EX-EMPLOYEE v ASTRAZENECA

Promotion of Seroquel

An ex-employee of AstraZeneca complained about the promotion of Seroquel (quetiapine) by that company and referred to five presentations, dated 1999, 2001, 2002, 2004 and 2006 respectively, published in the archived material for investors section of the company's website (AstraZeneca.com). The presentations had, three months earlier, been the subject of an alleged breach of undertaking, Case AUTH/2538/10/12.

The complainant noted that in Case AUTH/2538/10/12, AstraZeneca had stated in a letter to the PMCPA that 'It is also clear from the chronology of the presentations that AstraZeneca's statements in relation to weight and Seroquel evolved as a balanced and fair reflection of the evidence available at the time'. The complainant contended that this was not the case and noted a CBS news article entitled 'Email: AstraZeneca knew in 1997 that Seroquel caused weight gain'.

The complainant stated that the presentations demonstrated how AstraZeneca spread false claims about Seroquel and its effect on body weight.

The complainant explained that he was responsible for sign off for Seroquel in the UK and in 1997-9 the evidence clearly showed Seroquel caused weight gain. This was both time and dose dependent. Consequently, the complainant was unwilling to sign off any weight claims for UK advertisements.

In support of his position the complainant referred to the blog of a retired US psychiatrist and cited ten internet links.

The detailed response from AstraZeneca is given below.

The Panel did not accept AstraZeneca's assertion that a statement made in its response to Case AUTH/2538/10/12 was outside the scope of the Code. The complaint to be considered was about AstraZeneca's statements in relation to weight and Seroquel in the five presentations and whether these were a balanced and fair reflection of the evidence available at the time.

The Panel noted that the complainant had not highlighted specific slides. In Case AUTH/2538/10/12 the Panel had identified eight slides in the presentations at issue which contained claims about Seroquel and weight in relation to the alleged breach of the undertaking given in Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10. It was the Authority's responsibility to ensure compliance with undertakings. The Panel noted that the circumstances of the present case, Case AUTH/2572/1/13, were different. The Panel noted that the complainant made a general allegation but had not submitted any detailed reasons. Blog postings about Seroquel and AstraZeneca provided by the complainant largely concerned commentary on internal company documents disclosed during US litigation. The complainant did not explain how or which part of these supported the allegation. Whilst some of the blog postings discussed, *inter alia*, general issues about Seroquel and weight there was no mention of the claims identified in the eight slides considered in Case AUTH/2538/10/12 and nor was there detailed discussion of the clinical data. The complainant had not alleged that the claims were in breach of the Code for the reasons set out in Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10 ie that the presentations stated or implied that Seroquel was the only atypical antipsychotic with a favourable weight profile or that it had a clear advantage in this regard.

The Panel was concerned that AstraZeneca had not responded to the substantive allegation that the presentations were not a fair and balanced reflection of the evidence available at that time. The Panel noted the company's submission that any response would be no more than a reiteration of its submission in Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10 in which a breach of the Code was ruled. The Panel noted its general comments above in this regard. In particular, the Panel noted that the statements about Seroquel and weight in the presentations at issue did not state or imply that Seroquel was the only atypical antipsychotic with a favourable weight profile and were thus different to the material previously considered.

It was not the Panel's role to infer detailed reasons to support a complainant's allegation. It was for the complainant to establish his case on the balance of probabilities. The Panel considered that the very general nature of the complaint was such the complainant had not discharged his burden of proof and the Panel, on this narrow ground, ruled no breach of the Code. This ruling was appealed by the complainant.

Upon appeal by the complainant, the Appeal Board noted that in Case AUTH/2538/10/12 the complainant had unsuccessfully alleged that the five presentations at issue, dated 1999, 2001, 2002, 2004 and 2006 respectively, were in breach of the undertaking given in Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10. (These cases concerned a Seroquel journal advertisement published in April 2004 which included an implied claim of no weight gain; breaches of the Code were ruled).

The Appeal Board noted that alleged breaches of undertaking were taken up with the Director nominally acting as the complainant as the

PMCPA was responsible for ensuring compliance with undertakings. The current case (Case AUTH/2572/1/13), however, was different as it concerned an alleged breach of the Code in which the Panel made its rulings based on the parties' submissions. The burden was on the complainant to show, on the balance of probabilities, that a breach of the Code had occurred. Neither the Panel nor the Appeal Board were investigative bodies. In that regard the Appeal Board was concerned that the complainant had not clearly identified the claims at issue and, in relation to each, set out a concise explanation and discussion of the data to support his allegation.

The Appeal Board was concerned that the nature of the material before it was such that it was not always clear how/whether the material supported the complainant's allegation. Extracts from emails and excerpts from published papers were provided. The context of such material was unclear. The Appeal Board had to decide how much weight to attach to this evidence.

The Appeal Board noted that the Seroquel summary of product characteristics (SPC) dated 19 April 1999 stated in Section 4.8 Undesirable Effects, that 'As with other antipsychotics, Seroquel may also be associated with limited weight gain, predominantly during the early weeks of treatment.' A closely similar statement was included in the August 2002 SPC. By November 2006 'limited' had been removed and the statement now read 'As with other antipsychotics, Seroquel may be associated with weight gain, predominantly in the early weeks of treatment.'

The Appeal Board noted that the claims about weight in the presentations at issue were as follows: 'Seroquel - minimal weight gain' (1999); 'weight neutral in the long term' (2001); 'Weight-neutral long-term' and 'weight-neutral in the long term' (2002); 'Favourable weight profile long-term' (2004); 'Less weight gain than with olanzapine' (2006). The Appeal Board noted that the complainant considered that the latter comparative claim was truthful.

The Appeal Board considered that there was insufficient evidence provided by the complainant to show that the presentations, when written, did not provide a fair and balanced reflection of the evidence available at the time regarding weight gain with Seroquel. The Appeal Board considered that the complainant had not discharged his burden of proof and it upheld the Panel's ruling of no breach of the Code. The appeal was unsuccessful.

An ex-employee of AstraZeneca UK Limited complained about the promotion of Seroquel (quetiapine) by that company and referred to five presentations which three months earlier had been the subject of an alleged breach of undertaking, Case AUTH/2538/10/12. During the consideration of that case, and in response to a query from the complainant, he was advised that although the presentations had been ruled not to be in breach of Clause 25, he could, under the Constitution and Procedure, make a separate complaint about their content. After submitting the present complaint (Case AUTH/2572/1/13) and after AstraZeneca had been asked to respond to it, the complainant clarified that the present complaint did not concern an alleged breach of undertaking. The complainant was asked to provide further and better particulars clearly stating the material at issue and why it was considered to be in breach of the Code. As stated in the introduction to the Constitution and Procedure, a complainant had the burden of proving their complaint on the balance of probabilities. The PMCPA's advice to all complainants was always to provide a clear and concise exposition of the facts. The case proceeded as an alleged breach of Clause 7.2 and AstraZeneca was asked to respond to the complaint.

