

ANONYMOUS v ROCHE

Provision of hospitality

An anonymous, non-contactable complainant complained about hospitality provided to health professionals by Roche Products.

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

The complainant noted that a representative from a named pharmaceutical company refused to take the complainant's team out for dinner stating this was due to changes in the Code and the company's interpretation of the compliance issues. The representative set out the company's policy on this point.

However, the complainant was confused and surprised when he/she witnessed on many occasions Roche 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 named hotel only to be joined by a number of personnel from the other pharmaceutical company, one of whom openly bought rounds of drinks for everyone and was 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 representative from the other pharmaceutical company or had their colleague not read the same documents? The complainant submitted that if the ABPI had rules to be followed, then everyone should follow them to the letter.

The detailed response from Roche is given below.

The Panel noted that as stated in the introduction to the Constitution and Procedure, anonymous 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 also non-contactable it was not possible to ask him/her 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 associated allowable expenditure.

The Panel noted that Roche had provided a detailed account of subsistence provided during the conference including that provided at venues

other than the hotel bar. The Panel limited its consideration to the subject of the complaint; subsistence provided in the hotel bar.

The Panel noted that the conference lasted from Monday, 15 April to Wednesday, 17 April. On Sunday, 14 April Roche held a meeting in the hotel bar to review logistics for the week. Four health professionals attended one of whom, an active member of BSH, had asked Roche for advice about optimizing future BSH conferences from a company perspective; Roche had not sponsored his/her attendance at the meeting and he/she was not providing a service for Roche. This health professional also accompanied five Roche employees to dinner that evening. Roche submitted that all attendees returned to the hotel rooms without going to the hotel bar. The Panel noted that in relation to subsistence at the hotel bar, 13 drinks had been provided for 10 individuals over 2 hours and considered that the level of hospitality was not unreasonable in relation to three of the four health professionals involved. The Panel noted that whilst the complaint concerned subsistence provided at the hotel bar, to consider whether this was reasonable in relation to the health professional who subsequently accompanied Roche staff to the restaurant, it had to bear in mind the overall level of subsistence provided that evening. In that regard the Panel noted that according to Roche, five employees and one agency member of staff accompanied the health professional concerned to the restaurant. The bill provided by Roche however indicated that there were five people present not seven as submitted by Roche. The bill stated that a 10% service charge would only be added to groups of 6 or more. 10% service charge had been added to the bill. The position was unclear. The bill totalled £243.27 including £82.80 spent on wine.

The Panel was concerned about the subsistence provided to the health professional on Sunday, 14 April. The Panel noted that the educational content of the conference began on Monday; there was thus no educational programme on the Sunday and Roche had not argued that the subsistence was secondary to a conference educational event. The Panel noted that pre-dinner drinks at the hotel bar and a meal at a local restaurant had been provided for what should have been a relatively straightforward discussion. The Panel was concerned about the informal nature of the arrangements including the absence of an agenda bearing in mind the overall level of subsistence provided which included a restaurant meal. The company should be able to clearly demonstrate that the subsistence was secondary to the discussion in question. 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, given all the evidence before it and for the reasons set out above, the subsistence provided to the health professional in question at the hotel bar, noting the overall level of subsistence provided to him/her that evening, was, on balance, contrary to the requirements of the Code and a breach was ruled.

The Panel noted that Roche staff went to the hotel bar on the Monday evening but were not accompanied by health professionals nor according to Roche were health professionals otherwise present at the bar. On Tuesday, 16 April Roche provided early evening drinks at the hotel bar to, *inter alia*, two health professionals who were speakers for Roche at the conference; £74.40 was spent on 16 drinks for nine people. After dinner at a local restaurant three Roche staff and one health professional returned to the bar and shared a bottle of wine. A group of health professionals who came into the bar shortly afterwards were told that Roche could not purchase a drink for them as they were leaving the bar shortly. The Roche staff did not consume the wine that was then brought for them by one of these health professionals. The Panel noted that whilst the complaint concerned subsistence provided at the hotel bar, to consider whether this was reasonable it had to bear in mind the overall level of subsistence provided to the individual health professional who was accompanied by Roche employees throughout the evening. In this regard the Panel noted the restaurant bill for four individuals came to £179.90 including £53.36 for drinks. The Panel considered that bearing in mind the overall level of subsistence provided to this individual throughout the evening, the level of subsistence provided at the bar was not unreasonable.

