

COMPLAINANT v GlaxoSmithKline (GSK)

Allegations about a LinkedIn post

CASE SUMMARY

This case was in relation to a LinkedIn post by a global leader of GSK containing a video recording during which they mentioned the GSK medication, Arexvy.

The outcome under the 2021 Code was:

No Breach of Clause 2	Requirement that activities or materials must not bring discredit upon, or reduce confidence in, the pharmaceutical industry
No Breach of Clause 5.1	Requirement to maintain high standards at all times
No Breach of Clause 26.1	Requirement to not advertise prescription only medicines to the public
No Breach of Clause 26.2	Requirement that information about prescription only medicines which is made available to the public must be factual, balanced, must not raise unfounded hopes of successful treatment or encourage the public to ask their health professional to prescribe a specific prescription only medicine

**This summary is not intended to be read in isolation.
For full details, please see the full case report below.**

FULL CASE REPORT

A complaint was received from an anonymous, non-contactable complainant about GlaxoSmithKline.

COMPLAINT

The complaint wording is reproduced below with some typographical errors corrected:

“I wish to understand how the [named individual] of GSK is allowed to mention a product name directly in a social media post that would be and is visible to members of the public. This is clearly a breach of the code in promoting to the public [weblink provided].”

When writing to GSK, the PMCPA asked it to consider the requirements of Clauses 26.1, 26.2, 5.1 and 2 of the Code.

GSK'S RESPONSE

"GSK were extremely disappointed to receive the letter dated 6th February 2024 in which the PMCPA informed us of a complaint from an anonymous pharmaceutical employee regarding the above. GSK note that the PMCPA has asked us to consider Clauses 26.1, 26.2, 5.1 and 2 of the ABPI code practice (the code).

GSK takes its responsibility of abiding by the letter and the spirit of the code and all other relevant UK rules and regulations very seriously. Following the complaint, GSK reviewed the post alleged to be in breach of the code and subsequently refute a breach of Clause 26.1, 26.2, 5.1 and 2. The reasons for this are detailed below.

Before addressing each Clause in turn, GSK wish to state their firm belief that this case should not go before the Panel, because the pharmaceutical company of which the complainant is an employee have not informed GSK of the intent to submit a formal complaint, nor offered intercompany dialogue in an to attempt to resolve the matter, as required of them according to paragraph 5.3 (Complaints Procedure) of the PMCPA Constitution and Procedure.

GSK note that the complainant has identified themselves as a pharmaceutical company employee and that furthermore, they have confirmed that they do not have any commercial, financial, or other interest in the matter of complaint or GlaxoSmithKline, such as being an employee or ex-employee. Whilst GSK acknowledge the PMCPA position that anonymous complaints from pharmaceutical employees may be an important route for the operation of self-regulation to provide anonymity when a current or past company employee feels unable to use company whistleblowing processes, GSK assert that this is not the case in this complaint. The complainant has made it clear that they are not a current or former employee of GSK and that they have no other interest, other than being the employee of another pharmaceutical company.

GSK believe that it is a well-established principle in the operation of the code, that companies are responsible for the conduct of their employees when such conduct is related to their work, regardless of whether the company are aware of such conduct, or the conduct is contrary to company instructions. GSK believe that this principle is the foundation of why companies are held accountable for an employee's activity on private social media accounts when such conduct falls within the scope of the code. GSK contends that for self-regulation to be administered in a fair and proportionate manner, the same principle should be equitably applied in all situations, including this case. The company employee responsible for the complaint has not given any reason to be considered a 'whistleblower' requiring a route to complain anonymously, and because working with the code is clearly related to their employment, the employee's company should be accountable for managing the complaint.

This requires them to attempt to resolve the matter with GSK directly through intercompany dialogue if the company believe there to be a breach of the code. Only following un-successful attempts at intercompany dialogue at a senior level, should the complaint be sent to the PMCPA, signed, or authorized in writing by the company's managing director, chief executive or equivalent in accordance with paragraph 5.3 of the PMCPA Constitution and Procedure.