The presentations at issue, which had been published in the archived material for investors section of the company's website (AstraZeneca.com), were dated 1999, 2001, 2002, 2004 and 2006 respectively.

COMPLAINT

The complainant was concerned about a number of presentations produced by AstraZeneca. The complainant noted that in a letter to the PMCPA in connection with Case AUTH/2538/10/12, AstraZeneca stated 'It is also clear from the chronology of the presentations that AstraZeneca's statements in relation to weight and Seroquel evolved as a balanced and fair reflection of the evidence available at the time'. The complainant contended that this was not the case and noted a CBS news email article entitled 'Email: AstraZeneca knew in 1997 that Seroquel caused weight gain'.

The complainant stated that the presentations on AstraZeneca's website had allowed him to see how high up in the organisation people were involved in spreading false claims about Seroquel and its effect on body weight.

These presentations looked like poor quality detail aids that he would never have approved when he was at AstraZeneca UK.

AstraZeneca had submitted that 'AZ's statements in relation to weight and Seroquel evolved as a balanced and fair reflection of the evidence available at the time'. The complainant contended that this was not so.

The complainant was responsible for sign off for Seroquel in the UK and in 1997-9 the evidence clearly showed Seroquel caused weight gain that was both time and dose dependent. Consequently, the complainant was unwilling to sign off any weight claims for UK advertisements.

One of the best reports on what AstraZeneca got up to was available on the blog of a retired US psychiatrist. The complainant referred to ten blog articles on Seroquel.

The complainant was disappointed at being called a 'vexatious ex-employee' by AstraZeneca. The complainant worked with many good people at

AstraZeneca, but there were some who were not. Also there were some who stayed quiet who shouldn't have.

The Authority initially asked AstraZeneca to respond in relation to Clauses 2, 9.1 and 25. Subsequently AstraZeneca was asked to respond to Clause 7.2 of the Code.

RESPONSE

AstraZeneca queried whether this case should be allowed to proceed and raised three main concerns under the Constitution and Procedure; whether the case had been the subject of a previous adjudication; whether it was within the scope of the Code to raise an allegation about the accuracy of a statement made in a company's response; whether it was appropriate to ask the company to respond again to a complaint it had already responded to in full.

In AstraZeneca's view this complaint was very similar to Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10; although the specifics of the present claims differed from the 2010 cases the essence of the allegation was the same. Any AstraZeneca response in relation to Clause 7.2 would be no more than a reiteration of the argument it put forward in 2010 which was unsuccessful and resulted in a breach of, *inter alia*, Clause 7.2.

AstraZeneca noted that evidence submitted by the complainant comprised links to US news articles and blogs none of which had scientific foundation or offered new data relevant when the claims were made, nor were they relevant to the UK – thus no new evidence had been adduced. The company requested that the matter be reviewed by the Director; if the Director concluded that the complaint should be considered by the Panel the correspondence submitted in this request should be used as the full response to the complaint.

AstraZeneca was surprised that the PMCPA had advised the complainant that he could make a further complaint about the presentations and was astonished that the PMCPA did not dismiss the second complaint when it subsequently received the details.

AstraZeneca noted that the second complaint directly followed Case AUTH/2538/10/12, which also concerned the presentations. In that case, on four out of the five presentations at issue, the Panel ruled no breach of the Code. Instead of appealing those rulings (which would have been the proper course of action if the complainant disagreed with the Panel's conclusions), he brought a fresh complaint about the same presentations, apparently having received reassurance that this would be acceptable. From his short complaint, it did not transpire what violation of the Code was alleged. The complaint concerned the presentations, yet the complainant contended that the statement 'It is also clear from the chronology of the presentations that AstraZeneca's statements in relation to weight and Seroquel evolved as a balanced and fair reflection of the evidence available at the time' made in AstraZeneca's response to Case AUTH/2538/10/12, was incorrect. In objecting to this statement, the complainant referred to an article published in 2009 on the CBS news website with the headline 'E-Mail: AstraZeneca Knew in 1997 that Seroquel Caused Weight Gain'.

AstraZeneca contended that the Panel should have recognised that Case AUTH/2572/1/13 was an improper manipulation of the complaints procedure by an aggrieved ex-employee and thus dismissed it from the start: firstly because it was without substance (AstraZeneca was at a genuine loss to understand what it was required to respond to, which interfered with its right of defence) and secondly, because allowing the complaint to progress contravened the Constitution and Procedure. In relation to four out of the five presentations at stake, the matter had already been ruled upon and did not fall within the limited circumstances where the PMCPA had discretion to rule on a matter already adjudicated. With regard to the fifth presentation AstraZeneca noted that its appeal of the Panel's ruling in Case AUTH/2538/10/12 of breaches of Clauses 2, 9.1 and 25 was pending.

AstraZeneca alleged that by entertaining a complaint such as this, the PMCPA gave fuel to vexatious complainants to make absurd claims, resulting in a mockery of the system.

1 The complaint was without substance

AstraZeneca stated that it was at a genuine loss to understand what it was required to respond to. Whether the complaint was about the presentations or about the response letter, it was absurd on its face. AstraZeneca stated that it should not have to guess what the complainant had in mind.

<u>The presentations</u>

AstraZeneca submitted that this was apparently a complaint about the presentations. Indeed, in correspondence with the PMCPA the complainant stated: 'Thank you for your recent letter confirming that I can make a fresh complaint about the presentations listed below. I now do so'. Further, the PMCPA had treated the complaint as such. Although it did not transpire what violation of the Code the complainant alleged, AstraZeneca had been asked to respond to Clauses 2, 9.1 and 25, which meant that the PMCPA was treating this as a breach of undertaking case.

Effectively, therefore, the PMCPA had asked AstraZeneca to respond to the allegation that the presentations contained statements in breach of AstraZeneca's undertaking in Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10. AstraZeneca alleged that, however, this was precisely the issue on which the Panel had already ruled.

If the presentations were the subject of the complaint, then surely the Panel would agree that neither the statement quoted by the complainant in the response letter, nor the CBS news article, were relevant to the consideration of whether AstraZeneca had breached its undertaking.

The response letter

If, however, (and contrary to the PMCPA's explicit indications to the contrary, above), the subject of the complaint was, in fact, the response letter, then this too was absurd. The Panel surely agreed that the response letter, which formed part of the correspondence in relation to Case AUTH/2538/10/12, could not itself be the subject of a separate complaint under the Code. If this were possible, it would totally undermine the industry's right to defend itself.

