

**CASE AUTH/3702/10/22**

**COMPLAINANT v AMGEN**

**Allegations about an invitation to an Amgen sponsored webinar**

**CASE SUMMARY**

This case was in relation to an email invitation to a named organisation's webinar and an infographic that could be downloaded from the email, both of which had been sponsored by Amgen.

The Panel ruled a breach of the following Clause of the 2021 Code because it considered that it was not sufficiently clear at the outset that the webinar, being advertised in the email in question nor the infographic which could be downloaded from the email were sponsored by Amgen, as alleged and in addition high standards had not been maintained as the declaration was misleading:

<b>Breach of Clause 10.9</b>	<b>Failing to include a sufficiently prominent declaration of sponsorship to ensure readers are aware of the pharmaceutical companies' involvement at the outset.</b>
<b>Breach of Clause 5.1</b>	<b>Failing to maintain high standards</b>

The Panel ruled no breach of the following Clauses of the 2021 Code because it did not consider that:

- there was an allegation in relation to disguised promotion
- on the evidence before it, it had been established that the complainant had not given prior permission as required by Clause 15.5
- the circumstances warranted a ruling of a breach of Clause 2

<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>
<b>No Breach of Clause 2</b>	<b>Requirement that activities or materials must not bring discredit upon, or reduce confidence in, the pharmaceutical industry</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 contactable complainant who described themselves as a health professional and wished to remain anonymous raised concerns regarding an advertisement which they had received from a named organisation which supported primary care pharmacy professionals but appeared to have been sent on behalf of Amgen Limited.

### COMPLAINT

The complainant explained that the initial invitation looked like it was from the named organisation, and the email was titled '[independent organisation]' rather than 'Amgen'. It was only when you got to the bottom of the email you realised that, in fact, the event and contents were sponsored and organised by Amgen. The invitation stated that it was not promotional and then went on to state Amgen's products would be discussed. The complainant found this misleading and confusing.

The complainant also provided an infographic which was titled '[named organisation] BONE HEALTH MONTH OCTOBER 2022' and which was produced and approved by Amgen and not the named organisation.

The complainant noted that Clause 10 required companies to make the fact and the nature of its involvement in a meeting clear. The same rules applied to sponsored material like the infographic. It was not immediately apparent that Amgen had sponsored the webinar or the infographic. The audience should be made aware at the outset but the declaration was below the description of the webinar.

The complainant stated that, as a subscriber to [named organisation], they did not expect to receive promotional emails from the industry. The [named organisation] Privacy policy clearly stated:

- To contact you.
- To provide our services to you.
- To alert you to service upgrades, special offers, updated information and other new services.
- To disclose the information if required by law.

We will only ever use your personal information to inform you about events, services and other items to manage your membership if you become a member or subscriber of [named organisation].'

The complainant noted that the policy did not say that it would send promotional materials from third parties. Amgen should have checked the privacy policy to ensure that it was legally allowed to send members and subscribers promotional information. The infographic was neither an event, nor a service.

When writing to Amgen, the Authority asked it to consider the requirements of Clause 10.9 and, in addition, Clauses 2, 5.1, 15.5 and 15.6 of the 2021 Code.

### RESPONSE

Amgen explained that it took compliance with the ABPI Code of Practice (Code) very seriously and strove to conduct its business in a responsible, ethical and professional manner at all times.

Amgen had investigated the details of this case, including the screenshots and attachments.

## **Background**

Amgen explained that it was a gold sponsor of the [named organisation]. As a gold sponsor, Amgen received a tangible benefit from certain events throughout the year. Details of the benefits and sponsorship cost were provided.

Amgen submitted that in October 2022, the [named organisation] ran a sponsored month with weekly activities focusing on Bone Health ('Bone Health Month'). As a gold sponsor, Amgen had the opportunity to contribute to the [named organisation's] Bone Health Month by partnering with the [named organisation] in relation to an infographic, a webinar and a podcast.

The complaint in question related to the nature of Amgen's involvement in relation to the webinar, the email invitation to the webinar, the infographic (provided as a link in the webinar invitation) and the nature of these activities.

### **Live [named organisation] Webinar 27 October: Osteoporosis in the Primary Care Setting: What Clinical Pharmacists Need to know ('webinar')**

The [named organisation] required sponsors of its webinars (in this case Amgen) to commission and pay an honorarium to the webinar speaker ('Speaker'). To formalise the requirement, Amgen entered into a sponsorship agreement with the [named organisation] on 7 October 2022 confirming that Amgen would provide financial support to the speaker. The Sponsorship Agreement was provided.

