CASE AUTH/2156/8/08

GLAXOSMITHKLINE v SANOFI PASTEUR MSD

Gardasil letter to health professionals

GlaxoSmithKline complained about a letter sent to health professionals on 18 June by Sanofi Pasteur MSD.

GlaxoSmithKline noted that it had already complained (Case AUTH/2147/7/08) in relation to Sanofi Pasteur MSD's activities after the Department of Health (DoH) granted the contract to supply the human papillomavirus (HPV) vaccine for the national immunisation programme to Cervarix (GlaxoSmithKline's vaccine). Sanofi Pasteur MSD marketed Gardasil and had also competed for the contract.

GlaxoSmithKline stated that its concerns about the letter now at issue were similar to its previous concerns and provided further evidence of non-compliant activity by Sanofi Pasteur MSD in the immediate aftermath of the government's decision.

GlaxoSmithKline stated that anonymous health professionals sent it copies of the letter in question, concerned that it appeared to imply that the DoH had chosen the wrong vaccine; one that the rest of the world had not chosen. The health professionals were concerned that it was an attempt to undermine confidence in the choice of vaccine for the national HPV immunisation programme.

GlaxoSmithKline stated that Sanofi Pasteur MSD had asserted that the letter was sent to a limited number of experts with whom it had worked closely and came under the Code's exclusion of 'factual, accurate and informative announcements and reference material', but for this to apply, then the letter must 'include no product claims'. GlaxoSmithKline noted that the letter contained a number of claims, and provided examples.

GlaxoSmithKline contended that had Sanofi Pasteur MSD simply wished to inform these health professionals of the DoH's decision as a matter of courtesy, then the first and last paragraphs would have been adequate. However, the letter also included a further three paragraphs which promoted Gardasil. Consequently, GlaxoSmithKline considered that the letter was promotional and subject to the requirements of the Code including the requirements for prescribing information and an adverse event statement.

The claim '… Gardasil has recently received a positive opinion from the CHMP for protection against pre-malignant lesions of the vagina as a licence extension' constituted promotion of indications not covered by the marketing authorization. Readers were unlikely to know the nuances of the regulatory processes and would not be clear that a positive opinion did not equate to a licence granted, but was one of the final steps on the ladder towards it. As such, readers were left with the impression that the licence had already been extended.

GlaxoSmithKline stated that during inter-company correspondence Sanofi Pasteur MSD claimed the inclusion of the positive opinion announcement was a legitimate exchange of medical and scientific information with a number of experts, but the letter could not be both a factual informative announcement as claimed initially and also a bona fide exchange of scientific or medical views.

GlaxoSmithKline alleged that as part of a concerted campaign to undermine confidence in the DoH's decision to use Cervarix as the vaccine of choice, the letter had not maintained high standards.

The detailed response from Sanofi Pasteur MSD is given below.

The Panel noted Sanofi Pasteur MSD's submission that the letter had been sent to a group of clinicians with whom the company had worked closely as part of an ongoing legitimate scientific dialogue. According to information supplied by Sanofi Pasteur MSD the letter had been sent to just over 50 health professionals, the majority being hospital consultants. Sanofi Pasteur MSD had given details of its relationship with each health professional; many had spoken at Sanofi Pasteur MSD meetings. It appeared that for some of the health professionals, however, their only relationship with Sanofi Pasteur MSD was that the company had sponsored them to attend a European meeting on gynaecological oncology.

The Panel considered that the letter was promotional for Gardasil. Details of its indications were included and Gardasil was referred to as the 'world's leading HPV vaccine'. The Panel noted Sanofi Pasteur MSD's submission that the letter was not promotional and was part of an ongoing legitimate scientific dialogue with selected clinicians. In the Panel's view, however, each clinician would have a slightly different relationship with the company and so an identical letter to all of them could not be seen as part of that relationship. Further, the letter was purely product related and did not put any of that information into context with regard to the relationship between the recipient and the company. The Panel considered that the inclusion of product claims made the letter promotional and in that regard it could not benefit from the exemption to promotion given to factual, accurate, informative announcements. It was not

relevant whether Gardasil could or could not be used outside the national immunisation programme. The Panel considered that the letter should have included prescribing information and a statement about adverse event reporting and as both were absent breaches of the Code were ruled.

