

This case report, including the rulings, has been adapted for anonymisation purposes.

CASE AUTH/3835/10/23

COMPLAINANT v MODERNA

Allegations about online articles and tweets by a Moderna employee

CASE SUMMARY

This case concerned articles authored or co-authored by a Moderna employee and their activity on the social media website Twitter (now known as 'X'). The complainant alleged Moderna's involvement in the articles and social media activity was not clear.

There was an appeal by Moderna of five of the Panel's rulings.

The outcome under the 2021 Code was:

Breach of Clause 5.1 (x2) Panel's breach rulings both appealed and upheld at appeal	Failing to maintain high standards
Breach of Clause 5.5 (x4) Three of the Panel's four breach rulings appealed and upheld at appeal	Failing to be sufficiently clear as to the company's role and involvement
Breach of Clause 8.1	Failing to certify promotional material
Breach of Clause 26.1	Promoting a prescription only medicine to the public

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 5.5	Requirement to be sufficiently clear as to the company's role and involvement
No Breach of Clause 8.1 (x2)	Requirement to certify promotional material
No Breach of Clause 11.2	Requirement not to promote a medicine for an unlicensed indication
No Breach of Clause 26.1	Requirement not to advertise prescription only medicines to the public

**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 a contactable member of the public about Moderna Biotech UK Limited.

COMPLAINT

The complaint wording is reproduced below:

"I am writing to complain about 4 items written and/or distributed by a [senior employee] of Moderna UK on the internet and social media. I believe these items are in breach of your Social Media Guidance 2023 and also in breach of your Code of Practice. In particular I believe these sections of your Social Media Guidance are relevant to my complaint:

'Transparency

Pharmaceutical companies should always be transparent about the communications, activities and materials they produce, publish, sponsor, fund, or support on social media. Whenever a pharmaceutical company or a third party acting on its behalf publishes content on social media, it should clearly and prominently state the involvement of the pharmaceutical company and users should be aware of such involvement at the outset'

And.....

'The personal use of social media by pharmaceutical company employees has the potential to overlap with their professional responsibilities. As such employees should act with due caution when using all social media platforms, including LinkedIn, to discuss or highlight issues which relate to their professional role or the commercial/research interests of their company. An individual's personal activity on social media such as posting, liking, sharing will, in the first instance be visible to his/her connections and will potentially be visible to others outside his/her network depending on the individual's security settings. Pharmaceutical company employees should assume that such activity would, therefore, potentially be visible to both those who are health professionals or other relevant decision makers and those who are members of the public.

Pharmaceutical companies may be held responsible for engagement with, or dissemination of, information by company employees who do so via their personal social media channels including, (a) if the employee can reasonably be perceived as representing the company, and/or (b) if the employee is instructed, approved, or facilitated by the company to do so.

Pharmaceutical companies should ensure that they have appropriate policies in place and relevant employees receive regular training appropriate to their role, for responsible conduct on social media.

If an employee's personal use of social media was found to be in scope of the ABPI Code, the company would be held responsible.

Pharmaceutical companies should assume that the ABPI Code would apply to all work-related, personal social media posts, for example, LinkedIn or Instagram posts/activity by their employees unless, for very clear reasons, it could be shown otherwise.'

And.....

'Sharing/Re-sharing

Most social media platforms enable users to engage in some way/interact with content on other accounts and such engagement/interaction might result in the further dissemination (sharing/ re-sharing) of the content. Care must be taken when sharing/resharing content to ensure that the post and any linked content is in line with the ABPI Code and approved/certified if necessary. The account owner is responsible for the content they choose to share/reshare to their followers. Furthermore, it is important to understand exactly how each platform currently works as sometimes simply engaging with a post, for example, 'liking' a post on LinkedIn or retweeting on twitter can alert one's connections to the content; both of which are considered to be a type of 'sharing/re- sharing'. Content posted/shared/re-shared by pharmaceutical companies that relates to products or diseases should be examined to confirm compliance with the ABPI Code and where applicable certified in advance (eg educational material for the public).'

I am complaining about the following materials:

Item 1. This is an article which was published in the [named newspaper] in July 2023. [weblink provided]. It is entitled '[title of article]' and it is co-written by [member of parliament] MP (former Minister for [named activity]) and [named employee]. The [named employee] is described in their bio at the end of the article as '[working with a named 'think tank']' and a former member of [named government group]. What their bio fails to mention is that since [month] 2022 they have been, and remain, [job title] for Moderna in the UK. This is a very senior role within the Moderna UK organisation, and a particularly significant one when viewed in the context of the subject of this article and their co-author. Furthermore, your social media guidance is very clear that 'The personal use of social media by pharmaceutical company employees has the potential to overlap with their professional responsibilities. As such employees should act with due caution when using all social media platforms, including LinkedIn, to discuss or highlight issues which relate to their professional role or the commercial/research interests of their company.' I accept that this is not a social media article primarily, but I assume that the fundamental principles (including those of transparency) which I have quoted at the beginning of this letter apply equally to all materials published by pharmaceutical industry employees on the internet. However, [named employee] also used their own personal Twitter account to tweet about this article and also to retweet, on a number of occasions, positive comments about it from other accounts, including one from someone describing themselves in their profile as [senior leader at] the ABPI. In the profile to their personal twitter account, [named Moderna employee] describes themselves as follows:

[Screenshot of Moderna employee's Twitter profile]

There is no mention of their senior role at Moderna UK.

Here are links to some of the tweets and retweets which they used this personal account to post:

[weblinks and screenshots provided]

Please bear in mind that [named employee] is the Moderna [role] with specific UK responsibility for [corporate function]. It is therefore striking that their article contains specific reference to a number of topics and issues which either relate to their employer's products or would fall directly within their remit at Moderna. These include:

- 'In one important respect, its legacy is already clear: Covid-19 vaccines have saved over 100,000 lives in this country alone.'
- 'It eschewed the idea of the pharmaceutical industry as a 'black sheep', but rather, a critical partner to the NHS.'
- 'made real-time clinical trials data available to manufacturers, boosted public engagement in research and enabled speedier vaccine development.'
- 'Many were likely to fail, but opting for a combination of clinically-advanced yet less well- known types (such as mRNA vaccines) and well- established platforms (such as whole inactivated virus vaccines) spread the risk.'
- 'a strong case to refocus on vaccines policy itself. With the 'triple threat' (of COVID, flu and RSV) likely to loom large again this winter, a pragmatic approach to data sharing, workforce utilisation and pooling provider budgets'

In the circumstances, and to meet the transparency requirement set out in your guidance, the readers have a right to expect that [named employee] would clearly and prominently disclose their job title and role at Moderna, a leading manufacturer of Covid vaccines and developer of mRNA vaccines, at the beginning of the article. Also, if they want to tweet about this article surely their role at Moderna should at least be declared in the profile of account they use to do so. As a very senior member of staff at Moderna, the example they set by their failure to do so must surely represent a breach of Clauses 5.1 and 2. of your Code. As an ordinary member of the public I do not know if the content or distribution of this article breaches any other specific clauses of your Code, I will leave that for you to decide. However, I note with interest that the photograph at the top of this article shows a vial of Moderna covid vaccine. If [named employee] or their employers played any part in selecting or providing this photograph then I would suggest that this entire article then becomes an advertisement for Moderna's covid vaccine with all the attendant breaches of the Code that would accompany that status, including serious breaches such as advertising a POM to the public, failure to be correctly certified etc.

