



NEW ZEALAND
**PRESS
COUNCIL**

2017

45th Report
of the
New Zealand Press Council

NEW ZEALAND PRESS COUNCIL

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*Back : L-R: Hank Schouten, Tiumalu Peter Fa'afiu, Tim Watkin, Chris Darlow, John Roughan
Middle - L-R: Sir John Hansen (Chairman), Mary Major, Jo Cribb, Marie Shroff
Front L-R: Liz Brown, Christina Tay, Jenny Farrell.
Absent: Mark Stevens.*

Outbrain, Bitcoin and the Press Council

It sounded like one heck of a yarn. “A Levin man is the new member of the Bitcoin Millionaires’ club”. Horowhenua resident Tom Frewen certainly thought so and clicked on the Stuff headline to see if the lucky sod was anyone he knew. What he saw concerned him,

especially when he saw other, similar stories on the Herald website. The good luck seemed to be catching. Not only was there the headline: “Paraparaumu kid becomes a millionaire after buying Bitcoin for 12 pounds”, but further south: “Christchurch taxi driver got paid \$10 in Bitcoins in 2010, now he’s a millionaire”.

Except what Frewen quickly realised was that these stories all had something in common: They weren’t true. Not a word. Not even the photos accompanying the headlines. They all linked through to the same page, which tried to sell you – you guessed it – bitcoins.

Advertisements masquerading as news would never be permitted on the editorial pages of New Zealand’s newspapers and neither would headlines that simply lied to readers. Yet these headlines and fake photos were sitting at the bottom of articles on the Stuff and Herald websites, supplied by a multinational company called Outbrain. What’s more they were displayed under the headings ‘recommended’ on the Herald and ‘promoted stories’ on Stuff. How did this come to pass? Now that really is an interesting yarn and one that led to one of the Press Council’s most significant rulings for years.

As advertising revenues and audiences for media around the world have dropped in the past decade, newspapers and their websites have come under increasing pressure to find creative ways to serve their advertising clients. One of those is native advertising or sponsored content, which puts advertising in a native editorial environment; that is, uses headlines, photos and articles to make the ad look like a new story. Outbrain is a global leader, which provides sponsored content to news websites including Time, the Guardian, CNN, the BBC and others, including Stuff and the Herald here in New Zealand.

With Frewen’s complaint the Press Council was put in something of a bind, even before we considered its merits. Wikipedia says frankly that “Outbrain is an advertising company” and the Advertising Standards Authority has issued at least two rulings on Outbrain-provided content in the past. So it was no surprise that both media companies initially insisted that the Council had no jurisdiction over this sponsored content. From the editors’ point of view, this was content controlled by the company’s ad department. They pointed out they had no say over what showed in those boxes at the bottom of their pages, so asked how they could be judged on that?

Stuff editor Patrick Crewden said the content was hosted on another site in another country, while the Herald legal counsel Ashleigh Cropp argued that the stories were clearly displayed as advertising. Yet both acknowledged some fault; Crewden agreed “the headline did not accurately reflect the content it linked to”, removed the link and apologised to Frewen. Cropp, on the other hand, said the Herald had blocked content containing the word “bitcoin” from its site.

Yet the Council took one look at the headlines and photos that ran on the New Zealand websites and felt they were fair game; Chair Sir John Hansen decided to accept that complaint. He bravely argued that the content undoubtedly looked like news and amounted to a significant issue that industry needed to wrestle with.

The Council looked at first for wisdom from overseas. It appeared none of the equivalent bodies around the world had ruled on this issue, although some had looked into it. We found on a position paper from May 2017 by Canada’s National NewsMedia Council particularly useful. It decided “that branded content [one type of sponsored content] is within its mandate... The NNC is aware that the intent of branded content lies with the interests of the sponsor, while the intent of news and opinion writing lies with the interest of public good. The NNC believes it has a role in reminding the industry and the public of that distinction”. We took the same view regarding all sponsored content.

Frewen’s complaint was simple – the stories deceived the reader and so fell short of Principle 1, on fairness, accuracy and balance. They just weren’t true. There was no man in Levin or taxi driver in Christchurch. An algorithm saw where the reader was and dropped a local place name into a headline to tempt him or her to click through.

The Council chose to look at the complaint also as an issue of the industry’s commitment to the “highest professional standards”, as laid out in the preamble.

Forced to confront an issue that had for years now fallen down between the cushions of editorial and advertising, the media companies took slightly different approaches. Stuff accepted “Outbrain’s formats mimic the style of editorial content” and said it was “fair to complain about the headline link that was present on our pages”. The Herald, though, was having none of that. Cropp insisted the content “does not mimic the appearance of the editorial content feed” and the way it was labelled and laid out made it clear it wasn’t news. When the Council came to discuss the issue, it was a no-brainer and there was no dissent. This was clearly advertising masquerading as news. We were sympathetic to two key points from the industry. First, the rise of sponsored content in some supposed middle ground between the once distinct fields of journalism and advertising hasn’t come about by accident. It’s a survival technique driven by the desperation of a revenue-starved industry. We also understood that the editors who volunteer to work according to Council principles have no control over this content, that appears because a machine in another country says so.

But neither of those was reason enough for us to pretend that this is a new and welcome change for the industry. The collapsing boundaries between editorial and advertising are at the heart of the industry standards which the Council exists to patrol. The very fact that content is appearing on editorial pages that the editors have no control over is of serious concern to the Council. Some of the more experienced Council members remembered the days when editors had the power to change advertising copy if they felt the wording compromised the integrity of the paper. It seems the reverse

is now true, with the advertising executives able to compel editors.

As we wrote in the ruling, we hope that fact would also be a concern to the industry and this discussion would prompt some serious thinking about who is making the final decisions on our news sites.

When it came to our discussion, the Council members were of one mind. The very purpose of “native” is in the name. It is meant to blend in and seem indigenous to the news pages where it is hiding. That is not “fair” and does not maintain the highest professional standards of the industry. While the editors may not be able to control what Outbrain’s programmatic machines serve up, they should have authority over what appears on their pages. And headlines that lie, as did the headline about a Levin millionaire, should not be permitted.

The Council focused on what appears on our New Zealand news sites and how this sponsored content is displayed. We were most concerned at the words and display techniques used. While the Herald in particular argued that the layout of the Outbrain content makes it clear to readers that this is something other than standard news stories, we simply didn’t find that credible. Stuff’s use of the words ‘Promoted Stories’ was bad enough suggesting, to many ordinary readers not familiar with industry code, that these were stories the website were encouraging them to read. But the Herald’s display was even worse. They simply grouped them together under the heading ‘Recommended’, leaving many readers to believe not only that these stories weren’t ads, they were actually the best news stories of all.

Unfortunately, at the Herald it got even worse. Stuff separated its own news stories under the label ‘more from stuff’, distinct from its paid-for ‘promoted stories’. The Herald however mixed its own news stories in with the paid-for content, completely blurring the lines.

The ruling concluded: “To achieve the “highest professional standards” in the handling of sponsored content, the sites must be more transparent and earn the trust of their readers. That may include the use of borders, shading and more accurate headlines. It should undoubtedly include a much clearer distinction between the look of independent news and sponsored content, and a clear and unmistakable statement to readers that this content is paid content.”

We pointed to sites such as CNN and the Telegraph, which use the label “Paid Content”.

So the Council was delighted to see both companies act promptly when they received the decision. [Having been reluctant to even discuss the issue,] maybe delete this Tim- we didn’t really give the the chance to discuss it before accepting the complaint. The companies both moved to be more transparent and better serve their readers. The Herald wrote in an article on its site:

Despite our belief that we were complying with international standards, NZME has carefully considered the points of the Press Council and swiftly made changes to the Outbrain widget which appears on the New Zealand Herald digital site. These changes include:

A physical separation of content which is:

- Reticulated within the New Zealand Herald site (such

as other, related stories published by the New Zealand Herald), under a header called “Recommended”; and

- External links provided by Outbrain, under a header called “Paid Content” (or similar);
- Any images related to external links will continue to show the external website name immediately below the image.

Stuff simply noted, after the published Council ruling: “We are amending the title ‘Promoted stories’ on panels powered by Outbrain to now read ‘Paid content’, and are adding a link to a page that provides additional details about Outbrain’s paid content.”

Now, readers are much better placed to trust a good yarn when they see it, and can have confidence that when they see an ad masquerading as news, it will only be under a heading that makes it clear someone paid for that placement. In the current media era, we can’t escape the blurred lines altogether. Yet for the sake of our readers, the integrity of our profession and the trust relationship built up between the two over many decades, we must draw clear lines between what is paid for and what is independently sourced and reported as fact. Nothing less will do for those of us who value a good yarn.

Boundaries of opinion pieces explored

Freedom of expression is the most important of the principles that the Press Council is required to take into account when determining a complaint, and a key role of the media is providing a platform for the free expression of opinion. Provided the material is clearly identified as opinion, there are few restrictions on the content of opinion pieces, and in determinations in the recent past the Press Council has upheld the right of the media to publish material that many people would consider offensive or improper. However there are limits to freedom of expression, and several of the Press Council's principles are concerned with those limits.

Two recent cases highlighted the operation of Principle 7 in relation to freedom of expression. Principle 7 recognises that issues of gender, religion, minority groups, sexual orientation, age, race, colour or physical or mental disability are legitimate subjects for discussion, but prohibits gratuitous emphasis on such categories.

As with some of the other principles, the interpretation of Principle 7 may change with time and with changes in societal attitudes to the identified subjects. Some words and phrases that were commonplace may become unacceptable to the point that their casual use may amount to gratuitous emphasis, while others that once caused extreme offence are now much more acceptable. Equally, much depends on the context of the material. An unpleasant and possibly discriminatory remark that is an essential part of the argument put forward by a writer is less likely to amount to gratuitous emphasis than one that is largely irrelevant.

In the case of Oldfield against *The Dominion Post*, the Press Council was called on to determine whether an opinion

piece on immigration and immigration policy was in breach of Principle 7. The article was directed at immigration and the consequences of uncontrolled population growth, both of which are topical and legitimate subjects on which a variety of opinions are held. However in discussing them, the writer described New Zealand's future without immigration control as "nightmarish". He accurately detailed the net population gain from immigration but then went on to single out certain ethnic groups, most of which do not provide large numbers of immigrants.

The Press Council found that the writer's arguments were not advanced or aided in any way by singling out certain ethnic or national groups and that his approach could only be seen as gratuitous racism, especially when linked with the description of New Zealand's future as nightmarish.

By way of contrast, the case of Toailoa against *Kiwiblog* concerned an opinion piece that many people would have found just as objectionable as the piece described above. It was published in the wake of a Tongan/Samoan rugby match and the associated public disturbances, including fighting between Tongans and Samoans, as reported in the media, and one theme was the absence of a coherent Pasifika identity in New Zealand. The writer declared that "Samoans and Tongans hate each other with a vengeance".

While the Press Council found that the post was unpleasant and provocative for many readers, it was not prepared to uphold the complaint. The remarks were of dubious validity, but they represented the writer's opinion and were an integral part of his argument. There was no element of gratuitousness.

Use of social media in news

Several recent complaints have been directed at the use made by news media of material sourced from social media. Complainants have been concerned that material they have posted on social media sites has been used without their consent or without consulting them, giving it a much wider circulation than they had anticipated or wanted.

The Press Council has also received complaints about tweets made by journalists in the course of their professional duties.

The first point to note is that the media have an obligation to observe the highest professional standards in general, and the Press Council principles in particular. This applies both to tweets and to material sourced from social media in exactly the same way as it applies to material from more traditional sources. By way of example, the privacy of individuals should be respected (Principle 2), particular care must be taken in cases involving children and young people (Principle 3) and there should be care taken over the use of photographs and graphics (Principle 11).

Most of the complaints that have come to the Press Council have been complaints about the use of photographs or other material sourced from Facebook pages and in most cases these are open pages, that is, their content is available for any member of the public to view. Publications usually claim that the public nature of the Facebook page means that the material is in the public domain and there are no restrictions on its use.

The Press Council will not generally uphold a complaint of breach of Principle 2 when a publication has used material that has been made publicly available on social media, though reasonable steps should be taken to gain permission for such use. Users of Facebook and similar sites do not always have a sophisticated understanding of privacy settings, and a contact prior to publication will, at the very least, lessen the shock of seeing supposedly private information made public. It also enables the user to draw any special circumstances and any copyright issues to the publication's attention. It should be noted that the Press Council does not have the power to determine legal questions such as claims of breach of copyright.

In the case of Rivett (2016), *The Press* published a photograph, taken from her Facebook page, of a young woman who had died in a tramping accident. The Press

Council found that while photographs on an open Facebook page can generally be regarded as publicly available, this does not exempt a publication from its obligations under Principle 2 to give special consideration to those suffering from trauma or grief, in this case the family of the young woman. At the very least, there should have been a check to determine whether the family had objections to the publication of the photograph. The complaint was upheld.

A rather different issue arose on the case of Malcolm (2015) where there had been publication of personal abuse taken from a social media site. The complaint was that the article was unfair to the subject of the abuse and unbalanced in the absence of any counterbalancing favourable comment. While the Press Council had reservations about the wisdom of publishing the material, given the strong language used, it found that the material was already in the public domain and that positive comments had been published to provide balance.

In other cases where photographs or other material had been taken from a social media site where the information was already publicly available, complaints were not upheld. In these cases there were no special circumstances to warrant consideration of principles other than the general privacy principle, and in most cases there was a substantial public interest in publication that would outweigh any privacy interest.

Tweets are usually of a private and informal nature, but in two recent cases the Press Council commented on tweeted material. The first was a tweet that was effectively advance publicity for a forthcoming article, and the Press Council found that the same standards apply to a tweet of this nature as apply to other published material. The tweet in question in this case was unprofessional in its inaccuracy and use of unacceptable language and certainly did not conform to the highest professional standards.

In the second case a reporter had responded, using Twitter, to readers complaining about an article she had written. The Press Council found that she had engaged with complainants in a manner that was flippant and rude. It viewed her response as highly unprofessional and suggested the editor take steps to ensure that staff were aware of their professional obligations.

Sorry we missed your email ...

With ever increasing pressure upon the news media industry in New Zealand to do the same amount or more work but with less staff members the Press Council has observed that some of the complaints sent to editors have been going unnoticed as the email inbox may be ‘unmonitored’ (see case 2612) or, no acknowledgement of the complaint is sent until a complainant sends a follow up communication. In one situation the complaint had gone unanswered for 3 weeks before a reply was sent by the editor. This is creating both uncertainty for complainants as well as a delay in providing a response within a timely fashion. The Press Council’s complaint procedures outlines the requirement for lodging a complaint, ‘A person bringing a complaint against a publication... must, unless exempted by the Executive Director of the Council, first lodge the complaint in writing with the editor of the publication’. The further instruction is that the complaint needs to be ‘clearly marked as a letter of complaint’, this assists the publication in being able to immediately identify that a response to the complainant is required. In case 2612, a complaint was lodged but went unnoticed and the explanation provided by the editor was that the email inbox was not monitored. On the 11 July the complainant lodged a complaint via email. On the 18 July, the complainant sent a further email with a request for acknowledgement of his original email, “I would appreciate an acknowledgement of your receipt of this complaint and the earlier one of 11 July”, however he did not receive any response. On 27 July he sent a further email which highlighted his frustration about not having received any response, “In light of your failure to even acknowledge receipt of my complaint I am referring this correspondence to the Press Council.” On 4 August the Executive Director of the Press Council wrote to the complainant and offered an explanation of why he had not received an acknowledgement from the newspaper, “He advised that the mailbox to which you sent your emails has not been “attended” and so your emails have just been discovered. He is very apologetic about this.” In the response to the complaint the Business News Director offered an apology, “We apologise for the failure to respond to [the complainant’s] original emails. This was an oversight and we have taken steps to ensure that all mailboxes are properly monitored.” In this matter the Council provided commentary in the decision section of the ruling, as follows: “On the matter of the complainant’s emails being lost, the Council is concerned that Fairfax would leave its complaints email “unattended” for some weeks, but is encouraged to learn from the Business News Director that “steps have been taken to ensure that all mailboxes are properly monitored”.

