

ANONYMOUS v BAYER

Provision of Hospitality

An anonymous, non-contactable health professional complained about the provision of hospitality by Bayer at an international congress held in Amsterdam. The complainant alleged that a senior Bayer employee had entertained two health professionals in a hotel bar during the early hours of the morning and it looked as though significant amounts of alcohol had been consumed.

The detailed response from Bayer is given below.

The Panel noted from Bayer's account that on the evening in question its global colleagues had organized a dinner for researchers who had won scholarships under a Bayer awards programme. Three UK health professionals invited to the dinner had then walked the Bayer employee back to her hotel to save her walking alone and also because the closest taxi rank was situated outside her hotel. The Panel noted that according to Bayer the Bayer employee had purchased 4 drinks, one for each member of the group, at a cost of £28.15 just before midnight while waiting for the health professionals' taxi to arrive. The Panel did not know what type of drinks had been purchased. Bayer had not provided details. Purchase of alcoholic drinks would not be in line with Bayer's standard operating procedure. The drinks in the hotel bar were in addition to the hospitality already provided that evening. The Panel did not know if the group knew how long the taxi would be or how long it took to arrive. The Panel did not know why the group had not picked up a taxi at the dinner venue. The Panel considered that the circumstances in this case were exceptional. Nonetheless it was important for a company to be mindful of the impression created by its activities; this was especially so in relation to the provision of drinks late at night in a public bar irrespective of the circumstances. The Panel did not consider that drinks (particularly as they were likely to be alcoholic) in these circumstances constituted subsistence as outlined in the Code and a breach was ruled. The Panel did not consider that, given the exceptional circumstances of this case, high standards had not been maintained and no breach of the Code was ruled.

An anonymous, non-contactable health professional complained about the provision of hospitality by Bayer plc at the International Society on Thrombosis and Haemostasis (ISTH) Congress held in Amsterdam 29 June – 4 July 2013.

COMPLAINT

The complainant stated that as a health professional he/she was aware of the Code and its importance in governing the behaviour of pharmaceutical companies at meetings and congresses. With that in mind the complainant considered it necessary, after much deliberation, to report an incident he/she had

observed at the recent ISTH Congress.

The complainant stated that on returning to his/her hotel he/she observed a senior member of the Bayer group entertaining two of his/her eminent consultant colleagues in the early hours of the morning, in the hotel bar. It looked as though significant amounts of alcohol were being consumed.

The complainant considered that, as he/she had previously been told by the other members of the Bayer group that nightcaps were strictly forbidden by the company, the Code might have been breached. The complainant thus considered that he/she must report this incident and hoped that the person in question would be reprimanded.

When writing to Bayer, the Authority asked it to consider the requirements of Clauses 9.1 and 19.1 of the Code.

RESPONSE

Bayer submitted that its global arm held an awards dinner for researchers from around the world who had won scholarships under the Bayer Haemophilia Awards Programme (BHAP) on July 1 during the ISTH congress in Amsterdam. Three UK health professionals were invited to the dinner. The company provided reasons for their attendance; all had links to the awards programme. They were escorted to the dinner by a senior Bayer UK employee.

Bayer stated that the three UK health professionals stayed in different hotels in the city centre and not in the Bayer chosen hotel. Two of the health professionals worked for Bayer plc under full contract; one of them was also supported financially to attend the congress.

The Bayer employee stayed at a hotel which was approximately a 15 minute walk from the evening venue but in a quiet part of the city. At the end of the evening, approximately 23.30 hours, the health professionals walked the Bayer employee back to her hotel to save her walking alone and also because the closest taxi rank was outside of her hotel.

When the group arrived at the hotel there were no taxis available. They asked the doorman to ring for a taxi and he informed them that it would take some time to arrive. They decided to wait inside the hotel lobby bar and have a drink. It was nearly midnight. Four drinks were purchased, one for each member of the group, at a cost of £28.15. The hotel lobby bar was open to other residents which might have included members of the public.

An invoice from the hotel was provided which showed one amount for all food and beverage

purchased on the day in question, at a cost of €114.50 (itemised invoices were not provided by the hotel). Earlier in the day the Bayer employee had met with her team to plan out activities for the remainder of the meeting, and also just prior to them leaving for a separate dinner. On both occasions she had purchased drinks for them which made up the remainder of the amount shown on the hotel invoice. Bayer submitted that the employee in question had passed her ABPI Representative's Examination with distinction.

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 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 more restrictive than the Code. The Panel noted the complainant's submission that he/she had previously been told by other members of the Bayer group that nightcaps were strictly forbidden by the company.

The Panel noted that the Bayer SOP Meetings Policy (BHC-BP-UK-SOP-101) stated that drinks other than reasonable amounts of soft drinks, water, coffee and tea must not be provided after a meal.

The Panel noted that the complainant had alleged that a senior Bayer employee had entertained two of his/her colleagues during the earlier hours of the morning in the hotel bar and it looked as though significant amounts of alcohol had been consumed. The Panel noted that the complainant had not specified the name of the hotel or the date of the alleged incident. The Panel noted that as the complainant was non-contactable, it could not confirm that the subject of his/her complaint was the incident referred to by Bayer.

The Panel noted that Bayer had provided an account of the evening of 1 July when following an awards dinner organised by its global colleagues for researchers from around the world who had won scholarships under the Bayer Haemophilia Awards Programme, three UK health professionals that were invited to the dinner had walked the Bayer employee back to her hotel to save her walking alone and also because the closest taxi rank was situated outside her hotel. The health professionals included two who worked for Bayer plc under full contract; one of them was also supported financially to attend the congress.

The Panel noted that according to Bayer its employee had purchased four drinks, one for each member of the group, at a cost of £28.15 just before midnight while waiting for the health professionals' taxi to arrive. This was supported by the employee's expense claim, a copy of which was provided. The Panel did not know what type of drinks had been purchased. Bayer had not provided details. Purchase of alcoholic drinks would not be in line with Bayer's SOP. Unfortunately the hotel did not supply itemised invoices and so the invoice provided by Bayer showed one amount for all food and beverage purchased on the day in question, at a cost of €114.50 and included drinks purchased by the employee for her team earlier in the day. The drinks in the hotel bar were in addition to the hospitality already provided that evening. The Panel did not know whether the doorman had indicated precisely how long the group would have to wait for a taxi nor did it know how long the taxi took to arrive. The Panel did not know why the group had not picked up a taxi at the dinner venue.

The Panel considered that the circumstances in this case were exceptional. Nonetheless it was important for a company to be mindful of the impression created by its activities; this was especially so in relation to the provision of drinks late at night in a public bar irrespective of the circumstances. The Panel did not consider that drinks (particularly as they were likely to be alcoholic) in these circumstances constituted subsistence as outlined in Clause 19.1. A breach of Clause 19.1 was ruled. The Panel did not consider that, given the exceptional circumstances of this case, a ruling of a breach of Clause 9.1 was warranted and no breach of that clause was ruled.

Complaint received

26 July 2013

Case completed

30 August 2013