Item 2. This is an article which was published on the website [named political and news website] in September 2023 [weblink provided]. The similarities with item 1 above are striking:

- a. The same authors

- b. Similar subject, suggesting ways that Whitehall can learn from the [named government group]
- c. [named employee] fails to declare their interest as a senior [role] of Moderna UK
- d. The article contains specific reference to a number of topics and issues which either relate to Moderna's products or would fall directly within [named employee]'s remit at Moderna. These include:
 - 'Concluding [their] remarks, [they] announced the launch of a new '[named government group]' to 'coordinate the efforts of government, academia and industry towards a single goal: to accelerate the development of a coronavirus vaccine'.'
 - 'Looking back, much of the legacy of the [named government group] is clear, paving the way for us to 'reclaim our lives' and ensuring leading vaccine and therapeutic candidates were developed in the UK.'
 - 'There's also a need to consider how bespoke private sector secondments could enrich the state machine.'
 - 'There were sceptics of establishing a dedicated ministerial role [remit of government group]. However, experience showed the benefits of having a figurehead for such a significant operation and of the importance of a direct link to the Prime Minister.'
- e. The [named employee] again used their personal twitter account to tweet and retweet multiple times about this article without declaring their role at Moderna. Once again one of the supportive tweets they retweeted was from [named senior leader], ABPI:

[screenshots and weblinks provided]

(It is perhaps noteworthy that this company, [named communications agency], were earlier this year bragging about having Moderna as one of their clients [weblink provided]).

Therefore, once again, for the same reasons I set out for item 1., [named employee] and Moderna are in breach of Clauses 5.1 and 2 of your Code of Practice. Once again I will leave you to decide whether the content or distribution of this material breaches any further specific clauses of your Code.

Item 3. This is another article published on the website [named political and news website]. [weblink provided]. The article was published in January 2023. It was apparently written by [named employee] as sole author and they are described in the following terms '[elected Local Authority role] [named employee] is the [position in relation to specific policy area on named Local Authority].' Again there is no disclosure of their job at Moderna. The article is entitled '[Title provided].' It deals with their perceptions of the failings and shortcomings of the NHS and their ideas for its radical reform. As the [job title] at Moderna UK, this topic falls exactly within their remit, as demonstrated by the following content:

'Other vital functions, e.g. performing clinical trials, data analytics and negotiating pharmaceutical prices through the notoriously complex Voluntary Scheme on Branded Medicines, should be transferred to a new Department of Science, combining the National Institute for Health and Care Research, Office of Life Sciences, legacy parts of the [named government group] and miscellaneous functions in the Business Department for powerhouse integration. This would free the NHS load whilst providing serious UK leadership in life sciences and economic growth.'

Once again [named employee] uses their personal twitter account to distribute this article without declaring their senior role at Moderna.

[screenshot and weblink provided]

Once again, this lack of disclosure means that clauses 5.1 and 2 of your Code have been breached.

Item 4. This is a tweet by the [named Local Authority] which was retweeted by [named employee] from their personal twitter account in December 2022. [weblink provided].

The tweet encourages people to be vaccinated against Covid. Once again, there is no declaration, either in their twitter profile or in the retweet, that [named employee] is a [role] at Moderna, a manufacturer and supplier of one of the principal covid vaccines used in the UK. In the circumstances, in addition to breaches of clauses 5.1 and 2, there have also been a breach of your code clause dealing with promoting a POM to the public. Furthermore, as no covid vaccine has a licenced indication for protection against 'long covid' (whatever that is), an unlicensed indication has also been promoted, which is yet another breach."

When writing to Moderna, the PMCPA asked it to consider the requirements of Clauses 2, 5.1, 5.5, 8.1, 11.2 and 26.1 of the Code.

MODERNA'S RESPONSE

The response from Moderna is reproduced below:

"The Materials fall outside the scope of the ABPI Code for the reasons set out below. However, if the PMCPA considers any of the Materials to be subject to the Code, Moderna UK has not breached the Code in connection with those Materials.

The [named employee] is [job title] for UK and Ireland at Moderna UK and has held this role since [month] 2022. The [named employee] is an employee and is not engaged as a consultant. The [named employee] is also a [role at named 'think tank'] and a [role at named Organisation], as well as currently undertaking academic studies at [named] University sponsored by [named Organisation] titled '[title provided]'. [Named employee] is not an HCP or ORDM.

The [named employee] previously worked as a [named role on government group]. The [named employee] was elected to a Local Authority role for [named ward in named Local Authority] from [month] 2015 to [month] 2023, serving as the [position in relation to specific policy area on named Local Authority].

The [named employee] has always been transparent about their role with Moderna UK. The [named employee] has disclosed their employment with Moderna UK since they started their role at Moderna UK, in their online biographies - see [weblink provided], [named Organisation and named university] - and, as required by law, on the public Register of Interests and at all relevant public health meetings while [named employee] held an elected Local Authority role. We enclose a copy of the Register of Interests (copy provided) which was publicly available on the Local Authority website during [named employee]'s time in an elected Local authority role and relevant declarations.

The [named employee] maintains clear separation between their different roles and abides by the conflicts of interests policies and procedures of each organisation with which they are affiliated. The [named employee]'s 'X' account was created in 2016 prior to [named employee] becoming a Moderna employee and has only ever been used in the context of [named employee]'s political activities, elected duties and fellowships. Their profile and handle description make clear that their posts are in this capacity, state that all posts are 'my own views' and linked to [named employee]'s Local Authority profile and contact details throughout their time in an elected Local Authority role.

The [named employee] does not include reference to Moderna UK in their 'X' account profile or handle description because all content they post on the account is unconnected with their Moderna UK role and doing so could misleadingly imply that Moderna UK has some involvement with those posts.

As explained in more detail below, the Materials are articles about health policy and implementing models in the UK in which the [named employee] has specific expertise given their experience as a member of the [named government group], education and research interests. The Materials were written by the [named employee] in their capacity as a fellow/Local Authority role. The Materials are not promotional and do not refer to Moderna UK's medicinal products. Moderna UK had no involvement in the Materials.

The complaint refers to the PMCPA Social Media Guidance 2023, which states that companies should always be transparent about the communications, activities and materials they produce, publish, sponsor, fund or support on social media. The Materials were not produced, published, sponsored, funded or supported on social media by Moderna UK. Under the Social Media Guidance 2023, the [named employee] cannot reasonably be perceived as representing Moderna UK in relation to the Materials as clear statements were included in each article as to the capacity in which they were writing and in their 'X' profile, and they were not instructed, approved or facilitated by Moderna UK to do so.

Moderna UK is therefore not responsible for the Materials, which fall outside the scope of the ABPI Code.

Item 1

- Item 1 is an article titled '[Title provided]' co-written by [named member of parliament] MP ([named former role]) and the [named employee] in their capacity as [role in named 'think tank'] as former member of the [named

government group], as stated clearly at the end of the article. The article was published in the [named newspaper].

- The subject of this article is what can be learnt from the operating model and culture of the [named government group] as a case study and how could those learnings be applied in other policy contexts. The article does not discuss Moderna UK or specific medicinal products.
- [Named employee] considered any potential conflicts of interest in accordance with both [named 'think tank's] and Moderna UK's policies before co-authoring the article and concluded that, given the topic of [named government group] operating models and that there was no specific reference to Moderna UK or to specific vaccines, there was no conflict of interest.
- [Named employee] posted the article from their personal 'X' account which clearly indicates both in the post ('As a former [named government group] member' and '@[named 'think tank']') and in their profile description the capacity in which they posted and that their views are their own.
- The statements from this article highlighted by the complainant are accurate, factual statements that all relate to the pharmaceutical industry or covid vaccine manufacturers generally; they are not specific to Moderna or its medicinal products.
- The image of a Moderna vaccine used at the top of the article was chosen by the [named newspaper]. Neither [named employee] nor Moderna had any involvement in selecting this image.
- [Named employee] did ask [named 'think tank'] to include a declaration of their Moderna employment, but the [named newspaper] did not include it given the article was clearly written as 'a former member of the [named government group]'.