GSK are concerned that allowing this complaint to proceed to the Panel would encourage other pharmaceutical company employees to also circumvent inter-company dialogue, a critical element of self-regulation. It also ensures potential complaints are discussed within the complainant's company to determine a position on whether the company believe there has been a possible breach, or whether the individual may be misunderstanding the code or lack the expertise to interpret it correctly. Having senior company personnel required to be involved in intercompany dialogue as per paragraph 5.3 of the Constitution and Procedure, reduces the risk of unnecessary or vexatious complaints. The ability of the Director to refuse to accept a complaint if there has not been an offer of intercompany dialogue at a senior level and a notification that they were going to make a formal complaint was introduced over a decade ago for this very reason.

GSK Acknowledge that a historical consideration of the then Code of Practice Committee and ABPI Board of Management exists, where it was decided that private complaints from pharmaceutical employees should be accepted and that to avoid circumventing intercompany dialogue, the employing company would be named in the report and the complainant, being so advised, would have the opportunity to withdraw the complaint (e.g. 1489/7/003 and 2933/2/17). However, GSK believe that this consideration is not applicable in this case. Firstly, this consideration is more than 20 years old and before the now-clear position taken by the PMCPA on the responsibility that companies take for the action of employees, especially linked with social media cases. Secondly, the complainant did not provide details of their employing company and is not contactable, making it impossible to apply the approach described in order to avoid circumventing intercompany dialogue. It is important the Authority are seen to maintain the value of intercompany dialogue that allows companies the opportunity to resolve issues without recourse to the Authority and therefore help ensure the Authority's time, effort and expertise can be concentrated on areas that cannot be more easily resolved.

In summary, GSK assert that there is no reason the complainant, as a pharmaceutical company employee unrelated to GSK and who is not 'whistleblowing,' should not follow the requirements of the PMCPA Constitution and Procedure. This clearly requires them to first (unsuccessfully) attempt intercompany dialogue before submitting a formal complaint, signed or authorised by the company's managing director or equivalent, to the PMCPA. GSK therefore believe that this case cannot be put before the panel by the case preparation manager whilst adhering to the PMCPA Constitution and Procedure.

Background to the complaint

The complaint itself is narrow with little detail provided by the complainant: *'I wish to understand how [a global leader] of GSK is allowed to mention a product name directly in a social media post that would be and is visible to members of the public. This is clearly a breach of the code in promoting to the public.'* Which is followed by the provision of the following link: [weblink provided].

GSK note that the complainant does not specifically state the brand name mentioned which they believe in breach of the code. On review of the video, the only brand name mention is Arexvy, and so GSK assume that this is the subject of the complaint. The complainant provides no evidence as to exactly why they believe the LinkedIn post is promoting to the public, or, for example, why it misleads as to the safety of the product or

raises unfounded hopes of successful treatment. GSK note that the burden of proof lies with the complainant to show that there has been a breach of the code.

Nonetheless, GSK do not believe that the LinkedIn post subject to the complaint is in breach of the code, and in the interest of transparency, provide below the detailed rationale for this regarding each of the cited clauses.

Background to the LinkedIn post

This was posted to [named individual's] LinkedIn account on the 31st January 2024, to coincide with the stock market and media announcements of GSK's 2023 quarter 4 and full year results.

As can be seen in the screen shot provided to GSK by the PMCPA, and via the link above, [named individual] is clearly identified at the top of the screen as [a global leader], GSK and immediately below their name and title appears some text, which is reproduced here:

'Today I'm delighted to share our 2023 full year results – a year with lots to be proud of. We've delivered strong performance and continued progress in our pipeline.'

'In 2024, we expect to deliver another year of meaningful sales and earnings growth and are also upgrading our longer-term outlooks as we continue to get ahead of disease for patients, shareholders and each other.'

'Media and investors can watch this short clip for more.'

Below the text is a screen containing a short, 52 second video clip. The video shows [named individual] standing in front of an office style background (this is in fact the interior of the GSK Headquarters). At the very start of the video there is an animated text box which appears clearly in the centre of the lower portion of the screen stating [named individual's] name and title as [named role]. There are no images, charts or diagrams presented, other than subtitles of their spoken content to aid accessibility, and a closing animation at the end of the video depicting the GSK corporate Logo with the strap line 'Ahead Together.' There are no links to any other content in the video or the written post and there are no hashtags that might highlight the post or its content to any wider, inappropriate audience beyond those who follow [named individual] as [named role] of GSK.

