

COMPLAINANT v MERCK SHARP & DOHME

Disguised promotion of chicken pox vaccine

CASE SUMMARY

This case was in relation to an allegation that there was disguised promotion of Merck Sharp & Dohme's chicken pox vaccine in the London Politico Playbook and on the accompanying website.

Based on the complainant's narrow allegation, the Panel ruled no breach of the following Clauses of the 2021 Code because it did not consider that the complainant had established that the specific issue of the London Playbook or the associated Stop the Spots website promoted a prescription only medicine and therefore each could not constitute disguised promotion as alleged:

No Breach of Clause 3.6	Requirement that materials and activities must not be disguised promotion
No Breach of Clause 5.1	Requirement to maintain high standards

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

FULL CASE REPORT

A named, contactable complainant complained about the disguised promotion of Merck Sharp & Dohme's chicken pox vaccine.

COMPLAINT

The complainant provided a pdf of the London playbook (ref GB-NON-05951, Date of preparation: May 2022) and a link to the associated website, stopthespots.co.uk (ref GB-NON-05793, Date of Preparation: May 2022) and stated that there was disguised promotion of Merck Sharp & Dohme's chicken pox vaccine in the London Politico Playbook and on the accompanying website.

When writing to Merck Sharp and Dohme (MSD), the Authority asked it to consider the requirements of Clauses 3.6 and 9.1 of the 2021 Code.

RESPONSE

MSD stated that it took the allegations made by the complainant very seriously and was committed to complying with both the spirit and letter of the Code at all times.

MSD submitted that pharmaceutical companies could play an important role in public awareness and policy activities, within the guardrails of the UK health regulator (MHRA), industry regulations (Code) and MSD internal SOPs and related policies and guidance. MSD had a legitimate intent to support the implementation of UK Government National Immunisation Programmes (NIPs) and make the case for extensions of NIPs and the introduction of new NIPs, without promoting MSD products at any point. MSD recognised the lack of external guidance for the type of policy advocacy campaign in question and had, for that reason, developed specific internal guidance to ensure these initiatives were carefully considered before being carried out. MSD had provided a copy of the relevant guidance slides for review (MSD Internal Guidance on Vaccines Policy & Communications). This guidance was created to ensure that MSD could deliver on important Public Health goals with Ethics and Integrity, maintaining the pharmaceutical industry reputation and compliance with the Code; aware that, regardless of MSD intent, the public opinion might simply view MSD's legitimate efforts to contribute to Public Health as a mere commercial strategy.

MSD maintained that the feature in the Politico London Playbook newsletter and the campaign microsite were in accordance with the requirements of the Code and were not disguised promotion. MSD denied that these materials breach the requirements for Clauses 3.6 and 5.1 of the Code.

Background

MSD stated that Varicella was a highly infectious, common viral disease affecting almost the entire birth cohort. Although varicella was usually a mild and self-limiting disease, complications could occur; 2 to 6% of cases attending a general practice resulting in complications (Bonanni, P., Breuer, J., Gershon, A. et al. Varicella vaccination in Europe – taking the practical approach. BMC Med 7, 26, 2009). The risk of complications from varicella varied with age. Complications were infrequent among healthy children. They occurred much more frequently in persons older than age 15 years and infants younger than age 1 year.

In 1998, the World Health Organisation recommended varicella vaccination for countries where the disease had a significant public health burden. Nonetheless, concerns about a shift in the disease to older groups, an increase in herpes zoster in the elderly and cost-effectiveness led many countries to postpone universal varicella vaccination (UVV) introduction. UVV of infants demonstrated a dramatic reduction in the burden of varicella, therefore providing the strongest support for widespread implementation of the WHO recommendation for varicella vaccination in European countries. The UK was one of the few countries not only across Europe but also the rest of the world, where a NIP for chickenpox did not exist.

