

ANONYMOUS v MERCK SERONO

Provision of Hospitality

An anonymous and non-contactable complainant who described themselves as a fertility health professional submitted a complaint about the provision of hospitality by Merck Serono.

The complainant stated that Merck Serono had flown delegates premium class to an international conference in Boston and during the conference had hosted lavish dinners followed by drinks parties that went on into the early hours of the morning and during which large amounts of alcohol were consumed.

The complainant alleged that this excessive level of hospitality was further evidenced by Merck Serono's conduct at another international conference in London during which it entertained UK health professionals on a Thames river boat cruise with music, and treated them to an extravagant gala dinner held in the Tower of London where an excessive amount of alcohol was provided.

The detailed response from Merck Serono is given below.

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 Merck Serono had provided a detailed account of subsistence provided during both conferences.

The Panel noted that the Code required that companies should only offer or provide economy air travel to delegates sponsored to attend meetings. Delegates could of course organise and pay at their own expense the genuine difference between economy travel and business class or first class. The Panel noted that the reference to economy air travel first appeared in the 2006 Code and that airlines' offerings in relation to class of travel had developed since then.

The Panel noted that PMCPA advice stated that developments in recent times had led to classes of travel being offered which included 'economy' in their title such as premium economy and were part way between economy and business class. It was unlikely that the payment of a significantly more expensive fare than economy would ever be acceptable under the Code. The PMCPA's view was that the use of economy tickets put companies beyond reproach. The Panel thus considered that perception and cost were important factors when deciding whether premium economy flights were acceptable. There was no mention in either the Code or the published advice that the length of travel was a relevant factor.

The Panel noted that airlines' offerings differed. Some airlines offered economy, premium economy

and upper class flights and therefore premium economy might be considered a version of business class. Other airlines offered economy, world traveller plus, business and first class flights so world traveller plus might be considered to be part way between economy and business class. The matter was further complicated as airlines used different terms to describe similar levels of service.

The Panel noted Merck Serono's submission that the cost per premium economy ticket for delegates to attend the meeting was £1250. The Panel assumed that this also applied to the world traveller plus tickets. The Panel noted that one delegate travelled economy class from Ireland to Boston. The Panel noted that Merck Serono could not provide the actual cost of economy flights for the specific dates travelled. Instead Merck Serono provided the cost for flights to Boston on a Saturday and returning on a Thursday booked approximately six weeks in advance. The Panel noted that these were such that the actual cost of premium economy and world traveller plus flights were significantly more expensive than the corresponding economy flights. However, it was entirely unclear whether these economy flight costs were closely similar to the costs which would have been incurred had economy class tickets been booked originally. It was thus not possible to determine whether the premium economy class tickets and world traveller plus tickets purchased were significantly more expensive than the corresponding economy flights. The Panel was, nonetheless, extremely concerned about the impression given. The Panel also noted the impression that one airline's offering of premium economy appeared to be akin to business class. The Panel considered that on the evidence before it the provision of a class of flight other than economy was contrary to the Code and a breach was ruled.

The Panel noted that the American Society for Reproductive Medicine (ASRM) conference lasted from Saturday, 12 October to Thursday, 17 October 2013. The Panel considered that the subsistence provided to the Merck Serono delegation on 13–15 October at local restaurants was not unreasonable. Costs incurred varied from £35 to £40 per head including drinks. The Panel ruled no breach of the Code.

The Panel noted that the restaurant that Merck Serono had originally intended to go to on Wednesday, 16 October had to be changed on the evening as its staff refused to serve any delegates who did not have their passports with them. Merck Serono submitted that a steak house was the only available venue for a large number of diners at short notice. The cost per head including drinks was £83 which Merck Serono acknowledged was higher than it would ordinarily consider acceptable.

The Panel considered that the circumstances in this regard were unusual. In the Panel's view Merck Serono should have been aware that the booked restaurant required diners to bring their passports. 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 subsistence in a public restaurant irrespective of the circumstances. The Panel considered that the cost was such that the subsistence provided to the health professionals was contrary to the Code and a breach was ruled. The Panel did not consider that, given the exceptional circumstances of this case, Merck Serono had failed to maintain high standards and no breach of the Code was ruled. The Panel consequently ruled no breach of Clause 2.