Amgen explained that the main function of the [named organisation] was to support the education of primary care pharmacists, therefore, the contents of the webinar highlighted to its members (i) what resources were available to pharmacists to assist with identifying patients with osteoporosis; (ii) the current guidelines; and (iii) how to conduct structured medication reviews. The webinar included information from NICE, the Royal Osteoporosis Society and a number of QI tools that were available for practice-based pharmacists to use based on the primary care information systems. There was a clear intention to include only educational, non-promotional content.

Furthermore, the webinar and its content had been developed solely in response to feedback received from the [named organisation] members who had informed it that they wanted to know more about efficient structured medication review and there was a clear educational need for this. Amgen explained that the slides (copy provided) submitted by the speaker for Amgen review, however, also included information about the Prolia patient support programme 'PSP' and an Amgen-sponsored automated recall system for Primary care clinicians 'Recall System' as one of the examples for compliance on treatment. Although there was no specific Prolia product information in the webinar slides (nor was there any intention to discuss an Amgen product on the part of the Speaker) and PSPs were a non-promotional activity, as the webinar was going to be live and aimed at health professionals, Amgen took a cautious view and

decided to approve the webinar internally as promotional as Amgen could not rule out one of the webinar attendees discussing an Amgen product, and hence included the wording 'Amgen product may be discussed'. The webinar slides and the certificate were provided.

In compliance with Clause 10.9 of the Code, the front slide of the webinar referred to Amgen's involvement in the webinar. The slides for the webinar were also reviewed by the [named organisation] committee to ensure that they were appropriate and balanced for the audience. Although the webinar slides included the mention of 'Prolia' in the context of the PSP and Recall System, the [named organisation] felt that the exclusion of these resources could potentially make the event unbalanced. Overall, the [named organisation] viewed the webinar as educational.

In light of the above, Amgen disagreed that the content of the webinar could be considered disguised promotion and, therefore, it did not believe it was in breach of Clause 15.6.

### **Email Invitation ([named organisation] Osteoporosis Focus Month WEEK 3) – content.**

Amgen submitted that in compliance with Clause 10.9 of the Code, Amgen's involvement in sponsoring the webinar was stated in the email in the section where it encouraged [named organisation] members to register for the webinar. It stated 'the non-promotional webinar has been organised and funded by Amgen'. The email sent by [named organisation] did not contain any product claim, only the name of the company working with it to support its Bone Health Month and thus it was non-promotional and transparently declared Amgen's involvement with [named organisation]. For this reason, Amgen certified the email as non-promotional. The approved email and Amgen's certification were provided.

The [named organisation] recommended including an additional statement in the email stating that 'Amgen product may be discussed as part of this meeting' on the basis of this being a Live Webinar with two slides referencing the PSP and the Recall System. In hindsight, Amgen acknowledged the juxtaposition of 'non-promotion' and 'product' in the same declaration statement section. The statement: 'This non-promotional webinar has been organised and funded by Amgen and is intended for UK Healthcare Practitioners only. Amgen product may be discussed as part of this meeting' was confusing for the reader. This was not the intention but more a human error as it should have read as 'This webinar has been organised and funded by Amgen and is intended for UK Healthcare Practitioners only. Amgen product may be discussed as part of this meeting'. On this occasion, it appeared that Amgen had not met all the requirements of Clause 10 and, consequently, Amgen recognised that it had failed to meet high standards as required under Clause 5.1. However, despite the above human error, Amgen disagreed that the webinar invitation could be considered disguised promotion as the content of the webinar was educational only and not intended as promotional, therefore, Amgen did not believe it was in breach of Clause 15.6.

### **The Osteoporosis UK Infographic.**

Amgen explained that a link to the infographic was included in the email. The infographic was created by Amgen using publicly available information and highlighted the disease burden and impact of Osteoporosis and fragility fractures. It was intended as information for [named organisation] members as to why it decided to focus on Bone Health in October. On the second half of the page, under 'learn more on osteoporosis', Amgen's activities, such as the podcast

and webinar, were, again, referred to with Amgen's involvement indicated in accordance with Clause 10.9 of the Code by stating that these events were organised and funded by Amgen. Furthermore, the Amgen Bone Health logo was also prominently displayed on this page which was large enough so it would not be missed by the reader. The infographic was certified as promotional on the basis that it contained a link to promotional accredited e-learning modules. The approved Infographic and the certification of the Infographic were provided.

