

## **COMPLAINANT v MERCK SERONO**

### **Allegations about representatives' sales incentives**

#### **CASE SUMMARY**

**This case was in relation to bonus payments made by Merck Serono to its sales representatives. The complainant alleged that sales representatives at Merck Serono were incentivised with bonus payments upwards of £30,000 per year and as much as 40-60% of salaries paid, which the complainant claimed drove the wrong behaviours.**

**The outcome under the 2024 Code was:**

<b>No Breach of Clause 5.1</b>	<b>Requirement that companies must maintain high standards at all times</b>
<b>No Breach of Clause 17.6</b>	<b>Requirement that representatives must be paid a fixed, basic salary and any addition proportional to sales of medicines must not constitute an undue proportion of their remuneration</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 Merck Serono Limited was received from an anonymous, non-contactable complainant who described themselves as a health professional.

#### **COMPLAINT**

The complaint wording is reproduced below:

“The sales representative at Merck are incentivised to sell medicines with excessive bonus payments. Representatives can earn upwards of £30,000 a year in sales bonus incentives- as much as 40-60% of salaries paid. As a doctor working in the NHS, I can see this drives the wrong behaviours.”

When writing to Merck Serono, the PMCPA asked it to consider the requirements of Clauses 17.6 and 5.1 of the 2024 Code.

## MERCK SERONO'S RESPONSE

The response from Merck Serono is reproduced below:

“Thank you for your letter dated 28 May 2025, concerning alleged breaches of the ABPI's Code of Practice for the Pharmaceutical Industry (the ‘**Code**’). Merck Serono Limited (‘**Merck**’) seeks to both fully comply with and embody the Code, and we are disappointed that we have received a complaint regarding our sales incentive plans (the ‘**Complaint**’).

The complainant alleges that the way Merck remunerates its sales employees, in particular with regard to bonus payments, is excessive, and as a result, encourages the ‘*wrong behaviours*’. As requested in your letter, we have taken into consideration the following clauses of the Code: 17.6 – Undue Proportion of Sales Representative Remuneration and 5.1 – Maintaining High Standards.

In addition, you have asked us to provide you with good quality colour copies of the materials in question, along with full details of how they were used and copies of the relevant certificates and signatory qualifications, which are enclosed. A list of relevant signatories registered with the PMCPA by Merck is provided.

[information regarding the confidential nature of enclosures]

### 1. **Clause 17.6 – Undue Proportion of Sales Representative Remuneration**

Merck, like all pharmaceutical companies, provides a basic salary to our sales employees – Therapeutic Area Specialist (‘**TAS**’) – in addition to bonus payments contingent upon certain criteria being met throughout the relevant year. Such criteria are reviewed and revised three (3) times per year in order to encourage appropriate behaviours based on the contemporaneous needs of the company in the relevant franchises (oncology; neurology and immunology [N&I]; fertility, endocrinology and general medicine [FEGM]). Indeed, the Merck Sales Incentive Plan (‘**SIP**’) Policy's stated aim is to:

*‘[D]rive business by motivating the commercial field force. The plan contains the details of how bonus can be earned, detailing quantitative and qualitative elements, thresholds and weightings of elements to then allow for a payout to be calculated at the end of each plan cycle.’*

The SIP for TAS' introduces the On Target Earnings (‘**OTE**’), provisionally set at [amount] per calendar year; however, should there be exceptional overperformance, there is the possibility of exceeding this sum in line with the payout curve specified in the relevant franchise SIP. The SIP is comprised of a quantitative and a qualitative element, usually weighted towards the former, although the precise weighting will be cycle-specific and reflect the prevalent needs. As stated above, the SIP is franchise-specific, and we attach the Oncology, N&I and FEGM SIPs for the previous cycle (January to April 2025), redacted. You will note the quantitative/qualitative elements vary between franchise, although the broader criteria to fulfil the measures are very similar, if not the same.

In order to fully substantiate our position, we also attach a breakdown of the average bonus payments and percentages of base pay for the years 2022-2024, including the highest and lowest payments for a given year:

[table provided]

Please note the average bonus remuneration over the last three years is significantly below the allegation made in the Complaint. We acknowledge that the highest payments during this period do exceed the OTE; nevertheless, this is permissible in the event of overachievement of the criteria set in the SIP, which in any event are dynamic rather than static measures. Further, an element of any bonus payment is based upon qualitative measures, which Merck submits can only encourage appropriate behaviours in line with industry standards and indeed Merck's own Code of Conduct.

As a final point, there are no prescribed legal limits and/or thresholds regarding remuneration; these are market-driven, like any industry. Merck has aggregated data from [named data analytics company] of SIPS from Spain, France, Germany, Italy and UK. [Document reference] details 'Annual Incentive Compensation target pay by role', and you will note the Key Account Manager (analogous to TAS) bar, highlighted for your convenience, where over 80% of bonus payment are less than €[amount] (approximately £[amount] @ 10 June 2025), a figure Merck is comfortably aligned to.

