

ANONYMOUS v ROCHE

Conduct of employees

An anonymous and uncontactable complainant alleged that employees of Roche Products had behaved inappropriately whilst attending an overseas medical conference in 2012.

The complainant stated that it seemed that Roche had lost touch with good ethics of late and had brought the industry into disrepute.

The complainant alleged that on the Saturday evening of the conference he witnessed first hand hospitality to an excess that he had rarely seen since his days as a house doctor. Whilst enjoying late night drinks at a traditional nightclub the complainant stated that he watched as two very senior Roche personnel supplied round after round of shot drinks to their delegation of doctors. He alleged that vodka shots and shots of varying colours flowed like hot lava, unstopably. Further that two named Roche employees revelled way after midnight with a large group of customers. The group swelled in size as others joined and the party was raucous. In the complainant's view this was not good for doctors who were at a scientific meeting to be educated, nor was it good for the reputation of the pharmaceutical industry.

The complainant alleged that unfortunately one employee, who was known in the relevant medical community, proceeded to jump onto the stage drunk and that in a gesture of defiance he made a buffoon of himself by being physically evicted by door staff. The complainant considered this unacceptable behaviour outside of a scientific meeting.

The complainant expected that if the Authority examined the expense receipts/credit card statements of the two named employees, it would be surprised at the excessive levels of alcohol purchased and the time of purchase. The two Roche employees had on this occasion been lacking in their personal codes of conduct.

The detailed response from Roche is given below.

The Panel noted the seniority and responsibilities of the two named employees. According to Roche, both had attended a Roche hosted dinner on the Saturday evening and were amongst the last to leave the restaurant at about 11.30-11.45pm. They went to a bar for a drink and 'some down time away from customers'. Nine of the sixteen Roche personnel who attended the meal, including the named employees, went to the bar. The Panel questioned the choice of venue, given Roche's submission that it was a party bar that on a Saturday night when a congress was in town would be packed and very noisy. The Panel considered that the two named Roche employees would have known that it was likely that UK health professionals attending the meeting would also be at the bar and

this, according to Roche, proved to be so including at least one UK health professional who was a Roche delegate. Roche submitted, however, that there was no discussion between Roche personnel and health professionals attending the meal about which venue to visit afterwards. The Panel further noted Roche's submission that its staff did not go to the bar with any health professionals nor did they arrange to meet any there.

The Panel noted that the parties' accounts about hospitality and Roche personnel at the bar differed; it was difficult in such circumstances to determine precisely what had transpired. The Panel noted Roche's submission that the two named employees met with two Roche colleagues and others at the bar. There were some UK health professionals there and the Roche group talked to health professionals that they knew but did not buy them any drinks. The complainant referred to 'two very senior Roche personnel' supplying 'round after round' of shot drinks to customers. It was unclear whether this was a reference to the named employees, who were only referred to by the complainant subsequently, or other Roche personnel. Whilst bar receipts had been provided by Roche, these were not for 'shots' and the Panel had no evidence to indicate who had consumed the drinks in question. The complainant had the burden of proving his/her complaint on the balance of probabilities.

The Panel noted Roche's submission that it had not provided any hospitality to UK health professionals at the bar, it had not invited any to attend the bar and had not bought drinks for any health professionals who were in the bar during the time Roche staff were there. Taking all the circumstances into account, the Panel considered that the complainant had not established that Roche had provided any hospitality to UK health professionals as alleged and thus ruled no breach of the Code.

The Panel noted from the document 'Compliance & International Congress' provided by Roche that it considered congresses to be 'a highly visible activity' that required 'independent responsibility and accountability'. Roche employees were instructed to focus on business objectives, strengthen customer relationships and develop knowledge and understanding. The document referred to Roche's hospitality and subsistence policy and stated that, to ensure Roche business objectives were met, staff should not remain in the bar with customers later than 11.30pm-midnight, after which time Roche attendees should withdraw from the bar. If health professionals decided to continue drinking they must pay for themselves and Roche staff must not be present (even for only soft drinks).