There have also been explanations provided by editors that staff members at the newspaper were on leave and their email inbox was not checked during the period of leave by another member of staff. In case 2615 the following explanation was provided of why there was a delay in replying to a complaint, “I should like to explain why we did not immediately respond to the complainant’s second email, sent to the *Letters to the Editor* inbox on Thursday 20 July. That email address is serviced by our letters sub-editor, who only works part-time. I was away on annual leave on

Thursday 20 July and Friday 21 Jul and so did not see the letter until Monday 24 July, by which time the Press Council complaint had already been laid. We would, of course, have responded if I had seen the email... The last thing we want to do is appear cavalier about reader complaints. However, in my absence there is no one to immediately respond; the deputy editor position was made redundant three years ago.”

All of these explanations are indicative of the ever-increasing pressure being placed upon the media industry to essentially do more with less. The Press Council acknowledges the pressures that media outlets are under however the lack of response or untimely response to a complaint potentially impedes the opportunity for an editor to resolve a complaint with a complainant direct, where possible and, equally it frustrates the complainant who is adhering to the requirement set out by the Press Council.

While the Council has recently observed a notable incidence of complaints being missed or a delay in response by an editor there was an occurrence of this taking place in December of the previous year. In case 2550 the complainant did not receive a response to the two emails sent to *The Press*. The first email was sent on 3 October and a second email was sent on 12 October. In this matter the deputy editor acknowledged “that there had been no response to either of the emails”. Following a review of what took place the deputy editor said “*The Press* had investigated its failure to reply on the two occasions and found both were due to human error. The first email was forwarded to the journalist concerned and the chief news director, but no response was sent [to the complainant]. The second email was not seen and clearly had not been opened”. The deputy editor apologised for the lack of response and remarked that the two staff members at *The Press* had been reminded that the paper had a strict policy regarding complaints and any allegations of inaccuracy. She was confident the reminder would address the failure to respond. However, the reassurance provided by the deputy editor did not adequately satisfy the complainant. The complainant on behalf of committee members said that they did not accept *The Press*’ explanation for the lack of response to either email referring to it as an “attempt at a cover up”. The complainant further added that both letters were sent to the correct email addresses and marked as ‘read receipt’. The complainant suggested *The Press* had intentionally ignored the emails, “It seems to us that the correspondence was ignored in the hope that it would go away.” In dealing with this complaint, the members of the Press Council described the lack of response by *The Press* as “inexcusable” and further remarked that the deputy editor’s explanation of the events, which led to the failure of anyone at the newspaper getting back to the complainant as being “inadequate”. In the decision section of the ruling on this matter the Press Council supported the complainant’s view, “The suggestion that the second email had not even been seen by the editorial staff it was sent to, when it was obviously correctly addressed, is unconvincing, and we have some sympathy with the committee members who believed the correspondence was ignored in the hope that it would go away.” It would appear that the lack of response in this

situation struck a chord with the deputy editor as there was an additional response following the release of the decision by the Council. The post decision commentary noted an acceptance that there had been an “inexcusable failure to respond to the complaints” however, she stated there was nothing wilful with regards to the failure. There was an explanation offered that there had been an “enormous volume of emails received on the day of the second complaint”. Again, the deputy editor stated “this was not an excuse”, and she offered an assurance “that there was no deliberate decision by the personnel involved to deliberately ignore the email complaint.” The Press Council was prepared to accept the assurance however they wanted to remind publications that the responsibility essentially remains with them, “appreciating reduction in staff numbers and volume difficulties newsrooms face it remains the responsibility of the publication to ensure that all complaints are picked up and responded to in a timely fashion”. The Press Council wishes to emphasise that missed complaint emails or delays in responding to a complaint email are comparably small within the context of the number of adjudications decided on each year. It has been our experience that when a publication does realise that they have missed a complaint lodged via email they take this breach fairly seriously and put processes in place to avoid the error re-occurring.

An Analysis - 2017

Of the 86 complaints that went to adjudication in 2017 seven were upheld in full; seven were upheld by a majority; two were upheld in part; one was part upheld by a majority; eight were not upheld by a majority; and 61 were not upheld. A further 12 complaints were resolved informally.

Forty seven complaints were against daily newspapers; eight were against Sunday newspapers; eleven were against community newspapers; fourteen were against online news sites; two were against magazines; two were against broadcasters; one was against a student magazine and one against a blog. Two complaints were against Chinese language community papers.

Most complaints going to adjudication are considered by the full Council. However, on occasions, there may be a complaint against a publication for which a member works, has had some input into the complaint or has some link. On these occasions the member takes no part in the consideration of the complaint. Likewise, occasionally a Council member declares a personal interest in a complaint and leaves the meeting while that complaint is under consideration. In 2017 there were 27 occasions where a member declared an interest and left the room while the complaint was considered. There were also 14 occasions when an industry member was required to stand down to maintain the public member majority.

Debate on some complaints can be quite vigorous and while the majority of Council decisions are unanimous, occasionally one or more members might ask that a dissent be simply recorded, or written up as a dissenting opinion. In 2017 eight cases were upheld with dissent and eight were not upheld with dissent. (Cases 2571, 2576, 2588, 2589, 2590, 2591, 2594, 2611, 2617, 2618, 2621, 2627, 2633, 2637, 2638 and 2639.)

In an election year (General and Local Body) the Press Council has the facility to consider complaints under a Fast-Track Process. This year two complaints were fast-tracked with one being not upheld (Case 2607) and one being resolved with the broadcaster.

Press Council complaints are generally considered on the papers. However if a complainant requests the opportunity to make a submission in person they are generally given that opportunity. In such cases the editor is also invited to attend. No new material ie that has not already been presented to the editor for a response may be introduced at this stage. This year no complainant asked to attend the meeting.

The Press Council does not encourage legal representation, the Council is after all dealing with ethical issues not legal ones, but occasionally complainants do attend with their lawyers. No lawyers appeared in 2017.

Press Council Complaints Statistics

| Year ending 31 December | 2014 | 2015 | 2016 | 2017 |
|---|------------|------------|------------|------------|
| Complaints Determined | 61 | 77 | 85 | 98 |
| Decisions issued | 49 | 68 | 73 | 86 |
| Upheld | 2 | 20 | 20 | 13 |
| Upheld by majority | 2 | 1 | 3 | 7 |
| Part upheld | 1 | 2 | 3 | 2 |
| Part Upheld by majority | | | 1 | 1 |
| Not Upheld by majority | 5 | 6 | 2 | 8 |
| Not upheld | 40 | 39 | 51 | 61 |
| Mediated/resolved | 12 | 9 | 12 | 12 |
| Complaints received and not determined | 95 | 96 | 99 | 119 |
| Withdrawn | 3 | 2 | 3 | 4 |
| Withdrawn at late stage | | 1 | | |
| Not followed through | 38 | 62 | 63 | 61 |
| Out of time | 3 | 5 | 3 | 4 |
| Not accepted | 15 | 4 | 17 | 19 |
| Outside jurisdiction | 22 | 14 | 17 | 23 |
| In action at end of year | 14 | 8 | 6 | 7 |
| Total complaints | 156 | 173 | 184 | 216 |

Decisions 2017

| Complaint name | Publication | Adjudication | Date | Case No |
|-------------------------|--------------------------------|-----------------------------|----------|---------|
| Lynn Edgar | <i>The Dominion Post</i> | Not Upheld | February | 2555 |
| Chaz Forsyth | <i>Stuff</i> | Not Upheld | February | 2556 |
| NZ College of Midwives | <i>NZ Listener</i> | Upheld in part | February | 2557 |
| Hilary Philips | <i>The Dominion Post</i> | Not Upheld | February | 2558 |
| Right to Life NZ Inc | <i>The Press</i> | Not Upheld | February | 2559 |
| Max Shierlaw | <i>Hutt News, Stuff</i> | Not Upheld | February | 2560 |
| Tower Insurance | <i>The Press</i> | Not Upheld | February | 2561 |
| Victoria Turnbull | <i>Southland Times</i> | Not Upheld | February | 2562 |
| Christine & Doug Banks | <i>Greymouth Star</i> | Not Upheld | March | 2563 |
| William Booth | <i>Western Leader</i> | Not Upheld | March | 2564 |
| Shayne Borrell | <i>Otago Daily Times</i> | Not Upheld | March | 2565 |
| Ryan Carr | <i>Otago Daily Times</i> | Not Upheld | March | 2566 |
| Mike Loder | <i>Otago Daily Times</i> | Not Upheld | March | 2567 |
| Complaint | <i>Stuff</i> | Not Upheld | March | 2568 |
| Peter Waring | <i>The Dominion Post</i> | Not Upheld | March | 2569 |
| John Wilkinson | <i>Stuff</i> | Not Upheld | March | 2570 |
| Complaint | <i>Sunday Star-Times</i> | Upheld with dissent | April | 2571 |
| Berend de Boer | <i>NZ Herald</i> | Not Upheld | April | 2572 |
| Ian Pittendreigh | <i>TVNZ</i> | Not Upheld | April | 2573 |
| Greg Rzesniowiecki | <i>Stuff</i> | Not Upheld | April | 2574 |
| Eamon Sloan | <i>The Dominion Post</i> | Not Upheld | April | 2575 |
| Mattias Wallner | <i>Stuff / Southland Times</i> | Not Upheld with dissent | April | 2576 |
| Ellen Adoko | <i>The Times</i> | Not Upheld | June | 2577 |
| Vincent Burns | <i>NZ Herald</i> | Not Upheld | June | 2578 |
| Monika Ciolek | <i>Stuff</i> | Not Upheld | June | 2579 |
| David Horne | <i>Herald on Sunday</i> | Not Upheld | June | 2580 |
| Doug Dallimore | <i>Herald on Sunday</i> | Not Upheld | June | 2581 |
| James Findlay | <i>Herald on Sunday</i> | Not Upheld | June | 2582 |
| Grace Haden | <i>The Dominion Post</i> | Not Upheld | June | 2583 |
| Esta Hoeksema | <i>Manawatu Standard</i> | Not Upheld | June | 2584 |
| Andrew Hubbard | <i>The Dominion Post</i> | Not Upheld | June | 2585 |
| Andrew Hubbard | <i>The Dominion Post</i> | Not Upheld | June | 2586 |
| Kumara Residents' Trust | <i>The Press</i> | Upheld | June | 2587 |
| Fritz Lindekilde | <i>Whakatane Beacon</i> | Upheld with dissent | June | 2588 |
| Bob McCoskrie | <i>The Spinoff</i> | Not Upheld with dissent | June | 2589 |
| Bruce Aldridge | <i>The Spinoff</i> | Not Upheld with dissent | June | 2590 |
| Ewan Morris | <i>Northern Advocate</i> | Upheld with dissent | June | 2591 |
| Rob Paterson | <i>Bay of Plenty Times</i> | Not Upheld | June | 2592 |
| Peter Scott | <i>Devonport Flagstaff</i> | Not Upheld | June | 2593 |
| St John | <i>Akaroa Mail</i> | Upheld in part with dissent | June | 2594 |
| Renee Wells | <i>NZ Herald</i> | Not Upheld | June | 2595 |
| Bob Boardman | <i>Rotorua Daily Post</i> | Not Upheld | July | 2596 |
| Peter Bolot | <i>Wanganui Chronicle</i> | Not Upheld | July | 2597 |
| David Cumin | <i>Wanganui Chronicle</i> | Not Upheld | July | 2598 |

Decisions 2017 cont.

| Complaint name | Publication | Adjudication | Date | Case No |
|-----------------------------------|--------------------------------|-------------------------|-----------|---------|
| Christian Gospel Mission | <i>Herald on Sunday</i> | Not Upheld | July | 2599 |
| Coastlands Shoppingtown | <i>Kapiti Observer/DomPost</i> | Upheld in part | July | 2600 |
| Julie Fogarty | <i>Stuff</i> | Not Upheld | July | 2601 |
| Dakota Hemmingson | <i>NZ Herald</i> | Upheld | July | 2602 |
| John McCormick | <i>The Dominion Post</i> | Not Upheld | July | 2603 |
| Otago Mental Health Support Trust | <i>Otago Daily Times</i> | Not Upheld | July | 2604 |
| Jo-Ella Sarich | <i>NZ Herald</i> | Not Upheld | July | 2605 |
| Milly Woods | <i>Stuff</i> | Upheld | July | 2606 |
| Glenda Bell | <i>Southland Times</i> | Not Upheld | August | 2607 |
| Bernhardt Bentinck | <i>The Press</i> | Not Upheld | September | 2608 |
| John Chen | <i>Waikato Weekly</i> | Upheld | September | 2609 |
| Yi Liu | <i>Home Voice</i> | Not Upheld | September | 2610 |
| Barbara Cowie | <i>Otago Daily Times</i> | Upheld with dissent | September | 2611 |
| Tom Frewen | <i>Sunday Star-Times</i> | Upheld | September | 2612 |
| Friends of the Earth (Australia) | <i>The Spinoff</i> | Not Upheld | September | 2613 |
| Julie Fogarty | <i>The Spinoff</i> | Not Upheld | September | 2614 |
| Andrew Geddis | <i>NZ Listener</i> | Not Upheld | September | 2615 |
| Renee Gerlich | <i>Salient</i> | Not Upheld | September | 2616 |
| Julie Hales | <i>The Press</i> | Not upheld with dissent | September | 2617 |
| Hilary Lapsley | <i>New Zealand Herald</i> | Upheld with dissent | September | 2618 |
| Graham Robertson | <i>The Press</i> | Not Upheld | September | 2619 |
| Pete Rose | <i>The Rodney Times</i> | Not Upheld | September | 2620 |
| Graham Willan | <i>Hawke's Bay Today</i> | Upheld with dissent | September | 2621 |
| Kevin Brown | <i>NZ Herald</i> | Not Upheld | October | 2622 |
| Peter Bull | <i>NZ Herald</i> | Not Upheld | October | 2623 |
| Alex Crisp | <i>Nelson Weekly</i> | Not Upheld | October | 2624 |
| Andy Espersen | <i>Sunday Star-Times</i> | Not Upheld | October | 2625 |
| Andi Liu | <i>Mediaworks</i> | Not Upheld | October | 2626 |
| Complainant | <i>NZ Herald</i> | Not Upheld with dissent | October | 2627 |
| Albert Nipper | <i>NZ Herald</i> | Not Upheld | October | 2628 |
| SPCA | <i>The Press</i> | Not Upheld | October | 2629 |
| TVNZ | <i>NZ Herald</i> | Not Upheld | October | 2630 |
| Tom Frewen | <i>Stuff</i> | Upheld | December | 2631 |
| Tom Frewen | <i>New Zealand Herald</i> | Upheld | December | 2632 |
| Marty Blayney | <i>Stuff</i> | Not Upheld with dissent | December | 2633 |
| Megan Bowra-Dean | <i>Stuff</i> | Not upheld | December | 2634 |
| Mike Loder | <i>Dom Post/Stuff</i> | Not Upheld | December | 2635 |
| Simon Lymbery | <i>DomPost/Stuff</i> | Not Upheld | December | 2636 |
| Bernard Kernot | <i>Sunday Star-Times</i> | Not Upheld with dissent | December | 2637 |
| Eliza Prestidge Oldfield | <i>DomPost/Stuff</i> | Upheld with dissent | December | 2638 |
| Tanya Toailoa | <i>Kiwiblog</i> | Not Upheld with dissent | December | 2639 |
| Christine Toms | <i>Horowhenua Chronicle</i> | Not Upheld | December | 2640 |

CASE NO: 2555 – LYNN EDGAR AGAINST THE DOMINION POST

Lynne Edgar (the complainant) complained about the headline of a front page article published in *The Dominion Post* on November 10, 2016.

She alleged that the headline was “vulgar, demeaning, rude, immature and offensive” and breached Principle 1 (Accuracy, Fairness and Balance).

The complaint is not upheld.

Background

The headline related to an article covering the election of Donald Trump to the Presidency of America.

The headline was “WTF Why Trump Flourished”

The article below covered why the writer thought Mr Trump had won the American Presidential election; a result that created shock around the world.