Accordingly, in light of the above, Merck submit there has been no breach of clause 17.6; Merck sales force employees' bonus remuneration cannot constitute an undue proportion of their remuneration.

## **2. Clause 5.1 – Maintaining High Standards**

Merck strives to maintain high standards at all times. Merck believes that our bonus structures are commensurate to the work undertaken by our TAS'. The bonus payments themselves are regularly assessed to ensure they remain appropriate to the prevailing needs and circumstances of both the company and external environment. Accordingly, Merck submit high standards have and continue to be maintained, particularly in light of the information provided herein.

### **Summary and Conclusion**

Merck would like to reassure you that we take compliance with the Code extremely seriously and have thoroughly investigated this complaint. Merck strongly refutes the Complaint. On the contrary, Merck submits that it has acted and continues to act with high standards in setting our sales force appropriate measures of success in order to drive the right behaviours in attaining strong sales figures.

We remain at your disposal, should any additional information be required."

## **FURTHER INFORMATION FROM MERCK SERONO**

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

"In Merck's response of 18 June 2025, you provided a table detailing the average bonus payments and percentages of base pay for the years 2022-2024. Please can you confirm if [percentage] of base pay in 2024 is the highest proportion of bonus pay across the TAS role at Merck as opposed to the percentage of the highest figure paid out (as detailed in

the left-hand side table). In other words, did any individuals receive a lower bonus in 2024 than [amount] but which was a higher percentage of their base pay than [percentage]?

The response from Merck Serono is reproduced below:

“With regard to the [percentage] bonus, this is the highest percentage, irrespective of salary. Accordingly, there cannot be a situation where an individual received lower than [amount] but which was a higher percentage of their base pay than [percentage]. If this was true, the bonus must be in excess of [percentage], which is not the case, as stated in the tables previously furnished to you.”

## **PANEL RULING**

A complaint was received about alleged excessive bonus payments made by Merck Serono to its sales representatives. The complainant alleged that sales representatives at Merck Serono were incentivised with bonus payments upwards of £30,000 per year and as much as 40-60% of salaries paid, which the complainant claimed drove the wrong behaviours.

Merck Serono submitted that its sales employees, known as Therapeutic Area Specialists (TAS), were provided with a basic salary and a bonus payment contingent on certain criteria being met throughout the relevant year. Those criteria were reviewed and revised three times a year to encourage appropriate behaviours based on the contemporaneous needs of the company.

Merck Serono provided the Panel with a copy of the Sales Incentive Plan policy, and the franchise specific Sales Incentive Plans for January to April 2025. These set out the provisions for bonus payments including the weighting of quantitative and qualitative elements.

Clause 17.6 stated that “Representatives must be paid a fixed, basic salary and any addition proportional to sales of medicines must not constitute an undue proportion of their remuneration”. Clause 17.6 did not specify what proportion of remuneration would be considered an undue proportion. The Panel noted that the Appeal Board in Case AUTH/2965/8/17 considered “an undue proportion” of remuneration was for companies to determine in line with the requirements of the Code.

Merck Serono provided the Panel with a breakdown of the average bonus payments and percentages of base pay for the years 2022-2024, including the highest and lowest bonus payments for a given year. Based on those payment figures, the Panel accepted Merck Serono’s submission that both the averages and highest bonus payment figures for all three years were “significantly below the allegation made in the complaint”.

The Panel also noted that the “undue proportion” referred to in Clause 17.6 related to the sale of medicines and did not include any qualitative elements that may have contributed to a bonus payment. Although the Panel had not been provided with the detail of what percentage of Merck Serono’s bonus payments were qualitative, the Panel considered that it was clear, based on the information provided, that the bonus payments were weighted with both quantitative and qualitative elements. The Panel therefore also took account of the fact that not only were the averages and highest bonus payments significantly lower than alleged, but also that those payments were not exclusively based on sales for the purposes of Clause 17.6.

The Panel noted that 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 not provided any material to support their allegations or details of the specific franchise, individual(s) involved, dates, or evidence of what was meant by “wrong behaviours”. The Panel considered that the complainant had not established their case. In addition, the information provided by Merck Serono as part of its response did not show figures in line with those suggested by the complainant. On that basis, the Panel ruled **no breach of Clause 17.6**.

In light of the above, and in the absence of any other evidence or allegations from the complainant, the Panel did not consider that Merck Serono had failed to maintain high standards in this case, and the Panel ruled **no breach of Clause 5.1**.

**Complaint received**      **22 May 2025**

**Case completed**        **9 December 2025**