

CASE AUTH/2065/11/07 and AUTH/2066/11/07

ANONYMOUS REPRESENTATIVES v TEVA

Representative call rates

Two anonymous Teva representatives (non-contactable) complained separately about their call rates.

The complainant in Case AUTH/2065/11/07 stated that since early 2007 senior managers had set excessive activity targets for calls made on GPs, practice nurses, and hospital doctors. Managers went out of their way to tell representatives to comply with the Code but in reality the only way that the targets could be achieved and sustained was by breaching the Code. Most representatives could not achieve these activity rates so in quarter three 2007 the payment of bonuses was linked to activity rates and to having at least 30 appointments in the diary over the following four months.

The representative explained that his ability to achieve target call rates was not helped by having several surgeries on his territory which did not see representatives and others which would only grant one appointment a year. Despite doing everything possible to get appointments the complainant calculated that in order to get his bonus in Quarter 4 he would have to see more than six GPs every day.

The complainant in Case AUTH/2066/11/07 alleged that there was undue pressure placed upon representatives to achieve unfair and unjust call rates. The latest bonus payments were linked to the achievement of certain call rates and the numbers of appointments in diaries. Failure to achieve specific numbers led to non payment of bonus and the fact that dozens of representatives did not receive any payment suggested that this was an unfair scheme. The complainant was concerned that, through this ill thought through scheme, representatives were being indirectly pressurised to breach the Code.

The Panel noted that supplementary information to the Code stated that the number of calls made on a doctor or other prescriber by a representative each year should normally not exceed three on average excluding attendance at group meetings and the like, a visit requested by the doctor or other prescriber or a visit to follow up a report of an adverse reaction. Thus although a representative might speculatively call upon or proactively make an appointment to see a doctor or other prescriber three times in a year, the number of contacts with that health professional in the year might be more than that. In the Panel's view briefing material should clearly distinguish between expected call rates and expected contact rates.

The Panel noted Teva's submission that its representatives were very clear about the definition of contact rate. The Respiratory mandate and the Teva Brands mandate stated that 'There should not be more than 3 unsolicited calls in any one year on any

one individual customers [sic]'. Various reference points were given including to Clauses 15 and 19 of the Code. However it did not appear that the representatives were provided with the definitions of 'contact rate' and 'call rate'. Further it appeared that Teva was confused about the difference. Graphs entitled 'Area example – call frequency' were each headed call frequency whereas Teva's submission referred to them as showing 'contact rate'. The graphs showed that some customers were being called upon more than 3 times per year. The requirements of the Code related to the individual representative and thus if one representative made 2 calls on a doctor it did not mean that another representative could make 4 calls upon another. Similarly if a representative only called once upon one doctor, he could not call five times upon another.

The Panel noted Teva's original submission that '... Teva at a local level ... was not breaching the Code in terms of exceeding three unsolicited calls *on average* in one year' (emphasis added). The Panel was uncertain whether Teva had taken account of the fact that the supplementary information to the Code referred to the number of calls on doctors or other prescribers. It appeared that the representatives might be calling on health professionals who were not prescribers and these would not be subject to the restrictions in the supplementary information.

The Panel noted that it had not been provided with clear information about the frequency of contact expected on individual health professionals. There did not appear to be any information about the number of contacts per customer per year. The Panel accepted fully that it was for a company to decide upon its call rates and contact rates provided they complied with the Code. The Panel did not consider that it was necessarily a breach of the Code for Teva to require its representatives to have 30 booked appointments.

The Panel considered that taking all the circumstances into account the representatives' instructions did not sufficiently explain the differences between call rates and contact rates. In the context of Teva's concern that the data was below Teva's expectations and activity target, the Panel considered that without further explanation the briefing documentation together with the company's submission advocated a course of action which was likely to breach the Code. A breach of the Code was ruled.

The Panel considered that the activity graphs were confusing but on balance decided that these did not provide evidence that over calling had occurred and thus no breach of the Code was ruled in that regard.

Two anonymous Teva UK Ltd representatives (non-contactable) separately complained about representative call rates.

