

# ANONYMOUS EMPLOYEE v GRÜNENTHAL

## Failure to distinguish between call rates and contact rates

An anonymous and non-contactable employee of Grünenthal complained about an email sent by a senior employee to remind the sales force to enter data into a customer relationship management (CRM) system [Advance] daily.

The complainant noted that the email only referred to interactions and thus failed to reflect the Code which stated 'When briefing representatives, companies should distinguish clearly between expected call rates and expected contact rates'. In that regard the complainant highlighted the statement 'I would therefore have expected to see the data for the 2+ target interactions per day and 5-7 total interactions per day that is our role activity standard in ....'.

The detailed response from Grünenthal is given below.

The Panel noted that the email was headed 'Advance interactions entry and your personal responsibility for the Advance System – PLEASE READ ASAP'. It reminded recipients that they should enter data daily and submit interactions for 1:1 contacts and meeting contacts. In five bullet points it detailed 'big chunks of data missing'. Representatives were reminded that data entry was not optional and given two days to complete the required data entry.

The Panel did not accept Grünenthal's submission that the email was not a briefing on call rates but was sent with reference to the entry of interactions into the CRM system. The email referred to 2+ target interactions per day and 5-7 total interactions per day as Grünenthal's role activity standard. One bullet point read 'I am not seeing the total activity that relates to our role capacity in the system for many people – 1-2 total interactions a day maximum are appearing in many territories'. A subsequent paragraph read 'Our structure is in place to see a level of target and accessible customers within a priority account plan framework – if we can't see the customers then we need different resourcing. We just aren't seeing enough key people if this advance data is analysed. When we had the old coverage.....back in 2012 we were above 7 interactions a day average across the UK. I am keen to keep our current account plan bottom up targeting of customers as part of the cycle plan, but not if it results in this huge reduction in customer activity. Your new [quarter] 4 cycle plan should give the framework to meet our activity expectations'. The Panel considered that the email went beyond data entry and clearly instructed representatives on expected call rates and in this regard had to comply with the Code.

The Panel noted Grünenthal's submission that in quarter 4, 2012 it had moved to a bottom up cycle approach to sales activity planning. Representatives

were expected to see two target customers and 5-7 customers per day. These were not incentivised and Grünenthal submitted that the representatives' cycle plans did not stipulate expected call rates or expected contact rate targets. The Panel noted Grünenthal's submission that interactions as stated in the email referred to any contact representatives had with health professionals, whether in 1:1 calls or at group meetings. The Panel further noted Grünenthal's submission that it was specifically open about what form these interactions might take as the value of the interaction was more important than the nature of it. The Panel noted that Grünenthal could organize its sales force as it saw fit but, nonetheless, had to ensure that interactions with health professionals and instructions to representatives in this regard complied with the Code.

The Panel noted Grünenthal's submission that it provided reminders that the Code only permitted a maximum of 3 unsolicited calls in any one year but queried whether these were adequate. An internal presentation in January 2013 referred to 'at least 5 high quality interactions\* as permitted, and call back opportunities solicited by health professional'. The relevant Code requirement appeared as a footnote at the bottom of the slide '\* = three unsolicited calls per year are permitted' and on the next slide. It appeared that the representatives had not been provided with the definitions of 'contact rate' and 'call rate' as referred to in the Code and how they sat with the term 'interaction'. The Panel noted that the email, however, had to stand alone. The Panel was concerned that the representatives had not been provided with details of the requirements of the Code in relation to call rates.

The Panel considered that taking all of the circumstances into account the email in question was not sufficiently clear about the differences between call rates and contact rates as referred to in the relevant supplementary information. The Panel ruled a breach of the Code on the narrow ground alleged.

An anonymous, non-contactable complainant who described themselves as an employee of Grünenthal Ltd, complained about an email sent to the sales force from a senior employee. The complainant provided a copy of the email which reminded recipients of the need to enter data into a customer relationship management (CRM) system on a daily basis. The email referred to missing data and that completion to the timeline of the CRM system was not optional.

### COMPLAINT

The complainant noted that Clause 15.4 of the Code stated 'When briefing representatives, companies should distinguish clearly between expected call rates

and expected contact rates'. The complainant stated that the author of the email in question had failed to do this as the email only referred to interactions.

The complainant highlighted the statement 'I would therefore have expected to see the data for the 2+ target interactions per day and 5-7 total interactions per day that is our role activity standard in ....'.

## RESPONSE

Grünenthal explained that in order to have sufficient oversight of its interactions with health professionals it was important that it maintained records within a CRM system. The company required that all interactions with external customers were entered into the CRM system on a daily basis whether in a 1:1 call setting or interactions at a meeting and the email in question was sent in reference to that requirement.

