CASE AUTH/3252/10/19

COMPLAINANT v LILLY

Alleged promotion to the public

An individual who described him/herself as a concerned UK health professional complained about Eli Lilly & Company Limited's diabetes website (lillydiabetes.co.uk).

The complainant provided a screenshot of what looked like the homepage for the website and noted that the reader was presented with two options – to declare that he/she was a health professional in the UK or that he/she was a patient in the UK; there was nothing on the website for the general public. The complainant alleged that that lack of material would drive people to either one of the two parts of the website and thus would result in promotion to the general public.

The detailed response from Lilly is given below.

The Panel noted that the Code prohibited the advertising of prescription only medicines to the public. Information supplied directly or indirectly to the public had to be factual and presented in a balanced way. It must not raise unfounded hopes of successful treatment or mislead with respect to the safety of the product and statements must not be made for the purpose of encouraging members of the public to ask their doctor to prescribe a specific prescription only medicine. The Panel also noted the reference to a library resource in the supplementary information to the Code. Lilly had not made any submission in this regard.

The Panel noted other relevant supplementary information that unless access to promotional material about prescription only medicines was limited to health professionals and other relevant decision makers, a pharmaceutical company website must provide information for the public as well as promotion to health professionals with the sections for each target audience clearly separated and the intended audience identified. This was to avoid the public needing to access material for health professionals unless they chose to.

The Panel noted that the Code and its supplementary information did not mention material for patients that had been prescribed a specific medicine. It was an established principle that companies could provide information about a specific medicine to patients for whom the prescribing decision had already been made provided that such information complied with the Code. There were differing uses of the term 'patient' by pharmaceutical companies: sometimes it was used to mean a person receiving any medical treatment and sometimes it meant a person for whom the prescribing decision for a specific medicine had been made. It was important that companies identified the intended audience. The Panel noted that all patients however defined, were also ultimately members of the public. It was an established principle that material directed at patients for whom the prescribing decision had been made should not be accessible by

the general public, including patients in the broader sense of that term unless it was suitable for the general public. Thus, in the Panel's view, open access material on a website directed at patients for whom a specific medicine had been prescribed should be suitable for the general public.

The Panel noted that the welcome page of the lillydiabetes.co.uk website provided by the complainant asked the reader to choose between 'I am a health professional in the UK' and 'I am a patient in the UK' in order to be provided with the most appropriate information. If a reader stated that they were a health professional, he/she was taken to a section for UK healthcare professionals only which contained information on Lilly's diabetes products and devices.

Below the 'I am a patient in the UK' selection, the reader was told 'Within this website you will find information and resources about diabetes treatments' and was taken to a page titled 'About Lilly Diabetes'.

The webpage 'About Lilly Diabetes' provided information with regard to Lilly and its involvement with diabetes. The Panel noted that this was followed by an invitation to select from the nine diabetes products listed in a grid format by prominent brand logo and non-proprietary name, to learn more about each one and included links to instructions for use and the patient information leaflet for each. The webpage also listed the nine Lilly diabetes products in column format by brand and non-proprietary name on the left-hand side. The Panel noted Lilly's submission that before accessing information on a specific product, readers were asked to confirm that they had already been prescribed that product. The Panel noted that this appeared to be what happened if the 'learn more' button below each product logo was selected. If the reader confirmed that he/she had not already been prescribed the product, they were redirected to the Lilly UK corporate website homepage. They were diverted to specific medicine patient guides and similar material if they selected yes. If the link to the instructions for use or patient leaflet was selected, readers were advised that they were leaving the lillydiabetes.co.uk website and were redirected to the product's patient information leaflet on the eMC website.

The Panel noted, however, that the initial webpage, 'About Lilly Diabetes', to which readers were directed having declared that they were a UK patient, included all of Lilly's diabetes medicines by brand name and prominent logo, non-proprietary name, and formulation within the context of diabetes. The Panel further noted that the opening paragraph of this webpage referred to Lilly being a global leader in diabetes care and it striving to make life better for people living with diabetes. The Panel considered that given the combination of the medicine name particularly by prominent brand logo within a webpage dedicated to diabetes and its treatment, the promotional language above and the open access link for materials which Lilly considered suitable for patients who had been prescribed a specific product meant that the webpages in question promoted prescription only medicines to the public as alleged. A breach of the Code was ruled.

