GENERAL PRACTITIONER v ASTRAZENECA

Conduct of representative

A general practitioner complained to AstraZeneca about the conduct of one of its representatives and copied his letter to the Authority.

The complainant noted that he had met the representative one afternoon shortly before the start of a busy surgery. Unfortunately the meeting was arranged without his prior knowledge or consent and in that regard he considered it an unsolicited visit.

The representative (whom the complainant had not met before) began by stating that the practice nurses had recently told her that '[The complainant] did not seem to know a lot about Symbicort Smart and had been prescribing Salbutamol to patients and so could she (the representative) "have a word" with [the complainant]!'.

The complainant immediately expressed his surprise and disbelief that one of his nurses had said this to an outsider rather than discussing the matter with him first and, indeed, at an appropriate forum. The complainant repeatedly asked the representative if this was indeed what the nurse(s) had said and she replied that it was at least three times and even described the nurse but refused to name her.

The complainant stated that despite realising that he was upset by her comments, the representative continued to speak in a patronising and condescending manner without trying to establish the facts or ascertaining his prior knowledge on the subject.

The representative did not introduce the topic of SMART dosing in the context of asthma management and came across as unilaterally and blatantly trying to 'sell a product' without any due comparison or justification. In order to avoid feeding her incorrect assumption, the complainant illustrated his more than adequate knowledge on the subject.

The meeting closed amicably (given the circumstances) and the complainant stated that he would look into this matter further as there were several areas of concern.

The complainant submitted that he and his practice manager had interviewed the practice nurses individually; all of them denied making or implying any of the above statements or remarks. Furthermore, there were no examples or concerns expressed regarding SMART prescribing.

It thus appeared that the representative had been dishonest and made false representations during her meeting with the complainant to suit her (and possibly AstraZeneca's) gains. The representative's attitude was insensitive, unprofessional and irresponsible and did not befit an AstraZeneca representative and brought the company into disrepute and breached the Code on several counts.

The complainant requested a detailed inquiry from AstraZeneca, with a view to appropriate reprimand, sanctions and reassurances. In almost 20 years as a doctor, this was his first unsavoury encounter with a representative!

The complainant was also concerned about the way in which the matter had been handled. Initially it appeared that the representative would issue a full written apology and meet the complainant to try and resolve this matter. Shortly afterwards, the practice manager was informed that the complainant needed to write to corporate governance at AstraZeneca via the representative; this course of action was strange and unacceptable.

The area manager informed the practice manager of the complicated governance process that had to be followed. The complainant was assured of feedback following the area manager's meeting with the representative. However this had not happened.

The complainant expected a detailed report from AstraZeneca including remedial suggestions to prevent a recurrence. Whilst this matter was unresolved, AstraZeneca was asked not to engage with the practice.

Furthermore, all pharmaceutical representatives had clear instructions not to liaise/interact directly with practice nurses during practice hours as the practice had a designated forum for such meetings and would ask that AstraZeneca adhered to that policy; the representative at issue had thus also breached this policy.

Clearly, the representative would not be welcome at the practice in the future.

AstraZeneca's response was sent to the complainant and his further comments invited. The complainant stated that on the whole he found AstraZeneca's response totally unsatisfactory. Details were provided.

The detailed response from AstraZeneca is given below.

The Panel noted its role was to determine whether or not there had been a breach of the Code. As

acknowledged by the complainant some of his concerns were not matters within the scope of the Code.

The Panel noted that the parties' accounts differed markedly. It was difficult in such circumstances to determine where the truth lay. The Panel noted that it was for the complainant to establish his case on the balance of probabilities.

The complainant alleged that the representative had explained that a practice nurse had stated that the complainant did not know a lot about Symbicort SMART and suggested that the representative have a word with the complainant. This was denied by AstraZeneca which stated that on arrival at the GP practice a practice nurse gestured the representative and her line manager to come into her office. They were not made aware of any practice policy regarding such calls. According to the representative and her line manager this nurse suggested they see the complainant to discuss the use of Symbicort SMART in asthma patients including concomitant use of the blue inhaler. The complainant stated that all of his practice nurses denied making such comments. The Panel also noted the complainant's allegation that the representative's attitude during the interview was insensitive and unprofessional and that the promotion was without due comparison or justification. This was denied by AstraZeneca which referred to the contemporaneous note of its representative. The representative in question had not been at work and AstraZeneca had been unable to comment on the complainant's further information. The complainant provided a very full account of the interview. It was clear that the complainant had been upset. Representatives' calls should not cause inconvenience to those upon whom they call.