Complaint

The complainant alleged that in her opinion, the headline was “vulgar, demeaning, rude, immature and offensive”.

She did not make any complaint about the content of the article itself, only the headline.

She felt the use of “WTF” was offensive given what they would normally imply.

She believed the use of “WTF” breached “accuracy, fairness and balance”.

She felt that the original response from *The Dominion Post* editor was “quick, flippant and patronising” and felt that her argument that the headline was both offensive and vulgar was still valid.

The complainant disputed the editor’s claim that the term “WTF” is used widely around the world and believed that the use of “WTF” is not okay at all.

The Editor’s response

Bernadette Courtney, the editor, replied on behalf of the newspaper.

She stated that a lot of thought and consideration had gone into the headline and while it may have upset some readers it was reflective of the tone of the media around the world and thoughts of readers around the world.

The headline was designed to be provocative and have impact but was accurate and fair with the words (Why Trump Flourished) represented by “WTF” clearly shown below the letters.

The article reflected on how and why Mr Trump became the President elect and the headline accurately reflected the information in the article.

The editor, in her reply to the complainant responded that it was unfortunate that she (the complainant) was disgusted by the headline but noted that the Press Council in many of its findings, has stated that readers don’t have the right not to be offended.

In her response to the Press Council, the editor expressed her

regret that the complainant found initial response patronising which was not the editor’s intent.

There were a “handful” of people who complained about the headline to *The Dominion Post* and some of these were published in the letters section of the newspaper.

Discussion and Decision

This is a complaint about a headline so Principle 5 (Headlines and Captions) must be taken into account.

The headline did accurately and fairly convey the substance and key element of the article so Principle 5 has not been breached.

The article did not seek to mislead nor misinform the reader. It was an overview of why the writer believed Mr Trump had won the American Presidential Election and the surprise voiced around the world therefore Principle 1 (Accuracy, Fairness and Balance) was not breached.

While some readers may not have liked the use of “WTF”, there was a full title directly underneath “Why Trump Flourished”.

The editor is correct in noting that the Press Council has expressed in many decisions that readers do not have the right to be not offended and that it is the prerogative of the editor to decide what is printed in their newspaper or publication.

Some Press Council members did express concern at the tone used by the editor when replying to the complainant as they believed it was somewhat dismissive, but the majority did not agree.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Ruth Buddicom, Peter Fa’afiu, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Tim Watkin.

CASE NO: 2556 – CHAZ FORSYTH AGAINST STUFF

Chaz Forsyth says that an article published on the *Stuff* website (*Stuff*) breached principles of privacy, although the specific principle is not referred to.

The Article

The article on *Stuff* relates to a burglary during which a large number of military-style, high powered, semi-auto firearms and significant amounts of ammunition had been stolen. The article states this happened at an address in Maitland Street, and adds that there were a total of 28 firearms taken. The article continues that the owner was a licensed holder of the firearms, which were securely stored. There is a Google map identifying the general area, and there is a plea in the article that the police would like to hear from anyone who has information relevant to the investigation, which would include vehicle sightings, or people attempting to hide, trade or sell weapons. Contact details are then given.

The Complainant’s Position

The complainant initially complained to the Broadcasting Standards Association, presumably to do with an on-air presentation of similar news. In his complaint to the editor of the *Stuff* news site, he states:

I believe that your desire to serve the public interest, is in conflict with the rights and responsibility of licensed law abiding firearms owners and you have betrayed the responsibility of a licensed firearm owner by publicising his own location. I wonder how you can justify the mapping and location of the property of the victim of crime when images of the house concerned may provide clues to its location, making this firearm owner a potential target for further burglaries.

He goes on in his final response that, although he accepted Dunedin was a small town, he remained uncomfortable despite the explanation from *Stuff*.

Stuff's Response

The responsible Deputy Editor Otago Southland, Kamala Hayman, points out that the article was based entirely on a police press release. She notes that the police were seeking the public's assistance in recovering the firearms or identifying the offenders. She pointed to Principle 2 dealing with privacy, and accepted there needed to be a balance between the right to privacy and the public interest.

She pointed to the fact that the Google map embedded in the story identified Maitland Street, which was named in the police media release, but did not identify the specific property. Secondly, she noted the photograph published with the story shows a police car parked in Maitland Street, but this was not outside the house where the burglary took place, nor was that house visible in the photograph. She considered in those circumstances there was no breach of privacy. Finally, she went on to say that there was a strong public interest in identifying the street in order to support the police in finding potential witnesses.

Decision

Where relevant, Principle 2 dealing with privacy reads:

Everyone is normally entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of significant matters of public record or public interest.

In this instance we not consider there has been any breach of this principle. A significant number of highly dangerous weapons had been stolen in a break-in, and it was a matter of significant public importance and interest that these be recovered as quickly as possible, and the offenders identified and apprehended. In addition once the Police issued their Press Release the information contained in it was in the public domain. The article complained of does not go further than the information contained in that Press Release.

In this instance, the public interest outweighs any privacy considerations, and it was, in our view, the responsibility of the publication to follow through on the police media release to give it as wide a dissemination as possible.

In any event, the exact location was not identified in the article, or in the accompanying maps or photographs. However, although a photo shows a police car in a public street (Maitland Street) it also shows a house. Good practice would have been to point out in the caption that the house was unconnected to the theft of the firearms and ammunition.

There is nothing to indicate the complainant is in some way connected with the owner of the firearms, so we take it the complaint is one from a concerned citizen. While we note that concern, we have no doubt that privacy has not been breached, and the public interest has been best served by the responsible approach of *Stuff*.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Ruth Buddicom, Peter Fa'afiu, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Tim Watkin.

CASE NO: 2557 – NEW ZEALAND COLLEGE OF MIDWIVES AGAINST THE NEW ZEALAND LISTENER

Introduction

1. The College of Midwives' complaint relates to an article that appeared as the cover story in *The New Zealand Listener* edition of October 8-14, 2016 (released on October 3).
2. The article, headlined *Birth Control*, centred on a research paper by Elle Wernham et al of the University of Otago, Wellington, looking at data on lead maternity carers (LMCs) that found some poorer outcomes for midwife-led maternity care than in medical-led care (MLC).
3. The college complains of breaches of the Council's principles on accuracy, fairness and balance (1), headlines and captions (6) and comment and fact (4). The complaint is upheld in relation to principle 6.

The Complaint:

4. The college's president, Deb Pittam, on behalf of the college, complained that the article's headlines and captions did not accurately and fairly convey either the substance of the report, the study the article was based upon, nor maternity care in this country.
5. She cites in particular headlines that read "Alarming Maternity Research", "The dangers of midwives in charge" and "Where the revolution went wrong". She also points to the cover picture of a "hippy genre" couple carrying a banner reading "deliver us from doctors".
6. She said the research paper did not suggest there were dangers in choosing a midwife or that changes to maternity had gone wrong as the cover stated and it did not accurately reflect the substance or key elements of the story.
7. She says the reporting was inaccurate, in that it cited babies in the 2008-2012 study were at higher risk if they were delivered by midwives than doctors, when the data could not identify who delivered the baby, but only compared the outcomes for midwife-led and MLC-led care and the data only recorded who the woman first registered with, not who delivered the baby or was responsible at the time of birth - midwife or doctor. It also suggested there was greater danger to babies than there was, because the actual numbers were small.
8. She said a text box in the article which read "babies

- delivered by midwives are 55 per cent more likely to have oxygen deprivation during delivery” suggested over half of all babies were at risk and was highly inaccurate and misleading and suggested 55 per cent of all midwife-led births had birth-related asphyxia.
9. In a further alleged breach of principle 1 she said the article referred to minutes of a college meeting that were not written up at the time and had not been transcribed or circulated since, so could not be attributed to the college’s national meeting as having dismissed the research as “flawed” “poor” and based on wrong assumptions. She implied the comments were made outside the meeting by individuals.
 10. She said the reporter had used inflammatory language to portray the maternity care environment as “war torn” and a “hard fought battle” yet the experts cited had discussed the need to keep the results in context and agreed the integrated model of midwives and obstetricians was working well - and that undermined the claim of “midwives in charge”.
 11. On the complaint of a breach of principle 4 (comment and fact), Ms Pittam said the right of reply was not evenly spread with the college and other leaders in the maternity sector were given little opportunity to respond to other interviewees’ opinions.
 12. For instance, she said Lynda Exton’s view of increased mortality had been proven wrong in the past but she was able to voice that opinion “unhampered yet again” and there was not a clear distinction made between opinion and comment on the one hand and fact on the other.
 13. She also asserted that comments by the chair of the DHB chief medical officers group Ken Clark in the article were untrue.
 14. She said the reporter did nothing to discredit these “false claims” but reinforced them by quoting them.
 15. Ms Pittam said coverage like *The Listener* article obstructed the evaluation process and only succeeded in “terrifying pregnant women and demoralising the health workforce” as well as increasing stress on midwives.
 16. She also alleged the reporter’s other work on the topic was also inaccurate, unbalanced and unfair and demonstrated a predetermined agenda on her part and that of *The Listener* - and that she had not identified personal views as opinion.
 17. Ms Pittam provided the Council with further references and material supporting midwives and/or taking issue with the research paper’s findings and methodology and broadly supporting her views - including questioning the existence on the evidence of a causal link between the different outcomes and whether the pregnancy oversight was midwife or MLC – led.
- The Response**
18. The editor of *The Listener* Pamela Stirling in her response - and in a subsequent rebuttal of the college’s reply to her first response - said in relation to principle 6 the headlines accurately reflected the concerns raised by the report.
 19. Specifically the subheadline “the dangers of midwives in charge” addressed the disparity in outcomes in midwife-led births compared with obstetrician-led births and was an accurate way to describe a model where midwives were the lead carers.
 20. “Where the revolution went wrong” fairly reflected a key element of the article - a political decision in the mid-1990s to transfer control of delivery from doctors to midwives and whether that had resulted in the optimum outcomes. Along with funding changes it had seen, she said, nearly all GPs abandoning obstetrics and it was estimated there were fewer than 15 nationwide.
 21. The concerns of some of those interviewed in the article justified the use of the word “alarming” to describe the research findings.
 22. Ms Stirling accepted that the end of the first paragraph of the article should have referred to babies whose mothers had a midwife as lead carer, not who delivered their babies. The mistake was acknowledged and a correction ran on the letters page on November 9.
 23. She asserted that throughout the article it was acknowledged doctors were often involved in midwife-led care and vice versa and it was not known to what extent each may have been involved in each birth.
 24. But she said the focus was on the lead carer, not who ultimately delivered the baby. This was mentioned in the article.
 25. But the comparison of obstetricians and midwives as LMCs was fair and valid no matter who ultimately delivered the baby because the research study showed these had measurably different outcomes.
 26. She rejected the assertion by Ms Pittam that the text box referred to in paragraph 8 above would be understood as referring to 55 per cent of all babies delivered by midwives, but rather that it was proportionately more likely.
 27. In relations to the “minutes” of the college’s national meeting Ms Stirling provided a copy of a document identified as notes taken at the meeting. Ms Stirling said it was understood the document was widely circulated to college members as a record of the meeting. She argued it was accurate to describe them as minutes, even though they were described as “notes”.
 28. The notes did contain the language objected to by the college in its complaint - that the research report was flawed research, poor research and based on wrong assumptions.
 29. In relation to the allegation of inflammatory language Ms Stirling said the language - “war torn” and “hard fought battles” - was metaphorical and did not denigrate midwives but drew attention to the hard-fought effort to overturn the presumption in favour of doctor-led maternity care in the 1990s.
 30. She said the article did not contain the author’s comment or opinion, but “only factual information and the opinion

of people interviewed". Dr Exton's views were presented as opinions not facts, and the college's counter view represented by Lesley Dixon was set out directly below it.

31. Rights of reply were provided at the editor's discretion where balance was needed. The article was largely supportive of midwifery and extensive comment was included from representatives of the college. A letter from the college was published on October 22. Balance, not the right of reply, was required by the Council's principles, Ms Stirling said.
32. She said *The Listener* had published articles, including one on October 26 commissioned before the college's complaint was received, that were positive towards midwifery. The reporter had written only one of the other articles depicted by the previous *Listener* covers at the bottom of its opening page.
33. The magazine had taken a fair, balanced and accurate approach to the issue over a number of years.
34. Ms Stirling provided other documents including copies of reports of the research by other media, taking a similar approach to that of *The Listener*, the letters to the editor it published and a number of articles covering errors by individual midwives.
35. They included a letter from Professor Peter Crampton, the Pro-Vice-Chancellor of health studies at Otago University that stated that overall the article fairly and accurately represented the study - apart from the error acknowledged by *The Listener* that the article did not use the term LMC in some cases.

Discussion and Decision

36. As the Council has noted in the past it does not have the mandate or the resources to investigate the underlying research used as the basis for articles and cannot adjudicate or arbitrate between competing scientific papers or views or methodology or judge the merits of the research.
37. If the college takes issue with the research and its conclusions -as opposed to the fairness of the reporting of them - it should take those up with the researchers and the institution, in this case Otago University.
38. The Council does, however, note the poor treatment of statistics in the article and that this appears to be the work of the writer rather than of the researchers whose work was reported. It was noted that the research covered a large number of births (over 240,000), that fewer than 10% of those births had been from pregnancies registered with a medical lead maternity carer, with over 90% midwife-led, but at no point is there any mention either of the total number of births in which there was a sub-optimal outcome or of the number of such births in either category. This omission makes it difficult to assess the significance of the percentage figures for outcomes – and those percentage figures are a key basis for some of the later discussion.
39. In the matter of the complaint on principle 4 - opinion and

fact - the principle does not relate to examples where the reader takes issue with the accuracy of a view expressed by one of the people quoted in an article or where there are differing views on an issue. In such cases there may be an issue of balance, but it does not constitute a breach of the principle to accurately report a contested view or an opinion where it is clearly marked as such.

40. The thrust of the principle is that it should be clear what is opinion and what is fact. A person's view being quoted accurately - and clearly marked as their view - does not blur the distinction between opinion and fact. We do not find that in this case the reporter inappropriately confuses opinion and fact by analysing, summarising and drawing conclusions from the evidence.
41. In relation to principle 1 (accuracy, fairness and balance) the Council's view is that the article canvasses a wide range of views and is balanced and accurate (with the reservation outlined below). The views of the college and others both supportive and critical of the current environment are included.
42. Moving to some specifics of the complaint.
43. In the case of paragraph 8 above, the Council (while noting the error of the reference to midwife deliveries not midwife-led care) accepts Ms Stirling's view that it did not, as the college asserts, suggest 55 per cent of all births involving midwife births had a greater chance of oxygen deprivation as the college complains. It clearly refers to it that being 55 per cent "more likely" so is a relative not absolute measure.
44. On the question of whether the information came from "minutes" or not. Ms Stirling provides one dictionary definition but there are others that stress their more formal status. (e.g from BusinessDictionary.com: "The Permanent, formal, and detailed (although not verbatim) record of business transacted, and resolutions adopted, at a firm's official meetings such as board of directors, manager's, and annual general meeting.")
45. It would have been preferable to call them notes, rather than minutes, in the article but they were clearly more than just the view of an individual. The document presented by *The Listener* in support of its argument is a detailed account of the meeting. Clearly the evidence the magazine relied on in this instance was more than just the views of an individual after the meeting as the college implies.
46. The Council believes readers were not materially misled by the record of the meeting being described as "minutes".
47. It is regrettable that early in the article the magazine in error referred to the paper's findings as highlighting the risks to babies delivered by midwives, and that may have coloured readers' perceptions of the rest of the article and the research.
48. However, the magazine has acknowledged the error and printed a correction, albeit not in terms wholly accepted by the complainant. The article read as a whole provides

an accurate account of the research in that regard.

49. In relation to principle 6 (headlines and captions) the Council upholds the complaint.

50. It is acknowledged that magazine covers and the cover lines that appear on them are normally striking and more attention-grabbing compared to headlines on articles. As such they may, for instance, stress one controversial or compelling aspect of the article they seek to promote and may be granted some leeway under Principle 6.

