

MEDIA/DIRECTOR v ABBOTT

Arrangements for a meeting

An article in The Sun newspaper about an ex-employee of Abbott referred to the fact that representatives of the company had attended a gay club in Glasgow together with at least one hospital consultant. The article referred to a claim for unfair dismissal in employment tribunal proceedings. The Director considered that from the information given, Abbott might have contravened the Code. The matter was thus taken up as a complaint under the Code.

The Panel noted, with regard to the visit to the club, that Abbott representatives had claimed £40.90 for drinks. It appeared that the visit was a social event. The venue was a bar with music and dancing. The company had not provided any information about who had attended. The published article referred to the presence of a hospital consultant. This was not disputed by Abbott.

On the evidence before it, the Panel decided that the arrangements had not complied with the requirements of the Code regarding meetings and hospitality. It was probably unacceptable to take health professionals to such a venue in any circumstances and was certainly unacceptable for purely social reasons. A breach of the Code was ruled. High standards had not been maintained. Breaches of the Code were ruled. The Panel considered that irrespective of whether company money had been used to fund the visit to the bar, the arrangements in question brought discredit upon, and reduced confidence in, the pharmaceutical industry. A breach of Clause 2 was ruled.

The Appeal Board noted that in its appeal Abbott had provided further and better particulars than those submitted to the Panel. Abbott had now unequivocally stated that it had not provided the consultant mentioned in The Sun article with any hospitality. There was an anonymised supporting statement from the consultant signed by Abbott's solicitors as a true and accurate copy of the original. Abbott stated that the payment of £40.90 had been claimed by the representative as part of routine expenses and not part of customer support as this would have necessitated using a different procedure. The company assumed that the payment was in respect of a manager buying drinks for Abbott staff. There was no evidence provided by the journalist that inappropriate hospitality had been provided. On the basis of the information before it the Appeal Board ruled no breach of the Code, including Clause 2.

An article in The Sun on 8 February criticised the activities of Abbott Laboratories Limited. In accordance with established practice as regards media criticism, the matter was taken up by the Director as a complaint under the Code.

COMPLAINT

The article concerned a sales force employee dismissed by Abbott who had taken her case to an employment tribunal. The article referred, *inter alia*, to the fact that Abbott representatives had attended a gay bar in Glasgow with at least one hospital consultant.

Abbott was asked to respond in relation to Clauses 2, 9.1, 15.2 and 19.1 of the 2003 Code. The Authority informed the journalist that the article was being used as the basis of a complaint under the Code and noted that other matters referred to in the article had already been dealt with in Case AUTH/1745/7/05. A copy of the case report for that case was sent to the journalist.

RESPONSE

Abbott noted that these allegations were made in connection with an employment tribunal proceeding involving a former member of its HIV sales force and that the tribunal rejected entirely the claims brought by the former employee.

The gathering at the club in question occurred during the attendance by Abbott staff at the Seventh International Congress on Drug Therapy in HIV Infection which was held in Glasgow in November 2004. Attendance at the club did not form part of Abbott's official presence at the conference. A review of the expenses of Abbott employees attending the conference did not reveal the provision of any excessive or inappropriate hospitality; only one receipt for £40.90 relating to drinks purchased there was identified. Accordingly, Abbott did not consider that the attendance at the club constituted a breach of Clauses 2, 9.1, 15.2 or 19.1 of the Code.

PANEL RULING

The Panel noted that Abbott representatives had claimed £40.90 for drinks at the club. It appeared that the visit was a social event. The venue was a bar with music and dancing. The company had not provided any information about who had attended. The published article referred to the presence of a hospital consultant. This was not disputed by Abbott.

On the evidence before it, the Panel decided that the arrangements had not complied with the requirements of Clause 19.1 of the Code regarding meetings and hospitality. It was probably unacceptable to take health professionals to such a venue in any circumstances and was certainly unacceptable for purely social reasons. A breach of Clause 19.1 was ruled. High standards had not been maintained. Breaches of Clauses 9.1 and 15.2 were ruled. The Panel considered that irrespective of whether company money had been used to fund the visit to the bar, the arrangements in question brought discredit upon, and reduced confidence in, the pharmaceutical industry. A breach of Clause 2 was ruled.

