CASE AUTH/1890/9/06

CONTRACT REPRESENTATIVE v SERVIER

Representative call rates

A contract representative complained about the call rates set by Servier. The complainant alleged that in September representatives had been asked to see target GPs three times before Christmas but many representatives had less than 50 target doctors and had been requested to see some GPs up to six times before Christmas. The complainant considered that this was highly unreasonable and in breach of the Code as representatives were only allowed three unsolicited calls a year and most target doctors would have already been seen once or twice this year.

The Panel noted that supplementary information to the Code stated that the number of calls made on a doctor or other prescriber each year should not normally 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.

The Panel noted that on Friday, 15 September, the contract representative agency emailed those of its representatives who did not have 50 target GPs in their territory. Representatives were told that territories with 50 target GPs would need an average call frequency of three in order to achieve one of the key deliverables for the sales project but as their territory had less than 50 targets they would 'be required to see them at increased frequency'. On Thursday, 21 September, after some discussion with Servier, the agency contacted its sales managers to tell them that more doctors would be added to target lists so that overcalling would not be necessary. The Panel was concerned that no written instructions in this regard appeared to have been sent to the field force thus retracting the need for representatives to call on doctors 'at increased frequency'. Notwithstanding any further instructions, the Panel considered that the email sent on 15 September advocated a course of action which was likely to breach the Code. A breach of the Code was ruled.

The Panel noted that there was no evidence that overcalling had actually occurred. No breach was ruled in that regard. A ruling of a breach of Clause 2 of the Code was a sign of particular censure and was reserved for such circumstances. The Panel did not consider that the matter was sufficiently serious to warrant such a ruling.

COMPLAINT

A contract representative working for Servier Laboratories Ltd alleged that in September representatives had been asked to see target GPs three times before Christmas but many representatives had less than 50 target doctors and had been requested to see some GPs up to six times before Christmas. The complainant considered that this was highly unreasonable and in breach of the Code as representatives were only allowed three unsolicited calls a year and most target doctors would have already been seen once or twice this year.

When writing to Servier, the Authority asked it to respond in relation to Clauses 2, 15.4 and 15.9 of the Code.

RESPONSE

Servier stated that in early September 2006 it agreed to purchase detail consultations from a contract representative agency to be filled by contract representatives ideally before 31 December 2006. Each contract representative was to be given a target list of GPs and would be expected to deliver 75% of the expected calls on these targets. There was no overlap between these targets and any GPs targeted by Servier representatives. Of the target list only 73% were indicated by the agency to have the potential or would possibly be willing to see representatives and would therefore be included in the targeting exercise. Of these, 58% had previously been seen by the agency's sales force (pro-actively, at meetings and at the request of the doctor) in the 12 months to September at an average frequency of 2.17, of these 30% were anticipated to have been proactive.

Servier explained that the contract with the agency was for a number contacts of which it was anticipated that 75% would be on target GPs. These contacts were to be delivered by the contract representatives on 50 targets each. This equated to 3 contacts per target on average. The agency anticipated that 30% of these contacts would occur at group meetings of which two out of every three would request further information creating further contacts. This would leave a proactive average contract rate in the 4 month period of just less than 1. Details were provided.

Servier noted that the contacts required from the agency were to be averaged over the target group and not a specific number per target GP.

Servier submitted that it was thus clear that its contract with the agency did not require or advocate breaching the Code. Servier was confident that there had not been a breach of either Clause 15.2 or 15.9.

During a targeting exercise the agency established that ten of its territories had less than the required number of target doctors. The agency asked Servier for direction on this on 13 September.

On the 15 September the agency emailed the affected representatives and suggested that an increased frequency could be one proposal to make up the missing contacts. Servier noted that this was not an instruction. The attached email below this email outlined the targeting process to be carried out by the representatives. This activity was to start on 15 September and be completed at midnight on 18 September. Thus without knowing the actual target lists per territory and without the requested instruction from Servier, the agency was not in a

position to instruct overcalling as alleged. The proposal in the email to the affected representatives was an attempt to acknowledge that some representatives, on commencing the targeting exercise, might be concerned about their lack of targets and that this was being worked on by the agency. Thus a breach of Clause 15.9 did not occur at this time.