In fact, a company's submission to the PMCPA would, very clearly, fall outside the Code. The Code applied to the promotion of medicines, as well as certain categories of non-promotional information (Clause 1.1); and the PMCPA's remit, according to the Constitution and Procedure, was limited to handling 'Complaints made under the Code about promotional material or the promotional activities of companies' (Introduction). Whilst in practice (and consistent with Clause 1.1) the PMCPA also handled complaints about non-promotional materials and activities in so far as these fell within the scope of the Code, a company's submission to the PMCPA in response to a complaint was not akin to these non-promotional categories of information, and could not be the subject of a complaint.

Further, in so far as the complainant objected to the response letter, he had had the opportunity to appeal the Panel's rulings of no breach of the Code but had not done so. In fact, even if the complainant had appealed, any objection to what AstraZeneca stated in the response letter would be relevant only in so far as that statement was material to the Panel's rulings. The statement made by AstraZeneca and quoted by the complainant (namely, 'It is also clear from the chronology of the presentations that AstraZeneca's statements in relation to weight and Seroquel evolved as a balanced and fair reflection of the evidence available at the time') was not material to the Panel's rulings. Indeed, it was very clear that the only issue the Panel considered in Case AUTH/2538/10/12 was whether AstraZeneca had breached its undertaking, and not whether the statements made in the presentations were balanced, fair and an accurate reflection of the evidence. This was why, for example, the Panel stated in its ruling regarding the one presentation ruled in breach of the Code that 'it was only considering whether or not there had been a breach of undertaking', not the accuracy of the claims. Consistent with this, it was important to emphasise that if the Panel had considered it relevant to comment on or take issue with the statement in the response letter that the complainant had objected to, it had the opportunity to do so in its ruling in Case AUTH/2538/10/12. However, rightly, it did not do so.

Further, and in any event, the statement in AstraZeneca's response letter, and referred to by the complainant, did not fall within the scope of the undertaking. As a consequence of the undertaking, AstraZeneca was not entitled to claim or imply that Seroquel was the only atypical with a favourable weight profile. Accordingly, by explaining to the PMCPA that AstraZeneca's statements in relation to weight and Seroquel evolved as a balanced and fair reflection of the evidence available at the time, AstraZeneca had not claimed or implied that Seroquel was the only atypical with a favourable weight profile. As explained above, the only issue for the Panel to consider in a breach of undertaking case was whether a claim made in material which fell within the scope of the Code was the same as or similar to one previously ruled in breach of the Code.

AstraZeneca submitted that accordingly, either the presentations were the subject matter of the complaint for breach of undertaking, which would be absurd because the Panel had ruled on precisely this issue in Case AUTH/2538/10/12, or its response letter was the subject matter of the complaint, which would be absurd because it did not constitute material which fell within the scope of the Code (being a submission made in the context of a complaint procedure). For the avoidance of any doubt, it was clear that the CBS news article was not itself the subject of the complaint. The present complaint (Case AUTH/2572/1/13) was thus without substance.

2 Contravention of the Constitution and Procedure

AstraZeneca contended that the complaint violated Paragraph 5.2 of the Constitution and Procedure which made clear that, where a complaint concerned a matter 'closely similar' to one which had been the subject of a previous adjudication, the circumstances in which it might be allowed to proceed were very limited. This case concerned a matter not just 'closely similar' to Case AUTH/2538/10/12, but actually identical, as explained above. Specifically, AstraZeneca was apparently asked to defend again an alleged breach of undertaking in relation to the presentations. In any event, not one of the three circumstances in which a second complaint was allowed to proceed applied here, as explained below.

- Firstly, no new evidence was adduced by the complainant. The complainant referred only to a statement made by AstraZeneca in the response letter and to the CBS news article. Neither constituted 'evidence' that, in maintaining the presentations on its website, AstraZeneca breached its undertaking. The presentations had to be assessed on their own terms in light of the undertaking. This was what the Panel did in its ruling in Case AUTH/2538/10/12, which was, in part, subject to an appeal. Further, for the sake of completeness, AstraZeneca noted that it made a similar statement in its response to Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10; and press articles/broadcasts which criticised AstraZeneca's alleged suppression of evidence regarding the effect of Seroquel on weight (ie very similar to the CBS news article) were also under discussion in those 2010 cases. The complainant had not adduced any new evidence of breach of the undertaking.
- Secondly, the passage of time did not raise doubt as to whether the same decision would be made in respect of this case. The ruling in Case AUTH/2538/10/12 was dated 3 January 2013 and this Case (Case AUTH/2572/1/13) followed 12 days later (it was received by the PMCPA on 15

January 2013).
- Thirdly, there had not been any change in circumstances which raised doubts as to whether the same decision would be made in respect of this case.

Allowing this complaint to proceed, therefore, contravened the Constitution and Procedure.

Further, the Panel's ruling was, in part, still subject to adjudication by the Appeal Board. Accordingly, if the PMCPA allowed this complaint to proceed, it not only contravened the Constitution and Procedure by re-opening a case where none of the three circumstances above applied, but also, re-started a case which was, in part, still pending consideration by the Appeal Board. This was highly irregular and prejudicial to AstraZeneca.

For the sake of completeness, the following wording in Paragraph 5.2 of the Constitution and Procedure (also quoted above) had no bearing on whether the present complaint should be allowed to proceed: 'The Director should normally allow a complaint to proceed if it covers matters similar to those in a decision of the Panel where no breach of the Code was ruled and which was not the subject of appeal to the Appeal Board'. Clearly, this wording was not intended to allow the same complainant to issue a fresh complaint as an alternative to appealing the Panel's ruling on the original complaint. Rather, the Constitution and Procedure must be interpreted as providing that a different complainant (who would not have recourse to appealing the original complaint, to which he/she was not a party), would be permitted, normally, to bring a fresh complaint in the event that the matter had not been the subject of an appeal. In this case, however, the complainant could have appealed the Panel's rulings of no breach of the Code in relation to four out of the five presentations at stake in Case AUTH/2538/10/12, had he so wished. Indeed, the advice on the PMCPA website regarding the complaints procedure under the heading 'Can the Panel's ruling be changed?' (dated 2 May 2012), clearly stated that:

'Once the Panel has completed its consideration of a case and informed the parties of the outcome, it has no further role to play in that case. The Panel ruling provides a complete account of the factors in the case that the Panel considered were important in making its ruling. There is no provision in the Constitution and Procedure for the Panel to comment on the reasoning set out in its ruling. Similarly there is no way for the Panel ruling to be changed.

If either party considers that the Panel has made the wrong ruling for whatever reason then their only recourse is to appeal.'

Further, and as explained above, the Panel's ruling in Case AUTH/2538/10/12 was, in part, under appeal.

Conclusion

AstraZeneca stated that the complainant's submission of a fresh complaint about the presentations, instead of appealing the Panel's rulings in Case AUTH/2538/10/12, was an improper attempt to put the same matter before the PMCPA. This kind of vexatious complaint should not be entertained.