Case AUTH/2065/11/07

COMPLAINT

The complainant stated that since early 2007 senior managers had set excessive activity targets for representatives. These activity targets related to calls made on GPs, practice nurses, and hospital doctors and even though they went out of their way to tell representatives that they must comply with the Code in relation to activity, the reality of the situation was that the only way that these rates could be achieved and sustained was by breaching the Code. This they knew! Most representatives could not achieve these activity rates so part way through quarter three 2007 they linked the payment of bonuses to activity rates and to having at least 30 appointments in the representative's diary over the following four months.

On the complainant's territory, like many others, there were several surgeries on the target list which stated that they did not wish to see medical representatives and that they must not visit them again. The complainant's performance was still judged against the activity on these surgeries and the fact that they did not see representatives meant that he needed to make more calls on other customers to make up his overall rates. Many surgeries only gave one appointment for each representative per year. The complainant had to respect this yet the senior managers expected him to see these customers more than once by holding a meeting and then going back to see what they thought of the meeting was etc. He had done everything he could to get appointments with GPs, nurses, practice managers and others at every surgery on his list and still he could not get enough to get his bonus. Some people were now lying to say they had appointments that they did not really have, just to get their bonuses. He did not have more than thirty appointments which meant that he would never achieve his sales bonuses. To make things worse Teva said that representatives could get their bonus in Quarter 4 if they were able to make up the shortfall. The complainant would need to see more than six GPs every day to make up the shortfall.

At the last Teva conference the medical director referred to a complaint that had been made to the ABPI about people being pressurised to get upgrades (Enhanced Asthma Care Service [Case AUTH/2017/7/07]). He said that there had never been any pressure and this was backed up by the brands director. The representatives were all amazed about this – some people were sacked for not getting these upgrades! The representatives were all made to feel uncomfortable and it was obvious that complaining to the ABPI was something that they Teva was very unhappy about.

Case AUTH/2066/11/07

COMPLAINT

The complainant stated that he was concerned that there was undue pressure placed upon representatives to achieve unfair and unjust call rates. The latest bonus payments were linked to the achievement of certain call rates and the number of appointments in diaries. Failure to achieve specific numbers led to non payment of bonus and the fact that dozens of representatives did not receive any payment suggested that this was an unfair scheme. The complainant was concerned that, through this ill thought through scheme, representatives were being indirectly pressurised to breach the Code.

When writing to Teva, the Authority asked it to respond in each case in relation to Clauses 2, 9.1, 15.4 and 15.9 of the Code.

Cases AUTH/2065/11/07 and AUTH/2066/11/07

RESPONSE

Teva was surprised that the complainants had chosen this particular route to express their concerns as Teva would consider this to be a line management discussion in the first instance. Teva assumed that these anonymous complainants had used this 'anonymous' route, intentionally bypassing the internal processes, because they knew that their managers would have all the details regarding their individual performance over the year and how this compared to company and industry wide performance. Their line manager therefore would be able to put their concerns in context based on fact and not misleading hearsay or on one sided personal opinions of what was a fair expectation.

With regard to the suggested increasing pressure in relation to daily roles and expectations, Teva provided key performance indicators in order that an individual's expectations and performance could be assessed in a clearly defined framework. In addition Teva had implemented company wide management processes to help support all staff to help ensure standards and targets in all departments could be achieved.

Teva had an 'open door' policy to UK senior managers and had a detailed internal complaints procedure which helped and supported employees to tell management (outside of the UK if desired) about any activities and behaviours they considered to be unethical, this process was non-judgemental and anonymous. All field-based staff received training on this in Quarter 3, 2007. Amongst other things it covered a course of conduct which seemed improper for behaviour in Teva or which might compromise or embarrass the individual or Teva, if it were known by co-workers or the public.

Excessive activity targets

Virtually all employees within the pharmaceutical

industry were set targets on a number of parameters. Contact rates for sales teams were accepted as an industry norm.

National core contact rate calculation (definition: contact rate was a face to face meeting via either a booked appointment or a requested call in response to an enquiry by a health professional, or a contact made at a meeting):

On average a Teva representative had a customer base of 1,200 and hence appropriate focus was placed on planning for representatives, this included booking appointments.

Teva believed the contact rates set were appropriate given the customer base and were in line with those of other pharmaceutical companies.

Clause 15.4 suggested that representatives should not normally exceed three unsolicited calls on average in one year. This did not include attendance at meetings and the like or those requested by the health professional in response to a specific enquiry. The team mandate clearly recognized this and referenced the appropriate section of the Code.