51. But in this case the Council believes *The Listener* went too far. While each of the coverlines and subheadlines in isolation referred to key elements of the article, taken as whole the front page in particular conveys a much more negative view of midwives, the level of risks posed by midwife-led care and the changes to maternity care in the 1990s - further exacerbated by the “hippy” couple and their placard - than the substance of the article, the range of views it canvassed or the research on which it was based.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Peter Fa’afiu, John Roughan, Marie Shroff, Vernon Small, and Tim Watkin.

Ruth Buddicom and Sandy Gill took no part in the consideration of this complaint

Jenny Farrell and Mark Stevens stood down to ensure public member majority.

CASE NO: 2558 – HILARY PHILLIPS AGAINST THE DOMINION POST

Hilary Phillips has complained about a cartoon published in *The Dominion Post* on 9 January 2017, which depicted Foreign Minister Murray McCully as David and Israel as Goliath.

The complaint is not upheld.

The Complaint

Ms Phillips complains that the cartoon twists the Jewish story of David and Goliath, in a way that is at best distasteful and at worst inflammatory. In her view it is a part of the questionable material *The Dominion Post* has published on Israel, which may engender hatred against Israel and Jewish people in New Zealand. In making her complaint she has not cited a specific principle.

The Editor’s Response

In a brief response to Ms Phillips, the editor Bernadette Courtenay says the David and Goliath cartoon is opinion and clearly marked as such. The paper has published varying views on Israel/Palestinian issues. Cartoonists have scope for a view, as their work is opinion. The editor says it is not her intention to censor their work or to apologise for the cartoon.

Discussion and Decision

In late December 2016, just before its term ended as a member of the United Nations Security Council, New Zealand co-sponsored a resolution calling on Israel to stop building settlements on occupied Palestinian land. The US abstained, rather than taking its more usual position of vetoing resolutions critical of Israel. Strong opinions on both

sides of the issue were expressed over the following days, in New Zealand and internationally. It was reported that the Israeli Prime Minister had phoned Mr McCully to say that New Zealand’s action amounted to nothing less than a declaration of war; the Israeli ambassador to New Zealand was abruptly withdrawn. Palestinians are reported to have viewed the resolution as a rare victory for their cause. Some public commentary suggested that New Zealand’s was “brave” to annoy Israel. The cartoon responds to the Security Council resolution and its aftermath.

Relevant to the complaint is the Press Council Principle concerning Columns, Blogs Opinion and Letters, which says that cartoons are understood to be opinion.

The cartoon was opinion and clearly identifiable as such. With comment and opinion, balance is not essential. However, the editor says a number of stories and letters were published around the same time, which put forward views on both sides of the issues. In an editorial on the same page and immediately adjacent to the cartoon, the paper refers to the “lunatic fringe” who still quote from “The Protocols of the Elders of Zion” which “has long been exposed as a crude fraud”.

In previous complaints the Press Council has noted that cartoonists may express their own opinions and in doing so may cause disquiet, or offend individuals and groups. The complainant has a right to have concerns, and a different view from the cartoonist. The cartoonist also has a right to express his opinion. The Council must balance the complainant’s concerns with the freedom of expression necessary in a democracy.

While we acknowledge the complainant’s real concerns, in the Council’s view the right to freedom of speech outweighs her contention that the cartoon is distasteful and inflammatory. *The Dominion Post* has not breached the Press Council’s principles in publishing the cartoon.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Ruth Buddicom, Peter Fa’afiu, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Tim Watkin.

CASE NO: 2559 – RIGHT TO LIFE NEW ZEALAND INC AGAINST THE PRESS

Right to Life Inc, represented by its secretary, Ken Orr, complains about an article published by *The Press* on October 29, 2016. The complaint is of a breach of Press Council principle 1, concerning accuracy, fairness and balance.

The Press Council does not uphold the complaint.

Background

On October 29, 2016, *The Press* published an article reporting on submissions made to Parliament’s Health select committee when it held hearings in Christchurch on euthanasia.

The first part of the article focussed on a submission made by a woman with Huntington’s disease, in favour of the right to choose euthanasia. It then reported that the majority of

submissions were against physician-assisted suicide and summarised the views expressed in those submissions. The final part of the article reported and commented on a controversy over police action against members of Exit International, a euthanasia group, and a subsequent prosecution

The Complaint

Right to Life complains that the article was an advocacy article promoting euthanasia and that it positively advocated suicide as a rational act. It was therefore in conflict with guidelines on suicide reporting given by the Mental Health Foundation. In the opinion of Right to Life, the media have a duty not to promote suicide as a rational act. On the contrary, they should vigorously uphold the Crimes Act (which prohibits assisting in suicide).

Right to Life also consider that the article failed to give sufficient weight to the fact that most of the submissions heard by the select committee were opposed to euthanasia and that the article is unfair in “leading people to believe that the only way to be free of pain and suffering is to be killed by your doctor.”

The Press Response

The editor of *The Press*, Joanna Norris, did not accept that there was any breach of the Press Council principles.

The story was one of several reporting on the select committee hearings as it moved round the country hearing submissions on voluntary euthanasia. It placed the select committee process in the context of the wider debate on voluntary euthanasia.

The story (and its headline) accurately represented the views of a submitter. *The Press* has reported the views of a wide range of submitters and has, over time, also covered more general issues relating to voluntary euthanasia, again reporting on a wide range of views.

Ms Norris comments that in considering a previous complaint from the same complainant, the Press Council found that *The Press* had provided persuasive information to support the contention that its overall coverage of the right to die issue has been balanced. She considers that the complainant appears to be determined to test and re-test the same principle whenever an opposing view is published and that there is no willingness to accept that the media has a right and an obligation to present a diversity of views.

Discussion

The Press Council has, as noted by Ms Norris, previously found that the overall coverage by *The Press* of the debate over voluntary euthanasia has been fair and balanced. The complainant has not provided any evidence or argument that would persuade it to change its view. There are no identifiable inaccuracies in the article, it is reasonably fair and balanced as a stand-alone piece, and it is certainly so in the context of the many items on the issue that have been published by *The Press* and other media.

Right to Life considers the media have a duty to uphold and advocate for existing legislation. While media should not encourage breaking the law (and there is nothing in the article that would amount to such encouragement), there

is no reason why they should not report on advocacy for changes to existing law. Indeed when there is substantial public debate on an issue, as there is on euthanasia, it is part of the essential role of the media to report and comment on it.

Similarly, Right to Life refers to guidelines on suicide reporting put out by the Mental Health foundation. These guidelines advise against presenting suicide as a desired outcome or using language that may suggest suicide as a viable solution to pain and distress. In the view of the Press Council, the guidelines were not breached by reporting on submissions made to the select committee – it was simply not a case of reporting on a suicide.

The Press Council is concerned that the complainant appears unable or unwilling to accept that reporting the expression of views contrary to its own is not a matter of inaccuracy or that it is neither unfair nor unbalanced to report on occasion at rather greater length on one aspect of a long-running issue. It will continue to scrutinise complaints submitted by Right to Life, but unless Right to Life is able to produce at least some cogent evidence of a breach of Press Council principles, it is likely that there will be a recommendation to withdraw the complaint rather than submitting it for a full Council determination.

Decision

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Ruth Buddicom, Peter Fa’afiu, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Tim Watkin.

CASE NO: 2560 – MAX SHIERLAW AGAINST HUTT NEWS, STUFF AND THE DOMINION POST

1. Max Shierlaw objects to a news report of objections filed against an application to expand a brothel and escort agency operating from a house in Pharazyn St, Melling. The report for *Hutt News*, *Stuff* and *The Dominion Post* highlighted concerns that an operation employing more prostitutes would lead to the “breakdown of the nuclear family” and provide cheap sex for truck drivers. Mr Shierlaw complains the report lacked accuracy fairness and balance because only a minority of objectors raised family issues and the majority objected on legitimate planning considerations under the Resource Management Act, which, he maintains, the report did not cover. The complaint is not upheld.

The Complaint

2. As a former Hutt City councillor, Mr Shierlaw met with Pharazyn St residents to discuss the brothel application and advise them on the process. He says he always advised people in this situation to include every conceivable argument in their submission because it is better to be told something is not relevant than to omit something that is relevant and be unable to raise it later in the process.
3. The news report of objector’s submissions did not reflect their main themes, which were: nuisance and serious offence to members of the public, incompatibility with the character of the area and breaches of provisions of the

Prostitution Law Reform Act 2003, the Hutt City Council District Plan and the brothel's current consent to operate as a "home occupation".

4. Instead the reporter produced a "highly selective" report which focused on family issues. The vast majority of submissions were concerned with disturbance, noise, nuisance, alcohol related issues and, most important, incompatibility with the area. The story had not covered any of these.
5. Mr Shierlaw believes, "(the reporter's) intention was to ridicule the submitters". He found the tenor of the article extremely offensive. "These are just ordinary lay people seeking to engage in a process which they have little professional expertise in. They deserve better than to be ridiculed by a journalist."

The Newspaper's Response

6. The Editor in Chief of the Dominion Post, Bernadette Courtney, agreed the reporter had been selective because it would be impossible to cover all objections. But in highlighting family concerns he had focused on a fairly common theme in the submissions.
7. The report had in fact mentioned many of the other concerns that Mr Shierlaw says it ignored. One sentence read, "Neighbours claim it will lead to drug abuse, a loss of property values, undesirables hanging around, and extra traffic."
8. To demonstrate that factors other than family concerns played a significant part in the council planning officer's recommendation to decline the application, the newspaper quoted her as, "noting many of the issues raised by neighbours, including the breakdown of the nuclear family, were not covered by the Resource Management Act."

The Complainant's Response

9. Mr Shierlaw said the article had mentioned non-family related objections after its "sensationalist" opening and since the report did not indicate which objections were valid under the Act and which were not, readers would assume all were fanciful claims. The article was inaccurate in so far as it sought to portray the objectors raising only "fanciful objections". It was unbalanced in that it failed to provide equal coverage of relevant objections and did not give the Prostitute Collective's response to any of the valid objections.

Discussion and Decision

11. At the Press Council's request the complainant has supplied it with submissions from two groups of objectors, one that contained the reference to "the breakdown of the nuclear family" which was highlighted in the news report, the other from the Pharazyn St Residents' Collective that set out its concerns in terms the complainant prefers. He says the first submission represented fewer than 10 residents [the Council notes there were in fact around 100] whereas the second was made on behalf of "many dozens" of people but no mention was made of it in the news story.
12. In fact the Pharazyn St Residents Collective's submission

also makes reference to concerns for the effects on families, stating, "A brothel at this location is completely out of character with Pharazyn St, being a largely peaceful residential street with many families with school age and younger children."

13. While this might not have been a relevant concern under the Act, and therefore not one of the persuasive points for the council's planning officer's recommendation, it was not inaccurate or unfair for the reporters to highlight this objection. Newspapers are free to take an angle that will interest readers, they are not obliged to follow the prescriptions of legislation.
14. This story did in fact mention other points of objection — drug abuse, property values, undesirables in the neighbourhood and traffic. The complainant is not being accurate or fair when he says the reporter did not cover any of the legitimate RMA issues.
15. The story highlights the basic conflict between a brothel and family life in a residential neighbourhood and it is balanced with the views of the Prostitutes' Collective. The complainant is offended by the reference to "Fanciful Objections" in the headline but this is taken from a quote and reflects the Prostitutes Collective's view of the factual basis of some of the objections, not their legal relevance.
16. The story records the council planner's recommendation to decline the application while quoting her saying issues such as the breakdown of the nuclear family were not relevant under the Resource Management Act. A reader could therefore easily deduce that other concerns, some of which the story had mentioned, were relevant and persuasive.
17. The Press Council can see nothing wrong with the report. The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Ruth Buddicom, Peter Fa'afu, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Tim Watkin.

Liz Brown took no part in the consideration of this complaint.

Mark Stevens stood down so as to ensure the public member majority.

CASE NO: 2561 – TOWER INSURANCE AGAINST THE PRESS

Background

1. Tower Insurance complains about an article published in *The Press* on December 15, 2016. The complaint is under Principle 1) Accuracy, Fairness and Balance. In *The Press* the story was headlined 'Withholding information to cost Tower'; on *Stuff* it was headlined "Tower liable to cough up \$1.6million after withholding report from Christchurch architect".
2. The article is a court report covering legal action by home-owner Greg Young and his family trust, against their insurer, Tower Insurance, after damage sustained in the Christchurch earthquakes of 2010 and 2011. The

Young family made a claim that, as Justice Gendall wrote, suffered from misunderstandings from the start, leading to animosity and distrust.

3. The story chose to focus on the angle that “Tower Insurance withheld information” from the Youngs. The information withheld was a brief report commissioned by Tower that backed the family’s claim.
4. At its heart, the case was an argument over whether the damaged house should be repaired (as per Tower’s wishes) or rebuilt (the Young’s wishes). Justice Gendall discussed the events in dispute and, ultimately, considered Tower’s policy was central to the case. In particular, he focused on: whether Tower’s suggested reparations methods were “commonly used”, whether the repair would return the house to “as new condition”, whether the house was “damaged beyond economic repair” and whether Tower owed an implied duty of good faith to its client, and had in fact acted in good faith.

Complaint

5. Tower’s complaint to the Press Council was written by its head of Corporate Communications, Nicholas Meseldzija, and its complaint to *The Press*, by its CEO Richard Harding. For the purposes of this decision, the Council will treat their letters as a single complaint in the name of the insurer.
6. Tower says the headlines and story quoted selectively from the ruling and were inaccurate in suggesting that its withholding of the report led to it being found liable to pay the Youngs the \$1.62m. In particular, it notes that the *Stuff* headline “implies that the damages award was consequent on the withheld report”. In fact, it was the company’s liability under its policy that lost it the case.
7. Further, Tower says “the true position” with the brief report is that it was prepared by its agent, Stream; Tower did not know of its existence and provided it to the Youngs as soon as it became aware of it. The withholding of the report is a minor part of the case, mentioned in just three of the ruling’s 191 paragraphs.
8. Tower also says that if *The Press* is going to quote the judge saying withholding the report was “a serious breach of the defendant’s obligation of good faith”, it should also record the judge’s other comments in the same paragraph of the judgement: That the report was prepared by Stream, Tower released it as soon as it knew about it, the damages awarded for the breach were “nominal” and that the report made “little difference to the overall outcome” of the case.
9. The story quoted the plaintiff’s claim that the house “slid at least 100 millimetres down a hillside”, but that claim was ruled to be unfounded.
10. The complainant says it wrote to *The Press* “setting out its point of view” and the newspaper compounded its faults when it “refused to publish its letter”. It requested *The Press* print its letter in its entirety on page three and on *Stuff*, headlined “The Facts of the Young case against Tower”.
11. Tower complains that it was not given the opportunity to comment or contribute to the story.
12. Tower’s other complaints include: the final amount awarded was an amount nominated by their witness, not the Young’s; that the final amount awarded was closer to their pre-trial offer than the amount the Youngs were claiming and that the family’s claim was “excessive”; there is no mention of the points of law that the Young family lost on or the criticism they made that the judge found unwarranted; Tower never disputed the accommodation costs awarded; and Mr Young’s behaviour contributed to the delay and acrimony and his claim included substantial fees to his own company.

Editor’s Response

13. *The Press*’ editor Joanna Norris, rejected Tower’s complaints, arguing it is “simply a straightforward summary of Justice Gendall’s substantive judgement”. She says a news report of a 62-page judgement is by definition selective, adding “there will always be matters in a judgement of this length upon which one party or another may wish greater emphasis be placed”.
14. On the withholding of the report by Stream, Norris acknowledges that “Justice Gendall recognises Stream’s involvement, but notes “this does not assist the defendant in this case...”. She says Stream was Tower’s agent and Tower was held accountable by the court and the plaintiffs awarded \$5000 as a result.
15. Norris notes that the withholding of the report was one of the four key findings highlighted by Justice Gendall and formed the basis for the damages awarded. What’s more, the judge said the law in this area is still unfolding and discussed in detail the good faith obligations between insurers and clients. Therefore, the issue is of public interest.
16. Norris stands by *The Press* headline, but says while the *Stuff* headline is “technically accurate” it could mislead readers that the award was due to the report being withheld. Therefore the headline has been changed to read “Tower to pay \$1.62 million after dispute with client”.
17. On the home’s movement, she says that Justice Gendall noted the home did move, settling up to 116mm in the south-eastern corner and laterally to the east by up to 20mm.
18. The “letter setting out [Tower’s] point of view” was in fact a 1100 word statement. *The Press* invited Tower to instead write a letter to the editor in line with its letters policy, but Tower has not responded to the offer.
19. As the story was a straight forward report on court proceedings, neither party was contacted for further comment. That is standard practice.
20. The story reports as “a straightforward statement of fact” that the court ordered Tower to pay \$25,000 in accommodation costs. She does not accept Tower’s interpretation that the story implies that was in dispute. Similarly, she says the story accurately reports the

amount awarded to the plaintiffs, Tower's offers and the amount claimed by the Youngs.

