

# ANONYMOUS v MERCK SERONO

## Conduct of representative

An anonymous, non-contactable complainant, complained about the conduct of an un-named representative from Merck Serono who had requested a monthly visit throughout 2013. The complainant stated that he/she felt harassed as such frequent meetings were unnecessary. The complainant was informed that these visits were required to meet an instruction to have meetings with seven health professionals each day.

The complainant noted that before this episode, he/she had always found the representative to be very professional and an asset to the company. The complainant considered that the representatives were being forced to behave in this way by unrealistic expectations from their managers.

The detailed response from Merck Serono is given below.

The Panel noted that Merck Serono's instructions to its representatives referred to a number of different targets. For example, representatives were to see 90% of their colorectal cancer (CRC) oncologists at least 3 times per year. An additional incentive was paid to representatives who saw 20 CRC oncologists in the next 10 working days. Gold, Silver and Bronze targets were set in the Erbitux campaign brief 2013 and the minimum standard was to aim to see 2 gold contacts a day and five others from the silver and bronze contact list. According to the complainant it appeared that this instruction was referred to by the representative. The objectives referred to seeing a 'minimum' of three per year. None of the materials which instructed the representatives referred to the Code requirements concerning call rates or distinguished between call rates and contact rates. The email Merck Serono sent following the complaint referred to the expectations in the representatives' objectives and that 'for the avoidance of doubt there must not be any more than 3 unsolicited meetings with any one HCP over the year'. In addition, the Panel noted that following the complaint the Erbitux campaign brief which set the targets had been withdrawn.

The Panel ruled a breach as Merck Serono's instructions to representatives advocated a course of action which was likely to breach the Code. The Panel noted that the Code also required representatives to ensure that, *inter alia*, the frequency of their calls on health professionals did not cause inconvenience and supplementary information which stated that the number of calls should not normally exceed 3 on average. No evidence had been submitted to establish whether a breach of this clause had occurred. The complainant was non contactable, thus the Panel could not seek further information. No breach of the Code was ruled.

An anonymous, non-contactable complainant, complained about the conduct of an un-named representative from Merck Serono.

## COMPLAINT

The complainant was concerned about a meeting that he/she had had with a Merck Serono representative. The complainant alleged that the representative had requested that he/she plan a monthly visit with him/her throughout 2013. The complainant stated that he/she felt harassed by this request as such frequent meetings were completely unnecessary. When the complainant asked why the representative wanted to plan so many meetings in advance he/she was informed that these visits were required to meet an instruction to have meetings with seven health professionals each day.

The complainant noted that before this episode, he/she had always found this representative to be very professional and an asset to his/her company. The complainant considered that the representatives were being forced to behave in this way by unrealistic expectations from their managers.

The complainant stated that he/she had complained anonymously as Merck Serono had always been very supportive to his/her department and he/she did not wish to get the representative into trouble.

When writing to Merck Serono the Authority asked it to respond in relation to Clauses 15.4 and 15.9 of the Code.

## RESPONSE

Merck Serono operated three field forces, one promoting Rebif (interferon-beta 1alpha) and Saizen (recombinant growth hormone), one promoting Erbitux (cetuximab) and one promoting a range of fertility products.

Merck Serono's philosophy was that the quality of the interaction with health professionals was more important than quantity and therefore there was not an emphasis on call rates.

The Rebif, Saizen and fertility materials made no mention of call or contact rates.

Merck Serono stated that the most recent oncology material contained the phrase 'Selling the OS [overall survival] message to a minimum of 90% of your CRC [colorectal cancer] Oncologists at least three times per year' and a short term incentive – '20 in 10' – to see 20 CRC oncologists in the next 10 working days. A copy of the meeting slides was provided. This wording reflected an item in representative's annual objectives regarding contact rates:

## 'Coverage and frequency on CRC Oncologists and Liver Surgeons

To see 90% of CRC Oncologists and Liver Surgeons a minimum of 3 x per year to communicate the key messages and thus drive sales of Erbitux.'

This was followed by various targets for seeing clinicians 'a minimum of 3 x per year'.

Merck Serono submitted that as these contacts included meetings, solicited as well as unsolicited calls, these objectives complied with the Code and did not breach Clauses 15.4 or 15.9.