The Panel decided that it was not possible to determine on the balance of probabilities precisely what had occurred. The Panel noted that extreme dissatisfaction must be present on the part of a complainant before he/she was moved to submit a complaint. Nonetheless, taking all the evidence into account the Panel decided that it was not possible to determine precisely what had occurred and thus ruled no breach of the Code.

A general practitioner complained to AstraZeneca UK Limited about the conduct of one of its representatives and copied his letter to the Authority.

COMPLAINT

The complainant noted that he had met the representative one afternoon of 9 February, shortly before the start of a busy surgery. Unfortunately the meeting was arranged without his prior knowledge or consent and in that regard he considered it an unsolicited visit.

Rather than attempt to establish any kind of rapport with the complainant, the representative (whom the complainant had not met before) opened her conversation by stating that at a recent meeting with the practice nurses she had been told that '[The complainant] did not seem to know a lot about Symbicort Smart and had been prescribing Salbutamol to patients and so could she (the representative) "have a word" with [the complainant]!'.

The complainant immediately expressed his surprise and disbelief that such a statement had been made by one of his nurses to an outside party rather than discussing the matter with him first and, indeed, at an appropriate forum. The complainant repeatedly asked the representative if this was indeed what the nurse(s) had said and she replied that it was at least three times and even described the nurse as 'short, fair and blonde' but refused to name her claiming that she was not aware of it.

The complainant stated that despite realising that he was upset by her comments, the representative continued to speak in a patronising and condescending manner without trying to establish the facts or ascertaining his prior knowledge on the subject.

The representative did not introduce the topic of SMART dosing in the context of asthma management and came across as unilaterally and blatantly trying to 'sell a product' without any due comparison or justification. In order to avoid feeding her incorrect assumption, the complainant illustrated his knowledge on the subject and it was apparent to the representative that this was sufficiently more than adequate as she later admitted.

The meeting closed amicably (given the circumstances) and the complainant stated that he would look into this matter further as there were obviously several areas of concern.

The complainant submitted that he and his practice manager had investigated this matter thoroughly and had interviewed the practice nurses individually; all of them denied making or implying any of the above statements or remarks. Furthermore, there were no examples or concerns expressed regarding SMART prescribing or indeed management of asthma patients as a whole.

It thus appeared that the representative had been dishonest and made false representations during her meeting with the complainant to suit her (and possibly AstraZeneca's) gains and this was a serious misdemeanour and of concern.

The complainant alleged that the representative's attitude was insensitive, unprofessional and irresponsible and did not befit an AstraZeneca representative and brought the company into disrepute not to mention breaching the Code on several counts.

The complainant requested a detailed inquiry from AstraZeneca into this matter with a view to

appropriate reprimand and sanctions against the representative and he also sought reassurances that this behaviour would never be repeated. In almost 20 years as a doctor, this was the complainant's first unsavoury encounter with a pharmaceutical representative!

The complainant was also concerned about the manner in which the episode had been handled so far. The practice manager was initially informed that the representative was prepared to issue a full written apology and meet the complainant to try and resolve this matter. Shortly afterwards, the practice manager was informed that the complainant needed to write to corporate governance at AstraZeneca but send the letter to the representative's home address which was strange and unacceptable.

The practice manager was then contacted by an area manager who informed the complainant of the complicated governance process that had to be followed. The complainant was assured of feedback following the area manager's pre-arranged meeting with the representative. However this had not happened.

The complainant expected a detailed report from AstraZeneca including remedial suggestions to prevent a recurrence. The complainant further asked that, whilst this matter was unresolved, AstraZeneca refrained from engaging with the practice until professional trust was restored.