21. Norris concludes that Tower's complaint is "wholly self interested"; while the company would have preferred a greater emphasis on its arguments, the story was a fair, accurate and balanced report of the judge's findings.

Discussion & Decision

22. At the heart of any consideration of this complaint, is that the article is a report on a judge's ruling. While the story concerns the battle between Mr Young and Tower, it is not for the Council to rule whether this report is a fair, balanced and accurate report of the prolonged battle between the parties. That was the matter before Justice Gendall. The question facing this Council is simply whether the article is a fair, balanced and accurate record of Justice Gendall's judgment.
23. It's important to note that 1) Ultimately the Young family won its suit to have their home rebuilt and 2) court reports are always limited to the facts of a judge's ruling.
24. On that second point, it is perfectly normal then for *The Press* to have not contacted either Tower or the Youngs for comment; that is no cause for complaint. On the letter, Tower does itself no credit with its misleading comment that *The Press* "refused to publish its letter". It turns out Tower was demanding the printing verbatim of an 1100 word statement on a certain page with a certain headline. *The Press* has every right to reject such a disproportionate request and acted reasonably offering them the right of reply via a letter to the editor.
25. A number of Tower's complaints can be viewed as an attempt to relitigate the argument with the Young family. For example, reporting the offers and claims by both parties and that the court ordered Tower to pay \$25,000 in accommodation costs are both simple statements of fact. It would have been pushing the boundaries of court reporting for *The Press* to enter into discussion as to whether one claim was "excessive" or whether the final amount awarded was closer to one party or another's initial position.
26. Similarly, *The Press* headline "Withholding information to cost Tower" is a fair statement of fact. *Stuff's* headline "Tower liable to cough up \$1.6million after withholding report from Christchurch architect" does imply that withholding the report led to Tower losing the case, which is inaccurate. However, as *Stuff* has corrected the headline in accordance with the Council's requirement to act promptly to correct such errors, we do not uphold on that point.
27. Journalists are free to choose their own angle from the many offered by a 62-page ruling, so it is not for Tower to approve or disapprove of the headline or tell the newspaper which parts to report. As Norris says, any news story will "by its nature report selectively".
28. Withholding the report prompted Justice Gendall to embark on the lengthy discussion [20 pars] on good faith between an insurer and its client, noting an insurer's obligations have "never been settled in New Zealand"

[Par 157]. So that was certainly a matter in the public interest. Further, as Norris points out, withholding the report was one of the four main "results" focused on by Justice Gendall. The story covers the other three, including the core fact that the Youngs won the right to a rebuild in the second paragraph.

29. The Council also notes that withholding the report was the first "event" addressed by Justice Gendall in his judgement [at par 13]; was the reason for the damages awarded to the plaintiff; and, aside from the long discussion on good faith, was referred to in at least seven pars, not three as contended.
30. However, it was not the most substantive part of the ruling nor at the core of the case. As Justice Gendall wrote, it made "little difference to the overall outcome" and so *The Press* took some risk going with this angle.
31. In its coverage of the report being withheld, *The Press* then failed to say that it was Tower's agent, Stream, which wrote and "intentionally withheld the report" and that Tower released it to the Youngs as soon as it was aware of its existence.
32. While Tower's frustration at the exclusion of these details is understandable and *The Press* could have done better, Tower is unquestionably responsible for their agent. The court is clear that Tower is "bound by Stream's actions". The judge awarded nominal damages against Tower for "the defendant's failure to disclose this document", clearly laying responsibility at Tower's door.
33. Similarly, it's understandable that Tower would complain about *The Press'* decision to quote the plaintiff's claim about house movement of 100mm down the hillside to the east rather than the "agreed" movements discussed later in the ruling. The various measurements Justice Gendall reports are in the range of 10mm-116mm, but the 116mm movement (the closest number to the "at least 100mm" quoted) is in fact in the "south-eastern corner" of the house. But while the reporting is sloppy shorthand and seems confused about where the settling occurred, it is not sufficient to consider the story unfair or inaccurate.
34. The complaint against Principle 1 is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Peter Fa'afiu, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Tim Watkin.

Ruth Buddicom took no part in the consideration of this complaint.

Vernon Small stood down to ensure a public member majority.

CASE NO: 2562 – VICTORIA TURNBULL AGAINST SOUTHLAND TIMES/STUFF

Victoria Turnbull complained that an article published online by *Stuff* breached Principles 2 Privacy, 3 Children and Young People, 7 Discrimination and Diversity, 8 Confidentiality, 11 Photographs and Graphics, 12 Corrections.

Background

On November 3, 2016 *Stuff* published a story entitled “Government to outlaw school seclusion rooms”, which outlined plans by education minister Hekia Parata to make the use of seclusion rooms in schools illegal, and to release guidance developed by an advisory group so schools had a clear understanding of how to deal with challenging behaviour.

The story was a follow-up to several media reports last year of autistic children being locked in school seclusion rooms alone, for hours at a time.

The story was accompanied by an image of the complainant Mrs Turnbull and her husband, with a caption that named both of them and their son, who was not in the photograph. The photograph was originally taken for a story *The Southland Times* planned to run in February, but which was subsequently dropped.

At Mrs Turnbull’s request, the image and caption were removed from the story.

The Complaint

In her complaint, Ms Turnbull says she and her husband were interviewed by *The Southland Times* in February 2016 for a story regarding their son, a young person who has a disability. The parents were photographed and videoed for the article. The story was, however, not published, at their request, due to legal constraint on some material they had provided.

She says *The Southland Times* did not make contact with them again, even though issues surrounding their story were reported in other media in October and November. The Turnbells had elected to remain unnamed in those reports to protect their identity and the identity of their son.

She says that on November 3, a reporter from *The Southland Times* contacted the Turnbells regarding new developments in the story, and requested comment from them. Mr Turnbull advised the reporter that they were unable to make any comment at that time as they had made a commitment to another news outlet, but they “would be keen to talk to her the following day”.

The complainant says that later the same day, they discovered that stuff.co.nz had published a story online entitled “Government to outlaw school seclusion rooms”. A photograph taken by *The Southland Times* back in February, with a caption that named Mr and Mrs Turnbull and their son, was published as part of the story.

She says the story appeared online shortly after an interview she gave John Campbell on Checkpoint. In the interview she was named, but her husband and son were not.

Mrs Turnbull emailed Natasha Holland, the editor of *The Southland Times*, and requested their names and the photograph to be removed immediately.

The editor complied with their request but a later Google search revealed that their names still appeared under the headline.

She said the matter involving their son was currently under police investigation; as he is under 16, and may have been

the victim of a crime, he has automatic name suppression.

In further correspondence with the Press Council, Ms Turnbull said consent was given for the photograph to be used only for a potential story that was prepared by *The Southland Times* in February. She said the couple was allowed to review the story, but having read it, they decided not to go ahead and withdrew their support.

She said that despite heavy media interest, *The Southland Times* never contacted them again regarding the issue, or their complaint against Ruru Specialist School and their use of a seclusion room, which was being investigated by police.

Further, she questioned whether it was ethical for a news organisation to name a minor who is the possible victim of a crime which is still under police investigation.

The Response

The editor of *The Southland Times*, Natasha Holland, confirmed that the image published by *Stuff* was taken in February when the Turnbells were interviewed for a story. The Turnbells had alleged their son was improperly detained in the seclusion room at Ruru School in Invercargill. The Ministry of Education had investigated the complaint against the school, and a police investigation was ongoing.

The editor says that at the time of the interview the Turnbells consented to the video interview, to having their photograph taken, and to the use of their name and that of their son. They consented to the use of the image in question.

The Turnbells subsequently withdrew their support for the story as they were concerned that some written material provided by them was not included in the planned story. The specific material was not able to be published due to legal constraints.

The constraints did not relate to the interview itself, or the images of the Turnbells.

The editor says that there was no agreement that the newspaper would not publish the material it had gathered during the interview but there was an understanding that once the police investigation was over the newspaper would be back in touch.

In November the issue surrounding seclusion rooms gained further attention after another family spoke publicly of their concerns about their own child.

The editor said that on November 3, a Wellington-based Fairfax journalist reported on the news that the government would outlaw seclusion rooms. The story carried the image the Turnbells had consented to back in February.

The editor said Mrs Turnbull emailed her later the same night, expressing disappointment that the photo and their names had been published. In her complaint to the editor, Ms Turnbull said, “We are not at all happy that you have named our son. He has a right to privacy that is now blown. You do not have permission to report or publish any of the information previously supplied.”

The editor says that as a result of the complaint and the concerns raised about her son’s privacy, the image and names were immediately removed.

She argued that the story did not breach the relevant Press Council Principles as the image was gathered with consent and used in an appropriate context.

Addressing Principle 2, Privacy, the editor said the Turnbells consented to the use of the image when it was captured and have spoken publicly to Fairfax Media and other media in relation to their concerns about the use of seclusion rooms, so the subsequent use of the image was not a privacy matter.

On Principle 3, Children and Young People, the editor said the newspaper had sought to work closely with the Turnbells to ensure special heed was paid to the interests of their son. She had acted quickly to remove the image once she became aware of the Turnbells' concerns relating to the caption which named their son. The boy was not in the photograph.

The editor said when she had been alerted to the fact that the family's names were revealed in a Google search when she received the Press Council complaint, and she had subsequently requested Google amend the search to ensure the family's name is not connected to the story. Google had confirmed this had been amended.

Further, no charges have been laid in relation to the Turnbells' complaint against the school, therefore statutory name suppression does not apply.

On Principle 11, Photographs and Graphics, the editor argued that the parties had consented to the gathering and use of the image. The editor had determined however that there was no strong public interest in the ongoing use of the image that should outweigh the concerns expressed by the family, and had taken steps immediately once they were made aware of the concerns and to the explicit withdrawal of consent.

With regard to Principle 12, Corrections, the editor argued that she had immediately addressed the concerns raised by the complainant, and also to the matter of the Google search when it was raised with the Press Council.

The editor did not believe Principles 7 and 8 are relevant to this complaint.

Discussion

The issue concerning the use of seclusion rooms for the purpose of restraining children has received considerable publicity in New Zealand, and the news that the Education Department had announced plans to outlaw the practice is newsworthy and very much in the public interest. *Stuff's* story on Hekia Parata's announcement was timely and relevant.

The family's dismay at discovering they had been named in the article is however understandable given they had chosen not to be identified in any previous stories on the issue.

There is some disparity in the facts surrounding the phone call by a journalist asking for the Turnbells for comment on the moves to ban the use of seclusion rooms. Mrs Turnbull believed the call was made by a reporter from *The Southland Times*, which is somewhat at odds with her statement that no one from the paper had ever contacted them after the story was dropped in February. The phone call was in fact made by a Fairfax reporter working out of the Wellington office.

Be that as it may, the Press Council is satisfied the photograph and caption were published in good faith given that the

photograph had been taken with the couple's knowledge, and that they had given their full consent at the time the article was being prepared in February to its use, and the use of all three names in the story. Extra care should have been taken with the caption, however, given that there was a child involved.

Furthermore, the Turnbells had proved themselves to be willing participants in the story by contacting *The Southland Times* in the first place, and by engaging, albeit anonymously, with other media in the intervening months. They had told the Fairfax reporter that they could not comment because they had a commitment with another news organisation, presumably Checkpoint, but would be happy to talk the next day, all of which would suggest they were happy to cooperate with the newspaper. Mrs Turnbull was named in the Checkpoint interview.

The Southland Times editor's immediate response to the Turnbells' email which resulted in removal of the image and caption, and her follow-up later when she was alerted to the Google search that linked the Turnbells' names to the *Stuff* headline, was commendable.

In our opinion naming the boy in the caption was an honest mistake and *The Southland Times* and *Stuff* were professional in their handling of the situation. Although the family's privacy was compromised, which is regrettable, we find there is no breach of any Press Council principles.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Ruth Buddicom, Peter Fa'afiu, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Tim Watkin.

CASE NO: 2563 – CHRISTINE AND DOUG BANKS AGAINST THE GREYMOUTH STAR

Christine and Doug Banks complain about items published by the *Greymouth Star* on February 2, 4, 8 and 20, 2017, and refer also to letters to the editor. The complaint is mainly of a breach of Press Council Principle 1, concerning accuracy, fairness and balance, but Principles 2, 6, 10 and 12 are also cited.

The Press Council does not uphold the complaints.

Background

For many years Mr and Mrs Banks have been in dispute with the Grey District Council over matters to do with the lease of their property at Blaketown. There has been protracted and expensive litigation, in which Mr and Mrs Banks were ultimately unsuccessful, and the matter has been extensively reported by the *Greymouth Star*. Mr and Mrs Banks have paid the amount of rent that was in dispute but were left with substantial court orders for costs. The Grey District Council then commenced bankruptcy proceedings against them.

On February 2, 2017, the *Greymouth Star* published a short item reporting on the Grey District Council's decision to permit Mr and Mrs Banks to transfer the lease of their property. The item also reported on the Council's decision to request a consequential variation of the bankruptcy application that was to be heard the following day.

On February 3 the High Court heard the application and Mr and Mrs Banks were declared bankrupt, but with a period of two weeks before the order would take effect to allow them to attempt to make payment of the outstanding costs.

On February 4, the *Greymouth Star* reported the outcome of the bankruptcy application. The article referred to an outstanding debt of \$44,000 in rental payments when in fact the outstanding debt was made up entirely of litigation costs. Mrs Banks complained to Paul Madgwick, the editor of the *Greymouth Star*, who responded by email on February 8. He said “I unreservedly apologise for this error, which will be corrected on the front page of today’s edition. I can further assure you that this was an honest mistake in what has been a very long, protracted and legally complex issue and the reporter simply misunderstood the nature of the court case.”

In the meantime, on February 7, the *Greymouth Star* published a letter from Mr and Mrs Banks setting out their views on the bankruptcy proceedings and concluding with their expectation of an apology from the *Greymouth Star*.

On February 8, 2017, the *Greymouth Star* published a further item on the bankruptcy proceedings, acknowledging and correcting, but not apologising for, the error in its previous report.

Mr and Mrs Banks were unable to pay all of the outstanding debt for costs and the bankruptcy order took effect on February 17. On February 20 the *Greymouth Star* published a further article reporting on the bankruptcy, and on February 22 it published a further letter from Mr and Mrs Banks setting out their view of their position.

The Complaint

Mr and Mrs Banks complain about the inaccuracy in the February 4 article, but they also complain on grounds of fairness and balance. They say “we feel we have been severely harassed by three prominent front page news items appearing within just days of one another, all with heading intended to supposedly factually inform the readers about our bankruptcy; how many times is this necessary and on the front page, even if there was some public interest?” They say they were not offered an opportunity to comment

Mr and Mrs Banks also cite Principle 2 (privacy), though this may be an error, as their concerns under this heading appear to relate more to Principle 4 (comment and fact) when they say that the published items should have been, but were not, based on accurate facts.

On Principle 6, they say the headline did not accurately convey the nature of the article as an apology and correction.

On Principle 10, they say that the *Greymouth Star* has shown, if not a conflict of interest, a strong bias against them and in favour of the Grey District Council, noting that the Mayor is a major shareholder in the publication.