Merck Serono provided the Erbitux Campaign brief 2013. There were additional instructions for Q1 2013 'As a minimum standard you should be aiming for 2 Gold contacts per day and 5 others from your silver and bronze contact lists'. This seemed to form the basis for the representative's actions. The number of Gold, Silver and Bronze targets per representative was provided.

Merck Serono stated that representatives were in the field an average of four days a week. If they were to achieve this standard through meetings, solicited as well as unsolicited calls an activity level of eight Gold customers and twenty Silver and Bronze customers would be required per representative per week. The majority of contacts in colorectal cancer were the result of either pre-arranged meetings or follow-up activity. It was therefore very unlikely that there would be any risk of some customers being seen with undue frequency. Merck Serono submitted that management expectations were not at all unrealistic as alleged by the complainant.

The instruction to see two Gold and five Silver and Bronze targets per day had not been enforced and was not linked to any metric or financial incentive. As a result of this complaint an email had been sent to the representatives clarifying that this particular instruction was subject to Code compliance and that no more than three unsolicited calls per year were to be made. The focus should be on the coverage given in the latest briefing in March. To avoid a potential misinterpretation the campaign brief had been withdrawn. A copy of this email was provided together with the sales manager's monthly emails to the field force from Q1 2013 which did not mention call rates.

Merck Serono submitted that the representative in question confused the two contact rates in making the request. Merck Serono had taken the actions outlined above and would issue further written instructions to reinforce that call frequency was to remain compliant with the Code. It very much regretted the conduct of the representative in this case but submitted this was an individual aberration and did not reflect the normal standard demonstrated by Merck Serono representatives.

## PANEL RULING

The Panel noted that the complainant was anonymous and non contactable. Like all complaints, anonymous complaints were judged on the evidence. The complainant had the burden of proving their complaint on the balance of probabilities.

The Panel noted that the supplementary information to Clause 15.4 Frequency and Manner of calls on Doctors and other Prescribers stated that the number of calls made on a doctor or other prescriber each year should normally not exceed three on average excluding attendance at group meetings and the like, a visit requested by the doctor or other prescriber or a visit to follow up a report of an adverse reaction. Thus although a representative might proactively call on a doctor or other prescriber three times in a year, the number of contacts with that health professional in the year might be more than that. The supplementary information advised that briefing material should clearly distinguish between expected call rates and expected contact rates. Targets should be realistic and not such that representatives breached the Code in order to meet them.

The Panel noted the requirements of Clause 15.9 included that briefing material must not advocate either directly or indirectly any course of action which would be likely to lead to a breach of the Code.

The Panel noted that Merck Serono's instructions to its representatives referred to a number of different targets. For example, representatives were to see 90% of their CRC oncologists at least 3 times per year. An additional incentive of £250 in vouchers was paid to representatives who saw 20 CRC oncologists in the next 10 working days. Gold, Silver and Bronze targets were set in the Erbitux campaign brief 2013 and the minimum standard was to aim to see two gold contacts a day and five others from the silver and bronze contact list. According to the complainant it appeared that this instruction was referred to by the representative. The objectives referred to seeing a 'minimum' of three per year. None of the materials which instructed the Merck Serono representatives referred to the Code requirements concerning call rates or distinguished between call rates and contact rates. The email Merck Serono sent following the complaint referred to the expectations in the representatives' objectives and that 'for the avoidance of doubt there must not be any more than 3 unsolicited meetings with any one HCP over the year'. In addition, the Panel noted that following the complaint the Erbitux campaign brief which set the Gold, Silver and Bronze targets had been withdrawn.

The Panel considered that Merck Serono's instructions to representatives advocated a course of action which was likely to breach the Code. A breach of Clause 15.9 was ruled. The Panel noted that Clause 15.4 required representatives to ensure that, *inter alia*, the frequency of their calls on health professionals did not cause inconvenience and its

supplementary information required that the number of calls should not normally exceed 3 on average. No evidence had been submitted to establish whether a breach of this clause had occurred. Whilst according to the complainant the representative had requested monthly visits there was no evidence that the complainant had agreed to this request or that the meetings had otherwise occurred. The complainant was non contactable, thus the Panel could not seek further information. No breach of Clause 15.4 was ruled.

**Complaint received**      **26 March 2013**

**Case completed**        **2 May 2013**

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