CASE AUTH/2756/5/15

ANONYMOUS EMPLOYEE v MERCK SERONO

Call rates

An anonymous employee complained about the call rates set by Merck Serono. The complainant noted that since a change of leadership in neurology in January 2015, the neurology sales team had been targeted to see six prescribing customers daily. Although this started off as an initial extra incentive in March 2015, it was now the required activity standard for the team. Each of the eight [sales] areas averaged 50-60 consultants and nurse specialists in multiple sclerosis (MS). The team was under pressure to achieve this with weekly reporting of activity; failure to achieve six calls/day resulted in the director emailing the individuals in question to ask for their plans to hit the required standard. Now the company response was 'there are other customers such as general neurologists, pharmacists, business unit managers', but previous experience calling on these customers had resulted in their referral back to the MS specialists. They did not want to see them often as they did not prescribe. The complainant noted that he/she respected his/her customers' time constraints and workload and so would not make unnecessary calls if it was of no benefit to the service they provided to their patients. The team was now under pressure to hit this target, a situation which had not arisen before. In the complainant's view this would lead to customers refusing to see representatives and perhaps disciplinary action being taken against individuals who refused to do what was required to achieve the new activity targets.

The detailed response from Merck Serono is given below.

The Panel noted that the complainant referred to an initial extra incentive in March 2015 which had now become the required activity standard. The Panel noted that Merck Serono had an incentive scheme for 2015 and had run an additional incentive for March.

The Panel noted Merck Serono's submission that over a short period of time there had been a significant change to the UK MS therapy environment as several newly licensed MS medicines had become available. This had negatively impacted the sales of Rebif (interferon beta 1a), which had been a leading product for over a decade. Merck Serono commissioned an online market research survey of 30 MS specialists, carried out in January, February and March 2015. The data for January showed customers were being called on more frequently by competitors. Merck Serono further submitted there had been a significant downward trend in the average 'contact' rates of the sales team; it responded to this with various sales and marketing activities and changes to the neurology head office team. To help deliver a new sales campaign the sales team were offered a time-limited incentive from 1 – 31 March 2015 inclusive of 30% of key performance indicators which would be paid on achieving a contact rate of 6 per day. Merck Serono submitted that this had a positive effect on the sales team's (key account managers (KAMs)) average daily contact rate.

The Panel noted that an incentive scheme was generally understood to, *inter alia*, *encourage* increased productivity; it was therefore not a mandatory requirement. Merck Serono had submitted several emails from a senior manager to certain members of the sales team sent on 30 April 2015. It was of concern that contrary to Merck Serono's submission that the incentive scheme ran during March 2015, the emails showed that, at the very least, it had continued throughout April and KAMs were expected to continue to achieve 6 contacts/day thereafter. The emails linked the contact rate of 6 per day to the team's business objectives for 2015. In the Panel's view, the KAMs had been given the impression that the contact rate of 6 per day applied not only to March 2015 but to the rest of the year.

An email from a senior director dated 2 May had not been certified and stated, *inter alia*, 'We really need achieve [sic.] 6 calls per day on prescribing customers' and referred to driving call volume and contact volume. There was no reference to the relevant requirements of the Code. The Panel noted Merck Serono's submission that the language and tone of the email would not have been approved by its signatories and would have been amended. No information was provided as to what would have been amended. Merck Serono further submitted that it had no evidence to show that the email of 2 May had led to any KAM breaching the Code in relation to their activities with health professionals. The Panel noted Merck Serono did not appear to have retracted or amended this email to the KAM team even though it had submitted that it would have been amended. The Panel was concerned that an email from the compliance department dated 11 May 2015 reminding staff that all representatives' briefings must be certified was sent after Merck Serono had been notified of this complaint on 7 May.

The Panel noted Merck Serono's submission that it was for each representative, as an experienced KAM to ensure that their chosen activities complied with the Code and were generally in line with the training they received. The Panel noted the email submitted by the complainant dated 20 March included the statement 'Please note all contacts must be made within the ABPI guidelines', a customer target spreadsheet reminded the representatives that 'Frequency of contacts to be decided by the activities on the target segment and must be reasonable, however no more than 3 unsolicited calls per customer in line with ABPI code. For the avoidance of doubt, please see Clause 15.4 of the code'. No such reminder was included in any of the

emails from the senior manager on 30 April or the email from the director dated 2 May.

