

# GENERAL PRACTITIONER v LUNDBECK

## Email promotion of Cipralex

A general practitioner complained about an unsolicited Cipralex (escitalopram) email which he had received from a database agency on behalf of Lundbeck.

The complainant stated that he did not usually receive direct marketing about medicines and queried whether the email at issue was a spam email.

The detailed response from Lundbeck is given below.

The Panel noted that the Code prohibited the use of email for promotional purposes except with the prior permission of the recipient. Whilst the material at issue had not been sent directly by Lundbeck it was nonetheless an established principle under the Code that pharmaceutical companies were responsible for work undertaken by third parties on their behalf.

The Panel noted that when obtaining permission from health professionals to add them to their database, [and thus contact them through their NHS email account] the database agency had made it clear to them that it would, from time to time, email information which might include, inter alia, pharmaceutical promotional material. The Panel noted Lundbeck's submission that the complainant had been on the database since 2007 and that the complainant's details had been verified within the last year.

The Panel noted that the unsubscribe facility linked to the email in question appeared to enable a recipient to unsubscribe to all Lundbeck emails but not to promotional emails from any other company sent by the database agency. Opting in to receive promotional emails appeared to allow the database agency to send material from any pharmaceutical company; it seemed that opting out, however, had to be done company by company. The Panel queried whether this was entirely consistent with the Code. Nonetheless, on the material available, it appeared that on registration and on the last annual verification of his details, the complainant had agreed to receive pharmaceutical promotional material by email. The Panel consequently ruled no breach of the Code.

A general practitioner complained about an unsolicited Cipralex (escitalopram) email (ref UK/ESC/1303/0400) which he had received in April 2013 from an electronic marketing agency on behalf of Lundbeck Limited.

### COMPLAINT

The complainant stated that the company and its sister company, seemed a bit fishy/spammy and hence the query about whether the email was in breach of the Code. The complainant stated that he did not usually receive direct marketing about medicines.

When writing to Lundbeck the Authority asked it to respond in relation to Clause 9.9 of the Code.

### RESPONSE

Lundbeck stated that it had developed the Cipralex email in conjunction with a digital agency. That agency worked directly with an electronic marketing agency which owned a database of health professionals.

The electronic marketing agency sent the email only to health professionals that had registered on the database and had agreed to receive promotional emails from pharmaceutical companies. Lundbeck requested that the health professionals that would be interested in receiving the Cipralex email would be registered GPs and psychiatrists only who had opted in to receive promotional emails.

The database included medical professionals employed within the NHS and UK private healthcare sector. Registered users had free access to information on the site, including information about prescription only medicines and medical devices, which could only be directed and accessed by health professionals who prescribed these products.

The complainant was first approached by the database in 2007 and had been a member since then and his registration was last verified in September 2012. Lundbeck provided a set of slides which explained the registration process.

An electronic marketing agency initially approached the complainant by telephone. This conversation included background information on the services provided, and specifically referred to the potential use of email for pharmaceutical promotional materials:

'[the agency] will from time to time send information by e-mail about our associated/affiliated companies and their clients' product and services, which may include updates on specialist services, conferences and seminars, diagnostic, medical and pharmaceutical promotional materials as well as official information.'

A confirmation email was then sent to the complainant which included the text reproduced above and the opportunity to opt out. The complainant completed his registration on the 1 June 2007 and opted in to receive promotional emails.

Registered users of the database were contacted annually to check that their contact details were up-to-date and that they wished to continue their membership. They were emailed with the text quoted above and had to acknowledge their wish to opt in to continue receiving promotional emails.

Promotional emails, including the Cipralext email at issue, included an option to opt out of receiving further emails. When a health professional clicked the 'opt out' link at the bottom of the email, they were taken to an automated email which was sent directly to an electronic marketing agency's data department. The following steps were then taken:

- Unique identifier identified the health professional to allow extraction from the database
- The record was placed in the unsubscribed holding file
- The health professional was unsubscribed to all emails from that company, regardless of therapy area.

The complainant elected to receive promotional emails and had not opted out, despite clear opportunities to do so. Lundbeck did not consider the email at issue was unsolicited, and it believed that all the requirements of Clause 9.9 had been fulfilled. Of course, if the complainant did not wish to receive promotional emails Lundbeck would ensure that he was unsubscribed.

#### **PANEL RULING**

The Panel noted that Clause 9.9 prohibited the use of email for promotional purposes except with the prior permission of the recipient. The Panel considered that the email in question was clearly promotional material. Whilst it had not been sent directly by Lundbeck it was nonetheless an established principle under the Code that pharmaceutical companies were responsible for work undertaken by third parties on their behalf. The email stated in small font at the end that it had been forwarded by an electronic marketing agency on behalf of Lundbeck. This was

followed by a link which would allow the recipient to unsubscribe, although it appeared that following the link might only stop future Lundbeck emails.

The Panel noted that when obtaining permission from health professionals to add them to their database, the database agency had made it clear that it would, from time to time, email information about associated/affiliated companies, and their clients' products and services which might include updates on specialist services, conferences and seminars, diagnostic, medical and pharmaceutical promotional materials as well as official information. The Panel noted the company's submission that the database organisation had first approached the complainant by telephone and had referred to the use of email for pharmaceutical company materials. This was followed by a registration email on 31 May 2007 which again made it clear that the company intended to email promotional material from pharmaceutical companies. Lundbeck submitted that the complainant's details were verified annually and had last been verified by email in September 2012. A copy of this email which referred to the provision of pharmaceutical promotional materials had been provided.

The Panel noted that the unsubscribe facility linked to the email in question appeared to enable a recipient to unsubscribe to all Lundbeck emails but not to promotional emails from any other company sent by the database agency. Opting in to receive promotional emails appeared to allow the database agency to send material from any pharmaceutical company; it seemed that opting out, however, had to be done company by company. The Panel queried whether this was entirely consistent with the supplementary information to Clause 9.9 which stated that where permission to use emails for promotional purposes has been given to a recipient, each email sent should inform the recipient how to unsubscribe to them. Nonetheless, on the material available, it appeared that on registration and on the last annual verification of his details, the complainant had agreed to receive pharmaceutical promotional material by email. The Panel consequently ruled no breach of Clause 9.9.

**Complaint received**                      **12 April 2013**

**Case completed**                              **4 June 2013**