

ANONYMOUS v CHUGAI

Provision of hospitality

An anonymous, non-contactable complainant complained about hospitality provided to health professionals by Chugai Pharma UK.

The complainant stated that at a recent British Society of Haematology meeting he/she was confused by the mixed messages given out by various pharmaceutical companies attending regarding hospitality.

The complainant stated that the local Chugai representative refused to take the complainant's team out for dinner stating 'I am sorry, we are no longer able to do that due to changes in the Code and our company's interpretation of the compliance issues'. The representative also set out the company's policy on this point.

However, the complainant was confused and surprised when he/she witnessed on many occasions another named pharmaceutical company actively entertaining customers and buying them drinks openly in the bar of a named hotel. This was further highlighted when, following the gala dinner, the complainant and many colleagues went back to a named hotel only to be joined by a number of Chugai personnel, one of whom openly bought rounds of drinks for everyone in the bar and proceeded to be loud in his communication with some customers who were obviously his friends! The complainant thought this happened at around 2am.

The complainant considered that either he/she had been lied to by the local Chugai representative or had their colleague not read the same documents? The complainant submitted that if the ABPI had laid down ground rules to be followed, then everyone should follow them to the letter of the law.

The detailed response from Chugai is given below.

The Panel noted that the complainant was anonymous and non-contactable. As stated in the introduction to the Constitution and Procedure such complaints were accepted and like all complaints, judged on the evidence provided by the parties. Complainants had the burden of proving their complaint on the balance of probabilities. The Panel noted that as the complainant was anonymous and non contactable it was not possible to ask the complainant for further information.

The Panel noted that in addition to detailed requirements in the Code companies were required to have a written document setting out their policies on meetings and hospitality and the associated allowable expenditure.

The Panel noted that the parties' accounts of activities in the bar differed. The complainant had stated that on the night of the gala dinner he/she and his/her colleagues were joined at the bar by a number of Chugai personnel one of whom purchased rounds of drinks for everyone in the bar and spoke loudly. Chugai submitted that on the night in question whilst its employees acknowledged health professionals whom they knew on entering the bar they sat separately in a booth and drinks were purchased for company personnel only. The company receipts were consistent with the company's submission in terms of the number of drinks purchased. The Panel had no way of checking who had consumed these drinks. The company submitted that none of its employees had behaved in an unruly or loud manner.

The Panel noted that the complainant bore the burden of proof and further noted from the introduction to the Constitution and Procedure that complaints were decided on the evidence provided by the parties. The Panel considered that bearing in mind all the evidence before it the complainant had not established that Chugai had provided inappropriate hospitality as alleged. No breaches of the Code were ruled.

An anonymous, non-contactable complainant complained about hospitality provided to health professionals by Chugai Pharma UK Limited. The complainant also named another pharmaceutical company and so the matter was also taken up with that company (Case AUTH/2603/5/13).

COMPLAINT

The complainant stated that he/she wrote with some disillusionment following his/her attendance at the recent British Society of Haematology meeting. Historically this meeting had not only been a great source of learning but also a very hospitable time with gratitude to various pharmaceutical companies. However, at this year's meeting the complainant was confused by the mixed messages given out by various pharmaceutical companies attending, especially as he/she had been informed many times over the past 12 months that taking health professionals out for meals and buying them alcoholic drinks was now not acceptable.

The complainant stated that the reason for his/her missive, was that his/her local Chugai representative, when asked if he/she could take the complainant's team out for dinner replied 'I am sorry, we are no longer able to do that due to changes in the Code and our company's interpretation of the compliance issues'. The representative went on to state 'We are

now meant to go out to dinner as part of a company group with no customers present; if they are in the same building or in fact join us, a decision has to be taken as to whether we stay or leave; the same applies to having drinks in pub/club or hotel bar' (sic).

The complainant did not fully agree with this but could see that all companies were now obviously making a stance in this area much to his/her dismay.