Furthermore, all pharmaceutical representatives had clear instructions not to liaise/interact directly with practice nurses during practice hours as the practice had a designated forum for such meetings and would ask that AstraZeneca adhered to that policy too which, again, the representative at issue had breached as well.

Clearly, the representative would not be welcome at the practice in the future.

When writing to AstraZeneca the Authority asked it to respond in relation to Clause 2, 7.2, 8.2, and 15.2 of the Code.

RESPONSE

AstraZeneca explained that 'Symbicort SMART' was a company trademark and represented **S**ymbicort **M**aintenance **A**nd **R**eliever **T**herapy which was a licensed treatment approach for Symbicort, for it to be taken as regular maintenance treatment and as needed in response to asthma symptoms. The SMART licence was available for the 100mcg/6mcg and 200mcg/6mcg presentations of Symbicort but not the 400mcg/12mcg presentation.

AstraZeneca explained that on 4 February, the representative and her manager visited the complainant's practice to ask for an appointment with one of the practice nurses (an unsolicited call). When they arrived at reception, and before they had asked for the appointment, the nurse spotted them and gestured to them to go to her which they did; they were not aware of any specific policy in this practice about calls/interactions with practice nurses and nor were they informed of such a policy by the nurse. During this interaction (attended by both the representative and her manager) they discussed an upcoming AstraZeneca educational meeting. The representative and her manager also understood from the practice nurse that they should arrange to see the complainant to discuss Symbicort SMART and its licensed use in asthma patients, including those who were also concomitantly taking blue inhalers. The nurse asked them to 'have a word' with the doctor about this topic. The representative was told that the best way to arrange an appointment was via the practice manager.

The representative then asked the practice manager for an appointment with the complainant. When asked if this was important the representative said that it was in the belief that the appointment had been recommended by one of the practice nurses. The practice manager duly arranged an appointment. The representative assumed that the practice manager had the authority to arrange such an appointment; she was not told otherwise. AstraZeneca noted that the meeting with the complainant was on 10 February.

The representative's record of the meeting with the practice manager stated 'Agreed to arrange an appointment with [the complainant] to discuss SMART management'. The contemporaneous call record entered by the representative indicated that the 'Desired Customer Action' for this appointment (as desired by the representative) was 'To ensure that he is aware of the correct license indication and understand target pts and how to rx'. This was not inconsistent with the reasons that the representative and manager believed they were recommended to see the doctor by the nurse.

Based on this information, AstraZeneca believed that the representative acted in good faith upon the recommendation of a practice nurse to call on the complainant to discuss Symbicort SMART and that the appointment was arranged via an appropriately authorized practice official. AstraZeneca thus denied a breach of Clause 15.2.

AstraZeneca noted that the complainant appeared to allege that information, claims or comparisons provided verbally by the representative regarding Symbicort SMART were not balanced/objective and/or were exaggerated or had undue emphasis ('[she] came across as unilaterally and blatantly trying to 'sell a product' without any due comparison or justification'). The complainant had not referred to any specific promotional claims or materials.

In responding to this point, AstraZeneca relied on the contemporaneous written call record entered by the representative and the prior information supplied by her. The call record indicated that the appointment with the doctor took place at 16:30 on 10 February.

The representative recollected that during this call she initiated a discussion of Symbicort SMART specifically in relation to the management of patients with asthma, including those who were also taking blue inhalers. They discussed how the SMART licence changed the practice of prescribing blue inhalers.

AstraZeneca noted the 'Agreed Customer Action' was 'Understands and will use a blue inhaler in pt if he feels the needs and said that SMART was not the only indication for Symbicort'. This was not inconsistent with the representative's recollection of the clinical discussion about Symbicort SMART, as outlined above.

The representative also recollected a brief discussion about exercise-induced asthma and that this did not fall into the SMART licence indication (the summaries of product characteristics (SPCs) for the SMART licence doses stated that 'the prophylactic use of Symbicort, eg. before exercise, has not been studied' and that therefore reliever inhalations of Symbicort were not intended for such use).

