

**COMPLAINANT v BAYER****Bayer website****CASE SUMMARY**

**This case was in relation to three Google searches carried out by the complainant, as a result of which they alleged that they had been able to access advertisements for various Bayer medicines. The complaint was that the accessibility of these advertisements resulted in prescription only medicines being promoted to the general public.**

**The outcome under the 2021 Code was:**

<b>No Breach of Clause 5.1</b>	<b>Requirement to maintain high standards at all times</b>
<b>No Breach of Clause 16.1</b>	<b>Requirement that promotional material about prescription only medicines directed to a UK audience which is provided on the internet must comply with all relevant requirements of the Code</b>
<b>No Breach of Clause 26.1</b>	<b>Requirement not to advertise prescription only medicines to the public</b>

**This summary is not intended to be read in isolation.  
For full details, please see the full case report below.**

**FULL CASE REPORT**

A complaint about Bayer plc was received from an anonymous, non-contactable complainant who described themselves as a health professional.

**COMPLAINT**

The complaint wording is reproduced below:

“Found website page on Google search of a drug leaflet that does not stop the general public viewing it. Checked if other advertisements were available on the website and found they could also be viewed from Google search directly. The website belongs to Bayer [URL provided] and the advertisements cover multiple different medicines.”

When writing to Bayer, the PMCPA asked it to consider the requirements of Clauses 5.1, 16.1 and 26.1 of the 2021 Code.

## BAYER'S RESPONSE

The response from Bayer is reproduced below, with some typographical errors corrected:

"Thank you for your letter dated 21st November 2023, in which you notify us of a complaint to the PMCPA ('Complaint') from an anonymous complainant who describes him/herself as a health professional ('Complainant').

Bayer has been asked to consider the following clauses of the 2021 UK APBI Code of Practice in relation to its response: Clauses 5.1, 16.1 and 26.1 respectively.

Bayer takes its responsibility to comply with the ABPI Code of Practice and to maintain high standards extremely seriously. We welcome the opportunity to respond to this complaint and provide a full rebuttal to the satisfaction of the Panel. Bayer does not accept that the website in question breaches Clause 5.1, 16.1 and 26.1 of the Code.

### **Allegation**

The Complainant makes an allegation that the general public can inappropriately access three items of specifically identified material. All three items were stored within the Bayer UK Health Care Professional (HCP) online portal and are intended for HCPs.

The specific wording in the complaint is as follows:

*Found website page on google search of a drug leaflet that does not stop the general public viewing it. Checked if other advertisements were available on the website and found they could also be viewed from Google search directly. The website belongs to Bayer [URL provided] and the advertisements cover multiple different medicines.*

### **General context**

The complainant mentions general public access to a Bayer UK website, which they state they found whilst searching for a drug leaflet, and also alleges that 'advertisements' relating to multiple different medicines could be accessed directly via a Google search. The complaint is accompanied by a number of screenshots of Google searches as well as that of a formulary pack. For completeness, we have included the other two items that could be viewed as a result of the very specific Google search undertaken by the complainant, but not added as attachments to the complaint.

We make specific reference to each item below. Of the three items, two do not identify any product whatsoever.

The third is clearly a promotional document (it is the formulary pack for Nubequa (darolutamide), a medicine for the treatment of prostate cancer).

We note that the anonymous individual declares themselves as an HCP and therefore there is no reason not to provide these documents to them, since they are clearly searching for such pertinent information. These documents are hosted and available via the subdirectory URL, which is appropriately gated such that members of the public do not have to enter the site. The site, however, does not absolutely prohibit access.

To note, the ['subdirectory URL'] pages are a separated area of the website URL listed in the complaint and despite having a shared domain, the promotional content listed in the complaint is not mentioned, nor accessible using the URL alone.

We also note the PMCPA's recent comments in case AUTH 3641/4/22 confirming the Code's statements in clause 26.2 that company product information on the internet should be constructed such that they should *'avoid the public needing to access material for health professionals unless they choose to. The MHRA Blue Guide advises that the public should not be encouraged to access material which was not intended for them'*. Thus there is no requirement in the Code to 'stop' the general public viewing documents where 'they choose to'.

However, we note the very specific and technical search terms used by the complainant. If a member of the public was to use such specific terms as 'Bayer UK formulary' it is hardly a surprise if google search crawlers identify and display a link to a product formulary pack, albeit one intended for HCPs. The same would be true of most products for most companies.

We note your comments about search engine optimisation (SEO), etc, but would respectfully highlight that these are not allegations made by the complainant and as such we do not regard these enquiries made by the PMCPA as part of the complaint itself. However, we are willing to confirm that we do not operate paid search for the site, and no pro-active search optimisation has been implemented.