The Panel considered that while Merck Serono had reminded its representatives that their activity should comply with the Code, it considered that the KAMs appeared to have been given little comprehensive and consistent guidance on how to achieve 6 contacts/day and comply with the Code. This was a significant omission. The Panel was concerned that the terminology used in emails about contacts and calls which was sent to certain KAMs on 30 April was inconsistent; in response to a specific request the company had been unable to provide its definition of call and contact rates and associated representatives' briefing. The Panel noted the company's submission that it was able to distinguish between call and contact rates on its in-house data system but considered that this did not alter the fact that the KAMs had not been adequately advised in this regard.

The Panel noted the neurology sales team currently consisted of 8 KAMs each of which had 50-60 MS specialists in their territory. March 2015 had 22 working days, if a KAM were to achieve the 6 contacts/day this would give an overall contact volume of 132 contacts for that month, which would mean each specialist in each territory would need to be seen on average 2–3 times in the month.

The Panel noted its comments above. The Panel noted that the March incentive scheme was, in reality, a requirement. The Panel considered that achieving this would mean that on the balance of probabilities the representatives would breach the Code; in the absence of consistent terminology and briefing on how to achieve 6 contacts/day and remain compliant with the Code, the frequency of representatives' calls would cause inconvenience. On the balance of the evidence breaches of the Code were ruled.

The Panel noted Merck Serono's submission that all representative briefing material was reviewed and certified. However the briefing material sent by the senior director, in March 2015 and submitted by the complainant had been sent to the representatives prior to certification. The Panel noted the email from the compliance department had been sent on 11 May. The Panel further noted in a subsequent submission by Merck Serono that the email dated 2 May 2015 headed 'Rebif Global Winning Team!' and provided by the complainant had not been certified. This was disappointing. The Panel noted its comments above regarding the date of the email from the compliance department about the need to certify all representatives' briefing material. A breach of the Code was ruled.

An anonymous, contactable employee complained about the call rates set by Merck Serono.

COMPLAINT

The complainant noted that since a change of leadership in neurology in January 2015, there had been a big push on activity where the neurology sales team had been targeted to see six prescribing customers daily. Although this started off as an initial extra incentive in March 2015, it was now the required activity standard for the team. Each of the eight [sales] areas averaged 50-60, at most, specialists in multiple sclerosis (MS) comprising MS consultants and MS nurse specialists. The team was under pressure to achieve this with weekly reporting of activity; failure to achieve six calls/day resulted in the director emailing the individuals in question to ask for their plans to hit the required standard. Now the company response was 'there are other customers such as general neurologists, pharmacists, business unit managers', but previous experience calling on these customers had resulted in their referral back to the MS specialists. They did not want to see them often as they did not prescribe. The complainant noted that he/she had provided a valuable service to his/her customers for many years, and he/she respected their time constraints and workload and so would not make unnecessary calls if it was of no benefit to the service they provided to their patients. The team was now under pressure to hit this target, a situation which had not arisen before in his/her many years with the company. In the complainant's view this would lead to customers refusing to see representatives and perhaps disciplinary action being taken against individuals who refused to do what was required to achieve the new activity targets. Before January 2015, activity was not a key focus, and never had been in the complainant's time with the company. The complainant provided documents which he/she considered clearly illustrated this drive on activity.

When writing to Merck Serono, the Authority asked it to respond in relation to Clauses 15.2, 15.4 and 15.9 of the Code.

RESPONSE

By way of background Merck Serono explained that all new and existing representatives underwent training to enable them to carry out their activities in the field in compliance with the Code and Merck Serono's policies. Training included face-to-face, web-based or 'read and understood' formats which were rolled out at induction with specific mandatory training as determined by internal policies. Merck Serono had for many years benefitted from having an experienced, professional neurology sales team which currently consisted of eight key account managers (KAMs) and a manager. Their accounts covered approximately 385 MS specialist doctors and nurses throughout the UK and Ireland with approximately 50-60 MS specialists in each territory.

Over the past year, and in a short space of time, there had been a significant change to the MS therapy environment due to several newly licensed MS medicines becoming available in the UK. This had negatively impacted the sales of Merck Serono's MS product Rebif (interferon beta-1a) which, until now, had been a leading product for over a decade. With the rise of competitor activity and an increasing pool of MS stakeholders that included MS nurses, general neurologists and specialist pharmacists, the representatives had been challenged to not only review their current activities with known MS customers but to contact a wider group who might be potential prescribers or influence the use of MS therapies.