The Panel noted that the two named employees had arrived at the bar at approximately 12.10am. The

arrival time of other Roche personnel was not known, nor did the Panel have details about the amount of alcohol consumed previously at the restaurant. The named employees bought three rounds of alcoholic drinks, the last being purchased at 1.13am. One of the named employees had joined a group dancing on the stage of the venue, had been escorted from the venue and was not allowed back into the bar to retrieve his jacket. According to Roche a UK health professional who was also a Roche delegate remonstrated with bar staff on the Roche employee's behalf and was asked by the employee to retrieve his jacket. The employee was back at his hotel room by 1.40am. The second more senior employee had provided him with his jacket, then returned to the bar for a further 30 minutes before going back to the hotel, arriving there at around 2.15am.

The Panel noted that the provision of hospitality and other interactions between the pharmaceutical industry and health professionals outside the formal congress proceedings at international congresses was a subject that attracted much public scrutiny and criticism. Companies should be mindful of the impression given by such interactions and ensure that when applicable such activity complied with the UK Code. Other codes might also be relevant. The Panel was very concerned about the behaviour of Roche employees at a social venue at which they knew UK health professionals were in attendance. The Panel noted its comments above about the choice of venue and the likelihood of congress delegates being in attendance. The Panel considered that it was understandable that company employees would want to wind down away from health professionals at the end of a full day at congress. However, Roche employees were in the conference city as representatives of their company for business reasons and as such they should continue to be mindful of the impression created by behaviour beyond the conference and any associated subsistence/meetings. This was particularly important when interacting with UK health professionals and especially so in a late-night social environment. The Panel noted Roche's submission that its employees were aware of the need not to behave in such a way that gave the wrong impression.

The Panel noted that the parties' accounts were similar in some respects. Given that the two named Roche employees knew that UK health professionals were at the bar and had spoken to them, the Panel questioned Roche's submission that the behaviour of the Roche employee's was appropriate. The Panel considered that once the Roche employees knew that UK health professionals were at the bar they should have been mindful of the impression created by any interaction with them and the public nature of their behaviour. The Panel queried whether a shared social environment, particularly in the early hours of the morning, could ever be appropriate. The impression given by a senior member of Roche's staff being escorted off the premises at around 1am for whatever reason whilst attending a business

event was most unfortunate, particularly given general criticism about interactions between health professionals and pharmaceutical companies noted above. The Panel noted its ruling above of no breach of the Code. Nonetheless, the Panel considered that the behaviour displayed in the presence of UK health professionals amounted to a failure to maintain high standards and ruled a breach of the Code. This ruling was appealed by Roche.

The Panel was concerned that Roche had not considered its senior employees' behaviour inappropriate. However, taking all the circumstances in to account, the Panel did not consider that a breach of Clause 2, a sign of particular censure, was warranted and no breach of that clause was ruled.

The Appeal Board noted that the Roche employees had attended a dinner at a local restaurant organised for its UK customers attending the conference. At the appeal hearing Roche submitted that at the end of the dinner the employees had taken a taxi to the bar in question; no UK health professionals from the dinner accompanied them. The employees subsequently purchased several rounds of drinks using company credit cards. The Appeal Board expressed surprise at the number, frequency and timing of drinks purchased. The Appeal Board noted that the bar in question could be described as a lively, loud, party bar.

The Appeal Board noted from Roche that its employees had briefly spoken with UK health professionals at the bar and so they were aware of their presence. There was, however, no evidence that the Roche employees had invited UK health professionals or that they had bought UK health professionals any drinks.

The Appeal Board noted that shortly after dancing on the stage, the senior manager was escorted from the premises and not allowed back in. The Appeal Board noted from Roche that a UK health professional who was also a Roche delegate at the conference witnessed this and 'remonstrated with the staff that the senior manager had done nothing wrong'. The UK health professional agreed to retrieve the employee's jacket from the bar and it was subsequently brought out by the more senior Roche employee.