APPEAL BY ABBOTT

Abbott appealed all of the Panel's rulings.

Abbott submitted that in terms of evidence a review of the circumstances in question clearly showed that on the night of the alleged inappropriate hospitality, Abbott did not invite the hospital consultant to the club. Furthermore, Abbott did not provide the consultant with any hospitality at the bar. The consultant in question had provided a written statement to this effect and an anonymised copy, signed by Abbott's solicitors as a true and accurate copy of the original, was provided.

Abbott stated that at least one other ABPI member company that had been at the club on the evening in question had provided Abbott with a letter setting out the appropriateness of the venue and the events which took place there. An anonymised copy of the letter, signed by Abbott's solicitors as a true and accurate copy of the original, was provided.

Abbott submitted that the above evidence alone was sufficient to cause the Appeal Board to reconsider the ruling of a breach and to find instead no *prima facie* case.

Abbott stated that, as a result of the provisions in Paragraph 5.2 of the 2006 Constitution and Procedure relating to a complaint which concerned 'a matter closely similar to one which has been the subject of a previous adjudication', the Panel lacked authority to proceed with this purported complaint. The subject of Case AUTH/1745/7/05, which led to Abbott's suspension from the ABPI, was the subject of a review by the Appeal Board and dealt with what constituted an inappropriate venue and hospitality, ie identical issues to the subject matter now at issue. The two cases involved similar individuals, similar allegations relating to inappropriate hospitality and occurred in roughly the same time period as the visit to the club. As such, the Director abused her discretion in proceeding with this purported complaint. As a result of Case AUTH/1745/7/05, Abbott was suspended from the ABPI for six months and had given undertakings as to its future conduct. Bringing subsequent proceedings, on such closely similar allegations, whilst a company was already suspended and subject to undertakings, was an oppressive and disproportionate measure which could have no practical benefit or consequence other than to subject Abbott to further negative publicity.

Abbott submitted that The Sun newspaper article in question had not, and could not, constitute a complaint that was subject to the jurisdiction of the Panel. The Constitution and Procedure stated in Paragraph 1.2 that 'the Authority also administers the complaints procedure by which complaints made under the Code are considered by the Code of Practice Panel and, where required, by the Code of Practice Appeal Board' (emphasis added). There were numerous other references throughout the Code to 'complaints made under the Code', such as in Clause 2.1 and the first box of the flowchart on page 38 of the Code of Practice booklet. The Sun newspaper article could not constitute a complaint 'made under the Code', since it did not refer to either the Code or any of its provisions and was not submitted to the Director in the manner set forth in the introduction to the Constitution and Procedure. Furthermore, the article could not be considered a complaint since it did not have a 'complainant'. The newspaper had

reported on evidence given in an employment tribunal hearing by a former Abbott employee and was not making a complaint under the Code. There were no facts to support the view that the journalist was making a complaint. Further, the Code did not provide any basis for assuming the existence of a 'complainant'. The article did not contain any allegation of infringement of a provision of the Code. The part of the article relevant to the matters referred to a personal incident between the representative and the hospital consultant. The article had not alleged that Abbott provided hospitality to the hospital consultant at the club, a matter that would be covered by the Code.

Furthermore, Abbott submitted that it was highly inappropriate to suggest the description of the club as a 'gay club' constituted an allegation of infringement by Abbott and its representatives of the obligations to maintain high standards set out in Clauses 9.1 and 15.2 of the Code. Moreover, the supplementary information provided in the Code regarding Clause 2 stated that: 'A ruling of breach of this clause is a sign of particular censure and is reserved for such circumstances'. There was nothing about this venue, other than its description as a 'gay club', which the Panel surely could not intend to imply had any significance that would suggest an issue with this location.