Once the targeting had been completed and assessed, the agency emailed Servier with a proposal (not as yet communicated to the representatives) that territories with less than fifty targets be incentivised to overcall. On 21 September in the morning a telephone message was left at the agency to contact Servier urgently to discuss the proposal. At 2.41pm on 21 September Servier told the agency that the proposal was unacceptable and that Servier would increase the target number in these territories to ensure no overcalling. In addition a new incentive scheme was proposed that ensured that overcalling was actively de-incentivised. The details of this were confirmed in a further telephone call at 16.20 on the same day. In between these two calls the agency telephoned its sales managers to tell them that more doctors would be added to the target lists of those affected. At no time did Servier or the agency require representatives to overcall on GPs and thus no breach of Clause 15.9 had occurred. As a result of this, no representative could have overcalled in the six days (including the weekend) where any misinterpretation of information was viewed as an instruction to overcall. Thus no breach of Clause 15.2 had occurred.

Servier provided a copy of a presentation on GP targeting given to the primary care representatives in late September which related to the 12-month period from October 2006. On slide 6 of this presentation the representatives were told to ensure that activity was in line with the Code and this was reinforced in slide 12. Slide 7 outlined the expected number of contacts on each doctor. Each doctor might be on the target list for 2 and sometimes 3 representatives. Past experience of primary care representatives' activity at Servier had suggested that no more than 50% of all contacts were proactive with the rest being either 1:1 requested call backs or contacts at meetings. This therefore did not encourage the representatives to overcall on this group of prescribers and therefore there had been no breach of either Clause 15.2 or Clause 15.9 of the Code.

The presentation given in late September 2006 outlined the expected call rates for primary care representatives. This outlined the expected activity for the 4-month period from October 2006 to the end of January 2007. There were 3 teams of representatives. The reference provided represented the expected activity including proactive calls, requested call backs and meetings. Each doctor might have more than one representative calling on them. In addition, where a GP was on more than one target list a representative would be expected to discuss more than one product in a single call. In light of this and the expected proportion of calls to be proactive, Servier had not briefed the representatives to breach the Code. There had been no breach of Clause 15.9 of the Code.

The secondary care representatives were split into two teams; 'Endocrine' and 'Cardiovascular'. The two teams were briefed differently but both briefings were contained in a presentation given at the end of September 2006. The cardiovascular representatives were asked to have between two and three contacts over the 4-month period between October 2006 and the end of January 2007. In Servier's experience about half of these calls would be group detail or speaker meetings. Another quarter would be requested call backs. The high degree of call back was anticipated due to the post-launch period of one of the key products and the relative lack of knowledge of the clinical data.

The endocrine representatives were asked to have between 2 and 4 contacts over the period from October to the end of January 2007. These contacts would be a mixture of proactive 1:1 calls, meetings and call backs. As above Servier anticipated at least half of these calls would be group detail or speaker meetings with another quarter as call backs. The increased number of contacts mentioned in the brief reflected the fact that a number of presentations would be made to formulary committees due to the stage in the life cycle of the product. It was anticipated that a large number of call backs would arise from these as well as group presentations. Servier considered that there had been no breach of the Code in any of these briefings.

Servier did not consider that any activity described above either with the contract sales team or with the representatives' briefing constituted bringing discredit upon or reducing confidence in the pharmaceutical industry. The company did not therefore consider that there had been a breach of Clause 2 of the Code.

PANEL RULING

The Panel noted that under the Code, Servier was responsible for the activities which the contract representative agency carried out on its behalf.

The supplementary information to Clause 15.4 stated that the number of calls made on a doctor or other prescriber each year should not normally exceed 3 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.

The Panel noted that on Friday, 15 September 2006 the agency emailed those of its representatives who did not have 50 target GPs in their territory. Representatives were told that territories with 50 target GPs would need an average call frequency of 3 in order to achieve one of the key deliverables for the sales project but as their territory had less than 50 targets they would 'be required to see them at increased frequency'. On Thursday, 21 September, after some discussion with Servier, the agency contacted its sales managers to tell them that more doctors would be added to target lists so that overcalling would not be necessary. The Panel was concerned that no written instructions in this regard appeared to have been sent to the field force thus retracting the need for representatives to call on doctors 'at increased frequency'. Notwithstanding

any further instructions, the Panel considered that the email sent on 15 September advocated a course of action which was likely to breach the Code. A breach of Clause 15.9 was ruled.

The Panel noted that there was no evidence that overcalling had actually occurred. No breach of Clause 15.4 was ruled.

A ruling of a breach of Clause 2 of the Code was a sign of particular censure and was reserved for such circumstances. The Panel did not consider that the matter was sufficiently serious to warrant such a ruling.

Complaint received	**20 September 2006**
Case completed	**24 November 2006**