The Appeal Board considered that the issue was not that pharmaceutical company employees and UK health professionals were present in the bar at the same time per se. Whether this was acceptable would always depend upon the circumstances of each individual case. The Appeal Board noted its comments about some aspects of the employees' conduct. Company employees needed to be mindful of the impression created by their behaviour whenever they were on company business. In the Appeal Board's view, employees attending conferences were representing their company for the whole time that they were at the conference. The Appeal Board was particularly concerned about the removal of one employee from the premises who

had not been allowed to retrieve his own belongings and the impression created which it considered was unacceptable. The circumstances amounted to a failure to maintain high standards. The Appeal Board upheld the Panel's ruling of a breach of the Code. The appeal was thus unsuccessful.

An anonymous complainant alleged that employees of Roche Products Limited had behaved inappropriately whilst attending an overseas medical conference in 2012. The complainant, although initially contactable, subsequently became uncontactable.

COMPLAINT

The complainant alleged that Roche had lost touch with good ethics of late and had brought the industry into disrepute.

The complainant alleged that on the Saturday evening of the conference he witnessed first hand hospitality to an excess that he had rarely seen since his days as a house doctor. Whilst enjoying late night drinks at a traditional nightspot, the complainant watched as two very senior Roche personnel supplied round after round of shot drinks to their delegation of doctors. He alleged that vodka shots and shots of varying colours flowed like hot lava, unstoppably. Further that two named Roche employees revelled way after midnight with a large group of customers. The group swelled in size as others joined and the party was raucous. In the complainant's view this was not good for doctors who were at a scientific meeting to be educated, nor was it good for the reputation of the pharmaceutical industry.

Unfortunately one employee, who was a known industry person in the relevant medical community, proceeded to jump onto the piano stage drunk and that in a gesture of defiance he made a buffoon of himself by being physically evicted by door staff in front of the complainant's colleagues who were enjoying a few drinks and the ambiance of the conference city. The complainant considered this unacceptable behaviour outside of a scientific meeting, even in his youth.

The complainant expected that if the Authority examined the expense receipts/credit card statements of the two employees, it would be surprised at the excessive levels of alcohol purchased and the time of purchase.

The complainant noted that Roche had looked after him very professionally for many years and he had benefited from its kind support many times, for which he was grateful. Two named Roche employees had on this occasion been lacking in their personal codes of conduct. The company itself had not and yet again promising data had been presented which the complainant hoped would translate into clinical practice.

When writing to Roche the Authority asked it to respond in relation to Clauses 2, 9.1 and 19.1 of the Code.

RESPONSE

Roche explained that the employees named were a senior manager and his manager. The meeting in question was a premier international congress, and as a leading pharmaceutical company Roche clearly had an interest in being there.

The congress opened on a Friday and on the Saturday evening Roche hosted a dinner at a restaurant for UK customers. The two named employees and the customers at their table were amongst the last of the party to leave the restaurant at around 11.30 -11.45pm. The customers and the Roche employees then went their separate ways; the two named employees went to the bar for a drink and some down time away from customers. They did not go there with any customers and nor did they arrange to meet any there.

Roche explained that the bar was part of a chain with premises in a number of cities. The bars featured live music, dancing and were promoted as venues for bachelor parties and other celebrations. Roche provided screen shots from the website to give a flavour of what the bars were like.

The two named employees arrived at the bar at approximately 12.10am. The place was very busy and loud, and a band was playing. They met two Roche colleagues and recognised employees from other pharmaceutical companies in the crowd. There were also some UK health professionals in the bar. One of the two bought a round of drinks for himself, the other named employee, the two other Roche employees and two people from an agency that they knew and who had joined their group. This consisted of six vodka rocks, ie long drinks with mixers and not shots, which cost \$60; a copy of the receipt timed at 12.22am was provided. Although the Roche group talked to health professionals that they knew they did not buy them any drinks. At 12.40am the same employee bought a round of six Bacardi rocks which also cost \$60 (a copy of the receipt was provided). Again these were long drinks with mixers, not shots, and were only for the Roche and agency staff.

The same employee and one of the agency staff then went to dance. There were a lot of people dancing so they were not on their own. They danced for about 30 minutes and went back to join the others. The other named employee then bought some drinks for the Roche staff and one of the agency people consisting of one beer (for the named employee), 3 vodkas and Red Bull and another vodka on the rocks costing \$53 (a copy of the receipt timed at 1.13am was provided). Again no shots were purchased and nor were any of the drinks for health professionals.