According to internal market research performed in January 2015, customers were being called upon more frequently by competitor companies. Only 20% of the 30 MS specialists who took part in the online survey reported seeing a Merck Serono representative at least once a month. This appeared to signal an urgent need to increase the representatives' activities to remain competitive. Additionally, a significant downward trend was noticed in the performance of the team as measured by its average 'contact' rates, with 'contact' meaning solicited or unsolicited face-to-face, emails and telephone contacts, as well as contacts at meetings. In quarter 3 2014 the team's average quarterly daily rate of 'contact' was 2.4/day. This contact rate was significantly lower than that achieved in quarters 1 and 2 of 2014.

To help address this concern, changes were made to the head office team which included the recruitment of a new director from January 2015 who initiated a new sales campaign. To help deliver this plan, a time-limited incentive was offered to the sales team to achieve a target of 6 contacts/day (within the above definition of 'contacts') between 1 and 31 March 2015 inclusive. This was highlighted in the email dated 20 March sent to the Authority by the complainant.

For the purpose of the target incentive scheme, a 'contact' was defined as a 'face-to-face' activity recorded within the customer relationship management (CRM) system or a 'meeting' activity where the customer was listed as 'attended' in the 'profiled attendees' part of the meeting module within the CRM. The incentive was created as a 'short-term fix' to ensure Merck Serono remained competitive and to improve the team's average contact rate which was falling. It was clear from the figures provided that the 'contact' rates improved as a result. The average daily contact rate was recorded at 2.2 in January 2015, 4.5 in February 2015 and 5 in March 2015. The daily contact rate for April 2015 was 3.5 illustrating that the incentive scheme was a short-term measure and achieved its objective.

The recorded numbers of unsolicited calls by representatives did not indicate a breach of Clause 15.4 as the average percentage of solicited contacts was between 96% to 99% over the period from quarter 1 2014 to quarter 2 2015. The majority of contacts involved pre-arranged or customer-requested presentations and follow-up meetings. It was never suggested in communications sent to the representatives that their activities should go beyond what was permissible under the Code. On the contrary, they were always reminded that such activity should be in line with the Code. It was therefore up to each representative, as an experienced KAM, to ensure that their chosen activities complied with the Code and were generally in line with the training they received. Merck Serono believed that it was possible to achieve the required target whilst remaining compliant with the Code, and no concerns were formally raised by any of the representative to a senior director. Therefore, Merck Serono had no reason to believe that its representatives had not continued to demonstrate the high standard of ethical conduct required by the Code and Merck Serono policies. Merck Serono denied a breach of Clause 15.2.

With regard to the requirements of Clause 15.9, it had always been Merck Serono's policy and practice to review and certify all representatives' briefing material according to the requirements of the Code. Recent examples of certified briefing materials to the salesforce were included for reference. All materials related to its new sales campaign were certified in accordance with such requirements. However, unfortunately, the briefing email sent on 20 March by the senior director and sent to the Authority by the complainant was sent to the team before certification.

Merck Serono submitted that it was clearly stated in its policies that materials were certified before distribution to the representatives and it regretted that this was not adhered to on this one occasion. This had been acknowledged and fully investigated by Merck Serono's compliance department which had consequently addressed the issue with the individuals involved. The compliance department had also reminded all head office staff of their obligation to ensure that all briefing material was approved and certified.

Merck Serono stated that it remained committed to ensuring all its activities were compliant within its policies and the Code.

In response to a request for further information Merck Serono submitted the following:

1 **Briefings and communications regarding the incentive scheme:**

Merck Serono submitted a copy of a letter which was sent to all the neurology KAMs in January 2015 which outlined the details of the bonus scheme.

2 **Merck Serono's definition of all and contact rates, and solicited and unsolicited calls including associated communications and/or briefings. Also an explanation of how a solicited or unsolicited call is documented in Merck Serono's CRM system:**

Merck Serono submitted an approved and certified copy of a briefing to the KAMs on how to enter their contact rate in the CRM system on which all KAMs were trained.

The briefing set out the mandatory information which was required to be completed by the KAMs for each of their contacts, including whether or not this was a 'solicited call'. The briefing included a clear definition of solicited calls (and by implication unsolicited calls) and also reminded the KAMs that no more than three proactive, promotional calls per health professional could be made in a 12 month period.