The claim 'In addition Gardasil has recently received a positive opinion for protection against pre-malignant lesions of the vagina as a licence extension' in a press release had been considered in Case AUTH/2147/7/08 and ruled to be misleading in breach of the Code by the Panel. The material now at issue was promotional material aimed at health professionals. The Panel considered that by referring to the positive CHMP opinion and licence extension the letter promoted Gardasil for an as yet unauthorized indication. This was inconsistent with the marketing authorization and thus a breach of the Code was ruled.

The Panel noted that GlaxoSmithKline stated that as part of a concerted campaign to undermine confidence in the DoH decision to use Cervarix as the vaccine of choice the letter failed to maintain high standards. The Panel noted that the letter had been sent to a limited audience all of whom had had some specific interaction with Sanofi Pasteur MSD and interest in the UK HPV vaccination programme. Nonetheless, the Panel considered that Sanofi Pasteur MSD's failure to regard the letter as promotional material demonstrated a poor knowledge of the requirements of the Code. High standards had not been maintained. A breach of the Code was ruled.

GlaxoSmithKline UK Ltd complained about a letter (ref 0608 UK11970) sent to health professionals on 18 June by Sanofi Pasteur MSD Ltd.

GlaxoSmithKline noted that it had already complained to the Authority (Case AUTH/2147/7/08) in relation to Sanofi Pasteur MSD's activities after the Department of Health (DoH) granted the contract to supply the human papillomavirus (HPV) vaccine for the national immunisation programme to Cervarix (GlaxoSmithKline's vaccine). Sanofi Pasteur MSD marketed Gardasil and had also competed for the contract.

GlaxoSmithKline stated that its concerns about the letter now at issue were similar to its previous concerns and provided further evidence of non-compliant activity by Sanofi Pasteur MSD in the immediate aftermath of the government's decision. Inter-company dialogue had been unsuccessful. The clauses referred to were in relation to the 2006 Code as the letter in question was dated before 1 July 2008. The case was considered using the 2008 Constitution and Procedure.

COMPLAINT

GlaxoSmithKline stated that anonymous health professionals sent it copies of the letter which they had received from Sanofi Pasteur MSD, concerned that it appeared to imply that the DoH had chosen the wrong vaccine; one that the rest of the world had not chosen. The health professionals were concerned that it was an attempt to undermine confidence in the choice of vaccine made for the national HPV immunisation programme.

GlaxoSmithKline stated that in inter-company correspondence Sanofi Pasteur MSD had asserted that the letter was sent to a limited number of experts with whom it had worked closely and came under the exclusions of Clause 1.2, 'factual, accurate and informative announcements and reference material', but for this to apply, then the letter must 'include no product claims'. GlaxoSmithKline noted that the letter contained a number of claims, from 'In addition to protection from cervical cancer…', '… world's leading HPV vaccine…', '… more than 26 millions doses of Gardasil having been distributed…', '… Gardasil provides early health and economic benefits…' to '… good safety profile'.

GlaxoSmithKline contended that had Sanofi Pasteur MSD simply wished to inform these health professionals of the DoH's decision as a matter of courtesy, then the first and last paragraphs would have been adequate. However, the letter also included a further three paragraphs which promoted Gardasil. Consequently, GlaxoSmithKline considered that the letter was promotional and subject to the requirements of the Code. There was no stipulation in the Code that only blanket mailings were promotional, and campaigns targeted to a particular group of health professionals were often used as a marketing tool. As such the letter required prescribing information and an adverse event statement. Lack of these breached Clauses 4.1 and 4.10.

As the letter was promotional, the inclusion of the claim '… Gardasil has recently received a positive opinion from the CHMP for protection against pre-malignant lesions of the vagina as a licence extension' constituted promotion of indications not covered by the marketing authorization. A similar claim was included in the Sanofi Pasteur MSD press release considered in Case AUTH/2141/7/08 ie 'In addition to protection from cervical cancer, Gardasil provides protection from precancerous cervical, vulval and vaginal lesions (an extension to the licence following a recent CHMP positive opinion) and genital warts caused by virus types targeted by the vaccine'. Readers were unlikely to know the nuances of the regulatory authority processes and would not be clear that a positive opinion did not equate to a licence granted, but was one of the final steps on the ladder towards it. As such, readers were left with the impression that the licence had already been extended. GlaxoSmithKline alleged that this was in breach of Clause 3.2.