There was also a brief discussion of the British Thoracic Society (BTS) Guidelines on the management of asthma; a promotional leavepiece on the place of Symbicort SMART in the BTS guidelines was left with the complainant. The leavepiece gave a summary rationale/justification for the use of Symbicort in asthma on the basis that it was included in BTS clinical guidelines.

AstraZeneca noted that the representative was unavailable to respond to the specific point in the complainant's letter that 'She did not try and introduce the topic of SMART dosing in the context of asthma management ...'. However, in the prior information submitted by the representative, there was no indication of a specific discussion regarding doses or concerns expressed regarding a lack of such a discussion.

Based on this information, AstraZeneca could not establish evidence that the representative promoted Symbicort '… without any due comparison or justification'. The company therefore denied a breach of Clause 7.2.

AstraZeneca noted the allegation that the representative spoke to the complainant ' in a patronizing and condescending manner …' and considered that, in relation to the Code, this was an allegation that the representative disparaged the clinical or scientific opinion of a health professional.

AstraZeneca submitted that the representative recollected that the complainant was offended by the reason given by her for the call, ie that she had been recommended by one of the practice nurses to discuss Symbicort SMART and its licensed use in asthma patients, including those patients who were also concomitantly taking blue inhalers. The representative explained that she was merely following up on this recommendation.

The rest of the call focused mainly on a clinical discussion of Symbicort SMART and its use in patients with asthma including those also taking the blue inhaler. The representative agreed that it was appropriate for the complainant to continue prescribing Symbicort SMART as he had been, in line with his clinical judgement. This was reflected in the representative's call notes which stated 'Understands and will use a blue inhaler in pt if he feels the needs and said that SMART was not the only indication for Symbicort'.

The representative recalled that towards the end of the call the complainant was not as upset as he had been at the beginning. AstraZeneca noted the complainant's submission that 'The meeting closed amicably (given the circumstances) ...'.

Based on this information, AstraZeneca could not establish that the representative had disparaged the clinical or scientific opinion of a health professional. Therefore the company denied a breach of Clause 8.2.

AstraZeneca noted that the complainant was concerned about the manner in which the episode had been handled and considered that, in relation to the Code, this was an allegation that the representative and/or the manager had not maintained a high standard of ethical conduct.

AstraZeneca submitted that during and after the call, the representative recognized that the complainant was upset as stated in the call record, 'He was not happy that I had an appointment'. However, as detailed above, the representative judged that the ambience had improved in the latter part of the call.

The following week, the practice manager told the representative that the complainant was concerned about the way in which the appointment had been arranged and required an apology. The representative discussed this with her manager and was instructed to clarify the specific concerns before responding. In the subsequent discussion with the practice manager, the representative was informed that the complainant required a written apology.

The representative undertook to write an apology to the complainant in response to any letter of complaint from the complainant setting out the specific concerns and that this letter could be sent to the representative's home address.

However, in a telephone conversation with him on 18 March, the area manager told the complainant that any letter of apology from the representative would require AstraZeneca Head Office approval, and as a first step in the process of addressing his concerns, the manager asked the complainant to submit a written statement setting out the specific points of concern. The complainant declined to do this and requested that the representative write a statement first setting out the issues, since she should already know what they were, and respond

to them accordingly in an honest manner.

The area manager subsequently requested the compliance department at AstraZeneca to further follow up this matter. The compliance department duly telephoned the practice to request a clarification of the concerns verbally but was unsuccessful and therefore wrote to the complainant requesting this on 26 March and then in a follow up letter on 29 April.

AstraZeneca accepted that although the representative (in good will) initially promised, but did not write, a letter of apology, it was appropriate for the manager to first ask for a written clarification of the specific concerns before responding in writing.

Given the above, AstraZeneca believed that overall a reasonable effort was made to clarify and respond to specific concerns and it denied a breach of Clause 15.2.

AstraZeneca fully accepted that the complainant had a poor opinion of the company. However, as detailed above the company did not believe there had been breaches of the relevant clauses of the Code, or that the circumstances were such as to bring discredit upon, or reduce confidence in the pharmaceutical industry. AstraZeneca thus denied a breach of Clause 2.