Grünenthal stated that when it moved to a new CRM system (Advance) in quarter 2, 2013 it made some concessions regarding the requirement to input information on all interactions with external customers on a daily basis whilst some of the bugs in the system were corrected. This transition period was now complete and Grünenthal was able to run reports on the data entered. Bullet points in the email referred to various information from the report that indicated that some representatives had not met the internal requirements to enter data daily. This naturally caused some concern as Grünenthal might not have accurate records of every interaction its staff had with health professionals. The email was sent to highlight and address the requirement to log interactions daily.

Grünenthal noted that Clause 15.4 and its supplementary information addressed the frequency, duration, timing and manner of calls made by representatives on health professionals and associated administrative staff. The supplementary information provided specific guidance that 'the number of calls made on a doctor or other prescriber by a representative each year should not normally exceed three on average'. In addition, as referred in the complaint, it stated 'when briefing representatives companies should distinguish clearly between expected call rates and expected contact rates'.

Grünenthal submitted that the email in question was not a briefing on call rates; it was sent with reference to the submission of interactions with health professionals into the CRM system. The email referred to expected standard contact rates (2+ target interactions per day and 5-7 total interactions per day). There was an expectation that representatives saw seven health professionals per day including at least two targets. This number depended on location and experience of the representative in individual calls or at meetings. This was not a formal or incentivised target but this number of expected interactions was how the company devised resource allocation within the sales team. The number of targets or total daily interactions was not for example recorded as a core activity or goal for representatives in their objectives. Grünenthal

provided a copy of a document which outlined the core activities and goals for promotional staff in 2013.

Grünenthal stated that it did not incentivise its representatives to work to call rates, coverage rates or frequency rates. The company stopped this in quarter 4, 2012 when it moved to a bottom up cycle planning approach to sales activity planning. The commercial teams were sized with reference to the number of target customers on each territory. Each quarter, representatives planned their territory activities for the quarter ahead in the CRM and listed those customers they intended to see from the list of targets. They did this based on their personal knowledge of the local environment and where they believed they should focus their activities for maximum return (product sales) as this was what representatives were bonused on (copies of internal presentation slides were provided).

To achieve their cycle plan, representatives were expected to see two target customers and 5-7 customers per day depending on location and experience, however, this was not incentivised nor were any targets in place regarding 1:1 call interactions vs contacts at meetings. Business activities focused on the cycle plans individual representatives devised and the resultant sales. Given the average number of target customers per territory, and the average number of working days per representative, this contact rate could be compliantly maintained within the limit of three unsolicited calls per year, even if no requests for follow-up or return visits were made. Once completed by representatives, cycle plans were reviewed by line managers for appropriateness and compliance before being approved within the CRM system. This provided the opportunity to ensure the plans were appropriate from all business aspects and they were regularly monitored by line managers during the quarter. These plans did not stipulate targets regarding expected call rates and expected contact rates.

During cycle planning briefings, Grünenthal provided reminders that the Code only permitted a maximum of 3 unsolicited calls in any one year (a slide from a certified internal presentation in January 2013 was provided). In addition, the annual representative refresher training from an external supplier also referred to the Code requirements in that area (a copy of a slide taken from the annual representative refresher training was provided).

Commercial insight had been provided regarding the benefit of multiple interactions with an individual health professional (a slide from a certified presentation delivered on January 2013 was provided), however, the focus was on the representatives to establish a relationship with individual health professionals that allowed them to return at the request and invitation of the health professional. Representatives should provide such value, whether clinical data, educational resources, opportunities to attend educational meetings etc that the health professional would like to see them on repeat occasions.

With regard to the use of the words 'target interactions' and 'interactions' in the email, Grünenthal explained that 'target interactions' were interactions with individual health professionals with a specialization or clinical interest in the management of pain. Interactions referred to any contact a representative had with these specialists whether in 1:1 calls or at group meetings. Grünenthal was specifically open about what form these interactions might take as it considered the value of the interaction was more important than its nature.

Grünenthal reiterated that it did not stipulate call or contact targets for representatives therefore no one had failed to meet call/contact targets. Grünenthal submitted that it did not certify the email in question as it was not promotional and did not constitute a technical briefing. It also did not instruct its representatives about how to interact with health professionals or associated administrative staff. The email was sent to address the failure by some staff to properly maintain internal records. Grünenthal stated that it did not formally approve emails related to administrative duties expected of its staff.

Grünenthal stated that it was completely committed to adhering to the Code in all of its business activities. It was disappointed to have received this complaint as it had multiple internal reporting channels available to employees genuinely concerned about conduct within the business. Training on these channels was provided to all employees in March 2013 and repeated the week the complaint was submitted (relevant training slides were provided). Grünenthal submitted that complaints such as these, especially when anonymous and non-contactable, demoralised the various cross-functional teams involved and Grünenthal questioned the genuine nature and intent of this complaint.