#### **A: Response to complaint re: [URL provided] website**

Bayer confirms that the website referred to in the complaint [URL provided] is a current Bayer UK website, intended for use by UK HCPs. The purpose of the webpage is to inform UK HCPs and other relevant decision makers on Bayer processes in relation to electronic communication, including how to manage their own electronic communications from Bayer. The webpage allows an HCP to register to receive electronic communications from Bayer and to log into their Bayer account (if they had already registered) to update their communication preferences.

The webpage can be found by typing in the URL above. The SEO keywords for this site are: 'Register', 'Bayer', 'HCP', 'Healthcare', 'Professional', 'Connect', 'BCU'. When landing on the webpage, an honesty box appears which request the individual to confirm that they are an HCP or other relevant decision maker based in the United Kingdom. If the individual viewing the honesty box indicates that they are not within the intended HCP audience, they are directed to the Bayer corporate website, which contains information suitable for the public.

The consent capture webpage on [URL provided] has recently been certified and we enclose a copy of the certificate as well as the job bag documenting that all links have been accessed and do not lead to any of the documents captured in the screenshots accompanying the complaint.

## **B: Specific items included as attachments within the complaint hosted on promotional section labelled**

The Code does not require companies to block all general public access to promotional material appearing on UK company websites. Bayer has put in place appropriate measures to ensure material intended for UK HCPs is appropriately identified as such and that members of the general public have access to suitable non-promotional reference material about Bayer medicines as an alternative to accessing the promotional site. When landing on the webpage, an honesty box appears which request the individual to confirm that they are an HCP or other relevant decision maker based in the United Kingdom. If the individual viewing the honesty box indicates that they are not within the intended HCP audience, they are directed to the Bayer corporate website, which contains non-promotional reference material on Bayer medicines that is suitable for the general public. For a holistic picture, we list the relevant documents and include copies of their certification certificates.

- [Named Job Code] – This item is a non-promotional one-page summary of the Newcastle Ophthalmology Joint Working Project and was prepared to provide an easily digestible summary to demonstrate the types of NHS partnership work that Bayer undertakes in Ophthalmology. It has been certified by a medical signatory and classified as a non-promotional piece. It does not identify any Bayer medicines. It was discovered as a result of a very specific search term: 'Bayer UK diagnostic hub' – 'diagnostic hub' being part of the actual project name. Bayer denies any breaches of clauses 5.1, 16.1 and 26.1.
- [Named Job Code] – This item is an infographic highlighting key issues in CVD and AF and highlighting the NHS Long term Plan. It has been certified by a medical signatory and is classified as a non-promotional piece. It does not identify any Bayer medicines. It was discovered as a result of a very specific search term: 'Bayer UK CVD' – 'CVD' not being a commonly in-use phrase amongst the British general public. Bayer denies any breaches of clauses 5.1, 16.1 and 26.1.
- [Named Job Code] – This item is a Nubeqa Formulary pack for both non metastatic castration resistant prostate cancer and metastatic hormone sensitive prostate cancer. This promotional document has been designed to support healthcare professionals or other relevant decision makers who are involved with local formulary and guideline decision-making to provide additional, background information to support cases for local implementation. The document is designed to be used flexibly to suit local formulary application requirements. On the front page of the document, the intended audience is clearly defined as well as where to find mandatory information. The document is housed as previously stated on a promotional website with a clear audience splitter and has undergone promotional certification by a medical signatory. It was discovered as a result of a very specific search term: 'Bayer UK formulary'. Bayer denies any breaches of clauses 5.1, 16.1 and 26.1.

### **Conclusion:**

Bayer does not accept that the website in question breaches Clause 5.1, 16.1 and 26.1 of the 2021 UK APBI Code of Practice as outlined in our response.

Bayer PLC is committed to upholding the requirements of the ABPI code of Practice. We hope our response addresses your concerns accordingly and look forward to your response in due course.”

## **PANEL RULING**

The complainant provided screenshots of three Google searches and alleged that they had found “advertisements” for “multiple different medicines” viewable by the general public. The complainant also provided the pdf file they had found online as a result of the third search. Bayer’s submission included the files accessible from the first two searches.

The Panel noted that the complainant was anonymous and non-contactable. The Constitution and Procedure for the PMCPA stated that anonymous complaints would be accepted but, like all other complaints, the complainant had the burden of proving their complaint on the balance of probabilities. All complaints were judged on the evidence provided by the parties. The complainant had provided limited evidence and explanation regarding their allegations and could not be contacted for more information. The PMCPA was not an investigatory body and it was not for the Panel to make out the complaint.

