

CASE/0436/1/25

COMPLAINANT v MERCK SHARP & DOHME

Alleged promotion to the public by Merck Sharp & Dohme of an HPV vaccine

CASE SUMMARY

This case was in relation to a Merck Sharp & Dohme webpage about the Human Papillomavirus (HPV). The complainant alleged that the webpage promoted Merck Sharp & Dohme's vaccine for HPV, Gardasil 9 (human papillomavirus 9-valent vaccine), which at the time of the complaint, was the only licensed vaccine for HPV in the UK.

The outcome under the 2024 Code was:

Breach of Clause 5.1	Failing to maintain high standards
Breach of Clause 26.1	Advertising a prescription only medicine to the public
Breach of Clause 26.2	Encouraging members of the public to ask their health professional to prescribe a specific prescription only medicine

**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 was received about Merck Sharp & Dohme Limited from an anonymous, non-contactable complainant.

COMPLAINT

The complaint wording is reproduced below:

"I wondered how these campaigns are allowed to advertise these prescription medicines to the public? I'm all for vaccination, but know you can't just advertise your vaccine if you are the only product available unless you have Ministerial approval. Being recommended in the Green Book isn't Ministerial approval. Ministerial approval for an advertising campaign is separate and requires materials to be submitted and approved by the health minister."

When writing to Merck Sharp & Dohme, the PMCPA asked it to consider the requirements of Clauses 5.1, 26.1 and 26.2 of the 2024 Code.

MERCK SHARP & DOHME'S RESPONSE

The response from Merck Sharp & Dohme is reproduced below:

“Merck Sharp & Dohme (UK) Limited (“MSD”) thanks you for your letter dated 4th February 2025.

MSD wishes to acknowledge the original complaint received by the PMCPA. [MSD commented about the anonymous nature of the complaint]

MSD understands that the PMCPA has decided to reframe the original complaint it received and asks MSD to respond to the reframed complaint (as set out below):

that the [URL name] webpage amounts to promotion of a prescription only medicine to the public (“the Promotion Allegation”)

being the webpage accessed at [URL provided], a copy of which is set out at Appendix 1 to this letter (referred to in this response as ‘the Young Women Webpage’). MSD notes that the complainant has provided a screenshot of a webpage that does not reflect the version online at the time of the complaint. Please also note that the website is no longer online, the decision to withdraw this asset was taken in 2024.

Background to the Young Women Webpage

The Young Women Webpage is a public health campaign focused on disease information and education for the general public, specifically a female cohort aged between 18-24. It is not a ‘vaccination campaign’, under clause 26.1 of the ABPI Code. The complainant’s claim that this campaign advertises prescription medicines to the public is incorrect. MSD fully understands the distinction between disease or public health awareness initiatives and vaccination campaigns, which is why this campaign has not been submitted for approval by health ministers. This is not a product advertisement, and the website does not promote any prescription medicine, contrary to the complainant’s assertion.

Public awareness of the human papillomavirus (HPV), its prevalence and transmission, and its association with certain HPV-related cancers continues to be a public health challenge. Cervical cancer remains a significant public health challenge, with disparities in access to the NHS national vaccination programme (or national immunisation programme (NIP)) and NHS national screening programme contributing to preventable cases and deaths. Almost all cervical cancer cases could be prevented through the NHS’s existing national vaccination programme, cervical screening programme and early treatment of detected cell changes. Still, an estimated 3,300 cases of cervical cancer are diagnosed in the UK a year – nine women every day – and there are around 850 cervical cancer deaths. More than 95% of these cases are caused by the human papillomavirus. Addressing these inequalities requires collective efforts to improve awareness and education about cervical cancer.

The Young Women Webpage provides clear, balanced, and evidence-based information on the human papillomavirus and the associated public health guidance. It outlines who the information is relevant for, explains what the human papillomavirus is

and how it is transmitted, and highlights the risk of HPV-related cancers. Additionally, it includes a fact-checking section to address common misconceptions about the human papillomavirus. This resource is designed to offer accurate, evidence-based public health information in an accessible and objective manner.

MSD's Response

Promotion of a medicine is defined as 'activity undertaken by a pharmaceutical company or with its authority which promotes the administration, consumption, prescription, purchase, recommendation, sale, supply, or use of its medicines' (Clause 1.17, ABPI Code of Practice).