The briefing did not define call and contact rates. However, it required the KAMs to record their contacts as either face-to-face meetings, meetings, telephone contact or email contacts. Using the type of interaction recorded on the CRM system, Merck

Serono could distinguish between call and contact rates. Merck Serono stated that call rates included all KAMs' face-to-face meetings, and contact rates included all face-to-face meetings, contact at meetings, telephone and email contacts with customers.

3 Data on KAM contact and call rates on all neurology customers from November 2014 to March 2015:

Merck Serono submitted a chart that indicated the KAMs' monthly average contact and call rates on all customers from November 2014 to March 2015. Merck Serono split the contacts according to those which related to purely to face-to-face meetings (call rate) and those related to all customer contacts, including face-to-face meetings, contacts at meetings, telephone or email contacts (contact rate).

The rates were marginally different to those supplied in Merck Serono's original response. This was because the CRM system was a live system. Since Merck Serono last ran the analysis, a few more calls had been entered. Merck Serono believed that all relevant calls had now been entered onto the CRM system for the time period specified.

4 Data on KAM contact and call rates on MS nurses from November 2014 to March 2015:

Merck Serono submitted a chart that indicated the KAMs' monthly average contact and call rates on MS nurses from November 2014 to March 2015, as well as for each month the number of contacts which were accompanied. The same distinction was made between call and contact rates as defined above.

When comparing the total contact and call rate on all neurology customers between November 2014 and March 2015, and the total contact and call rate on MS Nurses only during the same period, the proportion of calls made to MS Nurses represented 35% of the total number of calls made to all neurology customers. Also the proportion of all contacts made to MS Nurses represented around 30% of the total number of contacts made to all neurology customers.

In response to a further request for information Merck Serono submitted that an email was sent by a senior manager to the KAMs which detailed the quarter 2 targets (copy provided); these were based on new patient numbers achieved on a monthly basis as illustrated. The targets were set for each KAM and region as indicated by the initials for the 8 KAMs. The targets for quarter 2 were not based on health professional contact rates – these were used only during the month of March, as previously indicated. This email was not certified as it related to an internal briefing on field force financial targets rather than a salesforce briefing *per se* on their promotional activities with customers. In addition, the letter detailing the KAM sales incentive scheme (dated 31st January) was not certified as it related to internal team financial targets and did not specifically detail field force activity with customers. The letter purely outlined the financial aspects of the KAM bonus scheme and did not indicate activity and metrics on call or contact rates with health care providers.

The email dated 2nd May that was sent by a new senior director to the KAM team should have been reviewed and certified. The language and tone of the email would not have been approved by the company's signatories and would have been amended. Unfortunately, this briefing material had not been put through the company's approval process in this instance which was an oversight. Merck Serono offered its assurance that it had addressed this issue with the senior director (who was new in the post at the time) and had reminded the whole commercial team that all field force briefings, which detailed activity with customers, had to be reviewed and approved by the signatories for certification purposes before distribution to KAMs.

The impact that the incentive scheme and associated communication had on the call/contact rates with health professionals (including MS nurses), as recorded in the CRM system, were detailed in the resultant KAM call rates which were provided. Merck Serono had not collected any additional evidence that the email of 2 May had led to any KAM breaching the Code. In summary, the company denied breaches of Clauses 15.2, 15.4 and 15.9 of the Code.

PANEL RULING

The Panel noted the similarities between this case and Case AUTH/2754/5/15. The Panel nonetheless considered each case separately. The Panel noted that the complainant was anonymous. 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 15.2 required that representative must at all times maintain a high standard of ethical conduct in the discharge of their duties and must comply with all relevant requirements of the Code, 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 complainant referred to an initial extra incentive in March 2015 which had now become the required activity standard. The Panel noted that Merck Serono had an incentive scheme for 2015 and had run an additional incentive for March 2015.

The Panel noted the complainant had submitted two emails in support of the allegations. The first dated 20 March 2015, subject: 'Additional Incentive!' was from a senior director and reminded the neurology sales team that 'for March 30% of KPI [key performance indicator] incentive will be paid on achieving a contract [sic] rate of 6 per day'. The email went on to state 'A contact is defined as a 'face to face' activity recorded within [the CRM system] or a 'meeting' activity where the customer is listed as 'Attended' in the 'profiled attendees' part of the meeting module within [the CRM system]. Please note that 'non profiled attendees' such as junior doctors are not included in the call rate calculation. All activities must be submitted within [the CRM system] and synchronised (if on the iPad) before midnight on 1st April 2015. Please note all contacts must be made within the ABPI guidelines'. A table at the bottom of the email set out the contact rates for each of the eight neurology sales representatives for the weeks beginning 2 and 9 March along with the average contact rate for each. Three of the eight representatives had an average contact rate at or above the desired 6 contacts/day. The final sentence of the email stated 'Let's make an additional uplift in the last two weeks'.