Finally, Mr and Mrs Banks find the apology and correction offered by Mr Madgwick inadequate and “nothing more than another news item to inflict harm against us over a matter of days”. (Principle 12)

The Greymouth Star Response

Mr Madgwick noted the long-running nature of the litigation, that the *Greymouth Star* had reported on it over the years and that it had also published many letters (frequently from the complainants, with responses from the Grey District Council) on the subject. It had not reported on many of the judgments in the protracted proceedings, and had eventually closed the correspondence on the issue. Accordingly it denies any suggestion of harassment.

The article of February 2 was simply a report of a public resolution from a Council meeting, without any “colouring”, after the Council had run a public notice advertising the resolution.

The report of February 4 was of the bankruptcy hearing and was of considerable public interest. Mr Madgwick considers the *Greymouth Star* had a public duty to report on the developments in the long-running dispute. He acknowledges the error over the outstanding debt and says that a correction and full explanation was later run, on p1 to give equal prominence. He says this made it very clear that while the overall basis of the court story was right, “the \$44,000 was described incorrectly”.

In general, Mr Madgwick says the *Greymouth Star* runs blanket coverage of all court cases, many on the front page. Comment is not sought from parties to the cases, and the report covers only what was said in court. This was the treatment accorded to Mr and Mrs Banks’ case.

Discussion

Mr and Mrs Banks have complained of breaches of several of the Press Council principles, but mainly of Principles 1 and 12. To cover the other complaints briefly:

There do not appear to be any privacy issues (Principle 2) in this complaint. If Principle 2 has been cited in error and the complaint is of a breach of Principle 4, then it needs to be noted that there is no expression of comment or opinion in any of the articles, and Principle 4 does not apply.

Principle 6 requires that headlines should accurately convey the substance or a key element of the report they are designed to cover. The article in question was mostly about the costs for which Mr and Mrs Banks had been found liable and accordingly it was quite accurate to head it “Blaketown couple bankrupted for court costs”. It is appreciated that Mr and Mrs Banks consider the correction was given insufficient prominence, but this is a matter for consideration under Principle 1 or 12, not Principle 6. There is also a complaint that the headline was inaccurate in stating that the couple had been bankrupted when the bankruptcy order had not yet taken effect, but the Press Council does not consider this inaccurate – the adjudication of bankruptcy had been made.

Mr and Mrs Banks say, in relation to Principle 10, that the *Greymouth Star* has shown, if not a conflict of interest, a strong bias against them and in favour of the Grey District Council. There is no discernible conflict of interest (and it is noted that in relation to a similar complaint considered by the Press Council in 2014 it was given an assurance that in view of the Mayor’s shareholding in the *Greymouth Star*, the relationship with him is “at more than arm’s length”). Questions of bias are considered under Principle 1.

Setting aside for the time being the question of inaccuracy, the main issues in this complaint have to do with fairness and bias. There was clearly a degree of public interest in the final stages of the long-running and costly litigation between the complainants and the Grey District Council, and the Press Council finds that it was appropriate, and neither unfair nor biased, to report on them. The first two articles were straightforward and factual accounts firstly of the Grey District Council's decision to agree to transfer the lease and its late application for a variation of the bankruptcy application and secondly of the hearing of that application and its outcome. The two articles were on quite different aspects of the dispute – one was on the Grey District Council decision and the other on the outcome of the bankruptcy application. Nor did fairness require the *Greymouth Star* to seek comments from any of the parties to the litigation, given the factual nature of the reports.

The third article was published in response to the complaint of inaccuracy. While its contents were clearly not as Mr and Mrs Banks had hoped or expected, there is no unfairness or bias apparent. In the first paragraph there is an acknowledgement and correction of the inaccuracy, and the rest of the article is a factual explanation of the debt owed by Mr and Mrs Banks, including an acknowledgement that they had paid the part of the debt attributable to unpaid (and disputed) rent.

The final article in the series appeared after the bankruptcy order took effect. Once again, it appears fair and unbiased, with accurate reporting of the facts and with comment from the various parties involved in the litigation.

The Press Council, is of the view that the four articles form a natural sequence of reports on a matter of public interest as it developed and cannot be seen as a form of harassment or unfairness.

There remains the question of the undoubted inaccuracy about the nature of the debt, and Mr Madgwick's response to the complainants about it. While the Press Council accepts that there was a genuine error on the part of the reporter, and that the error is understandable in the context of the intricate and technical nature of the proceedings, it is surprised that Mr Madgwick did not take steps to ensure the report was accurate before it was published. He was familiar with the history of the controversy, a key point of which was that Mr and Mrs Banks had repaid all debt attributable to unpaid rent, and he was most certainly familiar with Mr and Mrs Banks' sensitivities.

However, once the inaccuracy was drawn to Mr Madgwick's attention, he took immediate steps to correct it. He checked the facts, emailed Mr and Mrs Banks with an acknowledgement of the inaccuracy and an apology for it, and promised a correction on the front page of the next edition of the *Greymouth Star*. Contrary to Mr and Mrs Banks' submission, he did not offer to publish an apology.

The obligation under Principle 12 is to correct significant errors with fair prominence, and this Mr Madgwick did. An apology and /or right of reply are generally regarded as a matter for editorial discretion in all but the most extreme cases, and the Council does not consider this a case where a published apology was necessary. It notes that Mr and Mrs

Banks were given a right of reply in that their letter, restating and summarising their views, was published very shortly afterwards.

Decision

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, Marie Shroff, Mark Stevens, Vernon Small and Tim Watkin.

CASE NO: 2564 – WILLIAM BOOTH AGAINST WESTERN LEADER/STUFF

Introduction

William Booth complains the *Western Leader* breaches Principle 6 (Headlines & Captions) by using an unfair online headline which didn't properly reflect the content of the story, or his son, who the story was about.

The complaint is not upheld.

Background

Community newsroom *Western Leader* ran a story - in print and online - about the success of local man Aaron Booth at the men's decathlon open at the Queensland Combined Events Championships in Australia.

The story was angled on and included much detail about Mr Booth's success coming despite injury in his lead-up to the event.

Mr Booth was quoted in the story, including the comment: "I'm more than happy with how I went. I wasn't expecting much going into it, I wasn't even 100 per cent fit".

The digital version of the story featured a headline that was part of the same quote: "I wasn't even 100 per cent fit".

The print version featured a different headline: "Booth wins Gold at Queensland event".

The story followed a press release being forwarded to the *Western Leader* by Mr Booth's family.

There is some dispute over the relevance of the length of the headline. Mr Booth questioned why, if the digital version was shorter than the print version, it couldn't simply be lengthened. The news director suggested the favoured headline was the digital one, and was too short to fill the fixed print space allocated.

Additionally, there is no agreement on who ended a phone call about the complaint between the news director and the complainant.

Complaint

Mr Booth and his wife were shocked and embarrassed by the online headline, which they felt implied their son was arrogant. They say their son agreed it was bad and their complaint is on his behalf.

According to the Booths' complaint, the reporter apologised for the online headline, and pointed out the longer print version.

Using only part of Aaron Booth's quote in the headline meant the quote was used out of context.

Mr Booth sought to have the online version changed to match the print headline but his request was denied. He then, also unsuccessfully, sought to have the whole story removed.

Both the reporter and the editor refused to change the headline and, following a formal letter of complaint from Mr Booth, a ‘condescending response’ from the *Leader’s* news director was received.

Response

Leader news director Rebecca Stevenson said the headline was chosen from within the quotes as it summed up the key event in the story; it fairly and accurately reflected the most interesting angle.

It was hoped the headline would also draw the audience in to read more.

The *Leader* did not think the headline was either used out of context, or reflected badly on Aaron Booth. In fact, it showed he could overcome adversity and still achieve great results.

Discussion

The Council accepts the space allocated for a print headline determines its length, ie it cannot be so long that it cuts off, or so short that it leaves unnecessary blank space.

And the Council accepts that digital headlines are not bound by space, but instead written to both properly reflect the story and to draw the audience in.

It isn’t possible for the Council to determine who ended the phone call between the complainant and the news director, and nor is it relevant to the specific Principle being argued in the complaint.

It is, however, worth reminding all senior editorial staff that complainants warrant respect and should be dealt with courteously.

In regard to the substantive complaint, the headline, while brief, was not inaccurate and it fairly reflected the strongest angle of the story.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, Jenny Farrell, Marie Shroff, Mark Stevens, Vernon Small and Tim Watkin.

CASE NO: 2565, 2566 AND 2567 - SHANE BORRELL, RYAN CARR AND MIKE LODER AGAINST OTAGO DAILY TIMES

Background

Ryan Carr, Mike Loder and Shane Borrell each complain that an editorial published by the *Otago Daily Times* (*ODT*) titled *Guns: New Conversation Needed* on January 11, 2017 breaches several Press Council principles (notably Principle 1 Accuracy, fairness and balance.)

The *ODT* editorial opened by referring to “another fatal shooting by police and yet more debate about the firearms availability”. The editorial commented generally in relation to increasing police shootings, the enquiry currently underway by Parliament’s law and order select committee as to the availability of “illegal firearms”, recent thefts of

military style semi-automatic firearms and the wider issue of the balance between the rights of responsible gun owners and firearm importation. The editorial questioned “how many firearms does one licensed owner require...?” and whether current laws around the sale, possession and storage of firearms are adequate. The editorial concluded with a comment that “for the more guns we have, the more potential for harm for everybody...”.

The sentence most in contention was “50,000 guns enter the country each year (many are legally bought by licensed owners – hunters and sportspeople) but more than 20,000 are then stolen or sold to offenders”

Following publication *ODT* agreed that the reference in the editorial to the number of firearms stolen in New Zealand was incorrect. It had based this reference on comments from Chris Cahill, the Police Association president. The *ODT* apologised and published a corrected editorial noting the reference should have said “50,000 guns enter the country each year, a number of which are stolen or sold to offenders.”

The Complaints

Messrs Carr, Loder and Borrell essentially make the same point. All are in favour of gun owners’ rights and take exception with the thrust of the *ODT* piece. All forcefully advance the argument that the *ODT’s* comments are out of order and are inaccurate. Mr Carr says the editorial is “blatantly anti-firearm in nature” with significant sections “based entirely on personal opinion”. The editorial contains “untruths” particularly with regard to the number of stolen firearms in criminal hands. Mr Carr says that the *ODT’s* apology and restated opinion is inadequate. The editorial has been used to “push personal agendas” and “employs heavy hyperbole, rhetoric and disingenuous statements with very little objectivity or balance”. It is not right for the *ODT* to have relied on the comments from Mr Cahill. They were a “lie” and Mr Cahill’s facts were not checked.

Mr Loder says that the *ODT’s* “modest retraction” in relation to the number of stolen guns is “just not good enough”. Mr Loder refers to the editorial as a “bad joke”. Mr Loder has asked the Council to withhold his name “for safety and security reasons”.

Mr Borrell says that the article is “filled with misleading and factually false information”. Many of the statistics quoted were “fiction”. Mr Borrell says that the article is “dishonest”.

The Response

ODT rejects the complaint. *ODT* points to the fact that this was an editorial and therefore an opinion piece. The *ODT* refers to its prompt correcting amendment. *ODT* says the editorial “raises various pertinent and topical questions around gun ownership, illegal firearms and gun violence (intentional and accidental)”. *ODT* highlights its statement in the editorial that there is a “difficult balance” in the debate. The piece referred expressly to the risk that responsible gun owners will be “tarred with any reaction or any brush”.

The Decision

The newspaper relies on Principles 4 and 5. A clear distinction should be drawn between factual information on the one hand and comment or opinion on the other.

The *ODT* editorial was undoubtedly an opinion piece. Opinion pieces need not be balanced and need not to present all sides to an issue. This said, material facts upon which an opinion is based should be accurate.

The Press Council does not agree with the complainants. The newspaper was entitled to opine in relation to questions of gun violence. It was entitled to express concerns as to the apparent increasing numbers of illegal firearms and their use in increasing gun violence. The newspaper, by expressing this opinion, was not required to advance the arguments referred to by the complainants. It is only in the rarest of cases will an opinion piece breach the Council's principles. The *ODT* editorial does not fall into this category.

The Council notes the newspaper's prompt correction to the editorial. It does not agree with Mr Carr when he says the revised editorial was "disingenuous".

Mr Loder sought anonymity as he considered that publishing his name could make him the target of gun thieves. The Press Council sees anonymity orders as the exception rather than the rule. Other than the allegation he could be a target the complainant offers no evidence to support his view. We decline the request for anonymity.

The complaints are not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, Marie Shroff, Mark Stevens, Vernon Small and Tim Watkin.

CASE NO: 2568 – COMPLAINT AGAINST STUFF

Overview

This is a complaint about an article published on Stuff on February 1, 2017. The article was titled '*Better cellphone coverage may have helped save a man's life on Otago Central Rail Trail*'. It outlines the circumstances around a man's death in December 2016 on the rail trail. The story was based on comments made by a Volunteer Fire Brigade and Community Board Member (Robert Hazlett) about the impact of poor cellphone coverage on the incident. When the comments from Mr Hazlett were found to be incorrect, the story was edited and republished on February 16 2017 and again on February 21 2017. The complaint is under Principle (1) Accuracy, Fairness and Balance; Principle (2) Privacy; Principle (6) Headlines and Captions and Principle (12) Corrections.

The Complaint

The complainant's husband died in December 2016 on the rail trail. She provided *The Press* with information that contradicted the comments made by Mr Hazlett, including that cellphone coverage was not a factor in her husband's death. Based on her information, the article was edited and republished twice. Her complaint centers on the inaccuracy of the reporting of this incident.

The complainant also argues her privacy has been breached in the reporting of the incident and the headline and caption was inaccurate. While two corrections have been made, the complainant would like the complete story retracted.

The Response

The Press Deputy Editor for Canterbury and Otago, Kamala Hayman rejects this complaint. In regard to Principle (1) she defends the actions of her reporter. She states the reporter tried to verify the comments made by Mr Hazlett and quoted, in good faith, a person '*who could have reasonably been expected to have an accurate account of the situation.*'

Hayman also rejects that the article is a breach of privacy as the husband is not named and no identifiable information about the family was included.

Given the headline was amended to '*Cyclist Dies on Otago Central Trail*', Hayman argues this is now an accurate statement. Hayman also states her newsroom took steps as soon as possible to correct the story as soon as they became aware the details provided by Mr Hazlett were incorrect. Further, she argues that the article has been revised in line with other reports of sudden deaths in public places.

The Decision

The Press Council is in no doubt that the reporting of this incident will have caused the complainant distress.

In regard to the complaint against Principles (1), (6) and (12), the Council is divided on whether good standards of journalism were followed in the original reporting of this article. While the majority of the Council felt the reporter had taken sufficient steps to check the initial account – and noted none of those contacted (including the police and telco providers) gave him any reason to disbelieve it, three members (Jo Cribb, Marie Shroff and Liz Brown) acknowledge that the reporter attempted unsuccessfully to verify the facts, but are of the view that the reporter should not have relied solely on an unverified second-hand account as the source of facts for the incident.

However, all members of the Council acknowledge the timely revisions that were made by *Stuff*. These included revising the headline and including a statement that acknowledged the inaccuracy of the previous version. One last mention of the inaccurate article remains in the current web address for the article. The Council expects that *Stuff* will seek to remedy this immediately.

In regard to the complaint against Principle (2), no personal information was included in the article that could identify the complainant, her family or her husband so their privacy was protected.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, Marie Shroff, Mark Stevens, Vernon Small and Tim Watkin.

CASE NO: 2569 – PETER WARING AGAINST THE DOMINION POST

Peter Waring complained about an opinion piece published in *The Dominion Post* on February 8, 2017 headed "Politics and science a toxic mix". The opinion piece was written by Matt Ridley and had been sourced by the newspaper from The Times under a news feed service.

The complaint is not upheld.

The Complaint

Mr Waring complained that the opinion piece breached the principle requiring accuracy, fairness and balance. He claimed that the opinion expressed was based on factual inaccuracy. He also claimed that it failed to disclose relevant information about the author's personal stake in the coal mining industry and his association with an interest group which is funded predominantly by energy industry players. By omitting this information, the complainant alleged the article was unfair.

