

# NHS EMPLOYEE v SANOFI

## Conduct of representative

An NHS clinical commissioning group employee complained that a Sanofi representative had persuaded an NHS employee to send, on his/her behalf, a promotional email via the NHS.net system to all GP practices in the area. The email invited recipients to view a Sanofi promotional webcast.

The detailed response from Sanofi is given below.

The Panel noted that the email sent by the administrative assistant on behalf of the Sanofi representative had a subject heading of 'FW:Sanofi GLP-1 Webcast'. The email itself was headed 'Sent on behalf of [named representative] – Sanofi Practice Managers- please cascade'. The email, signed by the representative as a 'Diabetes Specialist' (although the company was not stated), was an invitation to a webcast entitled 'The Use of GLP-1 receptor agonist therapies, the evidence and practicalities'. In the Panel's view it was not clear from the email that the webcast was promotional or that it had been solely produced by Sanofi. The email was sent via the NHS.net system and stated that 'We are holding a webcast entitled...'. It could be argued that the impression given was that the meeting was an NHS-led meeting with sponsorship from Sanofi and not a Sanofi-led promotional meeting. The Panel noted that although the email did not refer to the meeting as an NHS meeting, it was likely to appear to recipients that the NHS trust endorsed the meeting as it had been sent from an NHS employee who regularly sent out details of workshops and courses that the local community healthcare trust had organised. It was only on clicking the registration link that the promotional nature of, and Sanofi's involvement with, the webcast was made clear. The Panel considered that the invitation disguised the promotional nature of the webcast and in that regard a breach of the Code was ruled. The Panel also ruled a breach of the Code as acknowledged by Sanofi as prior permission to send the promotional email had not been obtained from those who received it.

The Panel noted that by sending the email in question, the representative had, in effect, created and distributed his/her own promotional material; the email had not been certified prior to use in accordance with the Code. The Panel considered that the representative had thus failed to maintain high standards. A breach of the Code was ruled.

The Panel noted that the representative had persuaded an NHS administrative assistant to widely distribute an email on his/her behalf. The Panel considered that this was a serious breach of professionalism and that in doing so the representative had failed to maintain a high standard of ethical conduct. The representative had also failed to comply with all the relevant

requirements of the Code. A breach of the Code was ruled as acknowledged by Sanofi.

**The Panel considered that the representative's conduct was such as to bring discredit upon and reduce confidence in the pharmaceutical industry. A breach of Clause 2 was ruled.**

An NHS clinical commissioning group employee complained that a Sanofi representative had persuaded an NHS employee to send, on his/her behalf, a promotional email via the NHS.net system to all GP practices in the area. The email invited recipients to view a Sanofi promotional webcast by logging on from their own PC or attending a viewing of it at a specific venue and provided registration details.

## COMPLAINT

The complainant alleged that the activities of a Sanofi representative breached Clause 9.9 and brought the industry into disrepute by misusing contact with an NHS employee.

The complainant provided a copy of an email which the Sanofi representative had persuaded an administrative assistant in the local community healthcare trust to circulate to every GP and practice in the area via the NHS.net system; this imbued the content with unwarranted 'official' NHS endorsement. The complainant suspected that the member of staff might have mistakenly thought that the educational event in question was similar to the official in-house training provided within the trust. The complainant was interested to know how clear the representative made it that this was not so.

The complainant stated that no promotional material should be sent without the express permission of the recipient, let alone under the guise of an official NHS organisation. Whilst the meeting purported to be an educational webcast, given the recent launch of Lyxumia (lixisenatide), the complainant did not believe it unreasonable to regard this as a rather cynical promotional exercise. Indeed, on following the links within the email a screen appeared and confirmed the promotional nature of the webcast. The complainant provided a copy of the link.