Item 2

- Item 2 is an article published on the [named political and news website's] website titled '[Title provided]'. Again the subject matter is policy and what can be learned from the operating model of the [named government group], and does not reference Moderna UK or its medicinal products. The article states clearly that [named employee] is writing in their capacity as a [role in 'think tank'] and former member of the [named government group].
- Again, the statements from this article highlighted by the complainant are accurate, factual statements and are not specific to Moderna or its medicinal products.
- [Named employee] ensured [named political and news website] was aware that they were employed by Moderna UK. The [named employee] requested that [named political and news website] include reference to their role at Moderna, but that request was not granted.
- The complainant refers to [named communications agency]. [Named communications agency] has worked with Moderna UK previously on unrelated matters but was not engaged by Moderna UK or the [named employee] to repost this article.

Item 3

- Item 3 is an article written in January 2023 by [named employee] and published on the [named political and news website's] website in their capacity

at the time [in an elected Local Authority role] and [named role on Local Authority], as is stated clearly at the start of the article.

- The subject of the article again is policy focused, calling for reform of the NHS and discussing ideas for reform. Again, the content is not specific to Moderna UK or its medicinal products.

Item 4

- Item 4 is a post by the [named Local Authority] with information on covid vaccination.
- The [named employee] reposted this in their capacity as a [named Local Authority] [Elected Local Authority role] in response to requests from residents for this information and in accordance with [named employee]'s duty under the Nolan Principles, they shared relevant information to inform public health.
- The post reflects Government policy and does not refer to Moderna UK or a particular medicinal product.

The [named employee] received guidance on conflicts of interest from Moderna's compliance team on joining Moderna UK and has followed that guidance. Moderna UK has had no involvement in the Materials. The [named employee] shared a copy of the articles once published with Moderna UK. The [named employee] did not use Moderna or IT resources for their Local Authority, fellowship and academic duties.

If the PMCPA disagrees and considers any of the Materials to be subject to the ABPI Code, Moderna UK has in any event not breached the ABPI Code in connection with those Materials:

Clause 5.5: The Materials do not relate to Moderna UK's medicines and their uses, nor are they information relating to human health or disease sponsored by Moderna UK or in which Moderna UK has had any other involvement. Clause 5.5 of the ABPI Code is therefore not relevant to the Materials.

Clause 8.1: The Materials make no reference to Moderna's medicinal products so are not promotional and do not need to be certified.

Clauses 11.2: The Materials do not promote a medicine. Clause 11.2 of the ABPI Code is therefore not relevant to the Materials.

Clauses 26.1: The Materials do not advertise prescription only medicines to the public. Clause 26.1 of the ABPI Code is therefore not relevant to the Materials.

Clause 5.1: Moderna UK has not breached the Code and has maintained high standards.

Clause 2: The Materials are not the activities or materials of Moderna UK and have not brought discredit upon or reduced confidence in the pharmaceutical industry."

FURTHER INFORMATION FROM MODERNA

Moderna provided:

- a copy of [named employee]'s job description;

- a copy of Moderna's Social Media Policy;
- a copy of Moderna's Code of Ethics and Business Conduct which includes provisions on conflicts of interest.

Moderna submitted:

"The Materials in question are consistent with these policies. In addition, Moderna UK follows all local UK requirements including the PMCPA Social Media Guidance 2023. Moderna is also developing a new internal process for conflicts of interest which is intended to be rolled out at the start of 2024.

The [named employee] received guidance on conflicts of interest from Moderna's compliance team on joining Moderna UK in an onboarding meeting in April 2022 and has received training on Moderna's Social Media Policy and Code of Ethics and Business Conduct as evidenced in the attached extract from Moderna's My Moderna Portal training record system.

Moderna engaged [named communications agency] in January 2023 to provide strategic advice on enhancing inclusion and diversity in clinical trials across the UK and aspects of this work are on-going. This subject of this advice has no relation to Materials in question. [Named communications agency] was not acting on behalf of Moderna UK in relation to reposting the [named employee]'s article. Neither Moderna nor [named employee] had any knowledge of, or communication with, [named communications agency] about the reposting, which was undertaken independently by [named communications agency]."

PANEL RULING

The complaint concerned articles written by a senior [role] of Moderna UK and that [named employee's] activity on the social media website Twitter (now known as X).

The Panel noted that the matters at issue occurred before Moderna was subject to the code but noted that during the relevant time Moderna nonetheless had to comply with UK legal requirements.

The Panel noted that the Constitution and Procedure stated that 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. In making its determination, the Panel grouped the allegations into two parts: 'the Articles', and 'the Tweets'.

The Panel noted that certain allegations about the Tweets involved re-tweets by an ABPI employee. In this regard the Panel noted that it administered the Code at arms' length from the ABPI and the complaint would be considered in the usual way. The Panel noted the activities of the ABPI and its staff were not covered by the Code and therefore the matters raised in relation to the ABPI were beyond its remit and it thus made no comment in this regard.

The Articles

The Articles comprised three articles written or co-written by the named employee of Moderna: Article 1: '[Title provided]', July 2023, and published in the online version of the [named newspaper] stated at the outset that it was written by [named Member of Parliament] MP and

the named employee. No further details about the named employee were provided at the beginning of the article. Whilst it was mentioned at the very end of the article and beneath advertisements that the named employee was 'a [named position at named 'think tank'] and a former member of the [named government group]', it omitted they were [job title] for Moderna UK. The article discussed what could be learnt from the operating model and culture of the [named government group] including a suggestion that the model be used to refocus on the vaccines policy. It featured a prominent photo of a Moderna vaccine at the outset and referred to: opting for a combination of clinically-advanced yet less well-known types (such as mRNA vaccines) and well-established platforms (such as whole inactivated virus vaccines) spread the risk'; and ensuring leading vaccine and therapeutic candidates were developed in the UK (first article); that Covid-19 vaccines had saved over 100,000 lives. It also referred to [named government group] in relation to now, there being a strong case to refocus on the vaccines policy itself and mentioned the triple threat of Covid-19, flu and RSV.

Article 2: '[Named Member of Parliament] and [the named employee]: [title provided]', September 2023, published on [named political and news website]. Similarly, whilst it was mentioned at the outset beneath the heading that the named employee is 'a [named position at 'think tank'] and a former member of the [named government group]', it omitted that they were [job title] for Moderna UK. Above the heading was a picture of a gloved hand holding an injection which did not appear to be Moderna's Covid-19 vaccine. At the bottom of the article were links to [named political and news website] webpages about [named Member of Parliament] MP and [named 'think tank']'. The article similarly discussed those areas where the operating model of the [named government group] could be applied. The article referred to vaccine development in the context of the [named government group] and referred to the [named government group] in relation to reclaiming our lives and ensuring leading vaccine and therapeutic candidates were developed in the UK. It also referred to ensuring that a mission led approach is now applied in tackling major healthcare challenges of our time, listing cancer as an example.

Article 3: '[Named employee]: [Title provided]', January 2023, again posted on [named political and news website]. The named employee is described beneath the heading as '[elected Local authority role] [named employee] is the [position in relation to specific policy area on named Local Authority]'. Again, it did not mention that they were [job title] for Moderna UK. The article discussed the named employee's perceptions of the failings and shortcomings of the NHS and their ideas for its radical reform including the adoption of new NHS management strategies prioritising five major areas, one of which was vaccination, screening and diagnostics with greater use of technology, personalised healthcare and genomics.

The Panel noted that it first had to decide whether Moderna was responsible for the articles, noting Moderna's submission that the named employee could not reasonably be perceived as representing Moderna UK in relation to the materials as clear statements were included in each article as to the capacity in which they were writing.

In the Panel's view whilst it was not necessarily uncommon for senior employees to have prominent roles outside of their employment and in certain limited circumstances the Code might apply, whether the Code applied would be decided on a case by case basis. Relevant factors might include: the nature of the activity/material at issue including its content and forum, its relationship to the employee's employment responsibilities at the pharmaceutical company and/or that company's commercial interests, and the status of the employee.