To aid the PMCPA review of GSK's response, the transcript of the short-spoken content is reproduced here:

'GSK delivered excellent performance in 2023, with clear highlights, being the exceptional launch of Arexvy and continued progress in our pipeline. We are now planning for at least 12 major launches from 2025, with new vaccines and specialty medicines for infectious diseases, HIV respiratory and oncology. As a result of this progress and momentum, we expect to deliver another year of meaningful sales and earnings growth in 2024 and we are upgrading our growth outlooks for 2026 and 2031. We remain focused on delivering this potential and more to prevent and change the course of disease for millions of people.'

GSK contend that [named individual], as [named role], is expected to take part in corporate announcements and the like, which are material to the performance of the company and that such posts should not constitute promotion of a prescription only medicine either directly or in-directly. Investors and business media routinely follow the social media activity of key corporate officers of the companies in which they have a financial interest, and it is therefore reasonable that such corporate officers would include important business announcements on their LinkedIn account.

As can be seen, the post and the video portray important information about the financial performance of GSK in 2023 and how this, alongside the expected company pipeline and future launches from 2025 onwards, contributes to GSK's forecast of meaningful financial performance through sales and earnings growth, and upgrading financial growth outlooks for 2026 and 2031.

The word 'Arexvy', the use of which GSK believe to be the subject of this complaint, is the brand name for a GSK vaccination which launched in 2023 and the word is used only once, 7 seconds into the video. It is used in the context of the important financial contribution the product has made to the 2023 full year performance. It is of note that in 2023, Arexvy sales were £1.2 billion. As a new product launching in the reference year, this is a significant performance and is an important contribution to both the in-year performance and the positive financial outlook for the company.

GSK would like to point out that alongside the sole use of the word 'Arexvy' in this context, there is no mention of any indication, disease, mode of action, or any reference to how and when the product may be used. It would not be clear to any reader, who is not already aware of the brand name, whether the product is a vaccine or specialty medicine in one of GSK's core areas of Infectious Diseases, HIV, Respiratory or Oncology.

In line with the PMCPA's own social media guidance that states *'informal guidance is that, in general, the combination of a product name and indication is likely to be seen as promotional'*, GSK made sure that the indication was not included with the brand name.

In this regard, GSK do not see how there is any possibility that the simple mention of the brand name, in this context and in the absence of any other information about the product might encourage the administration, consumption, prescription, purchase, recommendation, sale, supply or use of Arexvy and therefore believe that it can in no way constitute promotion of the product and can therefore not constitute promotion to the public. Furthermore, GSK do not see how the mention of Arexvy in this context and with no further information about the product, may raise unfounded hopes of successful treatment nor encourage a member of the public to ask their health professional to prescribe a specific prescription only medicine.

Clause 26.1

Clause 26.1 states *that 'Prescription only medicines must not be advertised to the public.'*

GSK note the code definition of promotion: *'any activity undertaken by a pharmaceutical company...which promotes the administration, consumption, prescription, purchase, recommendation, sale, supply or use of its medicines'*.

GSK also note paragraph 3.3 of the MHRA Blue Guide to Advertising and Promotion of Medicines in the UK, which states that *'For the purposes of the Regulations, an advertisement is anything or any activity which is intended to encourage prescription or supply by healthcare professionals and use of medicines by the general public, generally by means of highlighting qualities of the medicine ("product claims")'*.

As GSK have outlined in the background information above, the mention of the brand name 'Arexvy' in the LinkedIn post subject to this complaint is made in the context of financial performance. No additional information is provided about the medicine, indication, disease, mode of action, or any reference to how and when the product may be used. Furthermore, no claims are made which highlight its qualities. GSK do not believe that it is possible for the use of the brand name alone in this specific context to promote the administration, consumption, prescription, purchase, recommendation, sale, supply or use of the product.

The importance of the use of the brand name in this instance is that it is associated with investor expectations about both in year and forecast performance. Investors follow brand names for information about their performance and Arexvy was, and is an important brand in terms of company financial performance. Even if this were not the case, GSK believes that the simple mention of a brand name, without any other information, rarely constitutes promotion to the public - one exception being when a brand name is well known to be associated with an indication, such as in the case of Botox

In this regard, GSK contend that in this case, the product has not been promoted. It follows that it cannot have been promoted to the public and is therefore not in breach of Clause 26.1.