However, the complainant was confused and surprised when he/she witnessed on many occasions another named pharmaceutical company actively entertaining customers and buying them drinks openly in the bar of a named hotel. This was further highlighted when, following the gala dinner, the complainant and many colleagues went back to the hotel only to be joined by a number of Chugai personnel, one of whom openly bought rounds of drinks for everyone in the bar and proceeded to be loud in his communication with some customers who were obviously his friends! The complainant thought this happened at around 2am.

The complainant considered that either he/she had been lied to by the local Chugai representative or had their colleague not read the same documents? The complainant submitted that if the ABPI had laid down ground rules to be followed, then everyone should follow them to the letter of the law.

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

RESPONSE

Chugai noted that the complaint was from an anonymous, non-contactable complainant who had not submitted any evidence or material to support his/her complaint.

Chugai took the allegations extremely seriously. All staff were aware of the need to maintain high standards between themselves and health professionals in line with the Code.

The director of finance and human resources and compliance officer had both interviewed all employees individually that attended the event. They had also reviewed the bar bills that were charged to the rooms of all the attendant employees. Chugai believed that it had acted properly and was confident that it had not breached the Code.

Chugai explained that the British Society of Haematology was an established learned medical society with an established annual conference. The 53rd annual event took place between 15 -17 April 2013 in Liverpool. Chugai was a sponsor at the event and a number of its employees had attended.

Chugai explained that it was strict company policy that employees did not purchase meals or drinks for health professionals outside of its company guidelines. It was therefore not surprising that the

complainant articulated the fact that a representative had explained this policy to him/her.

Ten Chugai staff were at the named hotel for the duration of the conference. The gala dinner was held on the evening of 16 April, but no Chugai employee attended. Instead the Chugai employees went to a local restaurant. No health professionals were present for this event. Seven employees returned to the hotel bar at approximately 00.45.

On entering the bar, it was clear that some health professionals were also present. Chugai understood that those health professionals had returned from the gala dinner at approximately 00.15. The Chugai employees understandably acknowledged the health professionals in the bar area on their immediate arrival, however in line with company policy the Chugai group sat separately to everyone else. No drinks were ordered until the Chugai employees were seated. All employees had since reaffirmed their awareness of company policy, which was to sit separately where possible, to not engage directly with any health professional and under no circumstances purchase any subsistence or beverage for a health professional in a social setting.

Chugai explained that the bar area was L-shaped and open plan with a number of horseshoe-shaped pod booths. This gave the Chugai staff a distinct sense of separateness to the rest of the bar area. No health professional visited the Chugai employees at the booth or sat with them. No drinks were purchased for anyone other than Chugai staff.

Receipts from the evening showed that a round of 7 drinks was purchased at 01.10 (1 Baileys, 1 wine and 5 beers) with a further glass of wine at 01.13. A double round of drinks was then purchased at 01.43, just before the bar closed (3 Baileys, 8 beers, 2 waters and 1 orange juice). The employees stated that none of these drinks were purchased for or consumed by any health professional. Copies of the receipts were provided.

Chugai employees who were present during this time stated that at no point did any employee behave in an unruly or loud manner.

Chugai provided a copy of its policy on meetings and hospitality and noted that all of the attendant employees were last trained on it in November/ December 2012. Chugai also provided a list of the names and titles of the employees present, and copies of the ABPI examination certificates for the representatives.

Chugai stated that it had taken this anonymous complaint extremely seriously and had performed a thorough investigation; the company strenuously denied any breach of the Code. There was no evidence that any member of staff purchased drinks for health professionals and as such Chugai refuted any breach of Clause 19.1.

Chugai submitted that there was no evidence that any of its staff had acted in an inappropriate

manner. The Appeal Board had confirmed in Case AUTH/2509/6/12 that it was not inappropriate *per se* for an employee to be in the same social setting as health professionals provided that the employee did not breach the Code. Chugai refuted any breach of Clause 9.1.

Chugai was pleased to find that the request by the anonymous complainant to entertain his/her team for dinner was refuted in line with its guidelines.