The Panel noted that it had raised some concerns as set out above and had ruled one matter in breach of the Code. In relation to the subsistence provided to health professionals (other than the one health professional on Sunday, 14 April), the Panel ruled no breach of the Code.

An anonymous, non-contactable complainant complained about hospitality provided to health professionals by Roche Products Limited. The complainant also named another pharmaceutical company and so the matter was additionally taken up with that company (Case AUTH/2602/5/13). Roche also decided to make a voluntary admission as a result of its investigation into this case, Case AUTH/2609/6/13.

COMPLAINT

The complainant stated that he/she was disillusioned following his/her attendance at the recent British Society of Haematology (BSH) meeting which historically 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 representative from a named pharmaceutical company, 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 Roche actively entertained 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 named hotel only to be joined by a number of personnel from the other pharmaceutical company, 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 pharmaceutical 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.

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

RESPONSE

Roche provided copies of its standard operating procedure (SOP) on meetings and hospitality together with the appendices which related to subsistence levels and expenses associated with meetings. Roche noted that the latter stated, *inter alia*, that:

'When the meeting involves an overnight stay, post dinner drinks (beer, wine or soft drinks) in the hotel bar area can be offered to delegates, but this is not obligatory. The most senior member of the Roche team will determine the appropriate level of post dinner drinks offered.'

The British Society of Haematology Annual Meeting took place in Liverpool between Monday, 15 April and Wednesday, 17 April 2013. Roche paid for exhibition space at the congress and also held a symposium on Tuesday, 16 April.

The Roche delegation comprised of 26 people; 16 employees (including 4 representatives), 6 agency staff and 4 health professionals. The health professionals were all engaged as speakers at the Roche symposium and Roche funded their meeting registration, travel, accommodation and subsistence. Four staff were responsible for subsistence and the payment where health professionals were in attendance; two brand managers, a medical manager and an oncology relations manager. Roche provided the relevant ABPI Representatives Examination certificates but one employee who paid for a meal at a local restaurant on the evening of Sunday, 14 April, had not taken the ABPI Representatives Examination despite being in a promotional role for over 2 years. (This matter became the subject of a voluntary admission (Case AUTH/2609/6/13)).

Roche detailed the evening activities of its employees for each night of the congress. Unless otherwise stated, the venues for these activities were open to the public and all subsistence provided to health professionals was paid for by a brand manager. In all cases but one the most senior Roche employee present paid for subsistence. All receipts were provided.

Sunday, 14 April

Four Roche employees met at 6pm in the hotel bar and were joined by four health professionals one of whom was a speaker at the Roche symposium. The purpose of the discussion was to review the logistics for events which took place that week at the congress (presentation rehearsal for the Roche symposium and it was anticipated that two of the other health professionals would be involved in filming at a meeting during the congress – see details below). Two further Roche employees also sat near the table but were not part of this discussion. Over the course of 2 hours, thirteen drinks were purchased by two Roche employees for these 10 individuals (10 bottles of beer, 1 pint of beer, 1 orange juice and 1 glass of wine).

Three of the four health professionals left the bar at varying times from 6.30pm and the remaining health professional (who was not one of Roche's speakers nor involved in the filming referred to below, but was a delegate at the congress) joined five Roche employees and one agency member of staff for dinner at a local restaurant. This meal was paid for by a member of staff who was not the most senior member of staff present as two brand managers were also present, however one of these brand managers determined that the level of subsistence was appropriate. This meal finished at approximately 11.30pm and all attendees returned to their respective hotel rooms without going to the hotel bar.

Monday, 15 April

A presentation rehearsal was pre-arranged in the evening for the Roche-sponsored symposium. Two of the health professionals involved in the symposium, four Roche employees and three agency staff attended this meeting which took place in a private room at the hotel. No alcoholic drinks were purchased as part of this meeting.

At 7.30pm ten Roche employees went to a local restaurant for dinner. At approximately 8.40pm a group from a pre-arranged rehearsal meeting, three Roche employees and the two health professionals, went to a pre-arranged dinner at another nearby restaurant. The latter group was joined by a further health professional who had asked to join the group in order to meet one of the other health professionals present with whom he was collaborating on a Roche-supported investigator-sponsored trial. This further health professional was not supported by Roche to attend the congress but was a registered delegate. The booking at the restaurant was originally for seven, however one Roche employee remained at the hotel to amend slides for the symposium and so only six people (three Roche employees and three health professionals) attended the meal. The table was in a private area of the restaurant where no members of the public could overhear any conversation.