Clause 26.2

Clause 26.2 of the code states that *'Information about prescription only medicines which is made available to the public either directly or indirectly must be factual and presented in a balanced way. It must not raise unfounded hopes of successful treatment or be misleading with respect to the safety of the product. Statements must not be made for the purpose of encouraging members of the public to ask their health professional to prescribe a specific prescription only medicine'*

As stated in the background paragraph above, alongside the sole use of the word 'Arexvy,' there is no mention of any indication, disease, mode of action, or any reference to how and when the product may be used, and it is not a brand name that is well known to be associated with a given indication. It would not be clear to any reader, who is not already fully aware of the brand name, whether the product is a vaccine or specialty medicine in one of GSK's core areas of Infectious Diseases, HIV, Respiratory or Oncology.

GSK do not see how there is any possibility, in the context of an announcement about the financial performance of the company and in the absence of any other information about the product, that the simple mention of the brand name might possibly raise unfounded hopes of successful treatment, mislead as to the safety of the product or encourage a

member of the public to ask their health professional to prescribe the specific prescription only medicine.

GSK note that Clause 26.2 states that information about prescription only medicines must be factual and presented in a balanced way. As no actual information about the medicine is presented, other than to refer to a successful financial performance, GSK believes that this aspect of the Clause is not relevant. However, GSK contend that the information provided about the financial contribution of the product is indeed factual and balanced.

The s.i. to Clause 26.2 specifically refers to Financial Information. This states that:

'Information made available in order to inform shareholders, the Stock Exchange and the like by way of annual reports and announcements etc may relate to both existing medicines and those not yet marketed. Such information must be non-promotional, accurate, presented in a factual and balanced way and not misleading, taking into account the information needs of the target audience. Business press releases should identify the business importance of the information and should only be aimed at the intended financial and investment audience.'

This s.i. is directly relevant to the LinkedIn post in question. The LinkedIn post was made on [named individual's] account with the intent of providing information to investors and media about the financial performance of the company. [Named individual] has approximately 114K followers on their LinkedIn account and whilst it is not possible to easily identify how many are from within the UK, LinkedIn itself denotes [named individual] as a **'Top Voice'**. LinkedIn states that *'Top Voices is an invitation-only program featuring a global group of experts on LinkedIn covering a range of topics across the professional world, helping members uncover valuable knowledge relevant to them.'* [Weblink provided]

As such, [named individual] and their LinkedIn account is acknowledged as a globally relevant source of business information, in the context of their role as [named role] of GSK.

It is worth noting that investors and potential investors do not just include financial professionals. Investment in GSK is a part of many pensions and investment funds and a broad audience would have good reason to be interested in the financial performance. In the written post itself, it is clearly stated that [named individual] is acting as [named role] of GSK and makes it abundantly clear in the first line of text that the reason for the post is to announce information about the 2023 full year results of GSK. GSK do not believe that any reader would read beyond this introduction unless specifically interested in the financial information. There is no mention of any brand name or product in the written part of the post. At the end of the written post, investor and media audience are invited to view the video for more information. It is in this video, aimed clearly at investor and media audience, that the brand name Arexvy is mentioned, with no other information about the medicine itself.

As stated earlier, the importance of the use of the brand name is that it is associated with investor expectations about both in year and forecast performance. Investors follow brand names. Even if this were not the case, for the reasons set out in detail above, GSK believes that the simple mention of a brand name, without any other information, rarely constitutes promotion to the public or the provision of information in breach of Clause

26.2. - one exception being when a brand name is well known to be associated with an indication, such as in the case of Botox

GSK believes that how this post has been executed is also consistent with the PMCPA's 2023 Social Media Guidance. Recognising that pharmaceutical companies will want to use social media to inform investors or prospective investors and/or appropriate journalists of newsworthy information affecting company investor outlook, a number safeguards are recommended. GSK's view is that it has adhered to these. The information provided relates to the company's financial results, which is both newsworthy and wholly relevant for a [named role] to post. The material has also been appropriately tailored to the intended audience, and it is clear who the intended audience is.

Summary

For the reasons given, GSK do not believe that it is in accordance with Paragraph 5.3 of the PMCPA Constitution and Procedure for the case preparation manager in this case to proceed to take the case before the panel. GSK believe that the pharmaceutical company of which the complainant is a stated employee should approach GSK to engage in intercompany dialogue if they believe there has been a breach of the Code.