The head of clinical governance for the local community healthcare trust investigated the incident and reported that:

'The member of staff is an administrator in the community diabetes office and she regularly sends out details of workshops and courses the local community healthcare trust have organised internally city-wide. On this occasion the information came from a representative

from Sanofi and rather than reading the detail beforehand she inadvertently sent it out. At the time she was the only person in the office so had not been able to check with someone if it was OK to send out. She did not question why the representative had asked her to circulate this on her behalf. Following a query from a GP she immediately recalled the email but it still reached some individuals. At the time she did not send out an apology or advice to ignore the email as this would have compounded the issue of "junk" mail. She said she sent this out in error. She has since spoken to the representative from Sanofi who has apologised to her for making this request in the first place. She made her line manager aware, completed an incident report, and knows in future not to send anything out without authorisation. I have since spoken to the line manager who has reassured me that the member of staff will not make the same mistake twice'.

The complainant subsequently received a follow up email which stated:

'The member of staff is very upset, and the representative did apologise'

The complainant did not consider that the representative's apology was adequate. The complainant found it reprehensible that a member of the pharmaceutical industry played upon the good nature and lack of knowledge of a non-clinical colleague to arrange for promotional material to be distributed to GPs and practice staff via NHS email. The complainant did not believe that any representative could be unaware that this was unacceptable.

This had resulted in a great deal of upset for an administrative employee who should never have been put in this position and found herself being investigated by the head of clinical governance in her employing organisation.

The complainant provided a copy of the email trail containing the original email at issue.

When writing to Sanofi, the Authority asked it to respond in relation to Clauses 2, 9.1, 9.9, 12.1 and 15.2.

## RESPONSE

Sanofi submitted that it took its responsibilities under the Code extremely seriously and was concerned to have received a complaint of this nature; the matter had been investigated by the medical director and the line manager of the representative in question.

The activity in question was the use of NHS email systems to invite health professionals to attend a Sanofi-organised promotional meeting. Before addressing the specifics of the allegation itself Sanofi submitted that it was helpful to understand the meeting to which it related and the procedures which had been established to ensure that invitations were

handled in an appropriate fashion and in compliance with the Code.

Sanofi organised a scientific symposium at the 2013 Diabetes UK Professional Meeting to present information on its new glucagon-like peptide-1 (GLP-1) receptor agonist, lixisenatide. Although scientific in content, the meeting was promotional and all content and materials were therefore reviewed and approved following Sanofi's standard operating procedure (SOP) according to the requirements of the Code.

To allow wider dissemination of the information after the Diabetes UK Professional Meeting, the speakers were filmed as they presented. The resulting talking head videos were combined with their on-screen information to produce an audio-visual presentation. This was delivered as a promotional webcast on 3 July 2013, with the pre-recorded speakers available on-line to answer questions raised by the audience who viewed the programme at remote locations. Again, the content of this presentation was reviewed and approved following Sanofi's SOP, as was the briefing material to the speakers (to ensure that questions raised by the audience were handled according to the requirements of the Code).

Sanofi representatives could arrange local meetings at which clinicians could view the webcast, facilitated by the representative. They were also able to provide support (in registration and ensuring access to the webcast system) to individual clinicians who chose to view the webcast on their own equipment.

A comprehensive staff briefing package was developed to ensure that the representatives managed all elements of the delivery of remote meetings in a compliant manner, again with all invitations and briefing materials reviewed and approved according to Sanofi's SOP. The elements relating to invitation of health professionals to local meetings comprised:

- an email invitation provided only to the agency hosting the event, which was sent, specifically, only to those health professionals who had agreed to receive promotional information electronically. (Sanofi recognised that this was not the invitation that was sent by the representative that had given rise to the allegation)
- a hard copy invitation that was to be mailed from Sanofi head office to key customers who had not provided permission to be contacted electronically.
- a hard copy invitation provided to the Sanofi sales teams to invite other customers not already invited above. This was, by intent, the only material provided to the sales force to be used with health professionals as an invitation to the meeting.

The briefing materials then described the procedures to be followed by representatives to allow successful connection to the on-line meeting where this was

delivered by Sanofi staff, and to support individual health professionals to register and access the meeting if they had joined as individual attendees.

