

## **COMPLAINANT V DAIICHI SANKYO**

### **Alleged recording of calls with health professionals by representatives**

#### **CASE SUMMARY**

This case related to a complaint that Daiichi Sankyo was covertly recording calls between its representatives and healthcare professionals. The complainant had provided no evidence that recording was taking place covertly. Daiichi Sankyo's response was that all recordings were done with the consent of those involved.

The outcome under the 2021 Code was:

<b>No Breach of Clause 5.1</b>	<b>Requirement to maintain high standards at all times</b>
<b>No Breach of Clause 15.5</b>	<b>Requirement that the telephone, text messages, email, faxes, automated calling systems, and other digital communications must not be used for promotional purposes, except with the prior permission of the recipient</b>
<b>No Breach of Clause 15.6</b>	<b>Requirement that promotional material and activities must not be disguised</b>

**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 Daiichi Sankyo UK Ltd.

#### **COMPLAINT**

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

“They're using AI technology to record health care professionals call by stating it is for rep training. I feel that is a breach and is collecting our data covertly.”

When writing to Daiichi Sankyo, the PMCPA asked it to consider the requirements of Clauses 5.1, 15.5 and 15.6 of the 2021 Code.

## **DAIICHI SANKYO'S RESPONSE**

The response from Daiichi Sankyo is reproduced below:

“Thank you for your letter dated 12<sup>th</sup> September 2023 regarding the above complaint from an unknown individual.

Daiichi Sankyo UK (DSUK) takes its obligations under the ABPI Code of Practice seriously and strives to maintain high standards and always behave responsibly and ethically.

The complainant states they have no commercial, financial or other interest in the matter of complaint or in the Company concerned, such as being an employee, ex-employee, or in a competitor? Yet in this case the complainant is described as ‘allied staff’ and is alleging that the tool at issue is ‘collecting our data covertly’.

It is therefore a reasonable assumption that the complainant is an employee concerned about collation of their personal data by DSUK. Whilst this is not the case and we consider that the evidence provided in our response demonstrates that the tool is being used appropriately and for legitimate business reasons, we do not consider that this matter falls within the scope of the Code.

### **Background Information**

The artificial intelligence (AI) technology referred to by the complainant is known as [digital tool name provided]. This digital tool (app) has been developed to support the improvement of one-to-one healthcare professional (HCP) interactions by the sales team. It is designed to focus on the quality of the interaction and identify any training needs

The digital tool, according to the suppliers of the technology,

*‘provides pharma leaders everyday visibility of the quality of the conversations taking place between their field-based teams and Health Care Professionals (HCPs)’* “This everyday visibility is provided on KPI dashboards updated daily in real-time. The data is collected using AI, rather than humans, to observe and record the conversations, which is converted into data that provides invaluable insights on campaign execution, selling skills deployment and evolution in call outcome’.

Thus, the tool can be used to provide analysis of a sales representative’s call quality and feedback via a dashboard and has the potential to highlight areas of development. The app can be used to record an interaction between a representative and a HCP, focusing predominately on the representative voice, which the app analyses, anonymises and extracts the key information used in connection with training and staff development purposes. The audio recording is securely deleted when the data extract is complete.

### **DSUK use of the AI tool**

Daiichi Sankyo UK is committed to continuous improvement, applying this principle to all aspects of our business, including the training and coaching of our sales force. With this in mind, and until recently, DSUK was piloting the use of the tool with a small group (13) of sales representatives (9 field-based and 4 remote). The pilot aimed to assess the tool in

terms of the willingness of both the DSUK representatives and HCPs to use the tool and the value of the information gained through the tool for learning and development purposes.

Before any use of the tool externally, the sales representatives and respective line managers were briefed as follows;

9<sup>th</sup> August 2023 – Sales managers briefed Face to Face, please see:  
[Enclosures provided]

21<sup>st</sup> August 2023 – Sales representatives briefed via MS Teams, please see:  
[Enclosures provided]

The briefing clearly outlined the need to gain consent from each HCP prior to any recording commencing, explaining that the recording was for training and quality control purposes. The aim at the outset was that the tool did not get in the way of high-quality interactions with HCPs. The briefing also made clear that should there be any resistance to recording the call, then the tool should not be used, and no recording should take place.