The Panel noted Merck Serono's submission that no hospitality was provided to any health professionals by Merck Serono following the dinners nor did Merck Serono employees accompany any delegates to any bars or clubs. The Panel did not consider that the complainant had proved on the balance of probabilities that Merck Serono had hosted lavish drinks parties that went on until the early hours of the morning and during which large amounts of alcohol were consumed as alleged. No breach of the Code was ruled.

The Panel noted that the European Society of Human Reproduction and Embryology (ESHRE) conference lasted from Sunday, 7 July to Wednesday, 10 July 2013.

The Panel noted the costs per head for the dinner on 7 July at a hotel was £42 and 8 July at a restaurant was £30. The Panel did not consider that the subsistence provided on either occasion was unreasonable and ruled no breach of the Code in relation to each.

The Panel was concerned that on the 8 July, three Merck Serono employees accompanied forty health professionals to a patient organisation's 10th anniversary event held on a river boat cruise along the Thames. The Panel noted Merck Serono's submission that it had no input into the organisation of this event and had not provided any financial support for the event. Merck Serono had at the request of the patient organisation notified its delegation of the event. The Panel noted Merck Serono's submission that no drinks were purchased by Merck Serono employees either for invited delegates or for personal consumption. Merck Serono had not paid for any aspect of the event including any hospitality. The Panel thus ruled no breach of the Code in that regard.

In relation to the river boat cruise, the Panel queried whether it was appropriate for Merck Serono employees to accompany its delegates to an event that appeared to be entirely social in nature. It was likely that attendees would be attracted by the venue. It was important for a company to be mindful of the impression created by its activities. The Panel considered that the impression given by the presence of Merck Serono employees with health professional delegates on the river boat which was likely to be more of a party atmosphere

was wholly unacceptable. In that regard the Panel considered that high standards had not been maintained. A breach of the Code was ruled.

The Panel noted the cost per head for dinner on 9 July at a restaurant was £68 including £14 per head for wine and mineral water. That it was possible to provide subsistence in the evening at a central London venue at a lower cost was evidenced by the cost of the meal at the restaurant on 8 July. The Panel considered that the hospitality was on the upper limits of acceptability. It was concerned about the impression given by the arrangements. The Panel decided on the evidence before it that the hospitality, on balance was not unacceptable. The attendees were health professionals and the main purpose of the conference was educational. No breach of the Code was ruled.

The Panel decided the circumstances in this case were not such as to bring discredit upon and reduce confidence in the pharmaceutical industry and no breach of Clause 2 was ruled.

An anonymous non-contactable complainant who described themselves as a fertility health professional submitted a complaint about the provision of hospitality by Merck Serono.

COMPLAINT

The complainant stated that most recently delegates were flown premium class to an international conference, the American Society for Reproductive Medicine (ASRM) in Boston. During this conference two Merck Serono senior managers hosted lavish dinners for UK health professionals which were followed by drinks parties that went on into the early hours of the morning and during which large amounts of alcohol were consumed.

The complainant alleged that this excessive level of hospitality was typical of Merck Serono and was further evidenced by its conduct at another international conference, European Society of Human Reproduction and Embryology (ESHRE) in London. During this conference UK health professionals were entertained by Merck Serono on a Thames river boat cruise with music, and on the following night they were treated to an extravagant gala dinner held in the Tower of London where an excessive amount of alcohol was provided.

The complainant alleged that this lavish hospitality was entirely inappropriate and responsible for bringing the pharmaceutical industry and the health profession into disrepute.

When writing to Merck Serono, the Authority asked it to respond in relation to Clauses 2, 9.1 and 19.1 of the Code.

RESPONSE

Merck Serono was very disappointed to receive a complaint in relation to its activities at ASRM and the ESHRE meetings. Merck Serono submitted that it took its obligations under the Code very seriously.