Finally Chugai was very concerned that the complainant was anonymous and uncontactable. The complainant had failed to supply any evidence or material in support of his/her serious allegations. Chugai was very concerned that this allegation could damage its good reputation.

PANEL RULING

The Panel noted that the complainant was anonymous and non-contactable. As stated in the introduction to the Constitution and Procedure such complaints were accepted and like all complaints, judged on the evidence provided by the parties. Complainants had the burden of proving their complaint on the balance of probabilities. The Panel noted that as the complainant was anonymous and non contactable it was not possible to ask the complainant for further information.

Clause 19.1 stated that 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 Clause 19.1 made it clear that the provision of hospitality was limited to refreshments/subsistence (meals and drinks), accommodation, genuine registration fees and the payment of reasonable travel costs which a company might provide to sponsor a delegate to attend a meeting. In determining whether a meeting was acceptable or not consideration needed to be given to the educational programme, overall cost, facilities offered by the venue, nature of the audience, subsistence provided and the like. It should be the programme that attracted delegates and not the associated hospitality or venue. The supplementary information also stated that a useful criterion in determining whether the arrangements for any meeting were acceptable was to apply the question 'would you and your company be willing to have these arrangements generally known?' The impression that was created by the arrangements for any meeting must always be kept in mind.

The Panel noted that in addition to detailed requirements in the Code regarding meetings and the provision of hospitality companies were required to have a written document setting out their policies on meetings and hospitality and the associated allowable expenditure. The Panel noted that company policies and procedures had to be in line with the Code. A company's policies might be even more restrictive than the Code. It may be that this had contributed to the complainant's concerns.

The Panel considered that the company's submission that the 'Appeal Board had confirmed in Case AUTH/2509/6/12 that it was not inappropriate *per se* for an employee to be in the same social setting as health professionals provided that the employee did not breach the Code' was not a fair reflection of the Appeal Board's consideration in that case. In Case AUTH/2509/6/12 the Appeal Board considered that whether such activity was acceptable would depend upon the circumstances of each individual case.

The Panel noted that the complainant had commented on the refusal of a Chugai representative to take the complainant and his/her team out to dinner. Whilst this refusal had triggered the complaint the Panel did not consider that it was the subject of complaint.

The Panel noted Section 5.1.2, Hospitality, of the company standard operating procedure (SOP) (MP 006.02) stated it was acceptable to provide low key subsistence if the health professional had received sponsorship of full registration, travel and accommodation costs. Low key subsistence could also be provided if a non third party meeting had been organised (advisory board meeting or a satellite meeting). The SOP stated that it was not possible to provide subsistence to health professionals who had received part or no funding at all. It was also unacceptable to make impromptu arrangements on the day of the meeting as this would be deemed social entertainment. In addition Chugai had submitted that it was a strict company policy that employees did not purchase meals or drinks for health professionals outside its internal guidelines.

The Panel noted that the parties' accounts of activities in the bar differed. The complainant had stated that on the night of the gala dinner he/she and his/her colleagues were joined at the bar by a number of Chugai personnel one of whom purchased rounds of drinks for everyone in the bar and spoke loudly. Chugai submitted that on the night in question whilst its employees acknowledged health professionals whom they knew on entering the bar they sat separately in a booth and drinks were purchased for company personnel only. The company receipts were consistent with the company's submission in terms of the number of drinks purchased. The Panel had no way of checking who had consumed these drinks. The company submitted that none of its employees had behaved in an unruly or loud manner.

The Panel considered that there was no evidence before it to support the complainant's allegations. The complainant had not discharged his/her burden of proof and the Panel thus ruled no breach of Clauses 9.1 and 19.1.

The Panel noted that the complainant bore the burden of proof and further noted from the introduction to the Constitution and Procedure that complaints were decided on the evidence provided by the parties. The Panel considered that bearing in mind all the evidence before it the complainant

had not established that Chugai had provided inappropriate hospitality as alleged. No breach of Clauses 9.1 and 19.1 were ruled.

Complaint received **7 May 2013**

Case completed **17 June 2013**