In the Panel's view, the supplementary information to the Code referred to the separation of promotional material intended for health professionals and/or other relevant decision makers from material intended for the general public. The Panel noted that it was not clear from the initial declaration that 'I am a patient in the UK' or the description of what information would be seen if that option was selected that it was referring to patients that

had been prescribed a specific Lilly medicine and therefore it was not unreasonable that a member of the public would select this option and would see information that was not intended for them. The Panel noted that whilst the section providing promotional information to health professionals was clearly labelled and was separated from the section containing information for patients, which according to Lilly was intended for patients who had been prescribed a specific Lilly medicine, there was no information for the general public as required by the Code and a breach was ruled.

Noting its rulings above, the Panel considered that high standards had not been maintained and a breach of the Code was ruled.

The Panel noted its rulings and comments above but did not consider that the particular circumstances of this case were such as to warrant a breach of Clause 2 which was a sign of particular censure. No breach of that clause was ruled.

An individual who described him/herself as a concerned UK health professional complained about Eli Lilly & Company Limited's diabetes website (lillydiabetes.co.uk).

COMPLAINT

The complainant provided a screenshot of what looked like the homepage for the website and noted that the reader was presented with two options – to declare that he/she was a health professional in the UK or that he/she was a patient in the UK; there was nothing on the website for the general public. The complainant alleged that that lack of material would drive people to either one of the two parts of the website and thus would result in promotion to the general public.

When writing to Lilly, the Authority asked it to consider the requirements of Clauses 2, 9.1, 26.1 and 28.1 of the Code.

RESPONSE

Lilly noted that the complaint was that the absence of a section tailored specifically for the general public on Lilly's diabetes website constituted promotion to the public. The complainant did not refer to any specific content, so Lilly stated that it was limited to that point of principle.

Lilly noted that in Case AUTH/2436/9/11 the Panel decided that Shire's website complied with the Code. That website contained two sections, one for health professionals and one for patients, and the Panel decided that that was sufficient to meet the requirements of the Code. Lilly's diabetes website was set up in identical fashion, with a promotional section for health professionals and a section for patients. As the screenshot from the complainant demonstrated, each target audience was clearly signposted.

Clause 28.1 of the Code required companies that provided a promotional section on their websites to also provide a section for those members of the public who needed to access similar information. Case precedent supported Lilly's view that 'need' must refer to patients, carers and family members rather than to imply a duty to inform the world at large.

As in Case AUTH/3252/10/19, visitors to lillydiabetes.co.uk were immediately required to state whether they were health professionals or patients. If they stated that they were patients, they

were taken to a section containing information on products relevant to their treatment. Before accessing information on the product relevant to them, visitors were asked again to confirm that they had already been prescribed the product. If they had not already been prescribed the product, they were redirected to the Lilly UK corporate homepage.

Clause 26.1 of the Code prohibited companies from promoting prescription only medicines to the public. According to Lilly, case precedent again supported Lilly's view that the provision of information in this way did not constitute an advertisement to the public. Patients accessing the information were not being encouraged to seek a prescription which they already had.

For the reasons set out above, Lilly considered that the provision of information on its website was consistent with Clauses 28.1, 26.1, 9.1 and 2 of the Code.

PANEL RULING

The Panel noted that Clause 26.1 prohibited the advertising of prescription only medicines to the public. Clause 26.2 permitted information to be supplied directly or indirectly to the public but such information had to be factual and presented in a balanced way. It must not raise unfounded hopes of successful treatment or mislead with respect to the safety of the product and statements must not be made for the purpose of encouraging members of the public to ask their doctor to prescribe a specific prescription only medicine. The Panel also noted the reference to a library resource in the supplementary information to Clause 26.2. Lilly had not made any submission in this regard.

The Panel noted that Clause 28 covered the Internet and other digital platforms, its supplementary information, Access, stated that unless access to promotional material about prescription only medicines was limited to health professionals and other relevant decision makers, a pharmaceutical company website or a company sponsored website must provide information for the public as well as promotion to health professionals with the sections for each target audience clearly separated and the intended audience identified. This was to avoid the public needing to access material for health professionals unless they chose to.

The Panel noted that Clause 28.1 and its supplementary information did not mention material for patients who had been prescribed a specific medicine. The Panel noted that it was an established principle that companies could provide information about a specific medicine to patients for whom the prescribing decision had already been made provided that such information complied with the relevant requirements of the Code. In this regard the Panel noted the differing uses of the term 'patient' by pharmaceutical companies: sometimes it was referred to in a broad sense including a person receiving any medical treatment and sometimes in the narrow sense of a patient for whom the prescribing decision for a specific medicine had been made. It was important that companies identified the intended audience given the requirements of Clauses 26.1, 26.2, 26.3, 28.1 and their supplementary information. The Panel noted that patients in both the broader and narrow sense of the term were also ultimately members of the public. It was an established principle that material directed at patients for whom the prescribing decision had been made should not be accessible by the general public, including patients in the broader sense of that term unless, it was suitable for the general public. Thus, in the Panel's view, open access material on a website directed at patients for whom a specific medicine had been prescribed should be suitable for the general public.