A national immunisation programme is a government-led initiative aimed at protecting public health by providing accurate, evidence-based information on recommended vaccines. It ensures widespread access to vaccinations that prevent serious infectious diseases, reducing illness, complications, and healthcare burdens. In the UK, the national immunisation programmes include routine immunisations for various age groups, from childhood vaccines to boosters for adolescents and targeted vaccines for at-risk populations. The programme is guided by recommendations from the Joint Committee on Vaccination and Immunisation (JCVI), which advises the UK government based on rigorous scientific evaluation. These immunisation efforts are vital in controlling and eliminating vaccine-preventable diseases, safeguarding individual and community health.

Public health awareness materials can discuss disease prevention, provided no specific prescription only medicine is referenced. The human papillomavirus national immunisation programme is an officially endorsed public health measure aimed at reducing HPV-related disease.

The purpose of the Young Women Webpage is to raise awareness of the human papillomavirus, the cancer risks associated with the human papillomavirus, and public health programmes made available by the NHS. Clause 26.2 in the ABPI Code clearly states, '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.'

The UK Health Security Agency (UKHSA) has already selected and contracted the Gardasil 9 vaccine through an independent government-led centralised procurement process. Even though Gardasil 9 is the only vaccine under the human papillomavirus national immunisation programme, referencing the programme does not create market preference. Highlighting a national immunisation programme on a webpage is a neutral, factual reference to a government policy, not an attempt to influence prescribing, sale, or supply.

Adhering to the ABPI Code of Practice is essential. As a company with vaccines in our portfolio, we uphold the principles of integrity and transparency in supporting public health. In line with the ABPI Code, we recognise our ethical responsibility to provide factual, science-based information on vaccine-preventable diseases. This aligns with the broader objective of ensuring public awareness of disease prevention. The JCVI has demonstrated that vaccination programmes significantly reduce and eliminate

infectious diseases, reinforcing the importance of maintaining public confidence in immunisation efforts.

MSD refutes breaches of clauses 26.1 and 26.2 for the following reasons:

1. The Young Women Webpage includes no name(s) of any prescription only medicine(s). It cannot be considered as product promotional.
2. There is nothing in the Young Women Webpage which informs the public, directly or indirectly, of the prescription only medicine currently selected for use in the NHS national vaccination programme by the JCVI and procured by the Department of Health and Social Care. Whether this be by name or types of human papillomavirus covered by the prescription only medicine used in the programme.

The Young Women Webpage is written with intentional care to avoid indirect prescription only medicine pointing statements. In developing the content MSD was very aware of the need to ensure focus is on the NHS programme and not the prescription only medicine selected by the JCVI for recommended use in the programme.

3. The call to action used on the Young Women Webpage is to contact your GP or practice nurse to find out more about the NHS National Vaccination Programme. It is not a call to action to request a specific prescription only medicine, it is an action to find out more about the NHS National Vaccination Programme.
4. When the call to action is taken together with their being no direct or indirect references to any prescription only medicine(s) (see the points above), there is no opportunity for a member of the public to request a specific prescription only medicine, in this case a particular vaccine. The material does not provide them with this information.
5. MSD would draw the PMCPA's attention to the following statement on the Young Women Webpage

"You do not have to be vaccinated against HPV if you do not want to, but it's a good idea to discuss any questions or concerns with your GP or practice nurse before making your decision."

MSD is committed to providing accurate, evidence-based public health information. The Young Women Webpage is designed to raise awareness of the human papillomavirus, its associated cancer risks, and the national immunisation programme available through the NHS. Its purpose is to equip individuals with balanced educational resources, enabling them to make an informed personal decision about cervical cancer prevention.

If the PMCPA determines that this case should proceed to the panel, it risks undermining legitimate pharmaceutical activities aimed at public education and informed decision-making. Compliance with the ABPI Code is essential to ensure companies can responsibly contribute to public health awareness and disease prevention. Challenging public health awareness initiatives without sufficient basis

could create uncertainty around factual, evidence-based communications and hinder efforts to prevent disease through vaccination, contradicting public health objectives.

In conclusion, the webpage is a public health campaign focused on education of disease and its prevention for the general public. Raising awareness of human papillomavirus disease and its preventability does not constitute promotion of the administration, consumption, prescription, purchase, recommendation, sale, supply, or use of a medicine. Moreover, public health campaigns in the context of preventable disease through vaccination cannot influence administration, consumption, prescription, purchase, recommendation, sale, supply, or use of a particular medicine, as vaccines and their use are defined by the national immunisation programme and already procured through a government contract. Given that signposting to the national immunisation programme as part of public health awareness does not meet the ABPI's definition of promotion under Clause 1.17, MSD firmly refutes any breaches of Clauses 26.1 and 26.2, as outlined above. For these reasons, MSD maintains that this complaint is unsubstantiated and respectfully requests that the PMCPA consider discontinuing the matter in accordance with paragraph 5.13 of the Constitution and Procedure."