Accordingly, AstraZeneca respectfully requested that, the case preparation manager dismiss this case and not place it before the Panel (Paragraph 5.1 of the Constitution and Procedure). Alternatively, AstraZeneca requested that the Director exercise power under Paragraph 5.2 of the Constitution and Procedure to decide that the complaint should not proceed on the basis that it did not satisfy the Paragraph 5.2 for 'similar' matter and/or that the present complaint did not show any breach of the Code.

AstraZeneca reiterated that it genuinely did not understand what it had to respond to. However, in the event that the PMCPA disagreed with the arguments raised above and had construed the complaint differently, AstraZeneca requested the opportunity of further response. Clearly, it would be unfair for this matter to proceed to a ruling when the allegation against AstraZeneca did not make any sense.

PANEL RULING

The Panel noted that the five presentations at issue dated 1999, 2001, 2002, 2004 and 2006 respectively had been the subject of a previous complaint by the same complainant (Case AUTH/2538/10/12) wherein it was alleged that they were in breach of an undertaking relating to Seroquel and claims about weight given in Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10. (These cases concerned a journal advertisement for Seroquel published in April 2004). In Case AUTH/2538/10/12, the Panel, and in relation to one presentation the Appeal Board ruled no breach of the Code. The complainant now queried whether these five presentations were a balanced and fair reflection of the evidence alleging that in 1997-1999 when the complainant was responsible for UK sign off for Seroquel it was clear that Seroquel caused weight gain. In support the complainant cited 10 blog postings authored by a retired psychiatrist in the US.

AstraZeneca had not submitted a comprehensive response to the present complaint which alleged a breach of Clause 7.2. In its response AstraZeneca referred to previous correspondence relating to this case including its response to the earlier correspondence with regard to a possible breach of Clause 25. The company submitted that the present complaint, ie the alleged breach of Clause 7.2, should not have been allowed to proceed and requested that this matter be placed before the Director for consideration. AstraZeneca had been asked by the case preparation manager to submit a response.

The Panel noted that the points raised by AstraZeneca were matters for consideration by the case preparation manager in accordance with the Constitution and Procedure. In particular, AstraZeneca's submission that the essence of the present allegation was the same as that in

Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10 and had therefore been the subject of a previous adjudication and in accordance with Paragraph 5.2 of the Constitution and Procedure should not proceed.

These 2010 cases concerned a Seroquel journal advertisement published in April 2004 (Cases AUTH/2294/1/10 and AUTH/2297/1/10) and an online news item (Case AUTH/2296/1/10) which referred to the advertisement at issue in Cases AUTH/2294/1/10 and AUTH/2297/1/10. In these cases, the Panel had noted that the material implied that Seroquel was the only one with 'a favourable weight profile across the full dose range'. Given that the other medicines caused weight gain, the advertisement could be read as implying that Seroquel did not. This was not so. Similarly, the advertisement could be read as implying that Seroquel had a clear advantage regarding its 'favourable weight profile' and this was not so. Breaches of the Code were ruled. This aspect of the ruling applied to all three cases. In Case AUTH/2538/10/12 the claims about Seroquel and weight in the presentations at issue had been ruled not to be in breach of the undertaking given in the 2010 cases cited by AstraZeneca as they were not closely similar. The Panel also noted AstraZeneca's statement in relation to the present case, Case AUTH/2572/1/13, that the reasons for the alleged breach of Clause 7.2 were unclear.

AstraZeneca had requested the opportunity of further response if the Panel disagreed with AstraZeneca's arguments. The Panel noted that there was no mechanism under the Constitution and Procedure in this regard.

The case preparation manager, having considered AstraZeneca's position very carefully, had determined that the case should be referred to the Panel. This was in accordance with the Constitution and Procedure. The Panel noted that as the papers had been provided to the Panel, the case preparation manager was satisfied that the requirements of Paragraph 5.2 of the Constitution and Procedure had been met: namely the present case was not covered by any of the previous cases, ie Case AUTH/2538/10/12 which concerned the five presentations and an alleged breach of undertaking or Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10 which concerned a Seroquel journal advertisement. The complainant had made it clear that his/her present complaint was not about an alleged breach of undertaking. The Panel noted that its sole function under the Constitution and Procedure was to determine whether there had been a breach of the Code based on the materials provided by the complainant and the respondent. It could not revisit earlier decisions made by the case preparation manager.

The Panel did not accept the company's assertion that the subject of the complaint was a statement made by AstraZeneca in its response to Case AUTH/2538/10/12 and therefore outside the scope of the Code. The complaint now to be considered was about AstraZeneca's statements in relation to weight and Seroquel in the five presentations and whether these were a balanced and fair reflection of the evidence available at the time.

The Panel noted that the complainant had not highlighted specific slides. In Case AUTH/2538/10/12 eight slides in the presentations at issue which contained claims about Seroquel and weight had been identified by the Panel in relation to the alleged breach of undertaking. It was the Authority's responsibility to ensure compliance with undertakings. The Panel noted that the circumstances of the present case, Case AUTH/2572/1/13, were different. The Panel noted that the complainant made a general allegation but had not submitted any detailed reasons. Blog postings about Seroquel and AstraZeneca provided by the complainant largely concerned commentary on internal company documents disclosed during US litigation. The complainant did not explain how or which part of these supported the allegation. Some of the postings identified material which contained statements about weight and the company's commercial strategy in this regard. One posting (Driving the brand) noted that the July 2004 'official labelling' for Seroquel on weight gain, discussed clinical trials which demonstrated a statistically significantly greater incidence of weight gain for Seroquel (23%) compared to placebo (6%). An internal undated company email sent before the US approval of Seroquel stated that the magnitude of weight gain at 52 weeks was about 5kg which was more than the short-term six week gain. Whilst some of the blog postings discussed, *inter alia*, general issues about Seroquel and weight there was no mention of the claims identified in the eight slides considered in Case AUTH/2538/10/12 and nor was there detailed discussion of the clinical data. The complainant had not alleged that the claims were in breach of the Code for the reasons set out in Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10. These being that the presentations stated or implied that Seroquel was the only atypical antipsychotic with a favourable weight profile or that it had a clear advantage in this regard. The Panel noted that, as set out in the introduction to the Constitution and Procedure, a complainant bore the burden of proving their complaint on the balance of probabilities.

The Panel was concerned that AstraZeneca had not responded to the substantive allegation that the presentations were not a fair and balanced reflection of the evidence available at that time. The Panel noted the company's submission that any response in relation to Clause 7.2 would be no more than a reiteration of an argument put forward by the company in 2010 which was unsuccessful resulting in a ruling of a breach of Clause 7.2 (Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10). The Panel noted its general comments above in this regard. In particular, the Panel noted that the statements about Seroquel and weight in the presentations at issue did not state or imply that Seroquel was the only atypical antipsychotic with a favourable weight profile and were thus different to the material previously considered.