The Panel noted that Lilly had referred to Case AUTH/2436/9/11. The Panel noted that the present case was different to Case AUTH/2436/9/11. In that case it was alleged that the part of the website 'allocated for the use of health professionals was easily accessible by members of the public' and that the configuration of the website allowed easy access to all promotional claims. Case AUTH/2436/9/11 did not consider whether the material within the patient, carer or family member section of that website was promotional nor the meaning of the term 'patient'.

The Panel noted that the welcome page of the lillydiabetes.co.uk website provided by the complainant asked the reader to choose between 'I am a health professional in the UK' and 'I am a patient in the UK' in order to be provided with the most appropriate information. If a reader stated that they were a health professional, he/she was taken to a section for UK healthcare professionals only which contained comprehensive information on Lilly's diabetes products and devices.

Below the 'I am a patient in the UK' selection, the reader was told 'Within this website you will find information and resources about diabetes treatments' and was taken to a page titled 'About Lilly Diabetes'.

The webpage 'About Lilly Diabetes' provided information with regards to Lilly and its involvement with diabetes and its 'continued determination to provide real solutions - from medicines and technologies to support programs and more'. It also included information on the Boehringer Ingelheim and Lilly Diabetes Alliance. The Panel noted that this was followed by an invitation to select from the nine diabetes products listed in a grid format by prominent brand logo and non-proprietary name, to learn more information about each one and included links to instructions for use and the patient information leaflet for each. The webpage in question also listed nine Lilly diabetes products in column format by brand and non-proprietary name on the left-hand side. The Panel noted Lilly's submission that before accessing information on a specific product, readers were asked to confirm that they had already been prescribed that product. The Panel noted that this appeared to be what happened if the 'learn more' button below each product logo was selected. If the reader confirmed that he/she had not already been prescribed the product, they were redirected to the Lilly UK corporate website homepage. They were diverted to specific medicine patient guides and similar material if they selected yes. If the link to the instructions for use or patient leaflet was selected, readers were advised that they were leaving the lillydiabetes.co.uk website and were redirected to the product's patient information leaflet on the eMC website.

The Panel noted, however, that the initial webpage, 'About Lilly Diabetes', to which readers were directed having declared that they were a UK patient, included all of Lilly's diabetes medicines by brand name and prominent logo, non-proprietary name, and formulation within the context of diabetes. The Panel further noted that the opening paragraph of this webpage referred to Lilly being a global leader in diabetes care since 1923 and it striving to make life better for people living with diabetes through research, collaboration and quality manufacturing and offering a wide range of therapies and possessing a continued determination to provide real solutions – from medicines and technologies. The Panel considered that given the combination of the medicine name particularly by prominent brand logo within a webpage dedicated to diabetes and its treatment, the promotional language above and the open access link for materials which Lilly considered suitable for patients who had been prescribed a specific product meant that the webpages in question promoted prescription only medicines to the public as alleged. A breach of Clause 26.1 was ruled.

In the Panel's view, the supplementary information to Clause 28.1 was referring to the separation of promotional material intended for health professionals and/or other relevant decision makers from material intended for the general public. The Panel noted that it was not clear from the initial declaration that 'I am a patient in the UK' or the description of what information would be seen if that option was selected that it was referring to patients that had been prescribed a specific Lilly medicine and therefore it was not unreasonable that a member of the public would select this option and would see information that was not intended for them. The Panel noted that whilst the section providing promotional information to health professionals was clearly labelled and was separated from the section containing information for patients, which according to Lilly was intended for patients who had been prescribed a specific Lilly medicine, there was no information for the general public as required by Clause 28.1 and a breach was ruled.

Noting its rulings above, the Panel considered that high standards had not been maintained and a breach of Clause 9.1 was ruled.

The Panel noted its rulings and comments above but did not consider that the particular circumstances of this case were such as to warrant a breach of Clause 2 which was a sign of particular censure. No breach of Clause 2 was ruled.

Complaint received **7 October 2019**

Case completed **7 February 2020**