

ANONYMOUS v ROCHE

Conduct of representative

An anonymous, non-contactable NHS employee complained about the promotion of Pegasys (peginterferon alfa-2a), a treatment for hepatitis C marketed by Roche. The complainant was particularly concerned about the actions of a representative who was married to the nurse specialist responsible for choosing the treatment for hepatitis C in a large teaching hospital.

The complainant alleged that as a result of the sales performance of Pegasys the couple had benefited from large cash bonuses and won a trip to the Caribbean. Further income was derived from Roche in terms of speaker fees for the representative's wife.

The complainant alleged that Roche had fully encouraged this appalling breach of ethics.

The detailed response from Roche is given below.

The Panel noted that the complainant was anonymous and non-contactable. General allegations about a representative's conduct were difficult to resolve. A complainant had the burden of proving their complaint on the balance of probabilities. The weight to be attached to evidence might be adversely affected if the source was anonymous. In this case very few details had been provided and there was no way to ask the complainant for more information.

The Panel noted Roche's submission that the representative in question had declared the potential conflict of interest to Roche in line with company policy.

The Panel noted Roche's statement that the representative's wife was considered to be one of the UK's most established and accomplished hepatitis C clinical nurse specialists but that she did not actively prescribe in her current role and nor was she able to influence patient medication.

The Panel noted Roche's submission that when the representative's wife moved to a teaching hospital in the representative's territory, the representative informed his line manager. Roche submitted that it was agreed that as Pegasys was already the treatment of choice at the hospital, there was essentially no conflict of interest. The Panel noted from Roche's submission that the representative's wife also spoke to her line manager who did not think there was a conflict of interest because the choice of hepatitis C treatment was not within her remit.

The Panel noted that since 2009 the

representative's wife had presented at four Roche meetings. Given her own professional standing, it did not seem unreasonable that Roche should ask her to speak at meetings on its behalf. There was a contract in place and the speaker fees did not appear unreasonable. No breach of the Code was ruled.

The Panel noted the salary and incentive payments received by the representative for 2008-2010. There was a significant increase in the incentive payment received for 2010 which seemed to be proportional to the increase in sales of Pegasys at the hospital where his wife worked.

Roche submitted that the Caribbean trip was an award that recognised performance vs target for 2010, performance management plus demonstration of the Roche values. The Panel noted that the representative's wife accompanied him on this trip as his guest.

The Panel noted that it was inevitable that there would be instances when a representative was married to a health professional. Companies should be mindful of the external perception particularly if the husband and wife had professional interests and/or influence in the same therapeutic area. The Panel noted that the complainant had the burden of proving their complaint on the balance of probabilities. The Panel had some concerns about the conflict of interest and the impression created by the arrangements but noted Roche's submission that both parties had been transparent with their line managers about the situation. The Panel could not understand the complainant's concerns but did not consider that he or she had provided evidence to show that on the balance of probabilities the representative or the company had acted contrary to the requirements of the Code. The representative had not failed to maintain high standards, and no breach of the Code was ruled in that regard. In the Panel's view the 2010 incentive payment was on the limits of acceptability. On balance the Panel did not consider that it constituted an undue proportion of the representative's basic salary, and no breach of the Code was ruled. The Panel consequently considered that high standards had been maintained and ruled no breach of the Code in that regard. The Panel noted its rulings above and ruled no breach of Clause 2.

An anonymous, non-contactable NHS employee complained about the promotion of Pegasys (peginterferon alfa-2a) by Roche, in particular the

actions of a representative.

Pegasys was indicated, *inter alia*, for the treatment of chronic hepatitis C in adult patients who were positive for serum HCV-RNA, including patients with compensated cirrhosis and/or co-infected with clinically stable HIV.

COMPLAINT

The complainant noted that the representative in question was married to the nurse specialist responsible for choosing the treatment for hepatitis C in a large teaching hospital that was on the representative's territory. Roche was well aware of this conflict of interest and seemed to encourage it.

