EU-authorised vaccine into NI in the midst of a pandemic. As a result, AstraZeneca, in partnership with the MHRA and PHE, agreed to continue to supply NI and GB under Regulation 174, which did not designate the vaccine as a POM. This was the arrangement in place as of 18 March 2021 when the press release at issue was released. The Appeal Board therefore considered that at the relevant time the 'GB' vaccine rather than the 'EU' vaccine was the product available in the UK (including Northern Ireland) and it was not classified by the regulator as a prescription only medicine. In the extraordinary circumstances of this case the Appeal Board considered that Clause 26.2 did not apply to the 'GB' vaccine and it upheld the Panel's ruling of no breach of Clause 26.2. The appeal on this point was unsuccessful.

In the light of its ruling above and the rulings of breaches by the Panel which had been accepted by AstraZeneca, the Appeal Board did not consider that the circumstances of this case warranted a ruling of a breach of Clause 2 which was a sign of particular censure and was reserved for such use. The Appeal Board therefore upheld the Panel's ruling of no breach of Clause 2. The ruling on this point was unsuccessful.

Complaint received **27 May 2021**

Case completed **7 July 2022**