After the meal the presentation rehearsal group returned to the meeting room at 10.45pm to meet the agency and another Roche employee to ensure all was in place for the symposium the following day. No health professionals attended this meeting. The group worked together until 12.30am, did not consume any alcohol and then all departed to their own rooms.

At 10.15pm the Roche-only group returned to the hotel and five of the group went to the hotel bar. They had one drink each. No health professionals were in the hotel bar at that time. This group retired to their rooms at 11.30pm.

Tuesday, 16 April

This was the evening of the gala dinner. No Roche employee attended this dinner.

In the afternoon two Roche employees attended a pre-arranged meeting in a hotel meeting room with a health professional engaged as a consultant. This health professional was one of the speakers at the Roche symposium for whom Roche had provided support to attend the congress. The meeting involved filming the consultant speaking and a cameraman was also in attendance. At 5.30pm two Roche employees met the health professional speaker in the hotel bar after concluding some filming and they were joined by the cameraman. Two bottles of beer and two glasses of wine were purchased. They were then joined at approximately 6pm by another Roche employee and another health professional (who was also supported by Roche to attend the meeting as he was a speaker at the Roche symposium). One of the health professionals left the bar at approximately 6.15pm. Three other Roche employees entered the hotel bar at approximately 6.30pm but did not join the original group as meeting discussions were ongoing. Drinks for this group were ordered and placed on the same bill, which was signed for all drinks and closed the order at approximately 7.45pm. Roche noted that although this receipt stated there were four people present, this represented the number of people when the bar order was opened. The number of people for whom drinks were bought was nine.

At 8pm three Roche employees and the remaining health professional then went to a restaurant. There were no other health professionals in the restaurant. The other Roche employees went to another restaurant as a Roche-only group for dinner.

The group of three Roche employees and one health professional arrived back at the hotel at 11.20pm. They went to the bar and at 11.36pm a Roche medical manager ordered a bottle of wine. There were no other health professionals or members of the public in the bar. Shortly afterwards a group of health professionals came into the bar and the Roche employees told them that they could not buy them a drink as they intended to leave the bar shortly. One health professional then insisted on buying glasses of wine for the three Roche employees, however these were left on the bar and not consumed. The three Roche employees discussed that they needed to leave the bar and proceeded to do so. The other Roche group arrived in the hotel bar at approximately 11:45pm and they were informed by the other Roche employees that they should go to their rooms, which they did.

In summary, Roche submitted that whilst it did provide hospitality to certain health professionals during the course of the BSH meeting, this was appropriate, proportionate to the event and secondary to the main purpose of the meeting. It was not, as alleged by the complainant, in the early hours of the morning. Roche thus refuted the allegation of a breach of Clause 19.1. Consequently Roche did not consider that it had failed to maintain high standards whilst attending this meeting and therefore considered that there had been no breach of Clause 9.1.

In response to a request for further information Roche provided a copy of the conference programme for the meeting and the agenda for the Roche symposium that took place during the meeting.

With regard to the fourth health professional to whom subsistence was provided by Roche on the evening of 14 April, Roche explained that he was a consultant haematologist and a delegate at the BSH conference. He was also an active BSH member and in his roles as the latter he had asked Roche for advice on how to optimise future BSH conferences from a pharmaceutical company perspective. This advice was provided during the meeting which took place on the evening of 14 April and was discussed with another active member of the BSH (who was one of health professionals involved in the filming project). It was on this basis that subsistence was provided.

PANEL RULING

The Panel noted that the complainant was anonymous and non-contactable. As stated in the introduction to the Constitution and Procedure, anonymous 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 also non-

contactable it was not possible to ask him/her 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 the 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 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 might be that this had contributed to the complainant's concerns.

The Panel noted that the Roche SOP UK meetings and hospitality (UK 107) stated that all meetings must have a clear, substantial and demonstrable educational content. Its appendix, Expenses, stated in the section headed 'Subsistence' that a pre- and post-dinner glass of beer or wine may be provided. When the meeting involved an overnight stay post-dinner drinks (beer, wine or soft drinks) in the hotel bar area could be offered to delegates but this was not obligatory. The most senior member of the Roche team would determine the appropriate level of post-dinner drinks. Roche staff should not remain in the bar with customers later than midnight. After this time Roche attendees should withdraw from the bar. If health professionals continued drinking they must pay for themselves and Roche staff should not be present. The appendix stated that it was unacceptable for any Roche employee to attend clubs and bars with health professionals after a meal or a meeting even if health professionals paid for their own drinks.