The second email dated 2 May 2015, subject: '2015 – Rebif- Global Winning Team!' was from a senior director and stated, *inter alia*, that 'To drive new patient share we need to do the following: - Deliver more calls, Call on the right customers and Have impact in call and challenge our customers. Please can you do the following 3 actions, Focus on driving your call volume/contact volume. We really need achieve [sic] 6 calls per day on prescribing customers…' The penultimate paragraph stated, *inter alia*, 'SHOUT OUT THE MESSAGES & challenge your customers while making these additional calls'.

The Panel noted Merck Serono's submission that over a short period of time there had been a significant change to the UK MS therapy environment as several newly licensed MS medicines had become available. This had negatively impacted the sales of Merck Serono's MS medicine Rebif, which had been a leading product for over a decade. Merck Serono commissioned some market research; an on line survey of 30 MS specialists, carried out in January, February and March 2015. The data for January showed customers were being called on more frequently by competitors. Merck Serono further submitted there had been a significant downward trend in the performance of the sales team as measured by the average 'contact' rates. Merck Serono responded to this with various sales and marketing activities and changes to the neurology head office team. A new sales campaign was developed; to help deliver this the sales team were offered a time-limited incentive from 1 – 31 March 2015 inclusive of 30% of key performance indicators (KPIs) which would be paid on achieving a contact rate of 6 per day. Merck Serono submitted that this had a positive effect on the sales team's average daily contact rate recorded at 2.2 in January 2015, 4.5 in February 2015 and 5 in March (Merck Serono's response dated 22 May). Merck Serono submitted that this illustrated that the incentive scheme was a short term measure and had achieved its objective. The Panel noted the average daily contact rate was 4.5 in February and queried how this therefore demonstrated the success of the stated short term incentive in March. The Panel noted that according to the company's response to the Panel's request for further information dated 16 June the monthly daily contact rate with all neurology customers was 2.9 (November 2014), 2.5 (December 2014), 2.4 (January 2015), 4.6 (February 2015), 5.2 (March 2015). The corresponding call rates were 1.8, 1.5, 1.5, 3.2 and 3.6 from November 2014 through to March 2015.

The Panel noted Merck Serono's submission of a letter sent to the KAMs outlining the 2015 incentive plan dated 31 January 2015. This pre-dated the short term incentive implemented for March and stated, *inter alia*, that 25% bonus would be paid on achieving quarterly KPIs. The March incentive stated that 30% bonus would be paid on achieving the KPIs.

The Panel noted that an incentive scheme was generally understood to be, amongst other things, a scheme which *encouraged* increased productivity; it was therefore not a mandatory requirement. Merck Serono had submitted several emails from a senior manager to certain members of the sales team sent on 30 April 2015, which included, *inter alia*, the following statements: 'Please can you let me know your plan to return activity to the required standard, I'd like to see improvements each week until 6 is achieved and please see that your activity levels are raised appropriately and urgently'. It was of concern that contrary to Merck Serono's submission that the incentive scheme ran during March 2015, the aforementioned emails showed that, at the very least, it had continued throughout April and KAMs were expected to continue to achieve a contact rate of 6 per day thereafter. The emails linked the contact rate of 6 per day to the team's business objectives for 2015. In the Panel's view, the KAMs had been given the impression that the contact rate of 6 per day applied not only to March 2015 but for the remainder of 2015.

The email from the senior director dated 2 May had not been certified and stated, *inter alia*, 'We really need achieve *[sic.]* **6 calls per day** on prescribing customers' and referred to driving call volume and contact volume. There was no reference to the relevant requirements of the Code. The Panel noted Merck Serono's submission that the language and tone of the email communication of the 2 May would not have been approved by its signatories and would have been amended. No information was provided as to what would have been amended. Merck Serono further submitted that it had collected no additional evidence that the email communication of 2 May had led to any member of the KAM team breaching the Code in relation to their activities with HCPs. The Panel noted Merck Serono did not appear to have provided any retraction or amendment of this email to the KAM team even though it had submitted that it would have been amended. The Panel was concerned that the email from the compliance department dated 11 May 2015 reminding staff that all representatives' briefings must be certified was sent after Merck Serono had been notified of this complaint on 7 May.