The Panel noted that it was not for the Panel to infer detailed reasons to support the allegation on behalf of the complainant. It was for the complainant to establish his case on the balance of probabilities. The Panel considered that the very general nature of the complaint was such that for the reasons set out above the complainant had not discharged his burden of proof and the Panel on this narrow ground ruled no breach of Clause 7.2 of the Code. This ruling was appealed by the complainant.

During its consideration of this case, the Panel noted that effective self-regulation depended, *inter alia*, on the provision of a complete response to a complaint. The Panel was, therefore, concerned that AstraZeneca had failed to provide a substantive response to the complaint. The Panel, however, noted the exceptional background and circumstances to the present complaint and decided, on balance, that whilst it remained concerned about AstraZeneca's conduct, it would not formally report AstraZeneca to the Code of Practice Appeal Board under Paragraph 8 of the Constitution and Procedure for it to consider whether further sanctions were appropriate.

APPEAL FROM THE COMPLAINANT

The complainant provided a report written by a retired US psychiatrist (noted above as the author of the blog articles), which he stated formed the basis of his appeal.

The retired psychiatrist noted his blog postings were in a series called 'Selling Seroquel'. The complaint involved five presentation slide sets from AstraZeneca that were annual business reviews for 1999, 2001, 2002, 2004 and 2006 and had to do with specific slides that mentioned weight gain. The blog, was written as the retired psychiatrist began to look at the devious ways the pharmaceutical industry sold its wares, but he did not think it was the one that mattered for the complaint, that was a series that came called 'Seroquel'. The retired psychiatrist provided links to nine blog articles on Seroquel.

The retired psychiatrist provided links to four more articles on Seroquel and stated that these articles were his review of the studies submitted to the FDA for approval. The retired psychiatrist submitted these articles specifically related to the complaint – adverse effects and weight gain:

The retired psychiatrist noted from the Panel ruling that it appeared that the Panel wanted the complainant to specifically address these slides and relate the evidence to them. The problem was that by the time these slides came around, the story was already in its middle chapters. AstraZeneca knew it had a weight gain problem back in 1997. In the blog article titled 'Seroquel IX: weighty matters ...' the retired psychiatrist stated that he/she had listed some of the many references to weight gain in the FDA analysis for approval.

The retired psychiatrist alleged that the medical person in charge of Seroquel at AstraZeneca had skillfully danced around the weight gain in the published reports and in the FDA submission:

In **Trial 0006**:

'Treatment with ICI 204,636 was associated with clinically significant weight gain (an increase of 7% or more from baseline weight) in 25% of patients compared with 4% of placebo-treated patients. Average weights at endpoint represented a change from baseline of +5.5kg for ICI 204,636-treated patients and +0.5kg for patients in the placebo group... Patients treated with ICI 204,636 gained, on average, 3.1kg, and 24% had clinically significant increases in body weight of 7% or more. **However, weight gain is not uncommon in schizophrenic patients treated with antipsychotic agents and has been reported in as many as one-third of patients treated with clozapine.'**

In **Trial 0008**:

'Treatment with quetiapine was associated with clinically significant weight gain (an increase of >7% from baseline weight) in 25% of the patients in the high-dose group compared with 16% in the low-dose group and 5% in the placebo group... Patients treated with quetiapine had a mean weight gain of 2kg, compared with 0.1kg for patients in the placebo group; **however, weight gain did not necessitate withdrawal of treatment for any patient and may or may not have been clinically important during the 6-week period. Often weight gain in patients treated for acute psychosis seems more a function of a return to pre-exacerbation status and other aspects of well-being associated with improvement in psychosis rather than of treatment.'**

In **Trial 0013**:

'Mean increases in weight with quetiapine, from low to high dose, were +0.9, +2.9, +2.0, +2.6, and +2.3kg, respectively, and were greater than those seen with haloperidol (+0.3kg) or placebo (-0.8kg). Increases from baseline of 7% or greater were considered clinically significant and were seen in greater proportions of quetiapine-treated patients: from low to high dose in 11%, 17%, 10%, 16%, and 13% versus 4% with haloperidol and 6% with placebo. Changes did not necessitate treatment withdrawal or appear dose-related on the basis of descriptive statistics... Although quetiapine was associated with a greater mean weight gain compared with haloperidol and placebo, no patients were withdrawn as a result. When reported as an adverse event, weight gain appeared to be related to dose, but no clear dose-response relationship was evident relative to clinically significant weight gain. Generally mean increases were greater at day 42 for patients who completed the trial (1.5-4.5kg) than for patients who withdrew. **In any case, weight gain over a 6-week period may or may not be clinically significant given that it may be a function of well-being resulting from improvement in psychosis.'**

And in the **Trial 0015** Report they sent the F.D.A.:

'There also appeared to be a dose-related increase in the proportion of patients with clinically significant weight gain among Seroquel groups. **Clinically significant weight gain, which was associated with Seroquel treatment, is often seen during treatment with antipsychotic agents.'**

The retired psychiatrist stated that the AstraZeneca medical employee's boss had, in fact, complemented her on her skill in 'smoke and mirrors' in an internal memorandum dated February 1997.

The retired psychiatrist submitted that the AstraZeneca medical employee's boss had referred to Study 15, a disaster that showed Seroquel's inferiority to Haldol and his/her words about weight gain. But the most telling document was an email dated August 1997 where he/she reflected on the weight gain story after being told that AstraZeneca was going to go with 'weight neutral':

'I couldn't attend the Serebral meeting yesterday and haven't been able to catch up with anyone who had in order to hear what the discussion was opposite weight gain (I suspect no one had read the documents) but I did have a chance to look over [named individual] document and have a couple of comments/thoughts. Perhaps we can chat afterwards?

The purpose of this analysis is 2-fold:

1) Is there a competitive advantage for Seroquel, re-weight gain which we can articulate in posters/talks/vis aids? We know we have weight gain but is it limited to the short-term treatment and flattens out over time? Clozapine continues to accumulate.
2) If not #1, then what do we tell the doctors when they ask about long term weight gain?

I recognize that there are a number of interactions/ confounds in the analyses [named individual] did, but despite this I was really struck by how consistent the data was. Across pools (all trials, 15 alone, all trials – 15), across parameters/measures (mean change from baseline, %change from baseline, proportion which clinically significant weight gain), and across cohorts *various durations of treatment) the results seem to be consistent and show:

Weight gain in more rapid initially

While weight gain slows over the longer term (I only considered to 52 week) there still is weight gain. It doesn't stop…the slope just appears to change.

The magnitude of weight gain at 52 weeks (regardless of pool or cohort) is about 5kg which is more than the short-term 6 week weight gain.

The proportion of patients with clinically significant weight gain at 52 weeks (regardless of pool or cohort) is about 45% and this is more than the % at 6 weeks.

This was quite surprising to me (not the weight gain but the consistency).