Teva provided a coverage and frequency report for an average Teva region consisting of nine representatives and stated that it clearly demonstrated that Teva on a local level (and if extrapolated up to a national level) was not breaching the Code in terms of exceeding three unsolicited calls on average in one year.

Given the above, Teva did not believe that this was in breach of Clauses 9.1, 15.4 or 15.9.

Forward planning – 30 appointments in a representative's diary

Planning and organisation was a core competency for representatives, having a well-planned diary was part of that competency. Like most organisations appraisals were based on clearly defined competencies with expectations and targets set around them.

Teva did not know why the complainants believed that having 30 forward booked appointments was unrealistic. Thirty appointments represented on average less than 0.025% (average customer base 1,200/30 appointments) of their customer base. [In response to a request from the Panel Teva subsequently corrected the 0.025% to 2.5% and apologised for its initial error.] Teva noted that this objective of 30 appointments was based on all customer groups not just GPs. Teva firmly believed that in setting these objectives it had acted in the spirit of the Code and ensured that its representatives based their contact with health professionals via pre-arranged appointments (in line with the Code) and therefore did not inconvenience health professionals with unsolicited calls. This information was communicated to the sales force appropriately.

Given the above Teva did not believe that this was in breach of Clauses 9.1, 15.4 or 15.9.

Quarter 4 incentive payments

Teva noted that its representatives were paid a fixed basic salary that formed the majority of their remuneration package, the incentive scheme did not form part of their employment contract and was awarded entirely at the discretion of Teva. For the avoidance of doubt, the scheme could be amended or withdrawn at any time, and without notice, by Teva. This was all clearly set out in the Terms & Conditions of the scheme.

It was not unreasonable to expect that any targets set in any given year were tracked against performance for all employees within Teva. The sales force was no exception to this. It was not unreasonable to set an appropriate incentive based on achievement of any set of performance indicators.

The Teva Incentive Scheme rewarded and recognized highly performing representatives against some key core competencies of the role;

- appropriate calling on customers within the remit of the Code;
- appropriate planning to ensure optimal productivity.

Teva set standards and objectives at all levels that it monitored on an ongoing basis, national contact rate was one such objective. Throughout the year the Teva brands team had been below the industry average.

In July 2007 achievement of key performance indicators was linked to achievement of sales target to recognise that the sales targets were based on figures that assumed a CFC phase-out early in 2007, various factors in the market meant this had not happened as quickly as predicted. Sales targets were reduced by 15% on average in recognition that the targets were stretching in this dynamic environment.

Teva believed in giving representatives every opportunity to meet or exceed their clearly defined targets and so a 'catch-up' facility was put in place to give all representatives a fair and equal chance of achieving their annual performance measures. The Quarter 4 catch-up was designed to allow those top-performing representatives who were close to achieving their performance measures a further opportunity to meet them. It was also accepted in the industry that Quarter 3 contact rates were lower than any other quarter of the year due to the holiday season and national sales meetings traditionally happened in September. Therefore by instigating the Quarter 4 catch-up Teva had tried to help representatives achieve their targets.

The incentive scheme as laid out in the Terms & Conditions was paid upon a representative achieving only 75% of the core contact rate of their total customer population and at least 100% of their sales target. The key performance indicators helped maintain a clearly defined framework for measurement of performance and incentive payment as laid out clearly in the Representative Mandate.

Sales force incentives were inextricably linked to day-to-day job performance and achievement of sales targets; poor performance in any profession was seldom rewarded and was therefore often the source of disgruntlement and resentment to management. The poor performance was often justified by individuals externalizing the issues and blaming it on factors that were 'not their fault' or just plain unfair.

Teva was very disappointed that actions designed to help representatives achieve their targets had been misrepresented as undue pressure by an alleged current employee to justify their own poor performance and consequent lack of bonus payment. One complainant stated they would need to see six GPs every day in Quarter 4 to make up the shortfall; this suggested poor performance. The incentive payment was linked to, inter alia, a contact rate of 2.7 a day. In saying that they would have to see six GPs a day, Teva concluded that in the preceding quarter they had seen virtually no customers at all and/or they did not understand how the incentive scheme worked, which if they had gone to their line manager could have been clarified. Unfortunately as this alleged current employee had complained anonymously, Teva could only speculate as to why they had avoided positive communication with their line manager. This representative seemed to have included this figure of six GPs a day more for its shock value than relevance as the contact rate was on all customers not just GPs.