1 American Society for Reproductive Medicine annual meeting

This congress was held in Boston, US from 12-17 October 2013 and attendance by Merck Serono was organised by the Head of Fertility, UK & Ireland. In total, the Merck Serono delegation to this congress comprised of 12 delegates, 10 of whom were health professionals and two of whom were Merck Serono employees.

As the delegation was limited there was no specific briefing for ASRM. A briefing in relation to hospitality etc was provided before the ESHRE annual meeting in July and Merck Serono considered that this briefing was sufficient to cover the ASRM meeting. An email regarding provision of hospitality sent to the whole company in September following a ruling by the PMCPA and which reflected the company's responsibilities to the Code was provided.

Merck Serono submitted that the support provided by Merck Serono to health professionals was registration fees, flights and/or accommodation. The itinerary provided details for each health professional and noted that all flights were either economy class or premium economy in line with the requirements of Clause 19.1. With regard to accommodation, all Merck Serono delegates stayed at a hotel chosen due to its proximity to the conference venue at the Boston Convention and Exhibition Centre. For some of the delegates the departure date was not immediately after the conclusion of the meeting, and for some the departure was not from Boston airport. This was because some delegates had other business in the US but Merck Serono only paid for accommodation for the duration of the ASRM meeting and did not pay for any internal flights in the US.

Merck Serono organised dinners on the nights of 13-16 October as set out below and copies of the receipts were provided.

Sunday, 13 October 2013

This dinner was attended by 16 delegates, plus two Merck Serono employees. Five of the 16 health professionals were part of the Merck Serono delegation. The others, though not supported by Merck Serono to attend the congress, were UK delegates at the congress and had attended the educational sessions that had taken place that day. The cost per head for this dinner (including drinks) was \$65.65, approximately £40 per head. Merck Serono submitted that this was not excessive or extravagant and was in line with Merck Serono's meetings and hospitality standard operating procedure (SOP) which allowed up to £45 per head for dinner. The receipt was issued at 9.50pm.

Monday, 14 October 2013

This dinner was attended by two Merck Serono employees and six health professionals, five of whom were part of the Merck Serono delegation. The other health professional, though not supported by Merck Serono to attend the congress, was a

UK delegate at the congress and had attended the educational sessions that had taken place that day. The cost per head for this dinner (including drinks) was \$56.97, approximately £35 per head. Merck Serono submitted that this was not excessive or extravagant and was in line with Merck Serono's meetings and hospitality SOP. The receipt was issued at 10.09pm.

Tuesday, 15 October 2013

This dinner was attended by two named Merck Serono employees and 15 health professionals, five of whom were part of the Merck Serono delegation. The other health professionals, though not supported by Merck Serono to attend the congress, were UK delegates at the congress and had attended the educational sessions that had taken place that day. The cost per head for this dinner (including drinks) was \$61.16, approximately £37 per head. Merck Serono submitted that this was not excessive or extravagant and was in line with Merck Serono's meetings and hospitality SOP. The receipt was issued at 10.34pm.

Wednesday, 16 October 2013

This venue was not the one that Merck Serono planned to take its delegation to. The original restaurant had to be changed on the evening of the meal, due to restaurant staff refusing to serve any delegates who did not have their passport with them, to a steak house, which was the only venue available for a large number of diners at short notice. This dinner was attended by two Merck Serono employees and 12 health professionals, four of whom were part of the Merck Serono delegation. The other health professionals, though not supported by Merck Serono to attend the congress, were delegates at the congress and had attended the educational sessions that had taken place that day. The cost per head for this dinner (including drinks) was \$135.93, approximately £83 per head. Merck Serono recognised that this cost per head was higher than it would ordinarily consider acceptable, however, as noted above, this was the only venue available at short notice during conference week. The receipt was issued at a slightly later time than the other evenings, 11.40pm, reflecting the need to change restaurant.