FURTHER COMMENTS FROM THE COMPLAINANT

AstraZeneca's response was sent to the complainant for comment. The complainant stated that on the whole he found AstraZeneca's response totally unsatisfactory. He started with some general comments:

- The complainant was disappointed that AstraZeneca's head of compliance had chosen to only write to the Authority as his letter of complaint was addressed directly to AstraZeneca's compliance leader and the complainant would therefore have expected him to respond to him out of professional courtesy.
- The complainant saw no expression of remorse at all in the letter which seemed to focus more on defending the possible breaches of the Code rather than dealing with specific issues raised.
- The complainant found it hard to understand why AstraZeneca had not consulted with/obtained a statement from its representative before responding to the complaint and relied on antiquated information which it claimed to be contemporaneous. Indeed, if the representative did make such extensive notes; then this surely must be because she realised she had done something 'wrong'.
- The complainant queried why the representative was 'unavailable' unless this was again a demonstration of how lightly AstraZeneca regarded this issue.
- The complainant had not come across any mention of an apology which he would most certainly still expect from the representative.

More specifically; the complainant had the following to add to enable the Authority to make its rulings:

- The response letter made frequent reference to the fact that the representative had acted on the recommendation of one of the practice nurses. Investigations so far had revealed this to be untrue and the complainant had no option but to ask the AstraZeneca representative to identify the nurse as all of the complainant's nurses interviewed denied making the condescending comment mentioned to the complainant by the representative and also clearly stated that they did not have any issues with the complainant's prescribing methodology (SMART or otherwise).
- Further to the complainant's discussions with his practice manager, she recalled that the reason given by the representative to meet with him specifically was because she had missed the complainant at her promotional meeting with the other GPs and not that she was acting on the behest of a nurse (yet another example of misrepresentation).
- The complainant found the head of compliance's description of the actual interaction inaccurate and extremely defensive.
- The complainant did not think there could be anything more disparaging than a pharmaceutical representative telling an experienced doctor she had not met before that '… you don't seem to know a lot about SMART prescribing and I have been asked to have a word with you'!
- The complainant would not expect any pharmaceutical representative to base their interaction with a health professional on an assumption or alleged comment from a nurse and then proceed to talk down to that person even after realising that their behaviour had upset them! This was what had caused the complainant the most distress and as he had pointed out earlier; he did not see an apology forthcoming at all.
- The response letter seemed to describe an interactive discussion around Symbicort SMART. The complainant told the Authority that he had no option but to quickly correct the representative's misplaced preconceptions and delivered a succinct summary on asthma management and the place of the SMART regime to demonstrate convincingly his grasp and command on the subject following which she conceded: 'I don't really need to tell you anything!'.
- The complainant had to take control and close the meeting amicably (this was what sensible well-trained professionals did in such situations) in order to compose himself before his afternoon surgery as the representative's demeanour did not change even as she realised she had acted wrongly. She casually stated to the complainant

shortly before she left '… I hope this isn't a problem. I didn't mean to cause any trouble …'. Did the Authority need any more proof of her admission of misbehaviour?

- There was further falsification about the sequence of events. The complainant had confirmed the facts yet again with his practice manager who could confirm that further to her discussions with the AstraZeneca representative, the representative actually agreed to submit an apology to him (either written or face-to-face). This was prior to the manager getting involved.
- The complainant stated that the AstraZeneca manager seemed intent on going down a formal complaints process and the complainant explained that this was unnecessary as the representative had already agreed to a written apology (and thereby admitting her misdemeanour). For this reason the complainant declined to provide a formal statement and suggested that the manager meet with the representative to ascertain the facts and arrange for an apology. The complainant noted that he had given AstraZeneca a written statement but that the company had still not apologized to him.
- The AstraZeneca manager clearly stated that she would meet the representative the following week and would contact the complainant further to this. (Which she never did and instead the practice received a call from the Compliance Leader and then a letter to which the complainant had obviously responded.)