The Panel noted that the complainant had alleged that he/she had witnessed on many occasions Roche staff actively entertaining customers and buying drinks at the hotel bar. The Panel noted that Roche had provided a detailed account of subsistence provided during the conference including that

provided at venues other than the bar of the named hotel. The Panel limited its consideration to the subject of the complaint; subsistence provided in the named hotel bar.

The Panel noted that the conference at issue lasted from Monday, 15 April to Wednesday, 17 April. The Panel noted that a Roche meeting to review logistics for the week which took place on Sunday, 14 April in the bar area of the hotel included four health professionals. The health professionals comprised one speaker, two health professionals whom Roche anticipated would take part in the filming of a congress meeting later that week and a health professional who had requested advice from Roche about optimizing future conferences from a company perspective. The latter health professional's attendance at the meeting was not sponsored by Roche and he/she was not providing a service for Roche, such as speaking at a Roche meeting. He/she was a BSH sub-committee member. It was this health professional who also accompanied five Roche employees to a local restaurant for dinner later that evening. Roche submitted that all attendees returned to the hotel and their respective rooms without going to the hotel bar. The Panel noted that in relation to subsistence at the hotel bar, 13 drinks had been provided for 10 individuals over 2 hours and considered that the level of hospitality was not unreasonable in relation to three of the four health professionals involved. The Panel noted that whilst the complaint concerned subsistence provided at the hotel bar, to consider whether this was reasonable in relation to the individual health professional who subsequently accompanied Roche staff to the restaurant, it had to bear in mind the overall level of subsistence provided that evening. In that regard the Panel noted that according to Roche, five employees and one agency member of staff accompanied the health professional concerned to the restaurant. The bill provided by Roche however indicated that there were five people present not seven as submitted by Roche. The bill stated that a 10% service charge would only be added to groups of 6 or more. 10% service charge had been added to the bill. The position was unclear. The bill was for £243.27 including £82.80 for wine.

The Panel was concerned about the subsistence provided to the health professional who was also an active BSH member, on Sunday, 14 April. The Panel noted that the educational content of the conference began the following day. There was thus no educational programme on the day in question and Roche had not argued that the subsistence was secondary to a conference educational event. According to Roche the health professional in question wanted to understand how to optimise conferences from a pharmaceutical company perspective. Whilst it was acceptable for a company to answer such questions it had to ensure that any accompanying subsistence was proportionate; acceptable in relation to the requirements of Clause 19.1 and secondary to the main purpose of the meeting. The Panel noted that subsistence of pre-

dinner drinks at the hotel bar followed by a meal at a local restaurant had been provided for what should have been a relatively straightforward discussion. The Panel was concerned about the informal nature of the arrangements including the absence of an agenda bearing in mind the overall level of subsistence provided which included a meal at a restaurant. The company should be able to clearly demonstrate that the subsistence was secondary to the discussion in question. 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 and for the reasons set out above, the subsistence provided to the health professional in question at the hotel bar, noting the overall level of subsistence provided to him/her that evening, was, on balance, contrary to the requirements of Clause 19.1 and a breach of that clause was ruled.

The Panel noted that a group of five Roche staff went to the hotel bar on the evening of Monday, 15 April but were not accompanied by health professionals nor according to Roche were health professionals otherwise present at the bar. On Tuesday, 16 April Roche provided early evening drinks at the hotel bar to, *inter alia*, two health professionals who were speakers for Roche at the conference; £74.40 was spent on 16 drinks for nine people. After dinner that evening at a local restaurant three Roche staff and one health professional returned to the bar and shared a bottle of wine. A group of health professionals who came into the bar shortly afterwards were told that Roche could not purchase a drink for them as they were leaving the bar shortly. The Roche staff did not consume the wine that was then brought for them by one of these health professionals. The Panel noted that whilst the complaint concerned subsistence provided at the hotel bar to consider whether this was reasonable it had to bear in mind the overall level of subsistence provided to the individual health professional who was accompanied by Roche employees throughout the evening. In this regard the Panel noted the restaurant bill for four individuals came to £179.90 including £53.36 for drinks. The Panel considered that bearing in mind the overall level of subsistence provided to this individual throughout the evening, the level of subsistence provided at the bar was not unreasonable.

The Panel noted that it had raised some concerns as set out above and had ruled one matter in breach of the Code. In relation to the subsistence provided to health professionals (other than the one health professional on Sunday, 14 April), the Panel ruled no breach of Clause 19.1 and consequently no breach of Clause 9.1.

Complaint received **7 May 2013**

Case completed **15 July 2013**