In addition to the dinners noted above, subsistence was purchased at Heathrow airport on 12 October for two health professionals who were part of the Merck Serono delegation and the two named Merck Serono employees. The cost per head was £13.06, which was in line with Merck Serono's meetings and hospitality SOP (£25 per head for a restaurant lunch and £18 per head for a buffet).

Given the above, Merck Serono submitted that the hospitality provided at ASRM was appropriate and not out of proportion to the occasion. The costs involved did not exceed the level which the recipients would normally adopt when paying for themselves. Merck Serono had complied with the requirements of Clause 19.1 and refuted the allegation of a breach of that Clause in relation to

hospitality provided at ASRM. Consequently there was no breach of Clauses 9.1 and 2.

In response to a request for information from the case preparation manager, Merck Serono submitted that no hospitality was provided to any health professionals by Merck Serono following the dinners nor did Merck Serono employees accompany delegates to any bars or clubs or go to such venues on their own. Following dinner each night, Merck Serono employees returned to their hotel and retired for the evening.

In response to a request for further information from the Panel Merck Serono submitted that the delegation to the American Society for Reproductive Medicine was offered varying levels of support which ranged from travel, registration and accommodation to registration and/or accommodation. Six delegates had the full package, including flights. Four delegates had registration and/or accommodation but paid for their own travel which was why flight details were not included. Premium economy and world traveller plus flights were selected as the classes were included in Merck Serono's company policy for flights over five hours.

The cost paid by Merck Serono per ticket for the flight to this meeting was £1250 (premium economy). Merck Serono did not have the details of the cost of the economy flights for the specific dates that health professionals travelled to the ASRM. However, having checked the airlines' websites for return seats to Boston departing on a Saturday and returning on a Thursday (as was the case for ASRM delegates) if booked approximately 6 weeks before travel, Merck Serono provided the following costs:

First airline economy: £532.75 (lowest) to £1534.75 (fully flexible)
First airline world traveller plus: £935.75 (lowest) to £2,291.75 (fully flexible)

Second airline economy: £457.75 (lowest) to £1534.25 (fully flexible)
Second airline premium economy: £838.25 (lowest) to £2366.25 (fully flexible)

Merck Serono considered that the flights provided to health professionals attending ASRM were appropriate, given the length of travel time, were in line with the requirement in the supplementary information to Clause 19.1 and were certainly not excessive hospitality as alleged by the complainant.

In relation to the four health professionals who did not depart immediately after the conclusion of ASRM, all paid for their own internal flights. One health professional travelled at her own expense to New York to visit a colleague's clinic there and travelled back to the UK from New York. The return cost of travelling back from New York instead of Boston was the same as if she had travelled back from Boston.

Another health professional travelled at her own expense to Washington to visit colleagues and to attend a meeting related to a fertility society and

travelled back to the UK from Washington. Again, the price of the fare was the same as if she had flown back from Boston.

A further health professional travelled at his own expense from Boston to Indianapolis, from Indianapolis to Chicago and then travelled back from Chicago to Manchester. This was for personal reasons. There was no additional cost to Merck Serono for this travel.

The fourth delegate stayed on to attend part of the congress at the end of the program and she would have missed this to get the flight to Dublin on Thursday 17 October. Merck Serono covered her accommodation for Thursday night for this reason and she flew back to Dublin on the Friday. There was no additional flight cost for the travel back on Friday.

In response to a request for further information from the Panel Merck Serono submitted that it had contacted both airlines and neither held retrospective flight costs. Merck Serono submitted that apparently they fluctuated depending on several factors and the comment from one airline was that it would be unable to give a precise cost for a flight booked in the preceding days. Merck Serono submitted that unfortunately the information did not exist and therefore could not be provided.

2 European Society of Human Reproduction and Embryology annual meeting

The conference was held at ExCel, London 7-10 July 2013. Attendance by Merck Serono at this meeting was organised by the Head of Fertility, UK & Ireland. In total, the Merck Serono delegation to this congress comprised of 65 delegates, 53 of whom were health professionals and 12 of whom were Merck Serono employees. The support provided by Merck Serono to health professionals was registration fees, subsistence and/or accommodation.