The tool was first used on the 21<sup>st</sup> of August 2023, and in total 20 calls were recorded by DSUK representatives. Consent was agreed verbally by the representative with the HCPs prior to commencing recording. It was reported by the Representatives that a total of five doctors did not consent to their call being recorded.

As of 14 September, DSUK has ceased the use of this tool.

### **Company Response**

As explained above, the use of the tool by DSUK was to analyse interactions between representatives and HCPs for coaching purposes; it was not used to promote any DSUK medicines.

The tool was not mandated and were there any resistance to the call being recorded it was not used. Permission was sought from the HCP prior to any recording. We, therefore, do not consider that Clauses 15.5 and 15.6 are relevant and deny any breach in that regard.

Before any use of the tool with HCPs, representatives were trained on its use and purpose, including the need to explain how DSUK is using the tool, and to gain consent from each HCP before any recording of an interaction is commenced. We, therefore, do not consider that DSUK has failed to maintain high standards and deny any breach of Clause 5.1 in that regard.

In terms of the use of representatives' personal data, specifically a voice recording, we do not consider that such a matter falls within the scope of the Code and Clause 5.1 is therefore not relevant.

However, as noted above, the recording is anonymised by the tool, only key words are extracted and analysed, and the audio file is securely deleted once this analysis is completed. We, therefore, do not consider that, in using this tool for a legitimate learning and

development purpose, DSUK has failed to maintain high standards and we deny any breach of Clause 5.1 in that regard.

As requested, we enclose the Privacy Notice [Enclosure provided].

## **PANEL RULING**

This case related to Daiichi Sankyo's use of artificial intelligence (AI) technology in the form of a digital tool to record calls between sales representatives and health professionals. Daiichi Sankyo submitted that consent was required from the healthcare professional (HCP) before the digital tool was used. Daiichi Sankyo's stated objective for using this tool was to analyse the call and highlight any areas of development for the sales representative.

The complainant's concern was that this was "a breach and [Daiichi Sankyo] is collecting our data covertly." The Panel noted Daiichi Sankyo's submission that it was "a reasonable assumption that the complainant is an employee concerned about collation of their personal data" and therefore they did "not consider that this matter falls within the scope of the Code."

The Panel noted the complainant had stated that they had no commercial, financial or other interest in the matter of complaint or in the Company concerned, such as being an employee, ex-employee, or a competitor, when they submitted their complaint. Clause 1.1 of the Code stated, among other things, that "this Code applies to the promotion of medicines to members of the United Kingdom (UK) health professions and to other relevant decision makers." The Panel therefore considered that the complaint was within the scope of the Code as it was in relation to a promotional activity with UK health professionals.

The Panel noted that it was the activity at issue (not who the complainant was) that determined whether the complaint was in the scope of the Code. It therefore considered that as the activity was with UK HCPs it fell within the scope of the Code.

The Panel noted Daiichi Sankyo's submission that they were using the AI tool, in a pilot to assess its use and "the willingness of both the DSUK representatives and HCPs to use the tool and the value of the information gained". The digital AI tool 'app' could "be used to record an interaction between a representative and a HCP, focusing predominately on the representative voice, which the app analyses, anonymises and extracts the key information used in connection with training and staff development purposes. The audio recording is securely deleted when the data extract is complete."

Daiichi Sankyo further submitted that the "tool was not mandated and were there any resistance to the call being recorded it was not used. Permission was sought from the HCP prior to any recording."

The Panel noted that the complainant was anonymous and non-contactable, the complainant had the burden of proving their complaint on the balance of probabilities. All complaints were judged on the evidence provided by the parties. The complainant had provided no evidence to support their allegation that Daiichi Sankyo were "collecting our data covertly" and could not be contacted for more information.

The Panel considered the lack of evidence to support the allegation the complainant had made and the submission and supporting evidence provided by Daiichi Sankyo, and ruled **no breach of Clauses 5.1, 15.5 and 15.6** of the Code.

**Complaint received**      **8 September 2023**

**Case completed**        **11 October 2024**