The named employee and the agency colleague went back to the dance floor which was packed. Members of the band then encouraged the dancers to get up on the stage (in fact more of a platform than a real stage), which apparently happened regularly at the bar. Thus encouraged, the named employee joined others on the stage. After a while

the band stopped playing and the dancers got down from the stage. The named employee was slow to get down and the next thing he knew he was escorted off the premises. He was not told why he was asked to leave, but was not allowed back in to collect his jacket. Not long after he was shown out, a UK health professional who was a Roche delegate remonstrated with the staff that the named employee had done nothing wrong. The named employee asked the health professional if he would retrieve his jacket for him. Shortly after the second, more senior, employee came out with the jacket. The first named employee then returned to his hotel and was back in his room by 1.40am. The other named employee went back to the bar.

Whilst the named employee was dancing the second, more senior, employee remained with the rest of the group. He did not know that the named employee had been asked to leave until informed by someone else. When he realised that the jacket had been left, he took it out to the employee and then returned to the bar and left about 30 minutes later. He believed that he got back to his hotel room at around 2.15am.

Roche submitted that both employees categorically denied going to the bar with customers or buying customers any drinks whilst they were at the bar. They also denied buying or drinking shots, and stated that the only drinks they had at the bar were the three rounds of long drinks detailed above. Both employees were at a loss to understand how the complainant concluded that 'Vodka shots and shots of varying colours were flowing like hot lava, unstopably', but assumed that as the bar was packed and very noisy the complainant had mistakenly thought some other people were part of the Roche group.

Roche submitted that it had been presented with no evidence to doubt the version of events provided by its employees. They were senior employees with long experience of working in the pharmaceutical sector, and they knew not to party with customers. The receipts provided showed that only three rounds of long drinks were purchased. As stated above, the bar was extremely busy and noisy and thus Roche assumed that the complainant thought that other people drinking shots were part of the Roche group. Roche noted that the impression that the complainant gave of the bar as somewhere to go for a quiet drink was far from reality.

Roche noted that the complainant had alleged that its employees had 'revelled way after midnight', and that their party 'swelled in size' and was 'raucous'. This implied that they were there all night, and that they were part of a large group that stuck out from the crowd by their loud behaviour. As stated above, the two employees did not arrive until after midnight, and they also denied that they were raucous.

Roche submitted that it had no reason not to believe its employees' version of events. Roche understood

that the whole atmosphere of the bar was very loud and noisy, and it queried how it was possible to single out one particular group in somewhere so crowded and which contained several hundred people crammed into the bar area.

Roche noted that the complainant had alleged that its named employee 'proceeded to jump onto the piano stage drunk', and that 'In a gesture of defiance he made a buffoon of himself by being physically evicted'. As noted above the person concerned acknowledged that he was on the stage, but that was along with other people at the invitation of the band. He also acknowledged that he was escorted off the premises, but as he was not told why he assumed that because he was slow to get off the stage the bar staff thought that he was going to cause trouble.

Roche submitted that the complainant's version of events was at variance with its employee's version. Also, the other named employee confirmed that the person concerned was not drunk. Additionally, the person concerned stated that a UK health professional, who had seen what had gone on, told the door staff that he had not done anything wrong. Roche submitted that it had not been presented with any evidence to lead it to doubt the employees' version of events. It might be that the complainant only saw the employee on the stage after the dancing had stopped and the other dancers had got down, and he thus assumed that the employee had jumped up alone, but Roche did not know why he concluded that this was 'a gesture of defiance'.

Roche concluded that the complainant had produced no evidence to substantiate his allegations as to what happened at the bar. His allegations were diametrically opposed to what Roche was told during the course of its investigation, and were contradicted by the evidence of the bar receipts. Roche's employees strongly denied buying drinks for customers or otherwise acting inappropriately. The only drinks they purchased at the bar were the three rounds of long drinks detailed in the receipts that were bought for Roche and agency staff. There was certainly not '... round after round of ... vodka shots and shots of varying colours ... flowing like hot lava, unstopably'. The website of the bar described a party bar that on a Saturday night when there was a major congress in town would be packed and very noisy, and thus it would be very difficult for anyone to clearly tell what others were doing. Roche's employees were experienced pharma staff who knew that it was not acceptable to entertain health professionals as alleged by the complainant.