A copy of the briefing presentation to Merck Serono delegates before attending the meeting was provided.

The accommodation for the Merck Serono delegation was chosen because of the location within walking distance of the Docklands Gateway. This enabled convenient access to the ExCel centre by the docklands light railway (DLR). Merck Serono organised dinners on the nights of 7-9 July. All meals were pre-booked and paid for in advance.

Sunday, 7 July

A meal was provided once delegates had arrived at the hotel they were staying at during the conference.

Monday, 8 July

On the same night, a patient organisation held an event to celebrate its 10th anniversary on a river boat on the Thames. Merck Serono had no input

in to its organisation and did not provide any financial support. At the request of the patient organisation, Merck Serono notified its delegation of the event and some attended this instead of the meal at a restaurant organised by Merck Serono. The invitation from the patient organisation and the function sheet for the event was provided.

Tuesday, 9 July

The cost of the meal at this event was £68 per head. This was above what Merck Serono would usually deem acceptable, it was considered acceptable by exception, given that this was a dinner at major conference. The cost per head for wines and mineral water was £14.00 which could not be considered 'an excessive amount of alcohol' as alleged.

Merck Serono submitted that the information provided demonstrated that the company did not provide the level of hospitality alleged by the complainant and was compliant with Clause 19.1.

The Merck Serono staff had passed the ABPI representatives examination.

In response to a request from the case preparation manager for further information, Merck Serono confirmed that following the dinners no hospitality was provided by Merck Serono to any health professional. The Merck Serono employees did not accompany any delegates to any bars/clubs etc nor did they go to any such venues on their own. They returned to their hotel and retired for the evening. Given this, there were no receipts etc.

A briefing in relation to hospitality etc was provided before the ESHRE annual meeting in July.

In response to a request for further information Merck Serono provided details of the dinner attendance at the European Society of Human Reproduction and Embryology as follows:

Date	HCP attendees	Merck Serono attendees
7 July	52	7
8 July	36	4
8 July, Riverboat	40	3
9 July	93	11

All health professional attendees were Merck Serono delegates who had support for registration and/or accommodation. Three Merck Serono employees attended the patient organisation riverboat cruise but no drinks were purchased by Merck Serono employees either for invited delegates or for personal consumption. Any appropriate purchases would have been claimed on expenses and no expense claims had been made relating to the riverboat event.

In response to a request for further information from the Panel, Merck Serono submitted that it had provided 53 delegates with a full package including accommodation and registration for the European Society of Human Reproduction and Embryology annual meeting. As the meeting was in London

there were a number of delegates who did not require accommodation and Merck Serono provided 41 delegates with congress registration only. These delegates were also invited to the dinner on 9 July which accounted for the difference between the numbers previously submitted.

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 not be provided except in association with, *inter alia*, scientific congresses, meetings and promotional meetings. 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 costs involved must not exceed that level which the recipients would normally adopt when paying for themselves. The supplementary information to Clause 19.1 made it clear that the provision of hospitality was limited to subsistence, accommodation, genuine registration fees and the payment of reasonable travel costs which a company might provide to sponsor a delegate to attend a meeting. The venue must not be lavish, extravagant or deluxe and companies must not sponsor or organise entertainment such as sporting or leisure events. Meetings for health professionals etc which were wholly or mainly of a social or sporting nature were unacceptable. 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 the complainant alleged that Merck Serono provided extravagant levels of hospitality to UK health professionals citing examples of flying delegates premium class to the ASRM conference in Boston and providing lavish dinners and drinks parties in relation to this congress and a Thames riverboat cruise and gala dinner at the Tower of London in relation to the ESHRE conference. The Panel noted that Merck Serono had provided a detailed account of subsistence provided during both conferences.

ASRM

The Panel noted that the ASRM conference lasted from Saturday, 12 October to Thursday, 17 October 2013.