However, in the spirit of transparency, GSK have provided a response in which they assert that the provision of the information within the LinkedIn post at issue is permitted under the code and that the post was executed on a relevant channel, aimed at a global investor audience to provide information regarding the financial performance of the company. Even though a brand name is mentioned, there is no detailed information provided that could mislead as to the safety of the medicine, encourage a member of the public to seek its prescription or which falls under the PMCPA definition of promotion or the Human Medicines Regulations definition of an advertisement. As such, GSK refutes any allegation of a breach of Clause 26.1 or 26.2. Furthermore, the post was managed in such a way to be clear that it refers to financial performance before inviting investors and media to access the video. GSK therefore believe that high standards have been maintained and that no breach of 5.1 has occurred. As Clause 2 is reserved for censure when a company brings discredit upon, or reduces confidence in the pharmaceutical industry, GSK believes that there can have been no breach of Clause 2.

Given the nature of the complaint was solely focused on the mention of the brand name in the LinkedIn post, and not about any employee interaction with the post, no information about such interactions has been provided by GSK. GSK believe that such information would only be relevant to a complaint about a post being liked or shared by a GSK employee in the UK. GSK are happy to answer any questions on this topic, should this information become material to the Panel's consideration of the case."

PANEL RULING

The Panel noted that the LinkedIn post in question, was published by [named role] of GlaxoSmithKline (GSK) on 31 January 2024 to coincide with the stock market and media announcements of GSK's 2023 quarter 4, and full year financial results.

The Panel noted that the post stated 'GSK delivered excellent performance in 2023, with clear highlights, being the exceptional launch of Arexvy and continued progress in our pipeline.' GSK

submitted this is a brand name for a vaccine launched in 2023 and that the mention of the vaccine was in the context of it making an important financial contribution to GSK's performance that year.

The Panel noted that LinkedIn was different to some other social media platforms in that it was a business and employment-orientated network. LinkedIn was primarily, although not exclusively, associated with an individual's professional and current employment and interests; its application was not limited to the pharmaceutical industry or to healthcare. Whether the Code applied would be determined on a case-by-case basis, taking into account all of the circumstances including, among other things, the content, context and distribution of the material.

GSK was concerned that the complainant had complained directly to the PMCPA without intercompany dialogue as they had described themselves as a pharmaceutical company employee. Whilst this would be usual process under paragraph 5.3 of the PMCPA's Constitution and Procedure, the Panel noted that the complainant in this matter was anonymous and uncontactable and therefore, the PMCPA was unable to identify which company the complainant worked for.

Clause 1.17 of the Code defines 'promotion' as 'any activity undertaken by a pharmaceutical company or with its authority which promotes the administration, consumption, prescription, purchase, recommendation, sale, supply or use of its medicines'.

In addition, the PMCPA's informal advice, as set out in its Social Media Guidance is that, in general, the product name (brand or generic), particularly if alongside its indication, is likely to be seen as promotional, unless there are factors that can show clearly that it is not promotional. It is also an accepted principle under the ABPI Code that depending on the context, a product could be promoted with either the product name, indication, or even without its name ever being mentioned.

Clause 26.1 stated that prescription only medicines must not be advertised to the public. Clause 26.2 stated, among other things, that information about prescription only medicines which is made available to the public either directly or indirectly must not raise unfounded hopes of successful treatment. Clause 26.2 also stated that companies must not make statements for the purpose of encouraging members of the public to ask their health professional to prescribe a specific prescription only medicine.

The Panel noted the brand name of 'Arexvy' was used only once, 7 seconds into the video and there was no mention of a disease, indication, mode of action or use for the product. On the evidence before it, the Panel considered that although the post mentioned the name of a medicine and the [named individual's] profile appeared to be publicly available, the post at issue was primarily directed at media and investors to provide a financial overview of GSK's performance during that year.

In other words, it was the company, and its financial performance that was being promoted and not a prescription only medicine.

The Panel did not believe that the [named individual] had raised any unfounded hopes of successful treatment for anyone being prescribed Arexvy, nor had they made statements for the purpose of encouraging members of the public to ask their health professional to prescribe

Arexvy. On balance, based on the nature and content of the post, the Panel did not consider that the complainant had established that a prescription only medicine had been advertised to the public. **No breaches of Clauses 26.1 and 26.2 were ruled.**

Noting the comments and ruling above, the Panel therefore ruled **no breach of Clauses 5.1 and 2.**

Complaint received 2 February 2024

Case completed 26 September 2024