### **[named organisation]'s Email Distribution & Privacy Policy**

Amgen noted that the complainant stated in their letter that they received the email from the [named organisation] and that the invitation looked like an email from the [named organisation], but when scrolling down Amgen's name appeared at the bottom, thus the email was from Amgen. The email in question was sent by the [named organisation] to its registered members who had accepted to receive emails from it. As per the [named organisation] Privacy Policy, [named organisation] clearly stated that it would contact the member to inform them about events, services and other items to manage their membership.

The Bone Health Month was a [named organisation] event directed at its members and, as a gold sponsor, Amgen had the opportunity to support this event. At no time, was Amgen given access to the [named organisation] membership list, nor was the email sent from Amgen.

Furthermore, the complainant confirmed that they were a subscriber to the [named organisation] but then cited only part of its Privacy Policy. The complainant omitted to cite that the policy also stated:

'If you decide to become a Member of [named organisation] and send the Join form on the Join page (click here to see this) or the Subscriber form on the same page, then the data you provide will be entered into our database and stored. If you do not give your consent to being sent marketing materials by email (by leaving the checkbox on these forms unchecked) then your data will be entered as normal but you will not be sent marketing materials.

....

When you give us information about another person, you confirm that they have appointed you to act for them and to consent to the processing of their personal data.'

Although the email was intended to invite health professionals to an educational event which had been organised at the request of its members, it appeared as though the complainant had perceived this communication as containing marketing materials. As the complainant was anonymous, Amgen was not in a position to check with the [named organisation] whether the complainant in question had opted-in for marketing materials via email (not that this was intended as such) nor did it know whether the complainant's details were submitted by another person on their behalf, thereby providing consent on behalf of the complainant. Consequently, as Amgen was unable to check and as the complainant had not categorically stated that they had opted-out, coupled with the fact that the complainant had not referred to the correct part of the Privacy Policy, Amgen did not feel there was enough information provided by the complainant for there to be a finding against it in relation to Clause 15.5.

## **Clause 2**

Amgen considered that any findings against Amgen in this matter were not of a nature that could be considered a breach of Clause 2, particularly in the light of the examples provided within the supplementary information to Clause 2. Amgen submitted that it had supported a credible organisation, developed a highly educational webinar addressing the training needs of pharmacists, had put a sponsorship in place and certified all the materials. Unfortunately, it was as a result of an unintended omission in the declaration statement.

### **Amgen signatories**

Amgen provided details of the signatories of the materials in relation to Bone Health Month.

Amgen confirmed that there were not any materials circulated after the webinar. Amgen provided the Prolia summary or product characteristics (SPC), as requested.

### **PANEL RULING**

The Panel noted the complainant's allegation that the initial email invitation looked like it was from the [named organisation] and it was only at the bottom of the email that it became apparent that the event and contents were sponsored and organised by Amgen. The invitation stated it was not promotional and then went on to state Amgen's products would be discussed.

The Panel noted Amgen's submission that it was a gold sponsor of the [named organisation] and, as such, it received tangible benefits from certain events throughout 2022. Amgen stated that in October 2022, the [named organisation] ran a sponsored month with weekly activities focusing on Bone Health, one of the activities was the opportunity to contribute to the [named organisation] Bone Health Month by partnering with it in relation to an infographic, a webinar and a podcast.

The Panel noted that Clause 10.9 stated when events/meetings are sponsored by pharmaceutical companies, that fact must be disclosed in all the material relating to the events/meetings and in any published proceedings. The declaration of sponsorship must be sufficiently prominent to ensure that readers were aware of it at the outset. Whilst the Panel noted Amgen's submission that in compliance with Clause 10.9 of the Code, the front slide of the webinar referred to Amgen's involvement in the webinar, it noted that the subject of the complaint was not the webinar but rather the invitation email and infographic and it was on this basis that the Panel made its ruling.

The Panel considered that the recipient's initial impression of the email was important. In the recipient's inbox the email (ref GBR-162-1022-80004, October 2022) appeared to be from the [named organisation], and the email subject was '[named organisation] Osteoporosis Focus Month WEEK 3 – infographic'.

According to the approved email provided by Amgen, the top of the body of the email featured a large prominent [named organisation] organisation logo, below which was stated in a blue box '[named organisation] Osteoporosis Focus Month WEEK 3'. Directly underneath on the left-hand side was a thumbnail of an infographic beside which it stated 'Osteoporosis UK Infographic', followed by 'Learn More About Osteoporosis with this Osteoporosis UK infographic' and a grey box which stated 'Download your copy HERE'.