Based upon its investigations, Roche submitted that there was no breach of Clause 19.1, and consequently no breach of Clauses 9.1 or 2.

In response to a request for further information by the Panel, Roche identified the Roche personnel who attended the meal on the Saturday evening. No agencies attended the dinner and Roche did not have any agency staff attending the conference.

Roche stated that there was no discussion between Roche personnel and the health professionals attending the meal about which venue to visit after the meal.

Roche submitted that, including the named employees, nine Roche personnel went to the bar. No agency staff attended as there were none at the conference (the two agency staff referred to previously by Roche were not attending the conference on behalf of Roche, although they were known to the named employee). No health professionals attended the bar at the express invitation of Roche personnel. It was not known whether any health professionals who attended the meal went to the bar without any invitation, although as mentioned previously the bar was very crowded on the night in question. The named employees spoke to some health professionals they knew.

Roche stated that the only drinks purchased by the named employees were those mentioned previously. A different Roche employee purchased two drinks for Roche personnel at a cost of \$41 (copy of the receipt was provided). Another Roche employee purchased drinks for herself and six Roche colleagues at 2.19am at a cost of \$139 including tip. At 2.23am the same employee purchased one drink for herself, costing \$10 including tip (copies of receipts were provided). These two employees together with the personnel for whom they bought drinks were included within the nine Roche personnel referred to above. No drinks were bought for any health professionals by Roche personnel and there were no agency staff at the conference for whom Roche was responsible.

Roche submitted that there was no Roche social group in the sense of all Roche personnel being grouped together. Rather the Roche personnel were over the course of the night split into smaller groups. As the bar was very crowded it was impossible to say categorically how a third party might have perceived things. However, as the Roche personnel concerned only briefly spoke to the UK health professionals previously referred to, Roche considered it to be most unlikely that a third party would consider the UK health professionals to be part of any Roche social group and the UK health professionals themselves (who were at the bar together) would not have considered themselves to be part of the Roche social group.

As a consequence of its investigations, Roche did not regard the behaviour of the named employees inappropriate. No evidence had been produced to prove otherwise. Roche repeated that the agency staff socialised with at the bar were not Roche agency staff (although known to Roche's employees), and there were no agency staff at the conference for which Roche was responsible.

Roche submitted that its personnel were keenly aware both of the provisions of the Code regarding hospitality and of the need not to behave in such a way that gave the wrong impression. In all the circumstances Roche did not consider the behaviour

of its employees to have been inappropriate and it would be willing to have the behaviour generally known.

Roche reminded the Panel that Roche was not the only pharmaceutical company whose UK personnel went to the bar that night, although it did not allege that they acted differently to Roche personnel in any way.

Roche stated that prior to attending the conference; its employees were given 'Compliance & International Congress' which provided guidance as to expected conduct.

Roche confirmed that it had not produced any internal meeting report after the conference.

PANEL RULING

The Panel noted that Clause 19.1 required that companies must not provide hospitality to members of the health professions and appropriate administrative staff except in association with scientific meetings, promotional meetings, scientific congresses and other such meetings, and training. Meetings must be held in appropriate venues conducive to the main purpose of the event. Hospitality must be strictly limited to the main purpose of the event and must be secondary to the purpose of the meeting, ie subsistence only. The level of subsistence offered must be appropriate and not out of proportion to the occasion. The supplementary information to that clause noted, *inter alia*, that the impression created by the arrangements for any meeting must always be kept in mind.