The representative and his wife would have benefited from high levels of cash bonus due to sales performance of Pegasys, and the couple had also won a trip to the Caribbean as a reward for sales of the product. They had derived further income from Roche in terms of honoraria for talks that the representative's wife gave to other nurses.

The complainant alleged that Roche had fully encouraged this situation which the complainant saw as an appalling breach of ethics.

When writing to Roche the Authority asked it to respond in relation to Clauses 2, 9.1, 15.2, 15.7 and 20.1.

RESPONSE

Roche stated that it took the allegations very seriously. Representatives were aware of the need to maintain professional relationships between themselves and the health professionals and appropriate administrative staff on whom they called. Roche recognised that in line with the Code, its representatives must not be paid an undue proportion of salary proportional to sales of medicines and all of its incentive programmes were configured to encourage and reward a high standard of behaviour in business.

Roche submitted that although the representative's wife was one of the UK's most established and accomplished hepatitis C clinical nurse specialists (CNS), and since January 2010 had been a qualified nurse practitioner, she did not actively prescribe in her current role. The clinical decision to use Pegasys at the hospital in question was made before 2007, before the representative or his wife worked at this account. A professor, along with two of his colleagues, had very strong clinical buy in for Pegasys, based on its clinical outcome data and personal experience.

The hospital did not have a treatment protocol as such and each clinician chose the most appropriate treatment for their patients; the consensus for hepatitis C was Pegasys. The representative's wife did not have a role to play in treatment selection *per se*.

The complaint was based on the allegation that the representative's wife was responsible for treatment choice and therefore there was an alleged conflict of interest with her husband promoting Pegasys in the department in which she worked. As the premise on which the complaint was based was false, it was clear that there could be no breach found in this matter. High standards and representatives' high standards were met in this regard and so the alleged breaches of Clauses 9.1 and 15.2 were refuted.

The representative had twice been so employed by Roche with an intervening period in a head office role. He currently worked in the field of hepatitis. During each of the periods that the representative had been in the field his wife had worked at a hospital that was part of his territory. On the first occasion the representative told the Roche business unit manager about the potential conflict of interest. The situation was fully explored but as clinicians and not CNSs decided on product use it was concluded that there was no conflict of interest. Some time after his return to the field, the representative's wife took up a position as hepatitis C CNS at the hospital now in question which, again, was on the representative's territory. The representative told his line manager about the situation and as above because of the role of the clinician in deciding treatment options it was concluded that there was no conflict of interest. There had never been any indication or direction to use personal relationships improperly at Roche. High standards and representatives' high standards were met and in this regard the allegation of a breach of Clauses 9.1 and 15.2 was refuted.

Whilst the representative received bonus under the Infield Incentive Scheme, Roche noted that in addition to sales performance this incentive scheme recognised overall company performance and a number of indicators to demonstrate sound and ethical business behaviour. The bonus paid, due to sales performance, was not an undue proportion of total salary. A copy of the Infield Incentive Scheme was provided, which Roche submitted showed that payments made proportional to the sales of medicine did not constitute an undue proportion of remuneration and in this regard the allegation of a breach of Clause 15.7 was refuted.

The Platinum Reward Trip to which the complainant referred was an award that recognised performance vs target, performance management, which included primary responsibilities and goals, plus demonstration of the Roche values of passion, integrity and courage. It did not reward unethical behaviour or encourage activity that would breach the Code. The award was made to individuals at Roche who under the system referred to by the complainant would have been eligible to have a guest accompany them. A copy of the Platinum Club Rule Book was provided. In Roche's view, the basis of the reward trip complied with Clause 15.7 and therefore Roche refuted the allegation of a breach in this regard.

Roche engaged with health professionals and appropriate administrative staff in accordance with Clause 20 of the Code. The representative's wife had been engaged by Roche on a few occasions due to her academic standing and experience; she was probably considered to be one of the UK's top three hepatitis C CNSs. Roche's view that she had the necessary expertise in accordance with Clause 20.1 was corroborated by the fact that two other pharmaceutical companies had proactively used her expertise. In that regard the allegation of a breach of Clause 20.1 was refuted.