The supplementary information to Clause 19.1 stated that companies should only offer or provide economy air travel to delegates sponsored to attend meetings. Delegates may of course organise and pay at their own expense the genuine difference between economy travel and business class or first class. The Panel noted that the reference to economy air travel first appeared in the 2006 edition of the Code and that airlines' offerings in relation to class of travel had developed since then.

The Panel noted that PMCPA advice, Air Travel, stated that developments in recent times had led to classes of travel being offered which included 'economy' in their title such as premium economy and were part way between economy and business class. It was unlikely that the payment of a significantly more expensive fare than economy would ever be acceptable under the Code. The advice stated that the PMCPA's view was that the use of economy tickets put companies beyond reproach. The Panel thus considered that perception and cost were important factors when deciding whether premium economy flights were acceptable. This was the first time the Panel had to consider a complaint which related to the class of air travel. There was no mention in either the Code or the published advice that the length of travel was a relevant factor.

The Panel noted that airlines' offerings differed. Some airlines offered economy, premium economy and upper class flights and therefore premium economy might be considered a version of business class. Other airlines offered economy, world traveller plus, business and first class flights so world traveller plus might be considered to be part way between economy and business class. The matter was further complicated as airlines used different terms to describe similar levels of service.

The Panel noted Merck Serono's submission that the cost per premium economy ticket for delegates to attend the meeting was £1250. The Panel assumed that this also applied to world traveller plus tickets. The Panel noted that one delegate travelled economy class from Ireland to Boston. The Panel noted that Merck Serono could not provide the actual cost of economy flights for the specific dates that health professionals travelled to the ASRM as the airlines concerned did not hold details of retrospective flight costs. Instead Merck Serono provided the cost for flights to Boston on a Saturday and returning on a Thursday booked approximately six weeks in advance. The Panel noted that these were such that the actual cost of the premium economy and world traveller plus flights were significantly more expensive than the corresponding economy flights. However, it was entirely unclear whether the costs of these economy flights were closely similar to the costs which would have been incurred had economy class tickets been booked originally. It

was thus not possible to determine whether the premium economy class tickets and world traveller plus tickets purchased were significantly more expensive than the corresponding economy flights. The Panel was, nonetheless, extremely concerned about the impression given. The Panel also noted the impression that one airline's offering of premium economy appeared to be akin to business class. The Panel considered that on the evidence before it the provision of a class of flight other than economy was contrary to Clause 19.1 and a breach of that clause was ruled.

The Panel noted the complainant's allegation that two named company employees had provided lavish dinners followed by drinks parties.

The Panel noted that there were a number of health professionals present at the dinners who were not part of the Merck Serono delegation. The Panel understood that such meals were often booked and paid for in advance and some attendees might drop out. In order to prevent wastage, pharmaceutical companies might invite alternative delegates that they had not originally sponsored to fill these spaces. The Panel considered that the number of places a pharmaceutical company booked for dinner should generally be proportionate to the number of its delegates. The Panel noted that the scientific content of the ASRM would have been the same for all delegates but queried why there were more non delegates than delegates present at the majority of the Merck Serono dinners. The Panel considered that it might not be unreasonable for a company to provide subsistence to health professionals attending a congress who were not sponsored by that company. In such situations the company would be well advised to be able to show that the health professional had attended the educational sessions that had taken place that day. Any such arrangements had to comply with the Code. The Panel noted that it did not have a specific complaint about this aspect and thus little information from Merck Serono about it. The Panel made no ruling on this point.

The Panel considered that the subsistence provided to the Merck Serono delegation on 13–15 October at local restaurants was not unreasonable. Costs incurred varied from £35 to £40 per head including drinks. The Panel ruled no breach of Clause 19.1.

The Panel noted that dinner on Wednesday, 16 October was attended by the two Merck Serono employees and twelve health professionals, four of whom were part of the Merck Serono delegation and eight who were not supported by Merck Serono to attend the congress but were UK delegates who Merck Serono submitted had attended the educational sessions that had taken place that day. The Panel noted that the restaurant that Merck Serono had originally intended to go to had to be changed on the evening as its staff refused to serve any delegates who did not have their passports with them. Merck Serono submitted that a steak house was the only available venue for a large number of diners at short notice. The cost per head including

drinks was £83 which Merck Serono acknowledged was higher than it would ordinarily consider acceptable and the receipt had been issued at 11.40 pm, slightly later than normal reflecting the need to change restaurants.