The Panel carefully noted the named employee's job description which stated that the role, '[job title]' played a crucial role in the UK organisation in relation to the [description of remit of job role]. The role included '[list of responsibilities from job description]', amongst other roles.

The Panel noted the content of the articles as set out above. The first and second articles referred to the [named government group] in relation to advocating the adoption of that management model in other areas of government. The third article advocated reform of NHS management. The Panel did not consider that such general references in isolation meant that Moderna was responsible under the Code for the articles. However the Panel considered that the references in the first article and on balance the second and third articles went beyond the narrow discussion of the application of the management model elsewhere in government and included discussion of vaccination and/or vaccines and commercial interests in relation to medicines including those potentially in development.

In addition the Panel considered that the content of the first and on balance the third article fell squarely within the named employee's role description at Moderna UK in relation to advocating and influencing government policy and that in producing these articles it could be argued that the named employee was fulfilling their contractual responsibilities with Moderna in relation to vaccination policy as set out above. In this regard the Panel noted that the first article referred to 'a strong case to refocus on vaccines policy itself'. and the third article listed 'Vaccinations, screening and diagnostics with greater use of technology, personalised healthcare and genomics.' as one of five major priorities that the government should now focus on.

The Panel bearing in mind the content of the articles including for the first article a picture of a Moderna vaccine, the named employees' job description and its direct relevance to the first and third articles, Moderna's commercial interests, that each article was published and directed broadly at the public, considered that all four factors combined meant that Moderna was responsible for the articles and that this was so irrespective of whether it had any knowledge of the named employee's actions.

Given its decision that Moderna was responsible for the articles the Panel took the view that transparency required the named employee's role to be disclosed in the articles due to the subject matter therein: there was no indication of any pharmaceutical company involvement with any of the articles. The Panel noted Moderna's submission in relation to the first and second articles that the [named employee] did ask that a declaration of their Moderna employment be included. It was unclear whether a similar request had been made in relation to the third article. In the Panel's view such requests demonstrated that the individual was at least aware of the requirement to be transparent. In the Panel's view, the majority of readers would have viewed these articles differently if they had known that the author/co-author was employed by a pharmaceutical company, which had a clear commercial interest in certain views expressed.

Disclosure of this pertinent information would have allowed the reader to form their own fully informed opinion of the views expressed in the articles. In the Panel's view that the named employee was a senior Moderna employee and Moderna was responsible for the article should have been made clear and stated at the outset on all three articles as alleged, a **breach of Clause 5.5** was ruled in relation to each article. Noting the failure to be transparent the Panel noted that high standards had not been achieved ruled a **breach of Clause 5.1**.

The Panel noted the allegation in relation to the first [named newspaper] article '[title provided]', that the photograph at the top of the article showed a vial of a Moderna Covid-19 vaccine and that if [named employee] or their employers played any part in selecting or providing this

photograph then the entire article would become an advertisement for Moderna's Covid-19 vaccine. The complainant referred to advertising a prescription only medicine to the public and certification. The Panel noted that Moderna did not comment on the provision of the photograph but limited its comments to the selection of the photograph stating that the photograph was chosen by the [named newspaper] and that neither [named employee] nor Moderna had any involvement in its selection. The Panel noted that irrespective of whether Moderna/ its employee had provided images to the [named newspaper], Moderna was nonetheless responsible for the article as set out above.

In the Panel's view the combination of the text including 'opting for a combination of clinically-advanced yet less well-known types (such as mRNA vaccine)' and the photograph of Moderna's Covid-19 vaccine at the outset was such that the article could not be considered as anything other than advertising. The Panel noted Clause 26.1 applied to prescription only medicines. While the Panel did not have the summary of product characteristics before it noted that Moderna had not commented on the legal classification of its Covid-19 vaccine shown in the article. Noting that the article was published in July 2023 the Panel was satisfied that Moderna's Covid-19 vaccine was a prescription only medicine when the article was published. Accordingly, in relation to the first article the Panel considered that the article was advertising a prescription only medicine to the public and ruled a **breach of Clause 26.1**, and as the first article was not certified ruled a **breach of Clause 8.1**.

In relation to the second and third articles the Panel noted that neither included an explicit picture of a Moderna vaccine, although the second article featured a picture of an unidentified injection syringe. The Panel noted that it was an established principle given the broad definition of promotion at Clause 1.17 of the Code that material may be promotional without mentioning a specific medicine. The Panel, on balance, considered that the articles were primarily about policy matters and although the Code applied to and Moderna was responsible for their content on balance they did not advertise a specific prescription only medicine to the public. The Panel therefore ruled **no breach of Clause 26.1**.

The Panel noted that it had been asked to consider certification in relation to Clause 8.1. In relation to the first article, the Panel noted its findings above that this article was promotional material and ought to have been certified. Noting that Clause 8.1 only applied to promotional material the Panel considered it did not apply to the second and third articles. The Panel therefore ruled **no breach of Clause 8.1** in relation to those articles.

The Tweets

The Panel noted that the tweets comprised tweets and re-tweets from the named employee's personal Twitter account. The named employee's Twitter account biography made no mention of their role at Moderna and read: '[profile description]. [named government group] Member 2020-2022. My own views'.

The tweets/retweets were as follows:

1. The named employee tweeted a link from their account to Article 1, above and stated, 'As a former [named operational group] member, we took a different & innovative approach. Pleased to co-author this piece with excellent @[named Member of Parliament] who was a brilliant [named position] & reflect on how the [named government group] legacy & its core principles can be applied @[named 'think tank']'. The tweet contained the photograph from Article 1 above of a Moderna

- vaccine superimposed on which was the name of [named Member of Parliament] MP and the named employee.
2. The named employee re-posted/re-tweeted a [named newspaper's] tweet that contained the same picture and text as in Tweet 1 above including the link to article 1 above the title '[title provided]'
 3. The named employee re-tweeted a tweet from [named second Member of Parliament] who had stated 'Good article and well worth a read and who had provided a link to the [named newspaper] article, article 1 above, and picture referred to at Tweet 1 above.
 4. The named employee re-tweeted a tweet from [named senior leader at ABPI] who stated 'Great piece from @[named Member of Parliament] and [named employee's twitter handle] on the lessons from the [named government group]. A lot that we can build on for the future'. This tweet contained the named employee's original tweet as set out in Tweet 1 above.
 5. The named employee re-tweeted a tweet from [named 'think tank' employee] who stated 'Pleased to share this excellent piece from @[position at 'think tank'], [named employee's twitter handle] & fmr [named activity Minister] @[named Member of Parliament] on the lessons Government can adopt from the [named government group] to deliver on key objectives'. The [named 'think tank' employee's] tweet contained the text of the named employee's original tweet 1 above.
 6. The named employee re-tweeted a tweet from [named senior leader at ABPI], who had tweeted the link to Article 2 above published on the [named political and news website] website with the following 'Nice article from [the named employee] and @[named Member of Parliament] on what Whitehall can learn from the [named government group]' above a picture of a gloved hand holding an injection which was not identifiable as Moderna's Covid-19 vaccine.
 7. The named employee re-tweeted a tweet from [named political and news website], which had tweeted the link to Article 2 above published on the [named political and news website] website with the following 'From @[named Member of Parliament] and [the named employee's twitter handle]: [Title of article]'
 8. The named employee re-tweeted a tweet from [named communications agency], which had tweeted the link to Article 2 above with the following '[Title of article] Interesting article from @[named Member of Parliament] and [the named employee's twitter handle] in @[named political and news website] on policymaking and lessons from the pandemic.
 9. The named employee re-tweeted a tweet from [named political and news website], which had tweeted the link to Article 3 with the following 'From [the named employee's twitter handle]: [Title of article]'
 10. The named employee re-tweeted a tweet by the [named Local Authority], which had tweeted an image and a text encouraging people to be vaccinated against Covid and 'long Covid'.