FURTHER RESPONSE FROM MERCK SHARP & DOHME

After giving preliminary consideration to this case, the Panel requested further information from Merck Sharp & Dohme before making its ruling:

"In MSD's response dated 26 February 2025 it makes reference to the fact the screenshot of the website provided by the complainant is not the version online at the time of the complaint. I would be grateful if MSD can confirm whether the copy provided at Appendix 1 of its letter is the version of the website in place at the time of the complaint. If not, please could MSD provide a copy of that version.

Further, please confirm when the version provided by the complainant was withdrawn."

The response from Merck Sharp & Dohme is reproduced below:

"As requested by the PMCPA in its letter dated 20 January 2025, we have provided a copy of the section of the [URL provided] website referenced by the complainant. Noting that the complainant submitted a poor-quality copy of the page without a visible job code, it was difficult to identify the exact version of the page being referred to by the complainant, given iterations of the webpage over time.

We can confirm, however, that the screenshot submitted by the complainant relates to a webpage that MSD withdrew on 26 November 2024 and that was therefore not live at the time the complaint was made in late January 2025.

Appendix 1 to this response contains a different, updated webpage from an asset that was live at the time the complaint was submitted. This has been included solely to clarify any potential misunderstanding between assets and is the same version that we provided in our initial February 2025 response to the PMCPA. For the avoidance of doubt, the asset included at Appendix 1 is not the subject of the complaint submitted in late January 2025.

Please also note that the website is no longer online; the decision to withdraw this asset was taken in 2024.

Please let us know if any further clarification would assist the Panel's review."

PANEL RULING

A complaint was raised in relation to a Merck Sharp & Dohme webpage about the Human Papillomavirus (HPV). The complainant alleged that the webpage promoted Merck Sharp & Dohme's vaccine for HPV which, at the time of the complaint, was the only licensed vaccine for HPV in the UK.

The complainant, who is non-contactable, provided a printed screenshot of what appeared to the Panel to be the top part of a webpage about HPV. The URL for the website appeared on the printout. In their response, Merck Sharp & Dohme explained that this screenshot was not the version of the webpage live at the time of the complaint and was withdrawn in November 2024, prior to the complaint being received by the PMCPA in January 2025. Merck Sharp & Dohme provided a copy of the complete updated webpage which was live at the time of the complaint. It confirmed that the website was no longer live, following a decision to withdraw the website in 2024.

The Panel acknowledged what appeared to be the relatively small differences between the webpages provided and ruled on the printed screenshot provided by the complainant which was the subject of their complaint. The Panel noted that Merck Sharp & Dohme had not provided a copy of the webpage at issue.

The printed screenshot of the webpage set out the following:

- A banner across the top of the webpage with the MSD logo and text which was not wholly legible in the printed screenshot
- This was followed by a row of text which included the "[name]" logo and tabs to access "Information for...", "Parents", "Young women (18-24)", "FAQs" and "Blogs". Underneath was text which stated, "This information is relevant to women aged 18-24 years old, who have not previously been vaccinated against HPV".
- The next section was titled "Help protect your future from certain HPV-related cancers" which appeared in a much larger font and was followed by the following text alongside an image of a young seated woman:

"For women and people with a cervix who are 18-24 years old, HPV vaccination is available for free until your 25th birthday as part of the NHS National Vaccination Programme.

High risk HPV strains (like HPV 16 and 18) can cause certain HPV cancers (like cervical cancer). The majority of people will have been vaccinated in school, but if you missed it, you can still catch up. Help protect yourself by getting vaccinated against HPV."

- What appeared to be two buttons to navigate to other pages appeared below. The text for one was illegible, the other stated "Check if you're eligible".
- The next section of the webpage was titled "What is HPV?" and contained a brief introductory sentence followed by a subheading on the left, "Transmitting HPV" which listed bullet points of ways the virus could spread. The bullet points were cut off part way

through bullet point two. A statistic appeared to the right of the text which stated “Around 4 out of 5 of us may be infected with HPV at some point” and included an image of 5 triangles alternating an inverted triangle.

At the bottom of the screenshot provided by the complainant was a link to the young women page of the “[name]” website.

Merck Sharp & Dohme submitted that the webpage “provides clear, balanced, and evidence-based information on the human papillomavirus and the associated public health guidance. It outlines who the information is relevant for, explains what the human papillomavirus is and how it is transmitted, and highlights the risk of HPV-related cancers”.