Varicella cases in Europe, prior to UVV introduction, were estimated to account for more than five million cases per year, leading to three million primary care consultations per year, nearly 20,000 hospitalisations per year and up to 80 deaths per year (Varela, F. H. (2019). Global impact of varicella vaccination programs. Human vaccines & immunotherapeutics, 15(3), 645–657). With a sizeable proportion of the disease burden in children under five, including a higher incidence for hospitalisations and death amongst them. In the United Kingdom it was estimated that 651,000 varicella cases occurred per year, whilst severe cases of varicella were considered uncommon, the burden of common cases fell on primary care utilisation or individual households (Spoulou, V; Implementing Universal Varicella Vaccination in Europe, The Pediatric Infectious Disease Journal: February 2019 - Volume 38 - Issue 2 - p 181-188).

Varicella Disease Landscape in the UK

MSD submitted that in 2009, the Joint Committee on Vaccination and Immunisation (JCVI) varicella subgroup undertook a review of varicella control strategies including (i) a two-dose childhood varicella programme, (ii) a single-dose Herpes Zoster (shingles) programme for older adults and (iii) a combined childhood varicella and adult HZ programme. The economic analysis concluded that the two-dose childhood varicella programme would not be cost effective in the short to medium term. This was largely due to a predicted temporary increase in HZ in the first 30-50 years as a result of reduced Varicella zoster virus exposure. (Amirthalingam G, Ramsay M. Should the UK introduce a universal childhood varicella vaccination programme Archives of Disease in Childhood 2016;101:2-3).

In 2010, following the review of medical, epidemiological, and economic evidence as well as vaccine safety and efficacy data relevant to a herpes zoster (shingles) vaccination programme of a combined varicella and herpes zoster programme and a herpes zoster only programme. The JCVI decided to recommend a universal herpes zoster vaccination programme for adults (with age restrictions) and not recommend a varicella programme for children. It was stated that these recommendations would be kept under review in light of emerging epidemiological data, with the varicella subcommittee noting that if HZ incidence in other countries did not increase as predicted by the model in later years this advice could be revised. Evidence from real-world data was inconsistent with these HZ model predictions following UUV implementation, this growing body of evidence had suggested a need for revision in the mathematical models with updated assumptions on HZ incidence trends in support of a re-evaluation of the recommendation.

In February 2020, the JCVI noted that due to a cease in the manufacturing of a vaccine in the childhood schedule, there was a need to review options and identify areas for urgent work required to inform schedule changes to the national vaccination programme. Here the JCVI noted their intention to consider Varicella vaccination, and this might be an option for inclusion into a revised schedule. These minutes were the last before the JCVI resources were heavily depleted due to attention to COVID-19 and as such progress on these discussions were brought to a halt. (JCVI Minutes, February 2020).

Recent JCVI meetings (June 2021, December 2021, and March 2022) had indicated the interest and need to consider introducing a chickenpox programme as part of a wider review of the childhood immunisation schedule. With a recent parliamentary question and the latest JCVI minutes noting that the current barrier to a decision was the limited modelling capacity to progress discussions.

'There had been interest in convening a Varicella sub-committee meeting however it was noted discussions would need supporting data analysis and modelling. There is limited capacity for this as there is still a focus on COVID-19. The sub-committee will meet after modelling has progressed.' JCVI minutes, March 2022.

Given the social distancing measures during the coronavirus pandemic there had been little chickenpox activity in the last two seasons and so a larger pool of susceptible children had accumulated. There were increasing cases of Varicella related hospitalisations, with particular concern around cases of invasive and non-invasive Group A Streptococcus (GAS) infections associated with chickenpox (a known risk factor for GAS). Both a concern to the NHS at the potential of becoming a public priority since treatment could become complicated with

chickenpox associated disease and GAS disease being a severe and sometimes life-threatening infection. Available national and geographic GP Syndromic Surveillance System data (from UKHSA) which indicated trends in chickenpox, demonstrated that chickenpox seasonality had returned with cases reaching its pre-pandemic levels with an increase in cases vs 2021 season. (Health Security Agency, U., 2022. Group A streptococcal infections: report on seasonal activity in England, 2021 to 2022. GOV.UK.).

'Stop the Spots' Campaign

Evidence generated from other countries around the world (with similar population demographics, adequate or improved surveillance systems and established chickenpox NIPs) and data generation outputs (funded by MSD), formed the basis of information MSD sought to use to highlight the lack of a national immunisation programme, the socioeconomic burden of chickenpox on families and health systems and the urgent need to prioritise the consideration of an NIP.