Therefore I'm not sure there is yet any type of competitive opportunity no matter how weak. Quantitative comparisons between compounds (clozapine, olanzapine) not from the same trials are seriously flawed. (Not that I would be giving up on an abstract but it requires more though before making a decision that this something we bally-hoo!) I have yet to recheck out the weight gain over time in the haloperidol group in 15 but comparisons here would be pretty shady!

The other issue of what we tell the sales force is more problematic because of the confounds. I feel the urge to delve more deeply into this but I realize resources are constrained, there are substantial limitations to the database and I'm not sure that the answers will be much different.

Thoughts are:

It appears on the scatterplot with slope marked that patients with lower body weights had a greater weight gain. (Note that [another named pharmaceutical company] has made this type of an argument stating that patients starting treatment at less than ideal body weight for frame size [they collect height information which we didn't] gained more weight. We can't draw these conclusions so convincingly.) Could the effect of sex be related to baseline weights of men and women?

If I recall from CTRs, our women are generally heavier.

Could the interaction with age be confounded by sex or even baseline weight?

We know that weight gain is dose related. Does the fact that during the first 6 weeks of treatment in many trials many patients were on low doses and when they got into OLE they may have shifted the dose upward (OLE was flexibly dosed) and therefore delayed the appearance of weight gain appearing as an effect of time on drug? Would analysis of Study 14, the only trial with flexibly dosed acute treatment which offered long term OLE be of help here?

The effect of trial isn't surprising. Is it worth repooling like with like?

For example, perhaps looking just at Studies 12, 13 and 14 which are 6 week acute studies which offered OLE or adding Studies 6 and 8 as well since the populations were similar (Studies 5, 4, 15, 48 and the clin pharm studies with OLE could be argued as having different populations).

I have to keep asking myself, are we going to go through the motions, using precious resources and not really come up with anything more solid for the sales reps?

Comments? Thoughts? Should we get together to chat?

Thanks'

The retired psychiatrist submitted that AstraZeneca certainly knew about the weight gain problems in

1997. Yet AstraZeneca persisted in the equivocation about weight gain. The most telling of the slides referenced by the Panel was the one from 1999 which was essentially a lie. By then AstraZeneca had plenty of information to know it was untrue – for example Study 15 which directly contradicted the zero weight gain implied by this slide.

The retired psychiatrist provided a link to a subdirectory of emails on psychrights that went back and forth about how to hold on to AstraZeneca claims about no or minimal weight gain during the period of the slides in 2001 and 2002 which stated 'weight neutral long term'.

And then in 2000/2001 the retired psychiatrist noted one of his blog articles titled 'Selling Seroquel into the fray'.

The retired psychiatrist submitted that there was a new cloud on the horizon. In 2000, the FDA began to look into the issue of Diabetes in patients on Atypical Antipsychotics and sent them a letter requesting data (an excerpt from AstraZeneca's first response to the FDA was provided).

The retired psychiatrist stated that all of this played into AstraZeneca's long internal discussion about how it could continue to justify the term weight neutral. AstraZeneca played with calling it 'minimal weight gain,' but the retired psychiatrist guessed that didn't sound as good as weight neutral. So this OLE data used for the article was the closest thing AstraZeneca had to a weight neutral data set. The retired psychiatrist stated that he/she had not done justice to all the email traffic as AstraZeneca tried desperately to hang on to weight neutral. AstraZeneca thought it would separate it from Zyprexa, and AstraZeneca was not letting go easily. AstraZeneca had finally ended up putting 'As with other antipsychotics, Seroquel can also be associated with limited weight gain, predominantly during the early weeks of treatment' in its Core Data Sheet, but after the FDA query about Diabetes, AstraZeneca began to discuss removing the word 'limited'.

The retired psychiatrist stated that then somebody at AstraZeneca noticed the obvious – that they had more than just 18 months of data on this group of subjects that had been used for the published paper. The authors had simply cut off the part they didn't like (18 months to four years).

'The mean weight change data beyond 18 months (78 weeks) are, I think, less consistent with a "weight neutrality" story than the data prior to 18 months. I have graphed the data on the attached slide for your review. One note: in the poster and the paper an error was made that is corrected in my graph. In the poster and paper the mean weight gain at 53-78 weeks was given as 1.94kg. From the data tables provided to me it was actually 2.03kg. For the following interval (79-104 weeks) the change was 1.94kg. So I think someone simply and inadvertently misaligned one interval as they transcribed the data. This is only potentially significant in that, with such a misalignment, the next mean weight change that would have been encountered was 3.89kg. It is the data from 3.89kg and subsequent which were omitted from the poster and paper.
The ultimate impact on the reprint carrier is that, in the absence of a valid reason for excluding the data beyond 18 months, I can't endorse the reprint/carrier for promotional use as they may not represent a fair and balanced disclosure of the data available to us. This is, I think, compounded by the failure of the paper (and therefore the reprint carrier) to present the incidence of "weight gain" as an adverse event (4.9%) relative to the incidence of "weight loss" as an adverse event (1.9%). These data also suggest to me that the concept of "weight neutrality" are not supported by these data.

I will be interested in your thoughts as well.'

The retired psychiatrist stated that the reprints didn't make it into circulation after all. While AstraZeneca had discussed removing 'limited', it didn't actually change it for several years. And though the inquiry about Diabetes obviously scared it, AstraZeneca continued to 'defend against potential FDA label threats: QTc, Diabetes' with the same energy that it fought accepting 'weight gain'.

The retired psychiatrist stated that so AstraZeneca, again, knew during the period of the slides in 2001, 2002, and 2004 that its claim of 'weight neutral' or 'favorable weight long-term' were bogus. The only truthful and state of its contemporary knowledge slides in this set were in 2006 where it stated 'less weight gain than olanzapine'.

COMMENTS FROM ASTRAZENECA

AstraZeneca noted that the appeal related to certain weight-related claims made in five presentations stored in the archived materials for investors on AstraZeneca's website; they were archived to comply with AstraZeneca's disclosure policy at the time. The presentations were between 7 and 14 years old and prepared solely for the international investor community and were non-promotional in intent. As the presentations were not in active circulation there were no consequences for health professionals, patients or other companies, and no possibility of influencing prescribing habits. In addition, to reflect the Appeal Board's observations and concerns expressed in Case AUTH/2538/10/12, AstraZeneca had removed the presentations from its website and had added appropriate disclaimers to the media archive content to reflect their historical nature.

AstraZeneca submitted that the complainant was an aggrieved ex-employee; this was one of a series of complaints he had brought before the PMCPA in order to harass AstraZeneca and discredit the company's reputation. More specifically, this complaint directly followed the complainant's 2012 complaint concerning Seroquel weight-related claims in the presentations (ie the same presentations that were the subject of the appeal), and his 2010 complaint concerning weight-related claims expressed in a different forum. It was important, therefore, to briefly summarise the history of this matter.