## PANEL RULING

The Panel noted that the complainant was anonymous and non-contactable. Like all complaints, anonymous complaints were judged on the evidence provided. The complainant bore the burden of proving his/her complaint on the balance of probabilities.

The Panel noted that Clause 15.4 required representatives to ensure that the frequency, timing and duration of calls on, *inter alia*, health professionals, together with the manner in which they were made, did not cause inconvenience. The supplementary information to that clause stated that companies should arrange that intervals between visits did not cause inconvenience. The number of calls made on a doctor or other prescriber by a representative each year should normally not exceed three on average excluding attendance at group meetings and the like, a visit requested by the doctor or other prescriber or a visit to follow up a report of an adverse reaction. Thus although a representative might speculatively call upon or proactively make an appointment to see a doctor or other prescriber three times on average in a year, the annual number

of contacts with that health professional might be more than that. The supplementary information to Clause 15.4 also advised that when briefing representatives companies should distinguish clearly between expected call rates and expected contact rates. Targets must be realistic and not such that representatives breached the Code in order to meet them.

The Panel noted that the email in question from a senior employee bore the subject heading 'Advance interactions entry and your personal responsibility for the Advance System – PLEASE READ ASAP' and was sent to the UK sales force. It reminded recipients that data entry should be on a daily basis and interactions submitted for 1:1 contacts and meeting contacts. In five bullet points it detailed 'big chunks of data missing' and reminded representatives that data entry was not optional. They were given two days to complete the required data entry.

The Panel did not accept Grünenthal's submission that the email in question was not a briefing on call rates but was sent with reference to the entry of interactions with health professionals into the CRM system. Whilst the email clearly discussed administrative matters, it also went beyond such matters and instructed representatives on call rates.

The email referred to 2+ target interactions per day and 5-7 total interactions per day as Grünenthal's role activity standard. One bullet point read 'I am not seeing the total activity that relates to our role capacity in the system for many people – 1-2 total interactions a day maximum are appearing in many territories'. A subsequent paragraph read 'Our structure is in place to see a level of target and accessible customers within a priority account plan framework – if we can't see the customers then we need different resourcing. We just aren't seeing enough key people if this advance data is analysed. When we had the old coverage.....back in 2012 we were above 7 interactions a day average across the UK. I am keen to keep our current account plan bottom up targeting of customers as part of the cycle plan, but not if it results in this huge reduction in customer activity. Your new [quarter] 4 cycle plan should give the framework to meet our activity expectations'. The Panel considered that the email went beyond data entry and clearly instructed representatives on expected call rates and in this regard had to comply with the Code.

The Panel noted Grünenthal's submission that in quarter 4, 2012 it had moved to a bottom up cycle approach to sales activity planning. Representatives were expected to see two target customers and 5-7 customers per day. These were not incentivised and Grünenthal submitted that the representatives' cycle plans did not stipulate expected call rates or expected contact rate targets. The Panel noted Grünenthal's submission that interactions as stated in the email referred to any contact representatives had with health professionals, whether in 1:1 calls or at group meetings. The Panel further noted Grünenthal's submission that it was specifically open about what form these interactions might take as the

value of the interaction was more important than the nature of it. The Panel noted that Grünenthal could organize its sales force as it saw fit but, nonetheless, had to ensure that interactions with health professionals and instructions to representatives in this regard complied with the Code, including Clause 15.4.

The Panel noted that although a representative might call on a doctor or other prescriber three times in a year the number of contacts with that health professional in the year might be more than that provided it was made clear that only three of those contacts could be cold calls. Without this explanation, instructions to representatives regarding interactions might advocate a course of action which was likely to breach the Code. In the Panel's view companies needed to be especially cautious in this regard and therefore be clear and unambiguous about Code requirements when they used a term such as 'interaction' which differed from the language used in the Code and industry practice.

The Panel noted Grünenthal's submission that it provided reminders that the Code only permitted a maximum of 3 unsolicited calls in any one year but queried whether these were adequate. An internal presentation in January 2013 delivered

by the general manager referred to 'at least 5 high quality interactions\* as permitted, and call back opportunities solicited by health professional'. The relevant Code requirement appeared as a footnote at the bottom of the slide '\* = three unsolicited calls per year are permitted' and on the next slide. It appeared that the representatives had not been provided with the definitions of 'contact rate' and 'call rate' as referred to in the Code and how they sat with the term 'interaction'. The Panel noted that the email, however, had to stand alone. The Panel was concerned that the representatives had not been provided with details of the requirements of the Code in relation to call rates.

The Panel considered that taking all of the circumstances into account the email in question was not sufficiently clear about the differences between call rates and contact rates as referred to in the relevant supplementary information. The Panel ruled a breach of Clause 15.4 on the narrow ground alleged.

**Complaint received** **8 November 2013**

**Case completed** **7 January 2014**