GlaxoSmithKline stated that during inter-company correspondence Sanofi Pasteur MSD claimed the inclusion of the positive opinion announcement was a legitimate exchange of medical and scientific

information with a number of experts, but the letter could not be both a factual informative announcement as claimed initially and also a bona fide exchange of scientific or medical views.

GlaxoSmithKline noted that Sanofi Pasteur MSD had stated that the second paragraph outlined information on the indication of Gardasil which any of the limited number of experts with whom it had worked closely would have known. The language used did not suggest an audience with whom Sanofi Pasteur MSD had worked closely, or it would not need to be told that Gardasil was 'the four type (6, 11, 16 and 18) HPV vaccine', or what its indication was.

GlaxoSmithKline noted that one paragraph was dedicated to noting how many doses had been distributed worldwide, which on its own did not constitute scientific or medical exchange. The bland nature of the clinical information 'good safety profile and generally well tolerated' also indicated that this was not a personal letter to individual experts, but a targeted promotional mailing to a number of health professionals.

GlaxoSmithKline alleged that as part of a concerted campaign to undermine confidence in the DoH's decision to use Cervarix as the vaccine of choice, the letter had not maintained high standards and as such breached Clause 9.1.

RESPONSE

Sanofi Pasteur MSD noted that GlaxoSmithKline had alleged that its letter to health professionals was promotional. Sanofi Pasteur MSD refuted this for several reasons. The letter was sent by its medical director as part of an ongoing, legitimate scientific dialogue with a selected group of clinicians with whom it had worked closely over time. Throughout this dialogue, no clinician had complained or asked it to stop sending them information. The distribution list and details of the relationship with Sanofi Pasteur MSD was provided in confidence. This long-term relationship with the clinicians was clear from the final paragraph of the letter which concluded: 'We would like to thank you for your continued support and look forward to the opportunity to work with you again on future vaccine initiatives'.

There were many stakeholders that had an interest in the national HPV immunisation programme yet, out of these, only a selected number were sent the letter. Sanofi Pasteur MSD had chosen to maintain close contact with these individuals as they represented a broad range of specialties eg out of approximately 550 senior genito-urinary medicine clinicians in the country, only 11 were sent the letter.

Furthermore, Sanofi Pasteur MSD did not believe that the letter contained promotional claims. The DoH's book - Immunisation Against Infectious Disease (The 'Green Book') stated that the HPV vaccine was not routinely recommended for those outside the national immunisation programme and there was no mention in the letter that the vaccine could be prescribed on a case-by-case basis. Consequently Sanofi Pasteur MSD believed that the letter actually deterred clinicians from prescribing Gardasil. It therefore rebutted the allegation that the letter was promotional and as such it would not have been appropriate to include prescribing information or an adverse event statement. On the basis of this Sanofi Pasteur MSD refuted the allegations of a breach of Clauses 4.1 and 4.10.

Sanofi Pasteur MSD had responded to GlaxoSmithKline's allegation of a breach of Clause 3.2 in Case AUTH/2147/7/08 in relation to the press release (UK12004) with reference to a positive CHMP opinion. It restated that whilst GlaxoSmithKline correctly pointed out that a positive CHMP opinion did not equate to a licence extension, it was nonetheless the step before the licence extension was granted. The second paragraph of the letter did not state that this was the indication of Gardasil, therefore Sanofi Pasteur MSD refuted this allegation of a breach of Clause 3.2.

Sanofi Pasteur MSD disagreed with GlaxoSmithKline that the letter could not be both a factual informative announcement as well as a bona fide exchange of scientific or medical views. Whilst a letter to an individual in itself could not be considered an exchange, since the information was only flowing in one direction, this must be taken in the broader context of an ongoing dialogue which was two way, components of which might include telephone calls, emails, as well as face to face meetings, as was the case with the letter's recipients and thus forming a legitimate exchange of scientific or medical views.