The Panel carefully noted Moderna UK's Corporate Social Media Policy which stated 'it is critical that Moderna employees and agents keep personal Social Media activities separate from those that occur in connection with employment by Moderna or that otherwise relate to Moderna's business interests'. This included 'all means of communicating or posting information or content of any sort on the Internet, whether or not associated or affiliated with Moderna'.

The PMCPA's 2023 Social Media Guidance stated that 'the personal use of social media by pharmaceutical company employees has the potential to overlap with their professional responsibilities. As such employees should act with due caution when using all social media

platforms, including LinkedIn, to discuss or highlight issues which relate to their professional role or the commercial/research interests of their company.’ It further stated that ‘Pharmaceutical companies may be held responsible for engagement with, or dissemination of, information by company employees who do so via their personal social media channels including, (a) if the employee can reasonably be perceived as representing the company, and/or (b) if the employee is instructed, approved, or facilitated by the company to do so’ and that ‘Care must be taken when sharing/resharing content to ensure that the post and any linked content is in line with the ABPI Code and approved/certified if necessary’.

The Panel noted that it first had to decide whether Moderna was responsible for the named employee’s tweets/retweets.

In the Panel’s view it appeared that the named employee’s ‘X’ account, described by Moderna, as a personal account, was routinely used for professional purposes that were inextricably linked to the individual’s job description. Noting the Panel’s view above that the named employee was fulfilling their contractual responsibilities in producing the first and third articles, the Panel considered it to be axiomatic that the same principles in relation to the relevance of the job description and the company’s commercial and research interests must apply to the publicising and sharing of said articles by tweet or re-tweet. Whilst there was no direct evidence before the Panel to suggest the named employee was instructed, approved, or facilitated by the company to disseminate this material on their personal account, for the aforementioned reasons the Panel considered that Moderna UK was ultimately responsible. Simply saying ‘my own views’ in the account profile irrespective of whether that was seen by followers, was insufficient in the Panel’s view to discharge what the Panel considered to be the company’s ultimate responsibility for tweets/re-tweets 1-9.

The Panel then considered whether when disseminating the aforementioned material via tweets or re-tweets the role of the named employee/Moderna should have been disclosed. In the Panel’s view as stated in relation to the articles the majority of those who saw or interacted with the tweets/re-tweets would have viewed them differently if they had known that the tweeter had a role at a pharmaceutical company which had a clear interest in the views expressed within the tweets and linked articles. The role of the named employee was also relevant. Given its comments above the Panel considered that the tweets were in effect company material. The Panel therefore considered that as the tweets and re-tweets did not make the role of the company/named employee clear Moderna UK had failed to comply with the requirements of Clause 5.5 and **a breach of Clause 5.5 was ruled accordingly**. This ruling applied to tweets 1–9.

In relation to tweet 10, the re-tweeting of the [named Local Authority] tweet which encouraged residents to get vaccinated to protect themselves from a bout of Covid and the effects of Long Covid and provided a booking link the Panel considered that the original tweet was a local authority public health announcement and thus very different to tweets 1-9. The Panel accepted that it could be argued that Moderna had an indirect commercial interest in this matter. When considering a combination of factors including: that it was a local public service announcement issued in the context of a pandemic; did not refer to a specific vaccine or make claims about the benefits of vaccination but focussed on how to get vaccinated; was retweeted in their capacity in an elected Local Authority role; and did not appear to be relevant to the named employee’s role, the Panel’s view was that on balance, Moderna was not responsible for the retweet. The Panel therefore ruled **no breach of Clauses 5.5, 8.1 and 11.2**.

Clause 5.1 and 2.

The Panel considered that Moderna UK had failed to maintain high standards. Such Tweets and retweets and articles should have been captured by the company's compliance framework. Noting that according to Moderna the named employee advised the company about each article upon its publication it was difficult to understand why concerns were not raised about their content, Moderna's responsibility for them and, non-compliance with the relevant SOPs. It was also difficult to understand how given the company's policies and SOPs the systematic use of a personal twitter account for corporate purposes which aligned with the individual's job description could be considered appropriate. A **breach of Clause 5.1** was ruled.

The Panel did not consider that the articles nor the tweets/re-tweets brought discredit upon, or reduced confidence in, the pharmaceutical industry. The complainant's concerns were adequately covered by the rulings of breaches of the Code above. The Panel therefore ruled **no breach of Clause 2**.

APPEAL BY MODERNA

Moderna's written basis for appealing is reproduced below.

"Our appeal requests the reversal of several rulings cited in this case, based on the fact that Moderna was not responsible for the content of the articles and tweets in question, which were non-promotional and focused on public health matters with no direct or indirect promotional intent

As advised in the confidential section of our response of 2 November 2023, the named employee has been specifically advised on public security grounds not to name Moderna on their social media profile as they have been and continue to be subject to distressing abuse and threats via social media. Moderna therefore disagrees with the Panel's ruling that the individual should have specifically stated that they work for Moderna in the relevant articles and tweets.

Articles

Article 1

Unauthorised Use of Moderna Label in Published Article:

The photograph of a Moderna vaccine label included in Article 1 was not provided to the publisher by Moderna and was selected by the publisher without Moderna's input, knowledge, or approval. This image was neither requested nor endorsed by [named employee] or Moderna, as highlighted in our initial response.

Despite this, **we understand and accept the ruling of a breach under Clauses 5.1, 5.5, 8.1 and 26.1 of the Code in respect of this Article 1**, acknowledging that the named employee's interaction with an article containing specific information related to Moderna, namely the label, could be considered promotional.

Articles 2 and 3

Moderna wishes to appeal the rulings of breaches of Clauses 5.1 and 5.5 in relation to Articles 2 and 3 as follows:

Alignment with Public Health Policy:

As previously referenced, [named employee] holds various academic and policy roles ([named employee] is a [named position] at the [named] think tank, a [named position] at Organisation], and is currently undertaking academic studies at [named] University sponsored by the [named organisation], and previously worked as a [named position] for the [named government groups]. The individual in question is not an HCP or ORDM.

[Named employee's] publications and tweets were intended to comment on the overriding public health objective of vaccination within a public policy context independently of any commercial interests. [Named employee's] contributions, both online and through published articles, drew from their public health expertise and prior roles, discussing the national benefits of vaccination and public engagement in health initiatives, in line with national public health policy goals. While the articles referred to vaccination, they did not refer specifically to any Moderna vaccine product by name or indirectly. Moderna disagrees with the Panel's finding that publishing commentary on national policy in relation to vaccination and vaccines generally (i.e. beyond Moderna's products) was a contractual responsibility of the named employee and that this together with the other named factors meant Moderna was responsible for the articles despite not being involved in them.

Non-Promotional Nature of the Articles:

Both Clauses 5.5 and 8.1 of the ABPI Code mandate transparency only for company-sponsored materials.

[Named employee's] publications were developed and disseminated independently of Moderna's sponsorship and did not reference Moderna's products. As noted in our original response, Moderna was not involved in requesting, producing, reviewing, funding, or endorsing these materials. The Panel have acknowledged that the materials in Articles 2 and 3 were non-promotional and did not advertise a specific prescription only medicine to the public.

A simple correlation between a discussion of public health policy relating to vaccination and Moderna, by virtue of being a vaccines manufacturer, should not be considered sufficient for the materials to be deemed as having been sponsored by nor involving Moderna for the purposes of Clause 5.5. Accordingly, **the rulings on Clause 5.5 and also therefore 5.1 in relation to Articles 2 and 3 should be overturned.**

Tweets

Accepted Breaches (Tweets 1–5):

We accept breaches under Clause 5.5 for Tweets 1 through 5 on the grounds that a Moderna label was used in Article 1 and subsequently having been posted/re-posted by [named employee], as detailed above.