Mr Waring stated that as far as he had been able to ascertain, the author of the opinion piece had no recognised qualification in atmospheric science nor had he published any peer-reviewed papers in that scientific discipline. He referred the Council to the journalist's association with the Global Warming Policy Forum an organisation which is reportedly almost exclusively funded by energy industry players and which is well known for denying the anthropogenic basis of climate change. Additionally, he referred to the journalist having a large open-cast coal mine situated on land from which the journalist personally derives a financial benefit.

Mr Waring asserted that to publish an article on a topic as serious as the effects of human greenhouse gas emissions without also publishing what he argues is relevant background information effectively amounts to misleading readers of the newspaper in that it deprives the readers of information which might assist them to more effectively evaluate the claims made in the opinion piece.

Mr Waring further complained that he submitted three letters to the editor in response to the opinion piece but that none of these had been published by the newspaper at the time of his complaint.

The Editor's Response

The editor rejected all the bases for Mr Waring's complaint.

She said the article was an opinion piece and was clearly labelled as such. Articles published in the opinion section of a newspaper represent a range of views from every perspective. The editor made it clear that the newspaper did not necessarily endorse the opinions it published. It would, however, be a retrograde step were newspapers to exclude views that editors, or even the majority of readers, may not agree with. Freedom of expression permits the publication of both popular and unpopular views.

She rejected any lack of balance and stated that the newspaper's coverage of climate change reflected diverse views. Two days after the publication of the article Mr Waring complained about, the newspaper published an article from Professor Renwick of Victoria University critical of the opinion piece as well as two letters to the editor in a similar vein. The newspaper also published one letter to the editor which supported the opinion expressed by the journalist.

In response to the complaint that no reference had been made to the journalist's personal interest in the climate change debate, the editor stated that any complaint about publishing an article by him had "no basis".

Finally, the editor explained that Mr Waring had sent a number of emails to her personal account and that these were

not cleared until she had returned from annual leave. She then informed him that one of his letters was to be published and this letter was duly published on February 21, 2017. The editor explained the need to submit letters to the editor to the generic letters address rather than to the editor's address.

Decision

It is not the role of the Council to adjudicate on the relative merits or otherwise of the 'science' contained in an opinion piece published by a newspaper. Provided that an article is clearly labelled as an opinion piece, which it was, then any complaint about its scientific accuracy is for another forum. The author is entitled to freely express his views however much they may be at odds with established or even generally accepted scientific opinion. The editor is entitled to choose to publish such views, and any countervailing views, as a matter of editorial discretion. Section 14 of the New Zealand Bill of Rights Act 1990 provides for freedom of expression.

After publication of the opinion piece the newspaper published a range of views in response. The Council agrees that balance was achieved by the newspaper in its coverage. It does note, however, observations made by the Council previously (decisions 2436 and 2437) that the subject of anthropogenic climate change had become a declining topic of debate in newspapers both because editors judged that readers were weary of the issue and had generally come to accept the scientific consensus. In such circumstances, an editor needs to remain vigilant about the need for balance.

That leaves the question as to whether the paper was unfair by failing to include information which the complainant asserts was germane to the views expressed by the journalist in the opinion piece. It is a fine line for editors to tread as to what inquiry they should make into the personal background of a journalist. While a basic search would likely have revealed information which the complainant argues was omitted, the Council accepts that a newspaper editor would rarely undertake such a search on an opinion piece when its source was a reputable newspaper with which the newspaper had a commercial news feed relationship. The Council does not find the failure to undertake such an inquiry lead to any unfairness. The responses to the opinion piece (including the letter to the editor from the complainant) address the concerns raised by the complainant and would have alerted interested readers to other lines of inquiry. Had the newspaper not achieved balanced coverage following on from the publication of the opinion piece, this head of complaint may have been more problematic for the newspaper. It has been effectively negated by the newspapers later balanced coverage.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, Marie Shroff, Mark Stevens, Vernon Small and Tim Watkin.

CASE NO: 2570 – JOHN WILKINSON AGAINST STUFF

The Complaint

John Wilkinson emailed the editor of Stuff News on 20 February 2017 asking why three months after the US Election result, Stuff was still using a sub-section heading

“US Election” in the World section of Stuff.

Mr Wilkinson complains that there was no election in the USA at the time of the articles in question. The use of the heading (known as a ‘strap’) was “a lie”. In addition, when you read the articles under this section “they are all anti-Donald Trump articles”. He adds that given the articles were not about the election and yet headlined as US Election, they “are misleading at best and fake news at worst.”

When Stuff removed the strap and replaced it with “Donald Trump’s America”, Mr Wilkinson said this was “stupid and misleading”. The election was won by Mr Trump.

In further email exchanges with the editor, Mr Wilkinson suggests that the section be renamed “the Trump hate club” and calls the editor “a liar” and “a weasel”.

He believes Stuff has breached Press Council principles related to Accuracy, Fairness and Balance and Headlines and Captions.

The Response

Patrick Crewdson, editor, Stuff responded to the complainant on 21 February 2017 confirming that there was nothing fake about the news in that section – “they’re all valid stories.” However, Mr Crewdson acknowledges the point made by the complainant that the strap name was out of date and said they would revisit it. It was subsequently decided by Stuff to remove the US Election strap and replace with the strap, Donald Trump’s America.

The editor explained that with major news events, Stuff creates a sub-section with a strap reflecting the news event; in this case the US election. Its aim is to collate news stories about the news event under a single sub-section. The strap and sub-section was located under the Stuff World News section.

Stuff maintains a permanent archive. Therefore stories and sections do not disappear even after the relevant major news event has finished. This was an innocent oversight and not what Mr Wilkinson infers; that Stuff was denying the US election result.

The section strap was eventually removed and replaced with “Donald Trump’s America” to reflect articles which covered what the country might be like under Mr Trump’s Presidency.

The Decision

There was an oversight with the sub-section strap ‘US Election’ not being removed after the US election was concluded.

When the matter was brought to the attention of Stuff by the complainant, the editor acknowledged the point and subsequently removed the strap.

The continued strap being accessible three months after the election result does not breach any of the principles Mr Wilkinson raises in his complaint. A reasonable reader would not have seen the continued existence of the strap as Stuff denying an election result. Most importantly, the articles under the strap were valid news stories. The Council agrees with the editor’s description of the oversight as “innocent”.

Mr Wilkinson has drawn a long bow between an innocent

oversight and what he describes as “fake news”. The articles reflected global media coverage at the time of what might a USA might look like under his Presidency given his policies and views during the election campaign.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, Jenny Farrell, Marie Shroff, Mark Stevens, Vernon Small and Tim Watkin.

CASE NO: 2571 - A COMPLAINT AGAINST SUNDAY STAR-TIMES AND STUFF

ADJUDICATION BY THE NEW ZEALAND PRESS COUNCIL ON

FINDING: UPHeld BY A MAJORITY 8:2

TO BE PUBLISHED ON 28 MAY 2017.

CONFIDENTIAL TO THE PARTIES UNTIL THAT DATE.

The complainant complains about an article published by the *Sunday Star-Times* and online on Stuff. She is of the view that the article breaches Press Council principle 2 (Privacy). There also appears to be a subsidiary complaint of a breach of Principle 1 (Accuracy).

The Press Council upholds the complaint with two members dissenting.

Background

On February 12, 2017, the *Sunday Star-Times* published an article written by a staff journalist. It was also published on the Stuff website. The article was highly personal in nature and covered the writer’s relationship with her grandparents and with her former partner. It included descriptions of her grandmother’s current physical and mental health (her grandfather had died some years previously) and also included excerpts from love letters written by her grandfather to her grandmother. Among other things, it described the grandmother as suffering from various physical and mental health conditions including Alzheimer’s disease.

The Complaint

The complaint has been lodged by the journalist’s aunt, one of the grandmother’s five children. She submits that she is supported in the complaint by her two brothers and has produced letters to that effect.

The main complaint is that very intimate details of the complainant’s parents’ lives

were published without consent. In particular, the complainant says that her mother is “an exceptionally private person and would mind tremendously that her personal health information as well as my father’s love letters to her, have been publicised for all to see”.

While the complainant’s mother’s health at the time of publication was such that she was unable to give or withhold consent to the publication, consent should have been, but was not, sought from all the immediate family.

The love letters are her mother’s personal property and similarly should not have been published without her consent

or that of all the immediate family.

There are a number of inaccuracies in the article, the most important of which is the statement that her mother has Alzheimer's disease. She has not been so diagnosed.

The complainant also raises an issue of editorial supervision of the journalist, whom she perceives to be in a vulnerable state.

In response to the editor's reference to the power of attorney, she says that four of her mother's five children hold power of attorney for her and should have been consulted before publication of the article.

The Sunday Star-Times Response

The editor of the *Sunday Star-Times*, Jonathan Milne, responded to the complainant, saying that the article was a piece of courageous first-person journalism of a high standard. It had been prepared with the agreement and support of two of the grandmother's daughters (the journalist's mother and aunt) and with the subsequent support of her sister, who had read the article to her. One of the daughters held power of attorney for the grandmother and had provided the letters to the journalist.

In the view of the editor, the disagreement was a family matter and should remain in the family. He says "There is no breach of privacy. There is no failure of editorial oversight – if anything the opposite is true. This is [the journalist's] story: it is hers to tell".

In responding further to the complaint, Mr Milne advised that the grandmother had agreed to be interviewed for an article some years previously when she was still of sound mind, and that while the article was several years in the making, it was the result of that interview.

The editor also produced a letter from the journalist's other aunt, in which she expresses the view that there was no breach of privacy, and disputes the complainant's claim that both brothers supported the complaint.

Discussion

The Press Council can only concern itself with the complaints about possible breaches of the Press Council principles and similar ethical matters. Matters of the ownership of published material, or of editorial supervision fall outside its terms of reference. Equally, while it is clear that the complainant and Mr Milne have different views about the level of support within the family for the complaint, the Press Council cannot enquire into, or determine, matters in dispute within the complainant's family.

Much of the article consists of the author's childhood memories, which are unremarkable and are as much about the author as about her grandparents, and of her feelings on the end of her relationship with her partner. None of this material raises issues of the grandmother's privacy.

However, there is no doubt that some of the material published in the article, and in particular the love letters, was personal and private, and should not have been published without the consent of its subject, the journalist's grandmother. It is noted that the law does not generally accord privacy rights to deceased persons and, accordingly, there can be no breach of

her grandfather's privacy.

The Press Council also notes that while it is certainly of the view that the vulnerable elderly need consideration and protection where warranted, it has previously (case of *Cooper v Manawatu Standard*) found that dementia is not considered by the courts to warrant the automatic privacy given to victims of sexual abuse, for example;

it would be impractical and unreasonable to require editors to check the competence of every old person, let alone every person in a possibly vulnerable group; in the circumstances of that case there was no need for a general rule against identifying people suffering a condition (dementia) that has become more common with increasing human longevity, but it did raise a question that possibly deserves more discussion within the industry and the wider community.

Accordingly it cannot be said that publication of the grandmother's name and other identifying details were automatically precluded because of her mental state.

The main question, therefore, is of consent to publication of excerpts from the private communications of the grandmother. All parties appear to agree that at the time of publication, the grandmother was not capable of giving consent. Her mental state is clearly described in the article. This distinguishes this case from the one cited above where the main issue was whether the person who was the subject of the published material was competent to give consent. However, the two cases remain similar in that they pose the question of the extent of an editor's duty to ensure that there is valid consent.

The editor refers to an interview some years earlier and appears to submit that the article is based on that interview, where clearly valid consent was given. However, the material that the complainant is most concerned about consists of information about the grandmother's recent and current state of health, both physical and mental, and the love letters. Neither of these can have been the subject of the earlier interview.

There is no evidence that there were any editorial enquiries into consent issues prior to publication. Given that the grandmother was named, that the article mentioned what could be highly sensitive health information, along with the intimate detail of the love letters, such enquiries should have been made. Consent could not be inferred from the fact that the article was written by a member of the subject's family.

It should have been obvious to the editor that the grandmother was in a very fragile state of health and not capable of giving consent. Given that the article was written by a staff member who was also the granddaughter of the recipient of the sensitive material, the majority are well satisfied that the editor should have taken steps to be sure that a valid consent existed to the publication of the most sensitive of correspondence ... love letters from many, many years before. Critically, the story in the love letters belonged not to the family but to the grandmother and her alone.

Further the majority are satisfied that the grandmother's right to privacy outweighs any public interest. The portion dealing with the letters carries little genuine public interest.

The Press Council has considered the relevance of the various powers of attorney held by members of the family and the possibility that holders of those powers of attorney could have given or withheld consent to publication. However it is not the function of the Council to decide points of law, and in any event, it is reasonably clear that no consent of any sort was sought or given prior to publication. The Council expresses no opinion on the legal issues.

On the question of accuracy, it seems there was an inaccuracy in describing the grandmother as suffering from Alzheimer's disease. In the context of the article, the Press Council does not regard this or any other minor inaccuracies as material.

We stress that this decision is based on the facts of this case alone and in no way sets any precedence.

Decision

The complaint is upheld by a majority of 8:2.

Dissent from Tim Watkin and John Roughan

We dissent from the majority view because we believe it puts unreasonable expectations on editors and could have a chilling effect on narrative journalism.

The journalist and her mother clearly believed they were free to use the letters and the newspaper acted in good faith, reasonably assuming it had family consent. (We don't believe the fact that the stories were written down, as opposed to shared verbally, is critical; oral stories could be just as private or worthy of consent). To expect an editor to get consent from every family member – potentially, every person – involved in a story is unrealistic, as is the assumption people's lives can be disentangled. Where does it end? No one is an island and the stories belonged to the family – including the journalist – as well as the grandmother; the complainant cannot claim veto.

Undoubtedly, the grandmother did not consent to the use of the letters. However to disqualify family members from acting as proxy in such cases (even members of a divided family), we risk editors feeling unable to commission important, first person journalism in the public interest on issues such as dementia, brain injury, mental illness and more. Because, contrary to the complainant, we do believe such real, personal stories are in the public interest.

Crucially, the letters were used not to expose or exploit, but to express love and admiration for the author's grandmother and grandfather. Had it been otherwise we would not dissent, but clearly no offence was intended; we – sadly – cannot know whether the grandmother was offended (the family is divided on that point); and neither can we say if it did her harm. For us, this standard of consent sets the bar too high.

Press Council members upholding the complaint were Sir John Hansen, Liz Brown, Ruth Buddicom, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, Hank Schouten.

Press Council members dissenting from this decision were John Roughan and Tim Watkin.

Mark Stevens took no part in the consideration of this complaint.

CASE NO: 2572 – BEREND de BOER AGAINST THE NEW ZEALAND HERALD

Introduction and Background

This complaint relates to an online article published by the *New Zealand Herald* on March 10, 2017 entitled: *Auckland University 'white pride' group sparks concern*, and some later additions including a video interview.

The article focused on a new group set up at the university, The European Students Association (ESA). Its website included Celtic symbols that the article said were used by white supremacist groups as well as the slogan "strength through honour" and a post "our pride is our honour and loyalty" that was seen by some as similar to a Nazi slogan "my honour is called loyalty" the article claimed.

The website also included pictures depicting the unification of Germany and the colonisation of New Zealand.

In later interviews and statements the group said it was not racist, Nazi or white supremacist and was open to anyone interested in European culture.

The Auckland University Students Association (AUSA) was quoted saying it was disappointing a potentially offensive group would be allowed at orientation events and it had received complaints about the group and these had been passed on to the university.

The club would be able to take part on the orientation expo. It had not done anything overtly offensive but nor had it done anything to reassure students.

Race Relations Commissioner Susan Devoy was reported saying she would keep an eye on the group.

The group eventually closed down after its leaders reported receiving threats.

The Complaint

Mr de Boer alleges breaches of Press Council Principle 1 on accuracy, fairness and balance.

The original article had been amended after his complaint to include balance but the newspaper had refused to apologise.

He said the article was inaccurate, because the university said it had found no evidence of discrimination or racism. He questioned how "paintings which hang by their thousands in NZ classrooms" we're symbols of white supremacy. He said the slogan and the Nazi slogan had only two words in common and that was a low bar for evidence.

Claiming someone could be a white supremacist based on the use of a Celtic symbol was unfair and the article did not attempt to relate the symbol and white supremacy.