The Panel reminded themselves of the requirements of Clause 26.1, that “Prescription only medicines must not be advertised to the public. This prohibition does not apply to vaccination and other campaigns carried out by companies and approved by the health ministers.”

Merck Sharp & Dohme in their response explained that the webpage is a public health campaign focused on disease information and education for the general public, specifically a female cohort aged between 18-24 years. Merck Sharp & Dohme confirmed that it was not a vaccination campaign and was not submitted for approval by health ministers. Merck Sharp & Dohme reject the allegation that the website promotes a prescription medicine.

The Panel first considered whether the webpage was promotional. The Panel noted the broad definition of promotion in Clause 1.17 of the Code, which referred to “any activity undertaken by a pharmaceutical company or with its authority which promotes the administration, consumption, prescription, purchase, recommendation, sale, supply or use of its medicines”. The Panel noted it was an accepted principle under the Code that it was possible, given the broad definition of promotion, for material to be promotional without mentioning products by name.

The Panel observed that the webpage was directed at members of the public and was a call to action. The Panel was of the view that whilst the material did refer to HPV the overall emphasis and key messages related to the prevention of HPV and certain cancers by vaccination. The Panel considered that the language and emphasis used on the webpage was such as to encourage viewers to seek out the vaccination. In particular, the Panel noted:

- “Help protect your future from certain HPV related cancers” was in a large bold font drawing attention to the wording towards the beginning of the webpage. Subsequent text about HPV would be viewed in light of this heading and its call to act to prevent certain HPV related cancers. Further the phrase “help protect your future” in the context of certain HPV cancers could be seen as an emotive phrase directed at young women and a strong recommendation to vaccinate as opposed to disease area information about HPV.
- The wording “for free” was emphasised in bold and might encourage some individuals to get vaccinated.
- “The majority of people will have been vaccinated in school, but if you missed it, you can still catch up” suggests to the reader that they should have been vaccinated already. Together with the messaging above that the vaccination is free before an individual turns 25 years old could create a sense of urgency in relation to vaccination.

- The “Check if you’re eligible” tab appeared at the beginning of the page within the banner headed “Help protect your future from certain HPV-related cancers” and, in the Panel’s view, the linked information likely related to vaccine eligibility.

Merck Sharp & Dohme submitted that the call to action is for readers to request further information from a GP or practice nurse. The Panel disagreed. The printed screenshot of part of the webpage provided by the complainant made no mention of seeking further information from a GP. In the full version of the updated webpage provided by Merck Sharp & Dohme, the Panel acknowledged that there was text in the second half of the continuously scrolling webpage which recommended “contacting your GP or practice nurse before your 25th birthday” to find out more about the vaccination programme. The Panel bore in mind that readers might not scroll down and see the reference to a GP and further noted that the complainant had not provided a copy of this version of the webpage and Merck Sharp & Dohme had not highlighted any relevant differences.

The Panel accepted that the webpage did not mention any specific vaccine or medicinal product. However, there were five mentions of the word “vaccinated” or variations thereof in the printout screenshot of the top section of the webpage provided by the complainant. The Panel considered that the overall impression of the webpage was a call for individuals, who met certain criteria, to get vaccinated. As Merck Sharp & Dohme had the only licensed vaccination in the UK, the Panel considered that the webpage promoted their prescription only medicine to the public. The Panel ruled a **breach of Clause 26.1**.

Clause 26.2 requires information about prescription only medicines which is available to the public to be factual and presented in a balanced way. It prohibits statements being made for the purpose of encouraging the public to ask their health professional to prescribe a specific prescription only medicine. Given the Panel’s findings above that the webpage promoted Merck Sharp & Dohme’s vaccination to the public and would encourage individuals to request the vaccination, the Panel ruled a **breach of Clause 26.2**.

The Panel considered the webpage presented strong messaging from the outset that individuals should get vaccinated. It considered the webpage to be promotion to the public of a national immunisation programme for which only Merck Sharp & Dohme’s medicine was available. Merck Sharp & Dohme recognised the importance of the role vaccination programmes play in reducing and eliminating infectious diseases and the importance of maintaining public confidence in immunisation efforts. The Panel were concerned that, given the importance of public trust in such programmes, including one directed at young people which referred to the prevention of certain cancers, Merck Sharp & Dohme had failed to correctly classify the webpage and recognise that it would need approval by health ministers. The Panel considered that high standards had not been maintained and ruled a **breach of Clause 5.1**.

Complaint received **14 January 2025**

Case completed **23 February 2026**