Appealed Breaches (Tweets 6–9):

Public Health-Focused Tweets: Tweets 6 through 9, related to vaccination policy and health system reform, were shared from [named employee's] personal account and reflect [named employee's] expertise in public health. These tweets are public policy-driven and make no reference to Moderna's products; and should not therefore be considered company material.

No Reference to Moderna in Social Media Bio:

[Named employee's] social media profiles, as provided in the evidence, do not specifically reference Moderna in the biographical information, as recommended by the [security advice] to safeguard [named employee]. Moderna takes the security of all employees seriously. [Named employee] informed Moderna of [personal security concerns and associated security guidance] specifically advising [Named employee] to avoid any public mention of their affiliation with Moderna and in accordance with that guidance, [named employee] deliberately did not specifically mention Moderna and Moderna did not require [Named employee] to act contrary to [security] guidance.

The Panel's ruling has not considered the reason for this deliberate omission, which corresponds with [security] guidance. We urge the PMCPA to consider the prioritisation of safety and privacy standards [discussion of personal safety guidance].

We request that the rulings made for Clause 5.5 breaches related to Tweets 6, 7, 8 and 9 be overturned.

Appeal Against Clause 5.1

The Panel concluded that Moderna failed to maintain high standards in relation to its compliance framework. However, in our initial response, we clarified:

"[Named employee] received guidance on conflicts of interest from Moderna's compliance team on joining Moderna UK and has followed that guidance. Moderna UK has had no involvement in the Materials. [Named employee] shared a copy of the articles once published with Moderna UK."

This statement has been misinterpreted and we should have been clearer - Moderna UK was not involved in materials that [named employee] published for personal reasons to their personal accounts. Moderna was only made aware of the articles after general publication of the articles themselves rather than [named employee's] subsequent reference to those same articles on their personal accounts. Considering this and the broader public policy position already highlighted above, **we respectfully request that the ruling under Clause 5.1 be overturned.**

Conclusion and Requests

Considering the above and in alignment with our initial response on 2 November 2023, we respectfully request that the PMCPA Appeal Board considers the appeal points highlighted above.

We are committed to cooperating fully with the PMCPA and appreciate your attention to these matters."

RESPONSE FROM THE COMPLAINANT

The complainant's written response is reproduced below.

"Thank you very much for sending me a copy of Moderna's appeal letter and for providing me with an opportunity to make some comments about it. I have listed my comments below. I also note Moderna's statements relating to [security] advice which has apparently been given to [named employee]. I will deal with this matter specifically and in detail at the end of this document.

Moderna has misunderstood the basis of the Panel's findings

Moderna states that its appeal is ***“based on the fact that Moderna was not responsible for the content of the articles and tweets in question, which was non-promotional and focused on public health matters with no direct or indirect promotional intent.”*** Thus, at the very outset of its appeal Moderna demonstrates that it fundamentally misunderstands the basis of many of the Panel's findings against it. With regard to all the articles, the majority of the Panel's reasons for finding breaches of clauses 5.5 and 5.1 do not actually relate to the presence or otherwise of any “promotional intent”. Indeed, in its decision letter the Panel made it clear that it considered the content of all 3 articles to be the responsibility of Moderna for several reasons which were unrelated to any promotional intent:

- A. The Panel made it clear that it considered that the references in all three articles went beyond the narrow discussion of the application of the management model elsewhere in government and included discussion of vaccination and/or vaccines specifically, as well as commercial interests in relation to medicines and including those potentially in development.
- B. After reviewing [named employee's] Moderna job description, the Panel considered that the content of the first, and on balance the second and third, articles fell “squarely” within [named employee's] senior role at Moderna UK in relation to [responsibilities within their role]. The Panel went on to say that in producing these articles it could be seen that [named employee] was fulfilling their contractual responsibilities with Moderna in seeking to [role responsibility].
- C. The Panel noted that each article was published for, and directed broadly at, the public.

The only matter considered by the Panel relating to any promotional intent was with regard to the vial of Moderna vaccine shown in Article 1. In this instance alone, the Panel considered that, in the context of the content of the article and the nature of [named employee's] job at Moderna, this photograph caused Article 1 to be promotional, in addition to the article being the responsibility of Moderna.

The Panel summarised its position by explaining that these multiple factors **combined** meant that Moderna was indeed responsible for all the articles ***“and that this was so irrespective of whether it had any knowledge of the named employee's actions”***.

Having clearly explained why it deemed Moderna to be responsible for these article, the Panel then went on to explain the reasons why its findings of breaches of 5.5 and 5.1 should apply to each of the three articles:

“Given its decision that Moderna was responsible for the articles the Panel took the view that transparency required the named employee's role to be disclosed in the articles due to the subject matter therein: there was no indication of any pharmaceutical company involvement with any of the articles.”

“In the Panel's view, the majority of readers would have viewed these articles differently if it had known that the author/co-author was employed by a pharmaceutical company, which had a clear commercial interest in certain views expressed. Disclosure of this pertinent information would have allowed the reader to form its own fully informed opinion of the views expressed in the articles. In the Panel's view, that the named employee was a senior Moderna

employee and Moderna was responsible for the article should have been made clear and stated at the outset on all three articles”

Thus, it is clear that the Panel’s decisions of breaches of clauses 5.5 and 5.1 for all three articles is not solely determined by the promotional or non-promotional nature of the material. Indeed, for articles 2 and 3 the Panel apparently does not consider the material to be promotional at all but still finds each article to be in breach of clauses 5.5 and 5.1.

For all of these reasons I submit that the Appeal Board should uphold the original decision of the Panel in relation to those breaches.

Moderna’s appeal letter is inconsistent and incoherent

In the context of the Panel’s comments described above I therefore find it surprising and confusing that Moderna makes the following statement in its appeal letter about the findings of the Panel with regard to Article 1:

“we understand and accept the ruling of a breach under Clauses 5.1, 5.5, 8.1 and 26.1 of the Code in respect of this Article 1, acknowledging that the named employee’s interaction with an article containing specific information related to Moderna, namely the label, could be considered promotional.”

It appears to me that here Moderna is not actually accepting the totality of the Panel’s finding for Article 1 at all. As I have explained above, the Panel’s findings of breaches of clauses 5.5 and 5.1 for Article 1 do not rely solely upon the promotional nature of the article. Based upon its decisions for Articles 2 and 3, even if Article 1 had not been found to be promotional, the Panel would still have found the article to be in breach of clauses 5.5 and 5.1. So, if Moderna has accepted, and presumably signed an undertaking relating to, the Panel findings for Article 1, why is it appealing similar findings for Articles 2 and 3? Put another way, if it is appealing the findings relating to clauses 5.5 and 5.1 for Articles 2 and 3, why is it not also appealing the similar findings relating to Article 1?

It seems to me that, for Articles 2 and 3, the Panel’s decisions regarding breaches of clauses 5.5 and 5.1 have two key elements which the Appeal Board may wish to consider:

1. **The Panel’s decision that Moderna was responsible for these articles.** The Panel provided quite detailed explanations of the considerations behind this decision. It therefore seems to me that if Moderna wishes to appeal this decision it should address each of the Panel’s considerations which I have listed in A, B and C above. I am afraid that can see nowhere in its appeal letter where it has done this. In particular it has not addressed in any detail the Panel’s specific conclusion that Moderna is responsible for these articles *“irrespective of whether it had any knowledge of the named employee’s actions”*.
2. **The Panel’s decision that because Moderna was responsible for the articles, and because of the content of the articles, [named employee] should have ensured that the readers of the article were made aware at the outset that [they were] a senior Moderna employee.**

Moderna’s only response to this finding appears to be to repeat that it was not responsible for the articles – despite already admitting that it was responsible for Article 1 in its appeal letter. Moderna also appears to be getting a little confused in the section of its appeal letter entitled “Non-Promotional Nature of the Articles”. It

kicks off this section by saying “*Both Clauses 5.5 and 8.1 of the ABPI Code mandate transparency only for company-sponsored material*”. Apart from the fact that a breach of clause 8.1 is not an issue in this appeal and, as I have explained above, the promotional or non-promotional nature of Articles 2 and 3 is not relevant to the Panel’s findings for these articles, company-sponsorship status is not actually determined by whether or not the item or activity under discussion is either promotional or non-promotional. I am therefore not sure what point Moderna is trying to make in this section of its appeal. It may be helpful to recap here what Clause 5.5 of the 2021 Code says :

“Material relating to medicines and its uses, whether promotional or not, and information relating to human health or diseases which is sponsored by a pharmaceutical company or in which a pharmaceutical company has any other involvement, must clearly indicate the role of that pharmaceutical company.”