The Panel noted Merck Serono's submission that it was for each representative, as an experienced KAM to ensure that their chosen activities remained compliant the Code and generally in line with the training they received. The Panel noted the email submitted by the complainant dated 20 March included the statement 'Please note all contacts must be made within the ABPI guidelines', a customer target spreadsheet which had also been included as an appendix, though not directly referred to in Merck Serono's response, reminded the representatives that 'Frequency of contacts to be decided by the activities on the target segment and must be reasonable, however no more than 3 unsolicited calls per customer in line with ABPI code. For the avoidance of doubt, please see Clause 15.4 of the code'. No such reminder was included in any of the emails from the senior manager on 30 April or the email from the senior director dated 2 May.

The Panel considered that while Merck Serono had provided various statements and reminders to their representatives that their activity should comply with the requirements of Clause 15.4, companies had a responsibility to ensure any requirements made of employees were reasonable, achievable and such that employees would not be put in a position that achieving company requirements would mean they might potentially breach the Code. The supplementary information to Clause 15.4 stated, *inter alia*, that 'Targets must be realistic and not such that representatives breach the Code in order to meet them'. Further Clause 15.10 stated 'Companies are responsible for the activities of their representatives if these are within the scope if their employment even if they are acting contrary to the instructions they have been given'.

The Panel considered that the KAMs appeared to have been given little comprehensive and consistent guidance on how to achieve 6 contacts/day and comply with the Code. This was a significant omission. The Panel was concerned that the terminology used in the emails about contacts and calls which was sent to certain KAMs on 30 April from the senior manager and senior director was inconsistent. It was of concern that in response to a specific request the company had been unable to provide its definition of call and contact rates and associated representatives' briefing. The supplementary information to Clause 15.4 required companies when briefing representatives to clearly distinguish between expected call and contact rates. Solicited calls were only described in the briefing to KAMs on how to enter their contact rate in the CRM system. The Panel noted the company's submission that it was able to distinguish between call and contact rates on the CRM system but noted that such ability did not alter the fact that the KAMs had not been adequately advised in this regard.

The Panel noted the neurology sales team currently consisted of 8 KAMs each of which had approximately 50-60 MS specialists in each territory. March 2015 had 22 working days, if a KAM was to achieve the 6 contacts a day this would give an overall contact volume of 132 contacts for that month, which would mean each specialist in each territory would need to be seen on average 2–3 times in the month. The supplementary information to Clause 15.4 stated, *inter alia*, that 'the number of calls made on a doctor or other prescriber and the intervals between successive visits are relevant to the determination of frequency. Companies should arrange that intervals between visits do not cause inconvenience'.

The Panel noted its comments above. The Panel noted that the March incentive scheme was, in reality, a requirement. The Panel considered that achieving this would mean that on the balance of probabilities the representatives would breach the Code in that, in the absence of consistent terminology and briefing on how to achieve 6 contacts/day and remain compliant with the Code, the frequency of representatives' calls would cause inconvenience. On the balance of the evidence a breach of Clause 15.4 was ruled. The Panel noted the requirements of Clause 15.2 which stated, *inter alia*, that 'Representatives must at all times maintain a high standard of ethical conduct in the discharge of their duties and must comply with all relevant requirements of the Code'. The Panel noted the ruling above and on balance ruled a breach of Clause 15.2.

The Panel considered Merck Serono's submission that it was its policy and practice that all representatives' briefing material was reviewed and certified according the requirements of the Code, a copy of the relevant standard operating procedure was provided, however the briefing material sent by a senior director in March 2015 and submitted by the complainant had been sent to the representatives before certification. The Panel noted the email from the compliance department had been sent on 11 May. The Panel further noted in a subsequent submission by Merck Serono that the email dated 2 May 2015 headed 'Rebif Global Winning Team!' and provided by the complainant had not been certified. This was disappointing. The Panel noted its comments above regarding the date of the email from the compliance department about the need to certify all representatives' briefing material. A breach of Clause 15.9 was ruled.

Complaint received	**7 May 2015**
Case completed	**24 July 2015**