The Panel noted Roche's submission regarding the seniority and responsibilities of the two named employees. According to Roche, both had attended a Roche hosted dinner on the Saturday evening and were amongst the last of the party to leave the restaurant at about 11.30-11.45pm. They decided to go to the bar for a drink and 'some down time away from customers'. Nine of the sixteen Roche personnel who attended the meal, including the named employees also went to the bar. The Panel questioned the choice of venue, given Roche's submission that it was a party bar that on a Saturday night when congress was in town would be packed and very noisy. The Panel considered that the named employees would have known that it was likely that UK health professionals attending the conference would also be at the bar and this, according to Roche, proved to be so including at least one UK health professional who was a Roche delegate. Roche submitted, however, that there was no discussion between Roche personnel and health professionals attending the meal about which venue to visit afterwards. The Panel further noted Roche's submission that its staff did not go to the bar with any health professionals nor did they arrange to meet any there.

The Panel noted that the parties' accounts about hospitality and Roche personnel at the bar differed; it was difficult in such circumstances to determine precisely what had transpired. The Panel noted Roche's

submission that the named employees met two Roche colleagues and others at the bar. There were some UK health professionals there and the Roche group talked to health professionals that they knew but did not buy them any drinks. The complainant referred to 'two very senior Roche personnel' supplying 'round after round' of shot drinks to customers. It was unclear whether this was a reference to the named employees, who were only referred to by the complainant subsequently, or other Roche personnel. Whilst bar receipts had been provided by Roche, these were not for 'shots' and the Panel had no evidence to indicate who had consumed the drinks in question. The complainant had the burden of proving his/her complaint on the balance of probabilities.

The Panel noted Roche's submission that it had not provided any hospitality to UK health professionals at the bar, it had not invited any to attend the bar and had not bought drinks for any health professionals who were in the bar whilst Roche staff were there. Taking all the circumstances into account, the Panel considered that the complainant had not established that Roche had provided any hospitality to UK health professionals as alleged and thus ruled no breach of Clause 19.1.

The Panel noted from the document 'Compliance & International Congress' provided by Roche that it considered congresses to be 'a highly visible activity' that required 'independent responsibility and accountability'. Roche employees were instructed to focus on business objectives, strengthen customer relationships and develop knowledge and understanding. The document referred to Roche's hospitality and subsistence policy and stated that, to ensure Roche business objectives were met, staff should not remain in the bar with customers later than 11.30pm-midnight, after which time Roche attendees should withdraw from the bar. If health professionals decided to continue drinking they must pay for themselves and Roche staff must not be present (even for only soft drinks).

The Panel noted that the two named employees had arrived at the bar at approximately 12.10am. The arrival time of other Roche personnel was not known, nor did the Panel have details about the amount of alcohol consumed previously at the restaurant. One of the named employees bought three rounds of alcoholic drinks, the last being purchased at 1.13am. The named employees had joined a group dancing on the stage of the venue, had been escorted from the venue and was not allowed back into the bar to retrieve his jacket. According to Roche a UK health professional who was also a Roche delegate remonstrated with bar staff on the Roche employee's behalf and was asked by him to retrieve his jacket. This employee was back at his hotel room by 1.40am. The other named employee had provided him with his jacket, then returned to the bar for a further 30 minutes before leaving to go back to his hotel, which he reached at around 2.15am.

The Panel noted that the provision of hospitality and other interactions between the pharmaceutical industry and health professionals outside the formal congress proceedings at international congresses was a subject that attracted much public scrutiny and criticism.

Companies should be mindful of the impression given by such interactions and ensure that when applicable such activity complied with the UK Code. Other codes might also be relevant. The Panel was very concerned about the behaviour of Roche employees at a social venue at which they knew UK health professionals were in attendance. The Panel noted its comments above about the choice of venue and the likelihood of congress delegates being in attendance. The Panel considered that it was understandable that company employees would want to wind down away from health professionals at the end of a full day at congress. However, Roche employees were in the conference city as representatives of their company for business reasons and as such they should continue to be mindful of the impression created by behaviour beyond the conference and any associated subsistence/meetings. This was particularly important when interacting with UK health professionals and especially so in a late-night social environment. The Panel noted Roche's submission that its employees were aware of the need not to behave in such a way that gave the wrong impression.