Sanofi Pasteur MSD had certainly not undertaken a concerted campaign to undermine confidence in the DoH's decision to choose GlaxoSmithKline's HPV vaccine instead of Gardasil. In fact the opposite was true. Sanofi Pasteur MSD had continued to be supportive of the DoH's HPV vaccination programme even though it was not successful in the tender process as evidenced by a range of initiatives which had included the following:

- A series of meetings run in conjunction with the Royal Society of Medicine focused on the prevention of cervical cancer.
- Sanofi Pasteur MSD had sponsored the Royal Society for the Promotion of Health's Human Papillomavirus Education programme including an education pack for schools to support Personal, Social and Health Education as well as a leaflet written and evaluated by a professor. The latter had been distributed on request to the primary care sector and had also been requested by schools.
- Sanofi Pasteur MSD had undertaken a disease awareness campaign entitled 'tell her' which provided educational information about HPV and cervical cancer.

- Sanofi Pasteur MSD provided a series of workshops for primary care organisations to support the implementation of the national HPV immunisation programme.

Sanofi Pasteur MSD did not believe that the letter was misleading, inaccurate or damaging. On the contrary it believed that the letter appropriately conveyed the outcome of the tender decision and gave the recipients of the letter the necessary context to help them understand its position. Sanofi Pasteur MSD had conformed to the highest standards and consequently it refuted the allegation of a breach of Clause 9.1.

In summary, Sanofi Pasteur MSD believed that it had acted appropriately in light of the DoH's decision to select GlaxoSmithKline's HPV vaccine for the national HPV immunisation programme. It strongly refuted the allegations of breaches of Clauses 3.2, 4.1 and 4.10. It was a responsible company, dedicated to vaccines and public health, and believed that it had maintained high standards and consequently denied breaching Clause 9.1.

PANEL RULING

The Panel noted Sanofi Pasteur MSD's submission that the letter had been sent to a group of clinicians with whom the company had worked closely as part of an ongoing legitimate scientific dialogue. According to information supplied by Sanofi Pasteur MSD the letter had been sent to just over 50 health professionals, the majority being hospital consultants. Sanofi Pasteur MSD had given details of its relationship with each health professional; many had spoken at Sanofi Pasteur MSD meetings. It appeared that for some of the health professionals, however, their only relationship with Sanofi Pasteur MSD was that the company had sponsored them to attend a European meeting on gynaecological oncology.

The Panel examined the letter at issue. It considered that it was promotional for Gardasil. Details of its indications were included and Gardasil was referred to as the 'world's leading HPV vaccine'. The Panel noted Sanofi Pasteur MSD's submission that the letter was not promotional and was part of an ongoing legitimate scientific dialogue with selected clinicians. In the Panel's view, however, each clinician would have a slightly different relationship with the company and so an identical letter to all of them could not be seen as part of that relationship. Further, the letter was purely product related and did not put any of that information into context with regard to the relationship between the recipient and the company. The Panel considered that the inclusion of product claims made the letter promotional and in that regard it could not benefit from the exemption to promotion given to factual, accurate, informative announcements in Clause 1.2 of the Code. It was not relevant whether Gardasil could or could not be used outside the national immunisation programme. The Panel considered that the letter should have included prescribing information and a statement about adverse event reporting; as both were absent breaches of Clauses 4.1 and 4.10 were ruled respectively.

The claim 'In addition Gardasil has recently received a positive opinion for protection against pre-malignant lesions of the vagina as a licence extension' in a press release had been considered in Case AUTH/2147/7/08 and ruled to be misleading in breach of the Code by the Panel. The material now at issue was promotional material aimed at health professionals. The Panel considered that by referring to the positive CHMP opinion and licence extension the letter promoted Gardasil for an as yet unauthorized indication. This was inconsistent with the marketing authorization and thus a breach of Clause 3.2 was ruled.

The Panel noted that GlaxoSmithKline alleged that as part of a concerted campaign to undermine confidence in the DoH decision to use Cervarix as the vaccine of choice the letter failed to maintain high standards. The Panel noted that the letter had been sent to a limited audience all of whom had had some specific interaction with Sanofi Pasteur MSD and interest in the UK HPV vaccination programme. Nonetheless, the Panel considered that Sanofi Pasteur MSD's failure to regard the letter as promotional material demonstrated a poor knowledge of the requirements of the Code. High standards had not been maintained. A breach of Clause 9.1 was ruled.

Complaint received **6 August 2008**

Case completed **13 October 2008**