While the complaint referred to a “website page”, the complainant did not provide the full URLs that appeared as a result of their Google searches. The URL referred to within the wording of the complaint provided the Panel with only the website’s domain. In the absence of further information, the Panel interpreted the complaint as being limited to the three documents that were before it, relating to the three Google searches.

The Panel noted Bayer’s submission that the three documents were stored within the Bayer UK Health Care Professional (HCP) online portal. Bayer described the website as “a promotional website with a clear audience splitter” and provided evidence of the “honesty box” by which the user accessing the webpage would confirm that they were “a health professional or other relevant decision maker based in the United Kingdom”. Bayer submitted that those users clicking “No” would be directed to the Bayer corporate website, which contained information suitable for the public.

The Panel noted that the complaint was a result of Google searches with specific search terms, which would be likely to return links to the Bayer website. The Panel accepted Bayer’s submission that it had not implemented proactive search engine optimisation and did not operate a paid search for the website.

### The First Search: “bayer uk diagnostic hub” – Clause 26.1

The first search used the search term “bayer uk diagnostic hub”. The complainant’s screenshot of the search result page showed two result snippets – the first was titled “Newcastle Diagnostic Hub” and the second was titled “Completed Collaborative Working”.

Bayer provided the pdf file that was referred to in the first result snippet as part of their submission. The document was a one-page summary of a joint working project, titled “Building Capacity, Efficiency and Resilience – Newcastle Diagnostic Hub”. The Panel concluded that this was a non-promotional document that did not identify any Bayer medicines. In addition, the Panel noted that Clause 20.3 of the Code requires summaries of collaborative working to be “open and transparent” and that summaries of collaborative working agreements must be

publicly available. The Panel concluded that there was no evidence that a prescription only medicine had been advertised to the public and ruled **no breach of Clause 26.1** in relation to the first Google search.

The Panel had no information before it about the second result snippet and made no comment on this.

#### The Second Search: “bayer uk CVD” – Clause 26.1

The second search used the search term “bayer uk CVD”. The screenshot provided by the complainant showed one result snippet titled “Partnerships with Bayer”. Bayer provided the relevant pdf file, which was titled “Partnerships with Bayer”. The Panel noted the content of the pdf file and accepted that this was a non-promotional document that did not identify any Bayer medicines. Given the complainant had not established why they considered the content of this document amounted to promotion of a prescription only medicine to the public, the Panel ruled **no breach of Clause 26.1** in relation to the second Google search.

#### The Third Search: “bayer uk formulary” – Clause 26.1

The third search used the search term “bayer uk formulary”. The screenshot of the search result page showed two result snippets – the first was titled “Formulary application support pack” and the second was titled “Our Products – UK – Bayer plc”. The complainant provided a pdf file related to the first search result as part of their complaint. The Panel had no information about the second result and determined that this allegation was related to the first search result only.

The first page of the file, titled “Nubeqa ▼ (darolutamide) 300 mg tablets formulary application support pack” included the statement “Promotional material intended for GB Healthcare Professionals only.” The Panel concluded that it was a promotional document designed to support health professionals and other relevant decision makers involved with local formulary and guideline decision making.

The Panel considered that this document was unlikely to be seen by non-health professionals because:

1. there was an ‘audience splitter’ on the website on which this document was hosted, requiring the user to confirm that they were “a health professional or other relevant decision maker based in the United Kingdom”,
2. the complainant described themselves as a health professional, and
3. the complainant had accessed the document using a very specific search term.

The Panel considered that ‘self-certification’ of health professional status was a sufficient way in which to ensure members of the public do not access material about prescription only medicines that is not intended for them, provided the requirements of Clause 16.1 and its supplementary information (‘Website Access’) were met.

Based on the above factors, the Panel did not consider that the complainant had established their case, on the balance of probabilities, that the third Google search demonstrated that a prescription only medicine had been advertised to the public. The Panel therefore ruled **no breach of Clause 26.1** in relation to the third Google search.

Clause 16.1

The Panel accepted that the documents relevant to the first search and the second search were non-promotional. In relation to the third search, the Panel concluded that the formulary application support pack (and the website on which it was housed) used a self-certification 'audience splitter', which fulfilled the requirements of Clause 16.1. The Panel was satisfied that this ensured that members of the public did not need to access material for health professionals unless they chose to, and were not encouraged to do so.

In the absence of any additional evidence from the complainant that promotional material provided on the internet did not comply with all relevant requirements of the Code, the Panel ruled **no breach of Clause 16.1**.

Clause 5.1

The Panel noted that the complainant bore the burden of proof. Given its rulings of no breach of the Code above (and that there was no additional evidence that Bayer had failed to maintain high standards), the Panel ruled **no breach of Clause 5.1**.

**Complaint received      20 November 2023**

**Case completed         17 January 2025**