The Panel noted that the parties' accounts were similar in some respects. Given that the two named Roche employees knew that UK health professionals were at the bar and had spoken to them, the Panel questioned Roche's submission that the behaviour of these employees was appropriate. The Panel considered that once the Roche employees knew that UK health professionals were at the bar they should have been mindful of the impression created by any interaction with them and the public nature of their behaviour. The Panel queried whether a shared social environment, particularly in the early hours of the morning, could ever be appropriate. The impression given by a senior member of Roche staff being escorted off the premises at around 1am for whatever reason whilst attending a business event was most unfortunate, particularly given general criticism about interactions between health professionals and pharmaceutical companies noted above. The Panel noted its ruling above of no breach of Clause 19.1. Nonetheless, the Panel considered that the behaviour displayed in the presence of UK health professionals amounted to a failure to maintain high standards and ruled a breach of Clause 9.1. This ruling was appealed by Roche.

The Panel was concerned that Roche had not considered its senior named employees' behaviour inappropriate. However, taking all the circumstances into account, the Panel did not consider that a breach of Clause 2, a sign of particular censure, was warranted and no breach of that clause was ruled.

APPEAL BY ROCHE

Roche submitted that the Panel's ruling was unclear as to what behaviour it regarded as inappropriate and thus amounted to a failure to maintain high standards. Was it the very presence of Roche employees in a bar where there were also UK health professionals, even though there was no finding that the health professionals had been provided with any hospitality, and the Roche employees and the health professionals did not form part of the same social group? Or was it

that Roche's senior manager had been escorted off the premises, even though there was no evidence produced to show that his behaviour had been unseemly or inappropriate? Or was it a combination of these factors? Roche submitted that this lack of clarity made the ruling unsafe.

Roche noted that the Panel had ruled a breach of Clause 9.1 even though it ruled no breach of Clause 19.1 or indeed of any other substantive clause. This suggested that the Panel regarded Clause 9.1 as a stand alone provision designed to capture all activities and behaviour that did not fall within the remit of other clauses. Roche submitted that the way Clause 9.1 had been used in this case was wrong and amounted to an abuse of process. Nothing in the Code (including the supplementary information to Clause 9) supported the use of Clause 9.1 in this way.

Roche noted that the Panel stated that '...once the Roche employees knew that UK health professionals were at the bar they should have been mindful of the impression created by any interaction with them and the public nature of their behaviour' and that the Panel queried '... whether a shared social environment, particularly in the early hours of the morning, could ever be appropriate'.

Roche noted that there was nothing to suggest that the Roche employees were not mindful of the impression that their behaviour might create. Roche reiterated that its employees did not provide hospitality to health professionals, that there was no evidence that their behaviour was inappropriate, and the so-called interaction consisted of a brief chat with some health professionals (they were not in the same social group) in a situation where it would have been discourteous to ignore them.

Roche further noted that the Panel seemed to suggest (although it was by no means clear) that, in its view, simply being in the same bar as health professionals was in itself inappropriate behaviour. If that was the Panel's view then there was nothing, either in the letter or spirit of the Code, which per se prohibited being in the same social setting as a health professional. The Panel's view in this regard radically widened the ambit of the Code which had implications not just for pharmaceutical companies, but also for health professionals. If pharmaceutical company staff and health professionals were to be prohibited from ever being in a shared social environment then the Code needed to be amended accordingly and/or guidance issued to companies.

Roche queried that if it was to be censured for its staff simply being in the same bar as health professionals, would the Panel also consider action against the other companies whose staff were in the bar on the night in question (although they were not doing anything different to what Roche staff were doing).

Roche submitted that the Panel had not made it clear why it regarded the behaviour of the employee who had not been escorted from the premises as inappropriate. There was no evidence that he behaved inappropriately unless the Panel regarded his being in

the same bar as health professionals as being inappropriate in itself (Roche referred to its comments above). The Panel's conclusion that he failed to maintain high standards was contrary to the evidence and thus perverse.

With regard to the other named senior employee, Roche noted that the Panel also stated that his behaviour was inappropriate without being clear as to how it reached that conclusion. Again, was this conclusion reached due to his being in the same bar as health professionals, and/or was it due to his being escorted off the premises? It was indeed unfortunate that he was shown the door, but there was no evidence to prove that he had done anything wrong. Indeed he strongly denied doing anything that would warrant his being shown out, and there was no evidence to substantiate the complainant's allegations that he 'proceeded to jump onto the piano stage drunk' and 'in a gesture of defiance he made a buffoon of himself'. Roche submitted that the ruling as it applied to this employee was also perverse.