Roche stated that the above showed that it and its representative had not undertaken any unethical activity. In Roche's view, the representative had conducted himself professionally in accordance with both the letter and spirit of the Code. Roche had investigated all activity in relation to this complaint and had established that these had been carried out in accordance with the Code. Roche therefore refuted the complainant's allegations and associated breaches of Clauses 2, 9.1, 15.2, 15.7 and 20.1. Roche took all accusations seriously and trusted its response addressed all the concerns expressed.

Following a request for further information, Roche confirmed that the Roche Group Code of Conduct clearly expressed the company's expectations as an employer and provided employees with practical guidance and links to further information. It included a section on conflicts of interest. The advice given to employees who had a situation that they considered might be an issue was to escalate the concern to their line manager – as the representative in question had done as outlined above. Roche employees also had to sit and pass the Roche Behaviours in Business training module, which contained specific content relating to confidentiality and the expectation of how each employee was expected to conduct themselves at work. The representative in question had completed this training.

Each time the representative's wife had presented on behalf of Roche she had signed a 'Speaker brief and agreement letter' which contained the statement that 'The slides used must include a statement that Roche sponsors the presentation'. She had presented on service delivery at four meetings since 2009 on behalf of Roche and details of the payments were provided together with copies of the agendas. One of the meetings was organized and attended by the representative and took place in December 2010. The title of the meeting was 'Hepatitis C service delivery – Evolving pathways in HCV'. The meeting was chaired by a liver nurse specialist and attended by eleven health professionals.

Roche confirmed that the representative's wife was a qualified nurse practitioner but did not actively prescribe in her current role.

The dates for the Caribbean trip referred to by the complainant were provided.

Roche submitted the basic yearly salary and bonus for the representative for 2008, 2009 and 2010. Roche noted that the increase in sales on the representative's territory in 2010 was driven by positive sales growth at twelve out of seventeen accounts. The hospital at which his wife worked was the second largest contributor to this growth. The Pegasys market share at this hospital was provided. Roche submitted that the increase in sales in 2010 was not due to a switch from a competitor product but due to service expansion/development at the trust. This was not an area in which the representative was involved as this was the remit of the Roche service development specialist.

Roche confirmed that the representative told his line manager that his wife was moving to the hospital in question and hence she would once again be working on his territory. They discussed the fact that as Pegasys was already the treatment choice at the hospital, there was essentially no conflict of interest. The representative also told his manager that, before she accepted the position, his wife had told a professor at the hospital that she was married to the Pegasys hospital sales specialist for Roche. The professor stated that he did not think that there was a conflict of interest because the choice of treatment for their hepatitis C patients was not within the representative's wife's remit.

During the meeting with his line manager, the representative also told him about the conversation he had with the business unit manager when he and his wife had worked at the previous hospital. His wife was a hepatitis C CNS at the trust and as clinicians not CNSs decided product use it was concluded that there was no conflict of interest. The line manager discussed with the representative the need for total confidentiality at all times and it was agreed that the representative should always be honest and disclose his relationship with his wife if a situation arose where the representative considered that it was appropriate to do so. The representative told his manager that he and his wife had always been open and transparent about their relationship to all of their internal and external customers when they both worked at the previous hospital, and it would be the intention to do so now that she had moved to the hospital in question. It was again agreed that, as the representative's wife was not in a position to influence patient medication, there was no conflict of interest.

PANEL RULING

The Panel noted that the complainant was anonymous and non-contactable. When a general allegation had been made about a representative's conduct it was difficult to determine precisely what had occurred. As set out in the Constitution and Procedure, a complainant had the burden of proving their complaint on the balance of probabilities. The weight to be attached to evidence might be adversely affected if the source was anonymous. In this case very few details had been provided and there was no way to ask the complainant for more information.

The Panel noted Roche's submission that the representative in question had declared the potential conflict of interest to Roche in line with company policy.