In March 2022, MSD, alongside (a subcontracted healthcare policy and communications consultancy), initiated the development of a campaign to raise awareness and build advocacy for the consideration of a UVV programme in the UK across parliamentary, public, policy and media audiences. To this end MSD developed and subsequently launched the 'Stop the Spots' campaign. The title 'Stop the Spots' was considered thoroughly and chosen to reflect MSD's aspiration to contribute to the worldwide effort to eliminate vaccine-preventable diseases in childhood that manifest as spots and rashes; this slogan had been used previously on social media and therefore this would resonate with members of the public who had similar aspirations. This campaign was an MSD led policy advocacy campaign aimed at members of the public and policymakers which focused on increasing the awareness for the consideration of an NIP to prevent chickenpox. This campaign was led by MSD's Corporate Affairs team, composed of policy and communications professionals, who design and execute on a range of externally facing corporate and therapy area related campaigns, partnerships, and events. The nature of this function's work, as per other companies' Government Affairs departments, was non-promotional and targeted predominantly at health professionals, patient groups, policymakers, and the general public. The desired outcome was to affect change, or impact on healthcare related policy such that policymakers were better informed and thus better able to craft policies that accounted for the unique insights of industry and/or its partners, be these professional societies, patient groups or academia. Recognising that one's function did not dictate whether an activity was promotional or non-promotional, it was nonetheless the case that company policies underpinning the work of the Corporate Affairs team, had ensured that activities led by this department were non-promotional in design and execution. The legal and compliance, government affairs and medical teams at MSD supported this activity. MSD drew attention to the 'Stop the Spots' campaign Plan and the Varicella Government Affairs Programme, a proposal by the subcontracted healthcare policy and communications consultancy. The campaign plan detailed the various materials under development, a summary of each and their respective target audiences. In MSD's opinion, these activities were clearly non-promotional in intent and purpose. This was further confirmed by the outcomes listed on each relevant slide within the Varicella Government Affairs programme deck. There were three pillars detailed in the deck and 'Tactical detail: Pillar 2' highlights the part of the campaign, which the complaint related to. Outcomes of this pillar included 'Awareness raised amongst the policy audiences and the general public that chickenpox was a vaccine-preventable disease, with the approach of the UK diverging from that of comparable nations' and 'Change in policymaker and public attitudes around chickenpox mobilised, that more accurately reflects the

burden it places on children, families, and the NHS'. These outcomes were clearly not commercial focused, or sales driven; they were centred around the need for a vaccination programme based on the current body of evidence detailed above.

Immunisation was one of the most effective public health interventions to prevent infections in humans. Raising awareness for the introduction of a national immunisation programme in a disease area where most people considered the disease to be a 'common mild illness', was important and necessary as serious complications of chickenpox did occur.

The campaign aimed to target members of the public including parents and parliamentarians, as well as policymakers via social media and the London Playbook respectively. The social media element was due to launch week commencing 6 June 2022, however upon receipt of this complaint, MSD had decided to pause this part of the campaign. Underpinning this campaign was a campaign microsite (<https://stopthespots.co.uk/>), a discrete entity accessible via this URL, which was developed to act as a central hub for the campaign. The first phase of the launch of this site was through the London Playbook newsletter as the only channel to drive traffic to the website, followed by a second phase which included a social media campaign leveraging social media channels such as Twitter, Facebook, Instagram and LinkedIn as supplementary channels to drive traffic to the website, intended for a targeted audience of the general public.

Target Audience for the 'Stop the Spots' Campaign

The campaign, as mentioned, was aimed at members of the public, and this included policymakers, MPs, and the media. Clause 5.6 of the Code was consulted when developing the materials, bearing in mind its requisites, and tailoring the content to suit the interests of the audience. Slide 4, copy provided, helped further clarify the correct category of the activity and ensured the target audience would be viewing appropriately tailored content. MSD considered the application of Clause 6 and 26 with regard to the type of information and proactive nature of the information provided to members of the public. MSD noted that this campaign, which targeted a wider group of members of the public, beyond standard policymakers, was a new concept at MSD, one which was considered conscientiously and discussed widely across various cross functional teams, including Senior Signatories.