The supplementary information to this clause then goes on to say

“Clause 5.5 (9.10) Declaration of Involvement

The wording of the declaration of involvement must be unambiguous so that readers is immediately able to understand the extent of the company's involvement and influence. This is particularly important when companies are involved in the production of material which is circulated by an otherwise wholly independent party, such as supplements to health professional journals. The declaration of sponsorship must be sufficiently prominent to ensure that readers of sponsored material are aware of it at the outset”

It seems to me that both the wording and the “spirit” of your Code are therefore very clear in this regard. A [senior employee] of Moderna has written, for public consumption, articles whose content effectively lobby for the government to change policy in a way that is likely to benefit their employer, and such lobbying falls “squarely” within the parameters of their job description. It is hard to understand how Moderna could believe that this is neither “company sponsored” activity nor “any other involvement” of the company. When that [senior employee] also co-authors such articles with a prominent and well-known [first named Member of Parliament], its claim that there is no Moderna involvement which needs to be disclosed is even more difficult to accept.

With regard to the Moderna appeal of certain findings of the Panel relating to some of the tweets I am again surprised and confused by Moderna’s declaration that “***We accept breaches under Clause 5.5 for Tweets 1 through 5 on the grounds that a Moderna label was used in Article 1 and subsequently having been posted/re-posted by [named employee], as detailed above.***” Once again, for the same reasons as those which I have set out above for the three articles, it appears to me that Moderna has failed to accept, or even possibly understand, that the Panel findings with regard to clause 5.5 for each of these tweets was not solely related to the Moderna label on the vaccine vial. As a result, I have to question the value of any undertaking already given by Moderna and whether that undertaking can be properly observed if it is not properly understood. Similarly, for reasons I have explained above in relation to the articles referred to in these tweets, the Moderna rationale for accepting the findings relating to tweets 1-5 but appealing the findings relating to tweets 6-9 appears to me

to demonstrate a poor understanding of your Code and the reasons for the Panel's decisions in this case.

For these reasons I submit that the Panel's decisions were correct and that Moderna have provided no credible basis for overturning those decisions.

Appeal Against Clause 5.1

Moderna has a section of its appeal letter entitled "Appeal against Clause 5.1". Moderna's entire justification for this aspect of its appeal appears simply to be another repetition of its assertion that it "was not involved" in materials that [named employee] published "for personal reasons to their personal accounts". As I have explained above, the Panel sets out very clearly why it rejected this "arm's length" defence by Moderna and yet once again Moderna has made no attempt to address and specifically challenge these reasons provided by the Panel. [Named employee's] senior role at Moderna, along with the content and context of the articles clearly combine to mean that Moderna was indeed responsible for, and therefore "involved" in, them. The Panel decision that in this case high standards were not maintained by [named employee], and therefore Moderna, was entirely justified.

Important clarifications required concerning [security] advice

I would now like to address the serious matters covered in the section of the Moderna appeal letter entitled "No Reference to Moderna in Social Media Bio:".

Firstly, I would like to emphasise my opinion that no one should be subject to personal abuse and threats of violence online, or anywhere else for that matter, in any circumstances. The police and the courts are able to, and should, take appropriate legal action against any individuals guilty of such behaviour.

This is the first time that I have heard about this situation with regard to [named employee]. This was not mentioned in the Panel's decision letter, nor was it included in any of the materials with which I was provided as part of the Moderna response to my complaint. I do not know if reference to this [security] advice was included but redacted in some of the materials with which I was provided.

If Moderna now intends to rely on that advice during the appeal process, and particularly if any copies or summaries of that advice have been provided to the Panel or to the Appeal Board, a copy must now promptly be provided to me as the complainant (with necessary redactions if needs be), so that I can understand its relevance to the appeal hearing. Either way, there are some very important questions which Moderna must please now be asked to address in order to ensure that I and the Appeal Board understand fully the relevance of that advice. Specifically:

1. On what date was this [security] advice given to [named employee] (ie. before or after the relevant articles and tweets)?
2. What was the nature of the advice and in particular did they advise [named employee] not to mention Moderna on any or all of their social media accounts, or did the advice specifically refer to "articles and tweets" as Moderna has stated in its appeal letter?
3. What does "public security grounds" mean in this context, and in particular does this phrase relate expressly to [named employee's] employment by Moderna or does it relate to their role as a public official in the political sphere (or both)?

The third question is pertinent because in addition to their [senior] role at Moderna, [named employee] is very active on the internet and in the media with regard to their political and academic roles. In their role as a prominent local politician in [named locality] and an active member of the [named political party], they have published articles and been interviewed on national TV about some highly controversial topics. For example, this has included an interview on [named broadcasting organisation] about national immigration policy, and an article published on the [named political and news website] website about the Assisted Dying Bill. It is relevant to this appeal that both the Appeal Board and I understand whether the focus of the [security] advice they have received has been on their role for Moderna, or on those other roles. Moderna appears to imply the former, but has not been explicit.

The [security] advice appears not to have been followed

Finally, I would like to point out that to this date [named employee] continues to be active on the internet and on social media, and in many cases they have openly disclosed their employment by Moderna, apparently contrary to their [security] advice. Here are some examples which are current or have been posted during the past 12 months :

1. [Named local chamber of commerce] with [named employee], Moderna. May 2024
[Link and screenshot provided]

In addition to the above screenshot references to their employment at Moderna, [named employee] mentions Moderna and its business numerous times during this interview.

2. [Named university and faculty]. Current biography
[Link and screenshot provided]
3. [Named locality] Chamber of Commerce. Current
[Link and screenshot provided]
4. [Named organisation]. Expert Profile. [Named employee]. Current
[Link and screenshot provided]
5. [Named 'think tank'] Publication "[Title of Article 1]". April 2024
[Link and screenshot provided]
6. [Named 'think tank'] Publication "[Title of Article 2]". February 2024
[Link and screenshot provided]
7. Article: [Title of article provided]. Published August 2024.
[Link and screenshot provided]

This was an article cowritten with amongst others [named ex-very senior civil servant].

8. [Title of article provided]. January 2024

[Link and screenshot provided]

In addition to identifying [named employee] twice on this page as [job role title] for Moderna, the LinkedIn logo immediately below their photograph links directly to their personal LinkedIn social media account, the profile of which also immediately identifies them as connected with Moderna.

9. “[Named programme].” A company advertising its leadership training programme for January – March 2025
[Link and screenshot provided]

Once again, in addition to identifying [named employee] on this page as [job title] for Moderna, the LinkedIn logo immediately below their photograph links directly to their personal LinkedIn social media account, the profile of which also immediately identifies them as connected with Moderna.

10. Finally, and of particular relevance considering that the social media platform concerned with this complaint is Twitter or “X”, it is noteworthy that [named employee’s] personal Twitter account was updated in December 2024, a month after the Panel had issued its decision letter about this complaint. It was updated to include a disclosure that they did indeed work for Moderna
[Screenshot provided]

Thus, over the past 12 months [named employee] does not appear to have been unduly cowed by the abuse or threats that apparently prompted the [security] advice. However, [named employee’s] rather selective observance of that advice must weigh heavily against any attempt by Moderna to leverage that advice to mitigate the failures for which it is rightfully now being held responsible under the Code.