Below this the email set out key points for pharmacists to consider, including an opportunity for UK Primary Care Pharmacists to Learn How to Identify & Manage Osteoporosis Patients. This was followed with a large blue box inside which it stated: 'Last chance to register for the Osteoporosis webinar!' which was titled 'Osteoporosis Patients in the Primary Care Setting: What Clinical Pharmacists Need to Know', information on the speaker and three key points regarding the webinar would cover. At the bottom of the email it stated: 'This non-promotional webinar has been organised and funded by Amgen, and is intended for UK Healthcare Practitioners only. Amgen product may be discussed as part of this meeting' followed by a grey box inviting readers to register.

The Panel considered the content and layout of the email and the immediate impression. In the Panel's view, considering the email was sent from [named organisation] and included its prominent logo at the top of the email and reference to Amgen's involvement was only included towards the bottom of the email in a font size similar to that of the rest of the email, on the balance of probabilities, a health professional would likely consider that the email invitation was to the named independent organisation's webinar and not a webinar sponsored by a pharmaceutical company. The Panel noted its comments above and considered that it was not sufficiently clear at the outset that the webinar, being advertised in the email in question, was sponsored by Amgen. The Panel therefore **ruled a breach of Clause 10.9** of the Code in this regard.

The Panel noted that the infographic (ref GBR-162-1022-80002, October 2022), which appeared as a thumbnail in the email invitation described above and could be downloaded by recipients, was titled '[named organisation] BONE HEALTH MONTH OCTOBER 2022, An Opportunity for UK Primary Care Pharmacists to Learn How to Identify & Manage Osteoporosis Patients'. This was followed by key facts about osteoporosis and fractures. Below this information, on the second half of the infographic under a thin blue line it invited readers to 'Learn More About Osteoporosis' and listed three options including: an on-demand Podcast available from the [named organisation] website titled 'the Critical Role of Pharmacists in Improving Osteoporosis Management in Primary Care\*'; a live [named organisation] webinar on 27 October 2022 titled 'Osteoporosis in the Primary Care Setting: What Clinical Pharmacists Need to know\*'; and Free 6 CPD accredited e-learning modules available on MIMS from [mims web address]\*. The asterisk led to text below which stated '\*These activities and resources have been organised and funded by Amgen and are intended for UK healthcare professionals only. Amgen products may be discussed'. The bottom right-hand side of the infographic had the Amgen logo under which, in the same colour, were the words 'BONE HEALTH'. The Panel noted Amgen's submission that the infographic was created by it using publicly available information and highlighted the disease burden and impact of Osteoporosis and fragility fractures and on the second half of the page, under 'learn more on osteoporosis', Amgen's activities such as the podcast and webinar were, again, referred to with Amgen's involvement indicated. The Panel noted its comments above and considered that it was not sufficiently clear that the actual infographic was sponsored by Amgen, as alleged. The Panel, therefore **ruled a breach of Clause 10.9** of the Code in this regard.

The Panel noted the complainant's concern that in referring to the webinar as non-promotional whilst stating that Amgen's products would be discussed, the invitation was misleading. The Panel noted Amgen's acknowledgement that, on this occasion, it had not met all the requirements of Clause 10 as the juxtaposition of 'non-promotion' and 'product' in the same declaration statement was confusing for the reader and, consequently, it had failed to meet high

standards as required under Clause 5.1. The Panel noted that Clause 10 was not relevant and therefore it made no ruling in this regard. The Panel, however, considered that the declaration was misleading and, in this regard, high standards had not been maintained and a **breach of Clause 5.1** was ruled, as acknowledged by Amgen.

The Panel did not consider that there was an allegation in relation to disguised promotion and thus it ruled **no breach of Clause 15.6**.

The Panel further noted the complainant's concern that as a subscriber to [named organisation], they did not expect to receive promotional emails from the industry; the named organisation] Privacy Policy did not state that it would send promotional materials from third parties and the infographic was neither an event, nor a service. The Panel noted that the complainant had confirmed that they were a subscriber to the named organisation]. It further noted the extracts of the named organisation] privacy policy as provided by both the complainant and Amgen. The Panel further noted Amgen's submission that as the complainant wished to remain anonymous, it was not in a position to check with the named organisation] whether they had opted-in for marketing materials via email or not. On the evidence before it, the Panel did not consider that it had been established that the complainant had not given prior permission as required by Clause 15.5 and **no breach of Clause 15.5** was ruled.

The Panel did not consider that the circumstances warranted a ruling of a breach of Clause 2, which was a sign of particular censure and reserved for such use, and **no breach of Clause 2** was ruled.

**Complaint received 27 October 2022**

**Case completed 24 August 2023**