The complainant reiterated his deep dismay at the total lack of any genuine repentance in the response from AstraZeneca which was unfortunately cluttered with the sort of corporate deniability one would not normally expect from such a company; which appeared to have covered up its representative's unprofessionalism in order to deflect any criticism and penalties from itself.

Sadly the complainant now had an even poorer opinion of the company and its representative. The complainant had hoped that by addressing his concerns appropriately, AstraZeneca could have tried to repair the damage caused to its relationship with the practice which now seemed irreparable and he again asked the company not to interact with the practice (or its employees during usual working hours) whilst this matter remained unresolved and until faith was restored.

The complainant would, of course, respect any rulings made by the Authority with regard to any likely breaches of the Code; but, as stated earlier, his concerns were much more than just this and AstraZeneca had failed to deal with these honestly and completely to his satisfaction.

FURTHER COMMENTS FROM ASTRAZENECA

The complainant's additional comments were provided to AstraZeneca.

AstraZeneca stated that its response above relied on information supplied by the representative in March when her manager was initially investigating this issue and additionally on call notes recorded in the territory management system. AstraZeneca had not been able to obtain a statement from the representative due to long term absence. This was not, in any way, an indication that AstraZeneca regarded this issue lightly.

AstraZeneca representatives were required to maintain contemporaneous notes in relation to calls they made on health professionals and the notes generated by the representative in this case were in keeping with that requirement and were not 'extensive' as suggested. There was no evidence to suggest that they had been generated because the representative realised she had done something wrong.

In relation to the complainant's specific points AstraZeneca had the following comments.

From the complainant's initial letter, AstraZeneca noted that he had already interviewed the relevant practice staff. Therefore AstraZeneca did not attempt to repeat such interviews and relied solely on the submissions of the AstraZeneca staff. AstraZeneca therefore did not have any direct information from named practice staff to submit.

The line manager's recollection was that the grounds given for booking the appointment with the practice manager were that a practice nurse had asked them to go and see the complainant regarding Symbicort and its licensed use in asthma patients, including those patients who were also concomitantly taking blue inhalers. They recalled that the nurse asked them to 'have a word' with the doctor in relation to this topic and not because the representative had missed the complainant at a promotional meeting.

From the complainant's initial letter the representative explained the reason for the call. The letter stated that the representative '…opened her conversation by stating that at a recent meeting with my practice nurses, she had been told that [the complainant] did not seem to know a lot about Symbicort Smart and had been prescribing Salbutamol to patients and so could she have a word with me'. This was consistent with the representative's account of events. However, in the latest correspondence the complainant suggested that the representative had initiated this remark with no context or reason for the call by saying '…you don't seem to know a lot about SMART prescribing and I have been asked to have a word with you'. This appeared to differ from the specific wording for this opening line originally given by the complainant and the account given by the representative. Within the context of the complainant's originally stated reasons given to him by the representative for making the appointment it did not appear that it was the intention of the representative to be disparaging.

The prior information from the representative was

that the call focused mainly on a clinical discussion of Symbicort SMART and its use in patients with asthma including those also taking the blue inhaler. The representative agreed with the patient that it was indeed appropriate for the doctor to continue prescribing Symbicort SMART, as he had been, in line with his clinical judgement. This was reflected in the representative's call notes which stated 'Understands and will use a blue inhaler in pt if he feels the need and said that SMART was not the only indication for Symbicort'. As the discussion progressed the representative recalled that towards the latter part of the call the doctor was not as upset as he had been at the beginning. AstraZeneca noted in the doctor's letter of complaint that 'The meeting was closed amicably (given the circumstances)…'.

Since the representative had been unavailable since receipt of the formal complaint, AstraZeneca was not able to confirm with her whether she made certain statements during the call as alleged in this latest correspondence. Those specific statements were:

- '… you don't seem to know a lot about SMART prescribing and I have been asked to have a word with you' (AstraZeneca addressed this point above)
- 'I don't really need to tell you anything!' (AstraZeneca did not believe that this statement in the context referred to by the complainant would in any case constitute a breach of any of the clauses under consideration)
- '..I hope this isn't a problem. I didn't mean to cause any trouble…' (AstraZeneca did not agree that this was necessarily an admission of wrong doing).