Case AUTH/2297/1/10

AstraZeneca submitted that the complainant originally complained to the PMCPA in 2010 on weight-related claims. In Case AUTH/2297/1/10 the complainant drew attention to a BBC Radio 4 programme in which he stated that, as a former medical adviser for Seroquel, he was pressurised to approve promotional claims for the medicine which stated that weight gain was not a problem. In addition, he referenced a journal advertisement which stated a weight-related claim for Seroquel. AstraZeneca was ruled in breach of Clauses 7 and 9.1 of the Code; AstraZeneca gave an undertaking to the PMCPA that it would not make the same or similar claims in the future. In an appeal raised by the complainant, the Appeal Board ruled that there had been no breach of Clause 2 of the Code.

Case AUTH/2538/10/12

The complainant complained again in 2012 about weight-related Seroquel claims, this time in the presentations. The complainant referred to Case AUTH/2297/1/10, and alleged in his submission that the presentations made 'false claims', attaching links to the presentations. Despite the statement alleging 'false claims', the Panel treated the matter purely as a breach of undertaking case. The Panel did not ask AstraZeneca to address Clause 7, nor did it request the complainant to contextualise or further clarify his comment (which was surprising considering the lack of any detail supplied by the complainant). Clearly, therefore, the PMCPA did not consider that the content of the presentations warranted an assessment under Clause 7 of the Code.

AstraZeneca noted that the Panel dismissed the complaint in relation to four of the five presentations above, but ruled AstraZeneca in breach of its undertaking in relation to one of the presentations. However, the Panel's ruling was overturned at appeal and as discussed above, the company had taken down the investor relations archive of presentations (including the presentations) from its website and added disclaimers to media archive content.

AstraZeneca noted that the complainant did not appeal the Panel's ruling of no breach in relation to four presentations but did defend the Panel's ruling of a breach in relation to the fifth presentation, again positioning the claims as 'not true'. Instead, the complainant submitted a new complaint about the presentations as explained below.

Case AUTH/2572/1/13

In January 2013, the complainant made his third complaint about AstraZeneca, and referred in his submission to a CBS news article regarding Seroquel; he did not, however, provide any granularity as to the basis and scope of his complaint. Notwithstanding this very unclear position, the Panel merely forwarded the complaint to AstraZeneca asking for a response focused on Clauses 2, 9.1 and 25 of the Code, but notably not Clause 7. It was also of concern that this case was raised in the period between the Panel's initial ruling in Case AUTH/2538/10/12 and the appeal, referencing specific wording within AstraZeneca's response letter of 13 November 2012 (Case AUTH/2538/10/12) as part of the complaint.

AstraZeneca stated that it submitted a comprehensive response which addressed these clauses and raised concerns about the nature and substance of the complaint, and potential implications on process. Consequently, the Panel asked the complainant to provide further detail regarding his allegation. What the complainant provided was, amongst others, a series of links to a personal blog set up by a retired psychiatrist. Subsequently, AstraZeneca was notified that the case preparation manager had made a gross error and had cited the incorrect clauses of the Code to which AstraZeneca should respond, with the case being allowed to proceed as an alleged breach of Clause 7.2 only and AstraZeneca was asked to respond accordingly.

Following review of the complainant's position and AstraZeneca's response, the Panel ruled that AstraZeneca had not breached Clause 7.2 of the Code; the complainant was seeking appealing that ruling.

Detailed response to the complainant's appeal

AstraZeneca submitted that it took its compliance with the Code very seriously. This was why, respectful of the self-regulatory system, AstraZeneca wished to respond to the complainant's appeal.

AstraZeneca recognised that the claims contained in the presentations were specifically different to those ruled in breach in 2010, and respected the fact that this was the position taken by Panel; however, it submitted that Cases AUTH/2297/1/10 and AUTH/2572/1/13 were, in essence (both in meaning and clinically) closely similar, a fact made more relevant by the historical nature of the claims.

AstraZeneca submitted that it would have therefore been disingenuous to have defended the claims in the presentations from 1999 to 2004, on the basis that they were of a historical nature and that, as such, there was no new contemporaneous evidence available to AstraZeneca to build a case other than that already submitted to and considered by the PMCPA in 2010, which resulted in a breach of Clause 7.2 being ruled. AstraZeneca regretted that this position was not clearly enough stated in its response above. The exception was the claim made in the 2006 presentation, where Seroquel was compared with olanzapine, which AstraZeneca did defend and which the complainant stated in his appeal was supported by the data available.

However, and with this in mind, AstraZeneca queried whether, given the procedural concerns raised above Case AUTH/2572/1/13 should have been progressed in the first place.

As explained above, it was AstraZeneca's perception that the complainant had brought this complaint because he had not properly and coherently constructed his case for Case AUTH/2538/10/12. Quite simply, the complainant (with the PMCPA's assistance) should have raised a potential breach of Clause 7.2 of the Code within that case. The PMCPA

certainly had an opportunity to do this, particularly given the complainant's allegation of 'false claims'. In addition, the complainant did not appeal the Panel's findings of no breach in Case AUTH/2538/10/12, despite raising this complaint in the period between the Panel's original ruling and AstraZeneca's appeal. AstraZeneca submitted that allowing the complainant, an aggrieved ex-employee, to use this channel to air his grievances seemed to be a manipulation of the PMCPA's complaint procedure, and amounted to an abuse of process. This was explained further below.

In AstraZeneca's view, this matter had already been adjudicated under the Code, in that the current complaint clearly concerned a matter 'closely similar' to one which had been the subject of previous adjudications by the Panel and the Appeal Board. AstraZeneca acknowledged that in some circumstances a complaint might be allowed to proceed even though it concerned a matter closely similar to one which had been previously adjudicated. However, AstraZeneca understood that this discretionary power should be very narrowly construed and, in its view, this complaint should not have been allowed to proceed under Paragraph 5.2 of the Constitution and Procedure which stated:

'If the complaint concerns a **matter closely similar** to one which has been **the subject of a previous adjudication**, it may be allowed to proceed at the discretion of the Director **if new evidence is adduced by the complainant or if the passage of time or a change in circumstances raises doubts as to whether the same decision would be made** in respect of the current complaint. The Director should normally allow a complaint to proceed if it covers matters similar to those in a decision of the Panel where no breach of the Code was ruled and **which was not the subject of appeal** to the Appeal Board.' (Emphasis added)

AstraZeneca submitted that the present complaint concerned a matter that was 'closely similar' to Cases AUTH/2297/1/10 and AUTH/2538/10/12 and that the matter did not fall within the limited circumstances where the PMCPA had discretion to rule on a matter already adjudicated.

AstraZeneca submitted that in the present complaint, the complainant had not submitted any evidence which was new in that it raised any new issues, or which had come into existence after the adjudication of Case AUTH/2297/1/10 and AUTH/2538/10/12. The complainant's clarified submission included links to the retired psychiatrist's personal blog. His appeal submission included additional links to this blog, and a narrative from the retired psychiatrist citing two emails (which were over 20 years old) obtained in relation to the Seroquel litigation in the US. All of these references were therefore easily available to the complainant when he made his two previous complaints.