The Panel noted that the representative in question moved to a field-based role that covered the hospital in question in Spring 2008. His wife moved to the position of hepatitis C CNS at the same hospital in late 2009.

The Panel noted Roche's statement that the representative's wife was 'considered to be one of the UK's most established and accomplished hepatitis C CNSs' but that she did not actively prescribe in her current role and nor was she able to influence patient medication.

The Panel noted Roche's submission that when the representative's wife moved to the hospital in question, the representative informed his line manager that she would be working on his territory. Roche had submitted that this was in accordance with its Group Code of Conduct requirements relating to conflicts of interest. Roche submitted that it was agreed that as Pegasys was already the treatment of choice at the hospital, there was essentially no conflict of interest. The Panel noted from Roche's submission that the representative's wife had also talked to a professor at the hospital before accepting a position there, informing him that she was married to the Pegasys hospital sales specialist and the professor did not think there was a conflict of interest because the choice of treatment for hepatitis C patients was not within her remit.

The Panel noted that since 2009 the representative's wife had presented at four Roche meetings and had received speaker fees for these services. One of these meetings was organized and attended by her husband. Roche submitted that the contract the representative's wife signed for each of these meetings contained a statement that 'The slides used must include a statement that Roche sponsors the presentations'. It was not clear to the Panel how the relationship between the representative and his wife was disclosed. Nonetheless, given her own professional standing as a hepatitis C CNS, it did not seem unreasonable that Roche should ask the representative's wife to speak at certain meetings on its behalf. There was a contract in place and the speaker fees did not appear unreasonable. No breach of Clause 20.1 was ruled.

The Panel noted the salary and incentive payments received by the representative for 2008, 2009 and 2010. There was a significant increase in the incentive payment received for 2010. Roche submitted that the increase in sales for the representative's territory in 2010 was driven by sales growth at twelve out of seventeen accounts and the hospital in question was the second largest contributor to this growth. Roche submitted that the increase in sales at the hospital was due to service

expansion/development and that this was not an area in which the representative was involved. The Panel noted that the incentive payment for the representative for 2010 did however seem to be proportional to the increase in sales. In the Panel's view, the incentive payment for 2010 was on the limits of acceptability.

Roche submitted that the Caribbean trip was an award that recognised performance vs target for 2010, performance management plus demonstration of the Roche values. The Panel noted that the 'Platinum Club' document provided by Roche stated that nominations for this award were put forward by the line manager based on sales or performance vs target for the qualifying period. The line manager would also include an overview of performance management and demonstration of Roche values, which would also be taken in to consideration. The Panel noted that the representative's wife accompanied him on this trip as his guest.

The Panel noted that the increased incentive payment provided to the representative covered a period that coincided with his wife's move to the hospital in question. In that regard, the Panel questioned the submission that the representative's wife had no influence over prescriptions for hepatitis C patients, given Roche's submission that she was considered to be one of the UK's most established and accomplished hepatitis C CNSs.

The Panel noted that it was inevitable that there would be instances when a representative was married to a health professional. Companies should be mindful of the external perception particularly if the husband and wife had professional interests and/or influence in the same therapeutic area. The Panel noted that the complainant had the burden of proving their complaint on the balance of probabilities. The Panel had some concerns about the conflict of interest and the impression created by the arrangements but noted Roche's submission that both parties had been transparent with their line managers about the situation. The Panel could understand the complainant's concerns, but did not consider that he or she had provided evidence to show that on the balance of probabilities the representative or the company had acted contrary to the requirements of the Code. The representative had not failed to maintain high standards, and no breach of Clause 15.2 was ruled in that regard. In the Panel's view the 2010 incentive payment was on the limits of acceptability. On balance the Panel did not consider that it constituted an undue proportion of the representative's basic salary, and no breach of Clause 15.7 was ruled. The Panel consequently ruled no breach of Clause 9.1. The Panel noted its rulings above and ruled no breach of Clause 2.

Complaint received

18 July 2011

Case completed

17 August 2011