MSD feature in the Politico London Playbook newsletter

As part of the 'Stop the Spots' campaign, MSD opted to use the Politico London Playbook newsletter as a channel to drive traffic to parliamentary, public, policy and media audiences in support of an upcoming parliamentary drop in event, with an aim to improve and outline the opportunities available to tackle chickenpox in the UK and to socialise campaign messaging with Westminster audiences (this includes MPs, journalists, government officials and the public in policy-related roles).

Politico was a global journalism entity which provided news operations and information services to audiences at the intersection of politics and policy. Outside of their global focus, Politico provided geographically relevant news to various locations across the EU, including London, Paris, and Brussels, through its 'Playbook' newsletter series.

The London Playbook newsletter was free to sign up to and was distributed to more than 75,000 subscribers: primarily Members of Parliament, people working in parliament, civil servants, journalists, government, and public affairs professionals.

A further breakdown of the industries the subscribers came from was as follows:

- Government – UK National 26%
- Media & Publishing 12%
- Consultancy – Strategy 8%
- EU Institution 7%
- Education 7%
- Political Parties 4%
- Health Care 4%
- Banks & Financial Institutions 4%

There were other descriptions of readership of the London Playbook newsletter which did not fall within the categories above, making up the total readership. The 26% of UK national government was indicated by any of the subscribers who used a 'gov.uk' or 'parliament.co.uk' email address to access their account, which meant they were either members of parliament, advisors, or civil servants. It did not however account for policy makers, or civil servants who might have subscribed using their personal emails which could indicate that the national government category could be reasonably assumed as an underestimation.

The London Playbook newsletter was sent out six times a week on Monday, Tuesday, Wednesday, Thursday, Friday, and Sunday. MSD's sponsorship was agreed to include two short blocks of text copy provided in each of those newsletters for one week only, MSD's sponsored inclusion featured on Tuesday 24 May to Friday 27 May and on Sunday 29 May. Politico had a strict word count where the first message could be no more than 50 words and the second message could be up to 150 words.

MSD noted that Politico sourced corporate sponsors for each week's newsletter, which in the past had also featured other Pharmaceutical Companies. Politico had a standard template for content to be adhered to, which regular readers would be familiar with, with respect to the standard format of the content.

Disguised Promotion

MSD recognised transparency as a key principle in the Code. Masking material as non-promotional when in fact it was clearly promotional was an example of disguised promotion, as was omitting company involvement in activities especially involving third party sponsorship. Promotion, as defined by the Code meant '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 intent of MSD's campaign was to encourage members of the public and policymakers to advocate for an immunisation programme for chickenpox in the UK, which did not currently exist. MSD's call-to-action did not constitute promotion, as the clear focus was sign-posting members of the public, which included policymakers, in a direction where they could contribute to a cause, raising awareness for the inclusion of an immunisation programme. This direction was by way of guiding those with a keen interest to act by their own volition through established processes such as engaging the government on government led decisions. This campaign did not encourage members of the public to ask their health professionals to prescribe a particular prescription only medicine.

Regarding the feature in the London Playbook, it was clear at the outset that MSD was involved by the presence of the company logo below the bold statement 'Presented By' at the outset. Although it might appear that this implied MSD's involvement in the whole article, as stated previously this text could not be edited to include a broader statement. **'A message from MSD'** further clarified MSD's involvement and this text could not also be edited to include a broader statement. The newsletter read as a series of short messages detailing who/where these messages were taken from e.g., 'Johnson replied:' indicating news concerning Boris Johnson. In MSD's second message on the webpage, the job number, date, and company involvement were included. Readers of the London Playbook were familiar with the layout of the newsletters and features of companies that might appear and would have therefore understood that MSD was not responsible for the totality of the article.