The Panel considered that the circumstances in this regard were unusual. In the Panel's view Merck Serono should have been aware that the booked restaurant required diners to bring their passports. 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 subsistence in a public restaurant irrespective of the circumstances. The Panel considered that the cost was such that the subsistence provided to the health professionals at the steak house was contrary to Merck Serono's SOP and the requirements of Clause 19.1 and a breach of that clause 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. The Panel consequently ruled no breach of Clause 2.

The Panel noted Merck Serono's submission that no hospitality was provided to any health professionals by Merck Serono following the dinners nor did Merck Serono employees accompany any delegates to any bars or clubs. The Panel did not consider that the complainant had proved on the balance of probabilities that Merck Serono had hosted lavish drinks parties that went on until the early hours of the morning and during which large amounts of alcohol were consumed as alleged. No breach of Clause 19.1 was ruled in that regard.

ESHRE

The Panel noted that the ESHRE conference lasted from Sunday, 7 July to Wednesday, 10 July 2013.

The Panel noted that the Merck Serono SOP Meetings, Subsistence and Associated Allowable Expenditure stated that one glass of wine per person was allowed with dinner. However, an email regarding the provision of hospitality at conferences stated that subsistence could be provided in association with appropriate meetings usually included up to half a bottle of wine per person and that was what was provided in most cases.

The Panel noted that dinner on 7 July was attended by fifty nine people, including fifty two health professionals and seven Merck Serono employees and the cost per head including drinks was £42. The Panel noted that dinner on 8 July was attended by thirty six health professionals and four Merck Serono employees. The cost per head was £30. The Panel did not consider that the subsistence provided on either occasion was unreasonable and ruled no breach of Clause 19.1 in relation to each event.

The Panel was concerned that on the same night, 8 July, three Merck Serono employees accompanied forty health professionals to a patient organisations 10th anniversary event held on a river boat cruise along the Thames. The Panel noted Merck Serono's submission that it had no input into the organisation of this event and had not provided any financial support for the event. Merck Serono had at the request of the patient organisation notified its delegation of the event. The Panel noted Merck Serono's submission that no drinks were purchased by Merck Serono employees either for invited delegates or for personal consumption. Merck Serono had not paid for any aspect of the event including any hospitality. The Panel thus ruled no breach of Clause 19.1 in that regard.

In relation to the river boat cruise, the Panel queried whether it was appropriate for Merck Serono employees to accompany its delegates to an event that appeared to be entirely social in nature. It was likely that attendees would be attracted by the venue. It was important for a company to be mindful of the impression created by its activities. The Panel considered that the impression given by the presence of Merck Serono employees with health professional delegates on the river boat which was likely to be more of a party atmosphere was wholly unacceptable. In that regard the Panel considered that high standards had not been maintained. A breach of Clause 9.1 was ruled.

The Panel noted that dinner on 9 July at a restaurant was attended by ninety three health professionals and eleven Merck Serono employees. The cost per head was £68 including £14 per head for wine and mineral water. That it was possible to provide subsistence in the evening at a central London venue at a lower cost was evidenced by the cost of the meal at the restaurant on 8 July. The Panel considered that the hospitality was on the upper limits of acceptability. It was concerned about the impression given by the arrangements. The Panel decided on the evidence before it that the hospitality, on balance was not unacceptable. The attendees were health professionals and the main purpose of the conference was educational. No breach of Clause 19.1 was ruled.

The Panel noted that Clause 2 was used as a sign of particular censure and reserved for such use. The relevant supplementary information referred to excessive hospitality. The Panel decided the circumstances in this case were not such as to bring discredit upon and reduce confidence in the pharmaceutical industry and no breach of Clause 2 was ruled.

Complaint received **25 November 2013**

Case completed **15 April 2014**