Following the appointment with the complainant the representative received a telephone call from the practice manager stating that the complainant was not happy about how and why she had got the appointment with him. From its initial submission, AstraZeneca had further established that the representative asked the practice manager 'where does the doctor want to go with this?' The representative asked the practice manager if the complainant wanted an apology. The practice manager said that she would call the representative back once she had spoken with the complainant. The practice manager telephoned the representative again to say that the complainant would like a written apology and the representative agreed to do that. The representative asked what the complainant was unhappy about and thus what she would be apologizing for and the practice manager said 'that they felt in the middle of things and would get the doctor to write to the representative'. The representative said to the practice manager that she would write an apology to the doctor in response to any letter of complaint from him setting out the specific concerns and that this letter from the doctor could be sent to her home address. This was, as stated by the complainant, before the representative's manager became involved.

Subsequently, the representative discussed the events with her line manager who told her that they were not allowed to write an external apology without Head Office approval. This advice from the manager was not inconsistent with the encouragement AstraZeneca gave its employees to report concerns internally along the management chain or to its compliance function so that appropriate investigation and action could take place. As mentioned in AstraZeneca's initial response, in a telephone conversation with the doctor on 18 March, the manager informed the complainant that any letter of apology from the representative would require Head Office approval, and as a first step in the process of addressing his concerns, the manager asked the doctor to submit a written statement setting out the specific points of concern. The doctor declined to do this and requested that in fact, the representative should write a statement first setting out the issues, since she should already know what they were, and respond to them accordingly in an honest manner.

The line manager then contacted head office to report the matter and for advice. An initial investigation into this matter took place on 22 March with the representative. Additionally the AstraZeneca compliance department contacted the practice manager to try to uncover the complainant's specific concerns and was told that the complainant did not wish to discuss the matter and would like a copy of AstraZeneca's complaints procedure. AstraZeneca then wrote to the complainant on 29 April requesting information on concerns that he had.

In summary, the AstraZeneca representative and manager concerned believed they were acting in good faith in response to a recommendation from a practice nurse when booking the appointment and for the reasons detailed above.

PANEL RULING

The Panel noted its role was to determine whether or not there had been a breach of the Code. As acknowledged by the complainant some of his concerns were not matters within the scope of the Code. The Panel had to restrict its consideration to those matters which fell within the scope of the Code; whether practice policy had been adhered to in relation to the initial conversation with the practice nurse, whether the representative's comments disparaged the complainant and whether Symbicort Smart was promoted without due comparison or justification.

The Panel noted that the parties' accounts differed markedly. It was difficult in such circumstances to determine where the truth lay. The Panel noted that it was for the complainant to establish his case on the balance of probabilities.

The complainant alleged that the representative had explained that a practice nurse had stated that the complainant did not know a lot about Symbicort SMART and suggested that the representative have

a word with the complainant. This was denied by AstraZeneca which stated that on arrival at the GP practice a practice nurse gestured the representative and her line manager to come into her office. They were not made aware of any practice policy regarding such calls. According to the representative and her line manager this nurse suggested they see the complainant to discuss the use of Symbicort SMART in asthma patients including concomitant use of the blue inhaler. The complainant stated that all of his practice nurses denied making such comments. The Panel also noted the complainant's allegation that the representative's attitude during the interview was insensitive and unprofessional and that the promotion was without due comparison or justification. This was denied by AstraZeneca which referred to the contemporaneous note of its representative. The representative in question had not been at work and AstraZeneca had been unable to comment on the complainant's further information. The complainant provided a very full account of the interview. It was clear that the complainant had been upset. Representatives' calls should not cause inconvenience to those upon whom they call.

The Panel decided that it was not possible to determine on the balance of probabilities precisely what had occurred. The Panel noted that extreme dissatisfaction must be present on the part of a complainant before he/she was moved to submit a complaint. Nonetheless, taking all the evidence into account the Panel decided that it was not possible to determine precisely what had occurred and thus ruled no breach of Clauses 2, 7.2, 8.2 and 15.2.

Complaint received **16 May 2010**

Case completed **6 August 2010**