Clause 3.6

The complainant alleged that the feature in the London Playbook and the 'Stop the Spots' campaign microsite constituted disguised promotion of the company's chickenpox vaccine, Varivax. The content featured in the London Playbook consisted of two messages clearly stated as 'A message from MSD', one focused on the epidemiology of chickenpox and the other also highlighted this and included a link to the 'Stop the Spots' campaign microsite. The page included the company logo at the outset; the involvement of MSD was not hidden. 'Presented by' was fixed text by the London Politico Playbook, which could not be amended. MSD did not have a role in relation to the entire article on the London Playbook page, hence the statement used in the newsletter 'A message from [client name]' to indicate which features companies were responsible for. When a user landed on the 'Stop the Spots' microsite homepage, it was made apparent that the website was produced and funded by MSD. A bold statement, **'This website is produced and funded by MSD'** was placed below the explanation of the 'Stop the Spots' campaign. As mentioned earlier, 'Stop the Spots' was a policy advocacy campaign. MSD's purpose was to highlight the absence of a national immunisation programme in chickenpox and the rationale for having one, the campaign did not promote the use of a specific medicine. Clause 26.2 of the Code allowed companies to provide proactive information to the public on diseases and medicines. It referred to several examples of proactive information but did not provide an exhaustive list. The Code referred to the MHRA Blue Guide for additional information on disease awareness campaigns guidelines however, no such guidance existed for implementing policy advocacy campaigns. To note, MSD had a disease awareness website for chickenpox, chickenpoxaware.co.uk (copy provided) which was developed in 2019, strictly following the Code requirements and MHRA Blue Guide disease awareness guidelines. A 'Stop the Spots' microsite map, explained the focus of the campaign microsite, clearly differentiating this from MSD's disease awareness website for chickenpox; 'the focus on raising awareness that chickenpox was a vaccine-preventable disease, including through highlighting that although many other countries had introduced UVV programmes, the UK had not yet taken this step'.

MSD thoroughly considered the intent and perception of this activity and believed this campaign, did not imply MSD's vaccine would be recommended for use in the programme, nor did the content featured in the London Playbook promote any MSD medicines. MSD noted that at this point, two vaccines were currently available for chickenpox, one was MSD's, Varivax, and the other was Varilrix, by GlaxoSmithKline UK. The materials in question did not encourage members of the public to ask their health professionals to prescribe a particular prescription only medicine. The materials in question were not promotional, and therefore were not disguised. The company involvement was sufficiently clear and prominent in each material and therefore MSD denied a breach of Clause 3.6.

Clause 5.1

MSD submitted that it had robust internal policies and guidance in place and had ensured that contracted third parties were entirely clear on what MSD's intended outcomes and objectives were, and that they were briefed thoroughly on the intent of the activities contracted at the outset. Each material developed was of a high-standard and MSD considered the campaign carefully in multiple cross functional team discussions as required by MSD's internal processes. As stated, the proposal and plans for the campaign, which detailed the outcomes under each pillar, were clearly not commercially led or sales driven. MSD diligently developed the content ensuring it was appropriate for members of the public including parliamentary and policy audiences. Each job for the materials in question was certified by a medical signatory as required by Clause 8.3 for material for the public related to diseases.

The intent of each job was clearly marked as 'non-promotional', and the intended audience was clear for both jobs. The materials in question did not encourage members of the public to ask their health professionals to prescribe a particular prescription only medicine. The content did not contain any promotional or inappropriate language.

In addition to this, MSD believed that this campaign was a clear example of a pharmaceutical company putting the four key principles of the Code at the heart of what MSD did and how it did it:

1. Following the review of the body of evidence in the UK and in similar healthcare systems, this campaign supported the advancement of health policy to ultimately benefit the UK population. This campaign also supported the provision of high-quality healthcare in the UK. MSD had ensured that its interactions with the general public complied with all applicable laws and regulations: this campaign and the language used was thoroughly discussed and reviewed with Medical Affairs advisors, Legal advisors, Signatories and Policy colleagues before its development.
2. MSD had acted with integrity by bringing the facts of the body of evidence to the campaign audience, MSD had been honest by highlighting the gap in the UK's healthcare system while always making it clear from the outset that chickenpox was generally a mild illness. MSD had invested in this campaign, out of ethics, in a field MSD had expertise in. MSD had done this with objectives far removed from commercial interest as reflected in the campaign details knowing that a commercial gain was not promised given the tendering process in the UK. During this campaign, MSD noted that it took all precautionary steps to ensure there was no conflicting commercial activity relating to its medicine, Varivax, and any paid promotion of MSD's vaccine was ceased. This decision was made to support the true intent of the 'Stop the Spots' campaign and reduce risk of perception as principally driven.
3. MSD had been transparent regarding its involvement in this campaign and activities, the intent had been upfront and clear, supporting evidence had been provided detailing the campaign and the companies' outputs.
4. MSD had shown respect for the general public by recognising their critical and active role in policy making in the UK and involving them in this campaign. MSD had been very careful to ensure that the language used was language that challenged for change

and politely invited those who chose to, to act. MSD had been very careful not to disrespect those making decisions on vaccination policy in the UK. At the end of the website, once viewers had visited the site and read the information provided, MSD asked them whether they were supportive of a NIP for chickenpox or not.

This was a metric MSD included for internal purposes, to see how well the messaging was landing with those that visited the site and to see how many people read all the information, as this question was placed at the bottom of the page.

MSD firmly denied a breach of Clause 5.1.

To summarise, MSD upheld that it had not breached either Clause 3.6 or 5.1; the evidence and explanation provided supported this. MSD submitted that it had been diligent and considerate throughout the implementation of this campaign so far, and although it was unfortunate that the complainant suggested MSD were promoting its chickenpox vaccine, MSD firmly maintained this was not the case.

PANEL RULING

The Panel noted MSD's submission that the 'Stop the Spots' campaign was developed to highlight the lack of a national immunisation programme (NIP), the socioeconomic burden of chickenpox on families and health systems and the urgent need to prioritise the consideration of a NIP. It was an advocacy campaign aimed at members of the public and policymakers which focused on increasing the awareness for the consideration of an NIP to prevent chickenpox.

The campaign aimed to target members of the public including parents and parliamentarians, as well as policymakers via social media and the London Playbook respectively. The social media element had been paused on receipt of the complaint. Underpinning the campaign was a campaign microsite (stopthespots.co.uk), a discrete entity accessible via the URL, which was developed to act as a central hub for the campaign. The first phase of the launch of this site was through the London Playbook newsletter (from Politico) as the only channel to drive traffic to the website.

The Panel noted that according to MSD, Politico was a global journalism entity which provided news operations and information services to audiences at the intersection of politics and policy. The London Playbook newsletter was free to sign up to and was distributed to more than 75,000 subscribers: primarily Members of Parliament, people working in parliament, civil servants, journalists, government, and public affairs professionals.

The Panel noted MSD's submission that the London Playbook newsletter was sent out six times a week on Monday, Tuesday, Wednesday, Thursday, Friday, and Sunday. MSD's sponsorship was agreed to include two short blocks of text copy provided in each of those newsletters for one week only, and MSD's sponsored inclusion featured on Tuesday 24 May to Friday 27 May and on Sunday 29 May. The Panel noted the complainant had provided a pdf of the London Playbook newsletter which was dated 24 May 2022 and it was this issue upon which the Panel based its rulings.

Under the publication title London Playbook from Politico, it stated presented by followed by the MSD Logo and the company name.

The online publication included the two permitted inclusions from MSD. The first was in the fourth paragraph of the publication and stated:

***A message from MSD: How can we help children recover from lost time in school over COVID-19? Vaccine-preventable diseases like chickenpox continue to disrupt children's lives across the UK. The time to act on chickenpox – and Stop the Spots – is now. Find out more here**, (emphasis added)*

and the second appeared to be towards the end of the publication before the Media round and stated:

A message from MSD: Did you know that chickenpox is estimated to have infected over 90% of the UK population, most often during childhood? MSD funded a recent study from the LSE which found that 49% of children who contracted chickenpox between ages 0 and 3 years and 66% of children who contracted chickenpox between ages 4 and 11 years missed days of school or nursery, with an average of 5.6 school days missed. As children get their education back on track after COVID-19, it is critical that we avoid further disruption wherever possible. Introducing a chickenpox national immunisation programme to Stop the Spots would help to give all children the best start in life. To find out more, visit <https://stopthespots.co.uk/home/> (The Stop the Spots campaign has been initiated and funded by MSD. The content of the campaign has been provided by MSD.)