Abbott submitted that even if, despite ample evidence to the contrary, the Panel was correct to conclude that The Sun article had constituted a complaint made under the Code, there was not a shred of evidence to support such a complaint. To find Abbott in breach of the Code without any evidence to support such a finding, and in spite of the denial of a breach provided by Abbott in its response, was a deviation from the requirements of fundamental fairness and due process.

Abbott stated that in providing the case report for Case AUTH/1745/7/05 to the Sun reporter, without first consulting Abbott, the Panel had effectively pre-determined the outcome of the case by increasing the likelihood of further adverse publicity for Abbott. As explained above, given that Abbott was already suspended and subject to undertakings given as a result of Case AUTH/1745/7/05, the only effective consequence of ruling a breach of the Code in the case now at issue would be further adverse publicity. The act of handing over the documents to the reporter, notwithstanding any request by the Panel that the reporter treated these documents as private and confidential, clearly increased the risk of further publicity against Abbott.

Finally, Abbott submitted that it was not it but the Panel in its ruling, its characterization of The Sun newspaper article as a complaint made under the Code and the reporter as a 'complainant'; and in sending the reporter a copy of its ruling along with the previous case report, that had engaged in activities to bring discredit upon, or reduce confidence in the pharmaceutical industry. This inappropriate contact with the media should be stopped immediately and the Constitution and Procedure revised to avoid recurrence of this unfortunate incident.

For the reasons stated above, Abbott submitted that the Panel's rulings of a breach of the Code was erroneous and unreasonable and should be set aside.

COMMENTS FROM THE JOURNALIST

The journalist stated that he had merely been reporting on an industrial tribunal for his newspaper and that he had no further interest in this case.

APPEAL BOARD RULING

The Appeal Board noted that in its appeal Abbott had provided further and better particulars than those submitted to the Panel. Abbott had now unequivocally stated that it had not provided the consultant mentioned in the Sun article with any hospitality. There was an anonymised supporting statement from the consultant signed by Abbott's solicitors as a true and accurate copy of the original. At the appeal hearing Abbott stated that the payment of £40.90 had been claimed by the representative as part of routine expenses and not part of customer support as this would have necessitated using a different procedure. The company assumed that the payment was in respect of a manager buying drinks for Abbott staff. There was no evidence provided by the journalist that inappropriate hospitality had been provided. On the basis of the information before it the Appeal Board ruled no breach of Clauses 2, 9.1, 15.2 and 19.1 of the Code. The appeal was successful.

During its consideration of this case the Appeal Board noted Abbott's concerns regarding the process by which the newspaper article was taken up and dealt with as a complaint but considered that the Director had acted in accordance with the Constitution and

Procedure in that regard. Paragraph 5.1 of the Constitution and Procedure stated that when the Director received information from which it appears that a company may have contravened the Code, the company concerned is invited to comment on the matters of complaint. Public criticism of the industry was taken up and dealt with as a complaint under the Code. Established custom and practice was to give the rights of the complainant to someone and in the case of articles in the press it was usually the author of the article. As to whether the matter should have proceeded, Paragraph 5.1 stated that if a complaint concerns a matter closely similar to one which has been the subject of a previous adjudication it may be allowed to proceed in certain specified circumstances. Further the Director should normally allow a complaint to proceed if it covered matters similar to those in a decision of the Code of Practice Panel which was not the subject of appeal to the Appeal Board. The Appeal Board considered that the matters taken up by the Director were not closely similar to those the subject of Case AUTH/1745/7/05 and in any event that case was not the subject of an appeal to the Appeal Board; the matter had come before the Appeal Board as a result of a report made to it by the Panel. Further the Appeal Board thus considered that the Director had correctly followed the Constitution and Procedure in this regard. The Appeal Board fully supported the Director's decision to send the journalist the published report for the previous case, Case AUTH/1745/7/05; it was relevant to the matter at issue and already in the public domain.

Proceedings commenced 15 February 2006

Case completed

11 May 2006