AstraZeneca submitted that there was no substantive issue beyond Case AUTH/2297/1/10 and AUTH/2538/10/12 for the Panel and the Appeal Board to adjudicate. As discussed above, a closely similar claim to those in the presentations was previously ruled in breach of Clause 7.2 in Case AUTH/2297/1/10. AstraZeneca submitted that due to the historical nature of these claims, and the fact that they had not been used since 2008, that there was little doubt as to whether the same decision would be made again. Moreover, the discretion available to the PMCPA to adjudicate on complaints closely similar to those previously adjudicated must be narrowly construed. The intention behind the flexibility was clear. Firstly, it was to allow complaints by individuals or companies who had not had the opportunity to appeal the previous ruling. This was clear from commentary in Case AUTH/1233/9/01 which stated that:

'[...] the Constitution and Procedure rather assumed that the party making a complaint about a matter closely similar to a previous complaint would be different to the original complainant.'

Secondly, AstraZeneca submitted that the Panel reserved this flexibility to adjudicate on live issues which had potential consequences for health professionals and patients.

AstraZeneca submitted that in this case, neither of those considerations applied. The complainant could have appealed the Panel's ruling regarding the presentations in Case AUTH/2538/10/12. Further, the presentations were old documents which had been removed from the AstraZeneca website and even before that happened they were extremely difficult to access. The presentations had not been tagged and so very difficult to find on the internet without prior specific knowledge of their content; they had been held in a website archive and had been difficult to find within the website (a minimum of four clicks was needed to get to the content from the website homepage). The issues in front of the Appeal Board were therefore not relevant to today's clinical practice. This was why it was not appropriate for the PMCPA to use its discretion to allow this case to proceed.

AstraZeneca submitted that it seemed that the presentations were only of interest to an aggrieved complainant who had a particular agenda and who knew what he was looking for. The PMCPA should not facilitate this type of complaint by overly accommodating such individuals.

AstraZeneca submitted that whilst not a court of law, the PMCPA was a quasi judicial body entrusted with ensuring fairness and that the general principles of justice were followed so that a company did not have to defend the same subject matter, on the same grounds, brought by the same party, indeterminately (ie the principle of 'a matter already judged'). Any obligation to re-examine a case must clearly be an exception to the principle of legal certainty and so must be interpreted narrowly.

Further, AstraZeneca noted that the Panel re-defined the whole scope of this complaint after AstraZeneca had already submitted a comprehensive response; this was wholly without process and prejudicial to AstraZeneca's ability to appropriately defend itself against historical allegations brought about by an aggrieved ex-employee.

Conclusion

AstraZeneca submitted that none of the issues now raised by the complainant were new with regard to the weight-related claims for Seroquel. It was wholly unreasonable that AstraZeneca should have to invest considerable time and resource defending claims made in historic, non-promotional presentations, where both the claims in essence and the presentations themselves had already been the subject of a detailed review by the PMCPA, and the Appeal Board, in Case AUTH/2297/1/10 and AUTH/2538/10/12 respectively. In any event, AstraZeneca had removed the presentations from the website after the Appeal Board's ruling in Case AUTH/2538/10/12.

AstraZeneca considered that the PMCPA should exercise caution to avoid providing a platform for resentful ex-employees with questionable motives to continue harassing their former employers. Whilst AstraZeneca recognised the importance of employees being able to raise issues and concerns with the PMCPA, but submitted that the Authority was allowing such repeated and unstructured complaints to progress which encouraged the attitude that these types of complaints were acceptable.

AstraZeneca submitted that the complainant would persevere with this form of harassment of AstraZeneca until the PMCPA assisted it in putting a stop to it. The present complaint was an improper manipulation of the complaint procedure by an aggrieved ex-employee.

FINAL COMMENTS FROM THE COMPLAINANT

The complainant was disappointed that AstraZeneca had made a personal attack on him and his motives for bringing this case.

The complainant asked the Appeal Board to focus on the retired psychiatrist's dissection of the claims made in the slides in question.

APPEAL BOARD RULING

The Appeal Board noted that in a previous case (Case AUTH/2538/10/12) the complainant had unsuccessfully alleged that the five presentations at issue, dated 1999, 2001, 2002, 2004 and 2006 respectively, were in breach of the undertaking given in Cases AUTH/2294/1/10, AUTH/2296/1/10 and AUTH/2297/1/10. (These cases concerned a Seroquel journal advertisement published in April 2004 which included an implied claim of no weight gain; breaches of Clauses 7.2, 7.4 and 7.9 were ruled).

The Appeal Board noted that alleged breaches of undertaking were taken up with the Director nominally acting as the complainant as the PMCPA was responsible for ensuring compliance with undertakings. The current case (Case AUTH/2572/1/13), however, was different as it concerned an alleged breach of Clause 7.2 in which the Panel made its rulings based on the parties' submissions. The burden was on the complainant to show, on the balance of probabilities, that a breach of the Code had occurred. Neither the Panel nor the Appeal Board were investigative bodies. In that regard the Appeal Board was concerned that the complainant had not clearly identified the claims at issue and, in relation to each, set out a concise explanation and discussion of the data to support his allegation.

The Appeal Board was concerned that the nature of the material before it was such that it was not always clear how/whether the material supported the complainant's allegation. Extracts from emails and excerpts from published papers were provided. The context of such material was unclear. The Appeal Board had to decide how much weight to attach to this evidence bearing in mind the above.

The Appeal Board noted that the Seroquel summary of product characteristics (SPC) dated 19 April 1999 stated in Section 4.8 Undesirable Effects, that 'As with other antipsychotics, Seroquel may also be associated with limited weight gain, predominantly during the early weeks of treatment.' A closely similar statement was included in the August 2002 SPC. By November 2006 'limited' had been removed and the statement now read 'As with other antipsychotics, Seroquel may be associated with weight gain, predominantly in the early weeks of treatment.'

The Appeal Board noted that the claims about weight in the presentations at issue were as follows: 'Seroquel - minimal weight gain' (1999); 'weight neutral in the long term' (2001); 'Weight-neutral long-term' and 'weight-neutral in the long term' (2002); 'Favourable weight profile long-term'(2004); 'Less weight gain than with olanzapine' (2006). The Appeal Board noted that the complainant considered that the latter comparative claim was truthful.

The Appeal Board considered that there was insufficient evidence provided by the complainant to show that the presentations, when written, did not provide a fair and balanced reflection of the evidence available at the time regarding weight gain with Seroquel. The Appeal Board considered that the complainant had not discharged his burden of proof and it upheld the Panel's ruling of no breach of Clause 7.2. The appeal was unsuccessful.

Complaint received **15 January 2013**

Case completed **26 June 2013**