The messages were interspersed among other brief headlines of key political and policy news. The Panel noted the London Playbook made no mention of any prescription only medicine.

The Panel noted the find out more **here** (emphasis added) at the end of the first message took the reader to the Stop the Spots microsite. The content of the microsite as provided by MSD appeared identical to the screenshots taken by the case preparation manager from the link provided by the complainant. The Panel noted that the landing page was headed 'Are you ready to 'Stop the Spots?' and included the Stop the Spots logo. This was followed by information on the prevalence and impact of chicken pox on the UK population and an explanation that Stop the Spots was a public health campaign aiming to raise awareness for the consideration of a National Immunisation Programme to prevent chicken pox in the UK followed by 'This website is produced and funded by MSD' in font that was bolder than most of the text above. The Panel noted MSD's submission that the purpose of the microsite was to highlight the absence of a national immunisation programme in chickenpox and the rationale for having one, the campaign did not promote the use of a specific medicine.

The Panel noted the second page of the microsite provided information on Why Stop the Spots, there were five headings which when clicked on expanded and provided information and answers for the reader. The headings were: About Stop the Spots campaign, Why do we need to 'Stop the Spots?', What is the burden of chickenpox on UK families and the NHS? How can the impact of chickenpox be reduced? and Why doesn't the UK have a chickenpox programme?

The third page was headed How can you help? Underneath this were two headings; 'MP or Peer' and 'Member of the public'. Clicking on the MP or Peer the text expanded uncovering two areas of possible action Tabling Parliamentary Questions and Writing to the Secretary of State for Health and Social Care and Minister for Prevention, Public Health and Primary Care. Clicking on member of the public the text expanded uncovering one possible action – Write to

your MP to encourage them to advocate for a chickenpox National Immunisation Programme in Parliament and invited readers to click to find the contact details for their MP.

The Panel noted the microsite made no mention of any prescription only medicine. The Panel noted that the sole issue before it was whether the 24 May 2022 issue of the London Playbook and the associated Stop the Spots website constituted disguised promotion of MSD's vaccine and it was on this narrow basis that the Panel made its rulings.

The Panel noted that whilst the campaign detailed in the London Playbook at issue and the Stop the Spots website promoted the implementation of a chicken pox national immunisation programme which if adopted might result in the use of MSDs vaccine, the Panel noted that there was no mention of MSD's vaccine in either. The Panel further noted MSD's submission that two vaccines were currently available for chickenpox, one was MSD's, Varivax, and the other was Varilrix, by GlaxoSmithKline UK. The Panel further noted MSD's submission that it had invested in this campaign in a field MSD had expertise in with objectives far removed from commercial interest as reflected in the campaign details knowing that a commercial gain was not promised given the tendering process in the UK.

The Panel noted its comments above and did not consider that the complainant had established that the 24 May 2022 issue of the London Playbook or the associated Stop the Spots website promoted a prescription only medicine and therefore each could not constitute disguised promotion as alleged and based on the complainant's narrow allegation **no breach of Clause 3.6** was ruled in relation to each.

The Panel noted that when writing to MSD the case preparation manager had asked it to consider the requirements of Clause 9.1 of the 2021 Code which required 'All relevant personnel, including representatives, and members of staff, and others retained by way of contract, concerned in any way with the preparation or approval of material or activities covered by the Code must be fully conversant with the Code and the relevant laws and regulations'. It appeared to the Panel that the case preparation manager had intended to raise Clause 5.1 'High standards must be maintained at all times'. It was Clause 5.1 of the 2021 Code which MSD had responded to and on that basis the Panel considered the matter raised under Clause 5.1 of the 2021Code.

The Panel noted its comments and ruling above and consequently ruled **no breach of Clause 5.1**.

Complaint received **24 May 2022**

Case completed **12 June 2023**