It is a worrying fact of modern life that anyone working in the public eye these days runs a continuous risk of exposure to abuse, threats and even worse. Of course [authorities] and employers must do all they can to protect people exposed to such risks. However, such risk mitigation surely cannot include allowing covert lobbying by pharmaceutical companies for changes in government policy, as appears to be suggested here by Moderna.

Thank you again for allowing me to comment on this appeal.”

APPEAL BOARD RULING

The Appeal Board observed that the senior employee’s job description stated that they played a crucial role for Moderna UK in relation to the [description of role and key responsibilities].

The Articles

Article 2 ‘[Title of article]’, September 2023, was published on [named political and news website] and authored by the employee in question and a named MP. The Appeal Board observed that whilst it stated, at the outset, that the named employee worked with a ‘think tank’ and had been a member of a government group, it failed to include that they were also a senior employee for Moderna UK. The article discussed where the operating model of the [named government group] could be applied, vaccine development in the context of the [named

government group] and referred to the [named government group] in relation to reclaiming our lives and ensuring leading vaccine and therapeutic candidates were developed in the UK.

Article 3: '[Named employee]: [Title of article]', January 2023, was again posted on [named political and news website]. The named employee was described as '[elected Local Authority role] [name] is the [position in relation to specific policy area on named Local Authority]'. The Appeal Board observed that, again, it failed to identify that they were also a senior employee for Moderna UK. The article discussed the named employee's perceptions of the failings and shortcomings of the NHS and their ideas for its reform including the adoption of new NHS management strategies prioritising five major areas, one of which was vaccination.

The Appeal Board considered that the nature of the named employee's role at Moderna was inextricably linked to the apparent aim and content of both articles 2 and 3. The purpose of the articles appeared to be to influence government policy and help create a conducive environment for vaccine development and distribution, which was fully in line with the named employee's job remit and would benefit Moderna due to enhanced vaccine uptake and use. The failure to inform readers of the named employee's interest in that regard was unacceptable. Without full knowledge of the named employee's employment readers would not have been able to form a balanced view of the articles.

The Appeal Board considered that Moderna's 'Code of Ethics and Business Conduct' failed to address how to manage conflicts of interest and transparency in relation to government officials and other policy makers.

The Appeal Board acknowledged Moderna's submission in relation to the second article that the named employee had asked that a declaration of their Moderna employment be included. It was unclear whether a similar request had been made in relation to the third article. The Appeal Board considered that Moderna should have had more oversight of that matter.

The Appeal Board considered that as the named individual was a senior Moderna employee, and as the content of the articles fell squarely within their job responsibilities, the articles could not be seen as anything other than an extension of the employee's role within the company. As such Moderna was responsible for the articles. That involvement should have been made clear and stated at the outset on both articles. The Appeal Board upheld the Panel's ruling of a **breach of Clause 5.5** in relation to each article. The Appeal Board determined that high standards had not been achieved as the company had failed to be transparent and it upheld the Panel's ruling of a **breach of Clause 5.1**. The appeal on both points was unsuccessful.

The Tweets

The Panel had ruled a breach of Clause 5.5 in relation to tweets 1-9. Moderna had accepted the ruling in relation to tweets 1-5 but it had appealed the ruling in relation to tweets 6-9. Consequently, regardless of the outcome of the Appeal, the ruling of a breach of Clause 5.5 would remain. The Appeal Board was nevertheless, in the context of this particular case, prepared to give its observations on the scope of the Clause 5.5 breach.

The Appeal Board observed that the re-tweets at issue were from the named employee's personal Twitter account. The named employee's Twitter account biography made no mention of their role at Moderna but referred to other roles/attributes and stated 'My own views'.

In relation to tweets 6-8, the named employee had re-tweeted tweets containing a link to article 2 above. In tweet 9, the named employee had re-tweeted a tweet with a link to article 3 above.

The Appeal Board took account of Moderna UK's Corporate Social Media Policy, which stated 'it is critical that Moderna employees and agents keep personal Social Media activities separate from those that occur in connection with employment by Moderna or that otherwise relate to Moderna's business interests'. This included 'all means of communicating or posting information or content of any sort on the Internet, whether or not associated or affiliated with Moderna'.

In the Appeal Board's view, it appeared that the named employee's 'X' account, described by Moderna as a personal account, had been used for professional purposes to re-tweet the articles at issue that were inextricably linked to the individual's job. The Appeal Board took account of the PMCPA's 2023 Social Media Guidance, as referred to in the Panel's ruling, and consequently considered that Moderna UK was ultimately responsible for the re-tweets; the words 'my own views' in the account profile had no effect in displacing the company's ultimate responsibility for re-tweets 6-9.

The re-tweets were in effect company material. The Appeal Board considered that the role of the named employee/Moderna should have been disclosed when disseminating the aforementioned material via re-tweets. The Appeal Board considered that the breach of Clause 5.5 was properly held by the Panel to apply to tweets 6-9.

Clause 5.1 Overall

The Appeal Board considered that social media activity and articles such as these should have been captured by the company's compliance framework. Given that, according to Moderna, the named employee had advised the company about each article after its publication it was difficult to understand why concerns had not been raised internally about their content, the company's responsibility for them, and non-compliance with relevant policies and SOPs. The Appeal Board found it incomprehensible that the systematic use of a personal twitter account for purposes which aligned with the individual's job description could be considered appropriate. The Appeal Board considered that Moderna UK had failed to maintain high standards and upheld the Panel's ruling of a **breach of Clause 5.1**. The appeal on this point was unsuccessful.

The Appeal Board was very concerned about Moderna's response in this case, which arguably showed a lack of understanding of the principles of accountability, transparency and conflicts of interest. The Appeal Board had a discretion to apply further sanctions. As Moderna did not attend, the Appeal Board were unable to ask further questions of the company at the time of the appeal. In accordance with Paragraph 12.7 of the 2024 PMCPA Constitution and Procedure, the Appeal Board decided that Moderna should attend the next available meeting of the Appeal Board to explain its policies and procedures with regards to transparency and conflicts of interest and to confirm how risk is identified and managed. The Appeal Board also requested that a senior individual responsible for compliance in the company attend to explain Moderna's overall framework in relation to Code compliance. The Appeal Board would then determine whether further sanctions were required.

APPEAL BOARD DECISION

The Appeal Board took account of the submissions from the Moderna representatives at the Appeal Board meeting, including that the company had fully accepted the Appeal Board's rulings of breaches of the Code. However, the Appeal Board remained concerned about the

facts of this case. The Appeal Board considered that Moderna's response lacked appropriate granular detail regarding what changes it would make to address the issues highlighted in this case, specifically regarding the enhancements needed to Moderna's compliance framework and the overall governance needed to ensure compliance. Given its concerns the Appeal Board decided to require a specific scope audit of Moderna's procedures in relation to the ABPI Code, in accordance with Paragraph 12.4 of the Constitution and Procedure. The audit will specifically focus on Moderna's culture, governance and compliance framework. On receipt of the audit report the Appeal Board would consider whether further sanctions were necessary.

The audit was required in relation to both this case and Case/0316/10/24, which concerned a report to the Appeal Board that was considered at the same Appeal Board hearing. It was agreed that details of any further actions will only be recorded in the case report for Case/0316/10/24.

The case report in this case could thus be finalised.

Complaint received	9 October 2023
Undertaking to Panel received	18 December 2024
Undertaking to Appeal Board received	11 February 2025
Appeal Board consideration	22 January, 13 March 2025
Appeal Board final decision	13 March 2025
Case completed	13 March 2025