Given the above information Teva did not believe that this was in breach of Clauses 9.1, 15.4 or 15.9.

Sales conference

As required by the Code any ruling against a company should be communicated to its employees. The presentation was deemed to be important and serious and delivered appropriately due to the company having been ruled as having breached numerous clauses, including Clause 2. Teva had subsequently appealed against this ruling.

Teva did not believe that the current case was a breach of Clauses 9.1, 15.4 or 15.9.

Teva strongly denied that 'people were sacked' for not getting upgrades; Teva assumed this was used to make the complaint more shocking and alarmist and like the rest of the complaint it was based on spurious and intentionally misleading information.

Teva firmly believed that it had acted within the spirit of the Code and defended its right to manage its business responsibly under its own corporate governance guidelines and did not believe it had breached any of the clauses cited.

FURTHER RESPONSE FROM TEVA

In response to a request for further information Teva submitted that the Teva Brands Mandate and the Respiratory Mandate related to the contact rates for promotion of respiratory products. The two sales

teams both promoted the same range of products. Teva had not defined the difference between contact rates and call rates per se in the respiratory document but clear reference was made to, inter alia, the Code in both team mandates. The reference to the Code clearly explained the difference and why this was important specifically in relation to the number of unsolicited calls per year to an individual health professional. Teva submitted that its earlier response clearly stated the definition of contact rate as follows and this was clearly understood by sales force and sales force management:

'National core contact rate calculation (definition: contact rate is a face to face meeting via either a booked appointment or a requested call in response to an enquiry by a healthcare professional, or a contact made at a pre-arranged meeting)'.

Regular training sessions were run for both sales teams that updated and refreshed knowledge on the Code and specifically the requirements of Clause 15.

With regard to the local data Teva provided further information as to why this demonstrated there was no breach of the Code with regard to not exceeding 3 unsolicited calls per year. The analysis with regard to all customers showed that for this particular geographical area this sales team (9 representatives) year to date had seen approximately 2,300 individual different customers once. Of these approximately 750 had been seen twice. Of the 750 customers seen twice, a further 350 (approximately) had been seen three times, and so on. The series of graphs was based on contact rate not call rate. Additional graphs broken down by customer groups were also provided.

Therefore, what this series of graphs demonstrated was that at a typical individual area level Teva was not 'overcalling' as representatives only saw the majority of customers once. This was an indicative picture across the other area sales teams.

The figures were below Teva's expectations and activity targets: therefore Teva deemed it appropriate to link activity to bonus to drive the right planning and organisation behaviours in the sales force. Teva did not believe this to be unreasonable based on the under performance being delivered against core performance indicators that had been set.

Teva stated that the phrase '75% of core contacts' meant an achievement of 75% of their individual core contact rate on the key customer group. Core contacts for Teva Brand were GPs, practice nurses, and hospital doctors. On average each Teva Brands representative had a customer base of approximately 1,200. No two territories were identical in terms of customer number or access to health professionals and so Teva had varied the targets to best reflect the local environment.

Teva Respiratory representatives did not see secondary care customers, therefore their customer

average was approximately 1,100 per territory.

Teva did not believe that the activity targets set were excessive considering the number of core targets customers a representative had and the industry benchmarking data in comparison to the Teva performance.

Teva assumed that 25% of health professionals would not see representatives; this was factored into the contact rate objectives.

The 30 appointment objective was based on all customer groups. If a representative only had appointments booked with one group of health professionals, eg nurses, the line manager would seek to understand why this was the case and develop a training needs analysis to help the representative focus more appropriately.

PANEL RULING

The Panel noted that the supplementary information to Clause 15.4 stated that the number of calls made on a doctor or other prescriber by a representative each year should normally not exceed three on average excluding attendance at group meetings and the like, a visit requested by the doctor or other prescriber or a visit to follow up a report of an adverse reaction. Thus although a representative might speculatively call upon or proactively make an appointment to see a doctor or other prescriber three times in a year, the number of contacts with that health professional in the year might be more than that. In the Panel's view briefing material should clearly distinguish between expected call rates and expected contact rates.