Also, as regards its employee being escorted off the premises, the Panel again mentioned the interactions between health professionals and pharmaceutical companies, and Roche again made it clear that there was no interaction as such here. Roche submitted that the Panel had inappropriately interpreted the supplementary information to Clause 19.1 (the impression that was created by the arrangements for any meeting must always be kept in mind). Simply being in the same establishment as a health professional did not amount to the kind of interaction with which the supplementary information to Clause 19.1 was concerned (the supplementary information was concerned with the arrangements for any meeting). Nonetheless, Roche always expected its employees to behave appropriately whilst on company business, whether or not health professionals were present.

Roche noted that the Panel was concerned that the company had not considered that its two employees' behaviour was inappropriate. In the view of the foregoing and the evidence Roche submitted that it had been presented with there were no grounds for taking such a view, and as an employer it would be inappropriate for it to do so.

In conclusion Roche submitted that the Panel's ruling of a breach of Clause 9.1 was illogical, perverse and simply wrong. If the ruling was upheld it would have serious implications for the whole industry and for health professionals. Accordingly Roche requested the Appeal Board to rule no breach of the Code.

Upon being advised that the PMCPA could now not contact the complainant, Roche queried whether it would be fair and rational to allow the complaint to continue, and asked that it be struck out.

RESPONSE FROM THE COMPLAINANT

As the complainant was now uncontactable there were no comments upon the appeal.

APPEAL BOARD RULING

At the appeal hearing the Chairman of the Appeal Board advised Roche that he had directed the Appeal Board to note that the complainant, although initially contactable, had subsequently become uncontactable. The complainant was thus now being treated as anonymous and uncontactable.

In response to a question regarding Roche's failure to provide an itemised bill as requested by the case preparation manager, Roche stated that this had not been provided by Roche's finance department.

The Appeal Board noted that whilst Roche disputed some of the complainant's allegations there were nonetheless some similarities between the parties' submissions.

The Appeal Board noted that the Roche employees had attended a dinner at a local restaurant organised for its UK customers attending the conference. At the appeal hearing Roche submitted that at the end of the dinner the employees had taken a taxi to the bar in question; no UK health professionals from the dinner accompanied them. The employees subsequently purchased several rounds of drinks using company credit cards. The Appeal Board expressed surprise at the number, frequency and timing of drinks purchased. The Appeal Board noted that the bar in question could be described as a lively, loud, party bar.

The Appeal Board noted from Roche that its employees had briefly spoken with UK health professionals at the bar and so they were aware of their presence. There was, however, no evidence that the Roche employees had invited UK health professionals or that they had bought UK health professionals any drinks.

The Appeal Board noted that shortly after dancing on the stage, one of the senior named employees was escorted from the premises and not allowed back in. The Appeal Board noted from Roche that a UK health professional who was also a Roche delegate at the conference witnessed this and remonstrated with the staff that the employee had done nothing wrong. The UK health professional agreed to retrieve the employee's jacket from the bar and it was subsequently brought out by the second, more senior employee.

The Appeal Board considered that the issue was not that pharmaceutical company employees and UK health professionals were present in the bar at the same time per se. Whether this was acceptable would always depend upon the circumstances of each individual case. The Appeal Board noted its comments about some aspects of the employees' conduct. Company employees needed to be mindful of the impression created by their behaviour whenever they were on company business. In the Appeal Board's view, employees attending conferences were representing their company for the whole time that they were at the conference. The Appeal Board was particularly concerned about the removal of one employee from the premises who had not been allowed to retrieve his own belongings and the impression created which it considered was unacceptable. The circumstances amounted to a failure to maintain high standards. The Appeal Board upheld the Panel's ruling of a breach of Clause 9.1. The appeal was thus unsuccessful.

Complaint received

4 June 2012

Case completed

7 November 2012