To reinforce the importance of compliance, the sales force was briefed both in writing and through an audio-visual presentation, copies of each were provided.

Sanofi submitted that at all stages in the development of the concept and content of the meeting, the process for inviting attendees and delivering meetings locally, and in the briefing of relevant Sanofi employees on how to do so, its internal procedures were followed appropriately and all elements of the programme met the high standards required by the Code. In particular, a special emphasis was placed on only inviting by email those health professionals who had given permission to be contacted in this way.

With respect to these processes, Sanofi therefore considered that the company had demonstrated high standards throughout.

The events relating to the complaint at issue had been clarified by the investigation. It was clear that the record provided by the complainant was an accurate summary of events and no element of this was contested. The key points confirmed by the investigation were set out below:

The representative, who was experienced, had passed the ABPI Medical Representatives Examination and had been employed by Sanofi for a number of years, wrote an email invitation (as provided by the complainant) of his/her own and provided this to the NHS member of staff. This was clearly contrary to Sanofi's SOP whereby all arrangements and materials for local meetings required manager review and approval before use. Review was not sought, nor would approval have been granted. The representative recognised that he/she had failed to follow company processes, and clearly understood that to have asked an NHS employee to email an invitation to a promotional meeting without the approval of recipients failed to meet the standards required of Sanofi and of the Code.

Although not providing any degree of mitigation, the representative had explained that she followed this course of action as he/she believed that the meeting was of true educational value and would have been of significant interest to the audience, and was keen to ensure that the local practitioners were aware of it before he/she went on annual leave 2 days later. The representative did not want the health professionals to miss the opportunity of attending the meeting if they considered it of value to do so.

The representative had a long-standing, convivial relationship with the NHS staff member and it was clear that he/she was overly-dependent on the nature of this relationship when he/she progressed the arrangements for the meeting. This was self-evident from the nature of the email exchange. In retrospect,

the representative acknowledged that a more professional approach should have been adopted, and that consideration of the NHS staff member's position and responsibilities was also necessary.

Immediately upon being made aware of the complaint, the representative spoke to the NHS employee who had sent the email on his/her behalf and offered her a personal and unreserved apology, recognising the importance of the event to the individual.

In summary, it was clear from the investigation that both the health professional and Sanofi had been let down by the actions of one employee who, despite his/her experience, failed to follow established Sanofi procedures. This resulted in an NHS staff member, acting on behalf of the representative, emailing an invitation to a promotional meeting without the prior approval of the recipients. Sanofi acknowledged that this failed to meet the requirements of Clause 9.9.

Furthermore, the invitation failed to make it sufficiently clear that the meeting was promotional. Sanofi acknowledged that this failed to meet the requirements of Clause 12.1.

Each of these individual courses of action showed that the representative failed to demonstrate the high standards required of his/her role, which Sanofi acknowledged was in breach of Clause 15.2.

Sanofi submitted that in the development and execution of this programme all relevant processes were followed in full by all staff aside from the individual in question. This complaint had arisen as a result of the unprompted actions of the individual alone, who had admitted that he/she acted with a degree of naivety unexpected for his/her position. Robust briefings were constructed and delivered to all staff engaged in this project. In particular, the use of electronic communication was given special consideration from the outset, with a clear understanding between Sanofi and the provider agency at conception of the project that promotional emails would be sent only to those who had opted-in to receiving such material. Hard-copy printed invitations were the only material provided to the sales team to be used to invite health professionals.

On balance, Sanofi therefore submitted that although the representative's actions fell well below the standards expected, the organisation did its utmost to maintain the high standards that it set at the company-wide level. Sanofi submitted that it therefore met the requirements of Clause 9.1 and that no breach had occurred in that respect.

These events had triggered a disciplinary process, as per Sanofi's SOP. More comprehensively, a company-wide training update on the requirements of the Code was to be delivered within the third quarter of 2013. This complaint had reinforced the importance of emphasising the requirements around communicating electronically, and this would be given due prominence within the programme.