The Panel examined all the documents. It noted Teva's submission that its representatives were very clear about the definition of contact rate. The Respiratory mandate and the Teva Brands mandate stated that 'There should not be more than 3 unsolicited calls in any one year on any one individual customers [sic]'. Various reference points were given including to Clauses 15 and 19 of the Code. However it did not appear that the representatives were provided with the definitions of 'contact rate' and 'call rate'. Further it appeared that Teva was confused about the difference. The set of graphs entitled 'Area example – call frequency' were each headed call frequency whereas Teva's submission referred to the graphs as showing 'contact rate'. The Panel disagreed with Teva's submission that these graphs demonstrated that at a typical individual area level Teva was not over calling on customers as the majority were only being seen once by representatives. The graphs clearly showed that some customers were being called upon more than 3 times per year. The requirements of the Code related to the individual representative and thus if one representative made 2 calls on a doctor it did not mean that another representative could make 4 calls upon another. Similarly if a representative only called once upon one doctor, he could not call five times upon another.

In this regard the Panel noted Teva's original submission that '... Teva at a local level ... was not breaching the Code in terms of exceeding three unsolicited calls **on average** in one year' (emphasis added). The Panel was uncertain whether Teva had taken account of the fact that the supplementary information to Clause 15.4 referred to the number of calls on doctors or other prescribers. It appeared that the representatives might be calling on health professionals who were not prescribers and these would not be subject to the restrictions in the supplementary information to Clause 15.4.

The Panel noted Teva's submission that it 'ensured that its representatives based their contact with health professionals via pre-arranged appointments (in line with the Code) and therefore did not inconvenience health professionals with unsolicited calls'. It was not a requirement of the Code that doctors should only be seen via pre-arranged appointments, representatives could, if they wished, speculatively 'cold-call' upon health professionals. Whether a representative called upon a doctor via a 'cold-call' or through a one-to-one appointment arranged by the representative (as opposed to one requested by the doctor or to follow-up on an adverse reaction) both types of visit would constitute an unsolicited call, of which no more than three should be made by any one representative to any one doctor or other prescriber in a year.

The Panel noted that it had not been provided with clear information about the frequency of contact expected on individual health professionals. It noted from the mandates that representatives were expected on average to contact either 6.95 or 5.4 customers per day. Again there appeared to be an inconsistency between Teva's submission and the supporting documentation. Teva stated that the incentive payment was linked to a rate of 2.7 a day. Teva also referred to a Quarter 4 catch up and that sales targets were reduced by 15% on average. This appeared to be inconsistent with the mandates which gave the GP contact rates as 3.4 per day or 3.6 per day.

There did not appear to be any information about the number of contacts per customer per year. From the graphs setting out the activity reports, the Teva objective for GPs appeared to be just over 3.5 per quarter for Quarters 1, 2 and 3. This appeared to be per month for October and November. This could be read as a representative having to contact one doctor 3.5 times for Q1, 3.5 times Q2 and 3.5 times Q3, and either 3.5 times per month October, November, December, or 3.5 times in Q4. Giving a total of either 14 or 21 per year. The industry average appeared to be 2 and the industry maximum appeared to be just over 2. The Panel accepted fully that it was for a company to decide upon its call rates and contact rates provided they complied with the Code. The Panel did not consider that it was necessarily a breach of the Code for Teva to require its representatives to have 30 booked appointments.

The Panel considered that taking all the circumstances into account the instructions to representatives were not sufficiently clear about the differences between call rates and contact rates noting in this regard the mandate documents. In the context of Teva's concern that the data was below Teva's expectations and activity target, the Panel considered that without further explanation the briefing documentation together with the company's submission advocated a course of action which was likely to breach the Code. A breach of Clause 15.9 was ruled.

The Panel considered that the graphs were confusing

as noted above but on balance decided that these did not provide evidence that over calling had occurred and thus no breach of Clause 15.4 was ruled.

The Panel did not consider the circumstances warranted a ruling of a breach of Clauses 2 or 9.1.

Complaints received

AUTH/2065/11/07	15 November 2007
AUTH/2066/11/07	16 November 2007

Cases completed	11 February 2008
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