Sanofi submitted that the processes it had in place were robust, that the approved arrangements for content and delivery of the programme met all the requirements of the Code and if followed would have prevented this complaint arising; it had taken appropriate action at the individual and company-wide level in response to the events that had happened. Sanofi aspired to be a fully compliant organisation and aimed to meet all the high standards required of the Code and to continue to reinforce these. On this basis, Sanofi submitted that a ruling of a breach of Clause 2 would be disproportionate.

Sanofi concluded that it recognised that the actions that occurred were in breach of Clauses 9.9, 12.1 and 15.2. However it disagreed that the actions of the individual implied that the company failed to maintain high standards, nor reflected a need for the organisation to require particular censure.

### **PANEL RULING**

The Panel noted that the email at issue was sent by the representative when he/she was about to go on holiday. A statement from the representative (copy provided by Sanofi) stated that interest in the meeting where Sanofi would be showing the webcast was low and the team subsequently cancelled the meeting.

The Panel noted that the email sent by the administrative assistant on behalf of the Sanofi representative had a subject heading of 'FW:Sanofi GLP-1 Webcast'. The email itself was headed 'Sent on behalf of [named representative] – Sanofi Practice Managers- please cascade'. The email, signed by the representative as a 'Diabetes Specialist' (although the company was not stated), was an invitation to a webcast entitled 'The Use of GLP-1 receptor agonist therapies, the evidence and practicalities'. In the Panel's view it was not clear from the email that the webcast was promotional or that it had been solely produced by Sanofi. The email was sent via the NHS.net system and stated that 'We are holding a webcast entitled....'. It could be argued that the impression given was that the meeting was an NHS-led meeting with sponsorship from Sanofi and not a Sanofi-led promotional meeting. The Panel noted that although the email did not refer to the meeting as an NHS meeting, it was likely to appear to recipients that the NHS trust endorsed the meeting as it had been sent from an NHS employee who regularly sent out details of workshops and courses that the local community healthcare trust had organised. It was only on clicking the registration link that the promotional

nature of, and Sanofi's involvement with, the webcast was made clear. The Panel considered that the invitation disguised the promotional nature of the webcast and in that regard it ruled a breach of Clause 12.1 as acknowledged by Sanofi. The Panel also ruled a breach of Clause 9.9 as acknowledged by Sanofi as prior permission to send the promotional email had not been obtained from those who received it.

The Panel noted that by sending the email in question, the representative had, in effect, created and distributed his/her own promotional material; the email had not been certified prior to use in accordance with Clause 14. The Panel considered that the representative had thus failed to maintain high standards. A breach of Clause 9.1 was ruled.

The Panel noted that the representative had persuaded an NHS administrative assistant to widely distribute an email on his/her behalf. The Panel considered that this was a serious breach of professionalism and that in doing so the representative had failed to maintain a high standard of ethical conduct. The representative had also failed to comply with all the relevant requirements of the Code. A breach of Clause 15.2 was ruled as acknowledged by Sanofi.

The Panel considered that the representative's conduct was such as to bring discredit upon, and reduce confidence in, the pharmaceutical industry. A breach of Clause 2 was ruled.

During the consideration of this case, the Panel was concerned about the unprofessional nature of the email correspondence between the representative and the NHS administrative assistant. The Panel noted that the Authority had previously issued guidance on the use of emails in which it noted that they were generally regarded as less formal than traditional letters and often casual language was used. If company staff emailed a health professional, appropriate administrative staff or others about a matter which related to their professional role then they should take great care to ensure that the email did not breach the Code through the use of exaggerated claims, immoderate language and the like. A practical rule of thumb might be that if the message could not be sent on company headed notepaper, then it should not be sent by email.

<b>Complaint received</b>	<b>30 July 2013</b>
<b>Case completed</b>	<b>17 September 2013</b>