Mr de Boer said the newspaper had admitted the lack of balance in its response. He alleged it had not sought comment ESA, and only approached it after the article was first published.

He said the *Herald* had destroyed the lives of a group of students and questioned whether its intention was to cause the group to fold.

He also asked if the council could rule the *Herald* should remove all articles relating to the ESA from its website.

The Response

Chief of Staff Elizabeth Binning on behalf of the *Herald* conceded in her first response to Mr de Boer that there should have been balance in the story, or at least a line stating comment was being sought.

She said there had been numerous versions of the story published on the day including one angled on the comments of the ESA president, and they had been added to the original story along with comments by NZ First leader Winston Peters questioning the role of the media in the group's decision to disband.

She said she had quickly addressed his concerns over balance.

The radio reporter from the same publisher (NZME), who uncovered the story, had tried very hard to contact the group prior to the story running on radio and on the website.

Concerns about the group held by the AUSA were outlined in the article. Other viewpoints were also covered including those of the university and Ms Devoy. A line from the group's Facebook page was cited.

The ESA had made contact later in the morning after publication and a new article was written based on those views.

She had added subsequent comments from the group to the original article and had linked to it, and other related articles, audio of an interview with the ESA representative (who requested anonymity).

The university had since issued a statement indicating the ESA's use of language and slogans was inappropriate.

Discussion and Decision

Ms Binning did initially concede there should have been balancing comment in the story, or a line stating comment was sought.

While it is good practice to include such an explanation where appropriate, because it reassures readers attempts have been made to achieve balance, the absence of those words does not in itself constitute a breach of the requirement for balance.

Ms Binning in her response said strenuous efforts were made before publication to seek comment, and the Council accepts that. There is no evidence from Mr de Boer to challenge this.

Evidence was presented showing that once comment was obtained from the ESA it was included in the original article and other articles on the issue.

Mr de Boer described this as rewriting history by editing the original article as if there was a semblance of balance. But to the Council it appears to be good practice and it is common to add further information and comments to existing articles online.

If the original complaint was about a lack of balance, then it is hard to see why the addition of further balancing comment should be objected to.

The Council does not find the article breached the principle of balance.

The AUSA statement cited by Ms Binning above did not specifically say the references were inappropriate - and Mr de Boer takes issue with that characterisation. But it indicated as much and went on to refer to the ESA responding to concerns by moving to change its slogan and expressing regret at its choice of words. (However an active Facebook page in the ESA's name still uses the slogan "strength through honour".)

The article correctly notes the slogan is "similar" to the SS one and reports the fears of some that the ESA is racist or a white nationalist group.

The pictures of German unification and New Zealand colonisation mentioned in the story fairly illustrate the concerns of "highly nationalistic" objectives raised by AUSA president Will Matthews.

(It is noted that Mr Matthews is quoted as saying "white pride" objectives not white supremacist ones.)

More problematic is the article's unequivocal and unsourced claim that the group used "Celtic symbols used by white supremacist groups". That seems true of the Celtic cross but not obviously true of the circle-style symbol ESA used. However viewed in context the Council determined that this was not worthy of an uphold.

It remains an open question whether the ESA was intending to be provocative - "dog whistling" to use a pejorative term - by combining the symbols, pictures and slogans it chose. But that would not be unusual on campus or during orientation.

Equally there is no doubt the concerns expressed to and by the AUSA were genuine, and it was right that the newspaper report those and did so fairly along with the ESA's rebuttal.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Ruth Buddicom, Jo Cribb, Chris Darlow, Tiimalu Peter Fa'afu, Jenny Farrell, Hank Schouten, Mark Stevens and Tim Watkin.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2573 – IAN PITTENDREIGH AGAINST TVNZ

Background

1. In one of the Council's first complaints dealing with written material on a broadcaster's website, Ian Pittendreigh has complained about a *TVNZ* article headlined "Bastards, hope they lose. Steven Adams blunt about not wanting England to beat All Blacks' winning streak".
2. The short online article, published on March 16, is about New Zealand basketballer Steven Adams' response to news that the England rugby team had the chance to overtake the All Blacks' record and win 19 straight games. While the story had been taken down by the time the complaint reached the Press Council, due to the fair use terms of the video expiring, it claimed Adams hates the England rugby team "just like us", argues that to be top you have to beat the other top teams and ends with Adams' own words – "Bastards, hope they lose".

Complaint

3. Mr Pittendreigh complains that the use of the word “bastard” is “disgraceful” and “inappropriate language”.
4. Initially, Mr Pittendreigh treated this as a complaint to the Broadcasting Standards Authority and so laid his complaint under the BSA’s programme standards and argued that it breached ‘Good Taste & Decency’. Informed that online complaints now fall under the jurisdiction of the Press Council he opted to make his complaint under Principle 6, Headlines and Captions.
5. He argues that *TVNZ* has used asterisks to replace letters in a word no more offensive, although he does not specify the word or story. As a result, he argues, *TVNZ*’s use of bastard is “very hypocritical”.

Broadcaster’s Response

6. *TVNZ*’s Complaints Committee rejected Mr Pittendreigh’s concerns on the grounds that it considers bastard “low level coarse language” that is not uncommonly used in news stories. It points to a recent *Herald* story in which Sir Colin Meads uses “bastard” to describe his cancer and the word was used in the story’s headline.
7. The committee further points out that it was a direct quote from Adams and argues that the use of the headline “accurately and fairly conveys the substance of the report”.

Discussion & Decision

8. The complainant initiated this action thinking to raise his complaint with the BSA under its “Good Taste & Decency” standard, but because his complaint is about a written article and piece of video that appeared online – and not on-air – it now falls under the Press Council. Therefore, the Council is considering his complaint under its principles, in this case Principle 6.
9. Unfortunately for the complainant, his concerns do not marry with Principle 6, or indeed with any Press Council principle.
10. Principle 6 is mostly designed to ensure headlines and captions are accurate and fairly represent – rather than sensationalise or misrepresent – the article. In this case the headline does clearly depict the heart of this short story, which was Steven Adams’ response to news of the England rugby team’s success.
11. Given this is new territory for complainants and the Council alike, a brief explanation seems worthwhile. Unlike the BSA, the Press Council does not have a Principle relating to taste and decency. However, as our preamble says, the Council is concerned with promoting “the highest professional standards” and “media freedom”. Such complaints are considered on this basis. The Council has repeatedly spelled out in previous rulings that it is not the “taste police” and the public does not have the right to not be offended. It is editors who are ultimately responsible for what appears in their publications, subject to Council adjudications, and their audiences judge them accordingly.
12. The complainant may consider this use of “disgraceful”

language is a breach of professional standards. The Council does not. That is consistent with past rulings and its belief that the use of a single word, especially one in such common usage, does not come close to that threshold. Therefore the complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Ruth Buddicom, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens and Tim Watkin.

CASE NO: 2574 – GREG RZESNIOWIECKI AGAINST STUFF

The Complaint

Although somewhat long and discursive, the essential element of Mr Rzesniowiecki’s complaint is unfair moderation by Stuff relating to the posting of online comments submitted by Mr Rzesniowiecki, and their refusal to link to a number of external sites.

The Council has already rejected similar complaints from two complainants on the basis that the complaints are analogous to non-publication of letters to the editor. In those cases, no adjudication was issued. Given that this matter has the potential to lead to ongoing complaints, we have considered it appropriate in these circumstances to accept this complaint and set forth the views of the Press Council.

Complainant’s Position

In the complaint, Mr Rzesniowiecki alleges breaches of Principle 1 accuracy, fairness and balance; Principle 4 comment and fact; and Principle 5 columns, blogs, opinions and letters.

Mr Rzesniowiecki is clearly a blogger, and on his blog site seeks public advocacy donations. He has supplied the Council with a very lengthy complaint and reply. He has also set out extensive email correspondence with Stuff, and one of his own blogs.

We do not think it necessary to analyse this plethora of material. It would be fair to summarise Mr Rzesniowiecki’s position as being someone who believes that the mainstream media works with governments and their agencies to prevent the widespread dissemination of information which he thinks is important — indeed critical in a democratic society. He says breaches of the relevant Principles occur when moderators refuse to post his comments or to give links to other sites he considers relevant. He also considered that the decision of Stuff impinged on his right of freedom of expression.

The Editor’s Response

The editor, Patrick Crewdson, referred to the terms and conditions for user-submitted content and comments, set out on the Stuff website.

The focus of his response is that he considers such comments to be analogous to letters to the editor, and notes the Press Council’s long-running recognition that it is the editor’s prerogative as to what letters and opinion pieces to publish. He refers to earlier decisions supporting this view, to which we will return. He states that Stuff takes that Principle seriously when moderating comments received and making decisions whether to reject or place them online.

He stresses Stuff is entitled to rely on its Terms and Conditions relating to online content. This includes limiting the publication of links outside of Stuff and New Zealand government sites. He says Stuff does not have the resources to check the accuracy and safety of other web sites.

He makes the supplementary point regarding the large number of comments that Stuff receives from readers on a daily basis. He states these are approximately 5000, of which 75 per cent are approved and 25 per cent rejected. He goes on to say that if only one per cent of rejected comments resulted in formal complaints, the Press Council would be receiving more than 12 complaints per day.

Decision

At the outset, we make it clear that the Stuff Terms and Conditions relating to online comment are a matter between Stuff and its readership. The Press Council has no jurisdiction over such terms and conditions. However, we do see those Terms and Conditions, particularly those relating to links to unchecked sites, to be a reasonable position for a publisher to take.

The matter of letters to the editor is covered by Principle 5 which, where relevant, reads:

Letters for publication are the prerogative of editors who are to be guided by fairness, balance, and public interest. Abridgement is acceptable but should not distort meaning.

It is clear this means that whether or not a letter is published is within the prerogative of the editor. They are advised to be guided in doing this by the principle of accuracy, fairness and balance.

Mr Crewdson is correct to point out that as early as 1999 the principle was cited, and for some considerable time the Council has rejected complaints about non-publication of letters from the public.

In the decision cited by Mr Crewdson,¹ the Council stated:

An editor can both decide which letters and opinion pieces to publish as well as when to close the curtain or close a discussion topic within his or her publication.

The critical question in this case is whether online content (sourced from the general public) can be seen as analogous to letters. We are satisfied it can.

As Mr Crewdson pointed out in his response, there are limits on what content will be published, both through editorial discretion and through adherence to the published Rules for Letters (in the case of newspapers), and the Terms and Conditions between the media online sites and their readership (in the case of websites). We consider it would be artificial to suggest that they are somehow different. Since the advent of newspapers, readers have had the opportunity to forward letters commenting on various topics to the newspaper for publication. Our Principle 5 makes it clear that the publication or non-publication of such letters is at the discretion of the editor. We see no difference between the invitations to the readership of online media content to comment on various matters that are published online and the traditional letters to the editor. The earlier form of letter

was received by way of envelope and postage; the latter form of online content is received electronically. But that physical difference does not change the fact that both give readers the chance to comment. In that sense, we are satisfied that online comment is clearly analogous to the letters to the editor, and in the view of the Council should be subject to the same principle.

Accordingly, the Council is satisfied that online comments are analogous to letters to the editor, and their publication is at the prerogative of the editor, pursuant to Principle 5. Therefore, the complaint is not upheld.

We reiterate that the Terms and Conditions for online comment are a matter between the online publisher and its readership. It is not a matter for the Council, nor do we have any jurisdiction to interfere in it.

We note Mr Crewdson's comments relating to the potential for a very significant increase in the work of the Press Council if this complaint was upheld. (Indeed he suggests to unmanageable levels). We have put those comments to one side. They are irrelevant to our consideration and the work load factor, on its own, would not have been a ground not to uphold the complaint.

In those circumstances, complaints about the non-publication of comments in online forums established by parties subject to the jurisdiction of the Press Council will not be accepted.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Ruth Buddicom, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens and Tim Watkin.

CASE NO: 2575 – EAMON SLOAN AGAINST THE DOMINION POST

Eamon Sloan complains that a cartoon by Tom Scott published in *The Dominion Post* on February 11 breached Principle 1 because it crosses the line into indecency.

The complaint is not upheld.

Background

On February 11 this year *The Dominion Post* published a cartoon by Tom Scott depicting a half-dressed President Trump and the Statue of Liberty in an pose that can be taken to suggest they have just engaged in sexual intercourse. The words, "How was it for you?" are attributed to Trump.

Complaint

Mr Sloan believes the cartoon crosses the line into indecency. He references the fairness section of Principle 1 on the grounds that the cartoon is offensive, demeaning to women, and deals gratuitously in sexual innuendo, even violence.

The complainant says he is not contesting *The Dominion Post's* right to freedom of expression, but says there is a reasonable expectation that the newspaper would maintain a consistent and comprehensive code of decency.

Mr Sloan also complains that *The Dominion Post* did not publish a "strongly worded, highly critical" letter he wrote to the editor, describing the cartoon as "perverted" and "up there" with Tom Scott's "most repulsive efforts".

¹ Decision 2470.

By ignoring critical letters, he says, *The Dominion Post* carefully shields itself within its culture of indifference.

By extending unbridled privilege to the cartoonist, *The Dominion Post* fails to maintain the expected standards of decency. Readers are not in a position to evade any objectionable cartoon material. *The Dominion Post* is a family newspaper, he says, and should remind itself that newspapers are available to all ages.

In his summary, the complainant says he is confounded as to why newspapers are unable to apply a consistent decency code to the field of cartooning and opinion. He also questioned why the Press Council fails to be proactive in promoting improved standards of decency, and challenged it to adopt a stricter policy to promote decency within free speech.

The Newspaper's Response

In her response to the complainant, the editor-in-chief of *The Dominion Post*, Bernadette Courtney, outlined the newspaper's position on cartoons, which she said are an integral part of the newspaper's opinion pages and "as such can be provocative and challenge readers". She acknowledged that not all cartoons or opinion pieces will sit comfortably with all readers.

Ms Courtney says she has the right not to publish material that does not meet the newspaper's standards, but she does not believe in censorship.

She said Mr Scott is an award-winning cartoonist and one of the country's best. As such he is given a wide licence.

She said she did not plan to apologise for his work.

Ms Courtney said *The Dominion Post* receives many letters, often critical, and has never shied away from printing a differing view. In the case of the Tom Scott cartoon, two letters were received, Mr Sloan's, and another, which was published. Both were similar in their condemnation, but "two letters is not a reader outcry".

Discussion

As the complainant himself states, the Statue of Liberty is a stock-in-trade stereotype and since President Trump took office at the start of 2017, there have been many cartoons published depicting him in compromising poses with the statue; many of these are sexualized, some not.

Whether or not Tom Scott's cartoon crosses a line into indecency is the basis of this complaint, but this is very much a matter of personal opinion. Although Mr Sloan complained under Principle 1, this complaint in fact belongs under Principle 5, Columns Blogs, Opinion and Letters, which clearly states, "Cartoons are understood to be opinion."

Cartoons in the media represent freedom of speech at its most extreme interpretation. By their very nature, they are confronting, challenging and sometimes offensive. As has been noted by the Press Council many times before, with opinion and cartoons, readers do not have the right not to be offended.

In line with previous decisions on complaints about cartoons, we do not consider *The Dominion Post* to have breached either Principle 1 or Principle 5.

Mr Sloan also challenges the Press Council to do more to promote decency within free speech. The Press Council's mandate on this is quite clear. The Preamble states: There is no more important principle in a democracy than freedom of expression. Freedom of expression and freedom of the media are inextricably bound. The print media is jealous in guarding freedom of expression, not just for publishers' sake but, more importantly, in the public interest. In dealing with complaints, the Council will give primary consideration to freedom of expression and the public interest. In this case, a newspaper cartoon which highlights the concerns people the world over have about Donald Trump's style of presidency fall without a doubt into the domain of public interest.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Ruth Buddicom, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens and Tim Watkin.

CASE NO: 2576 – MATTIAS WALLNER AGAINST STUFF AND THE SOUTHLAND TIMES

Mattias Wallner of Christchurch has complained about a photograph he saw in the Stuff website showing an upturned car under a bus shortly before the car caught fire, causing the death of its two occupants. The vehicles had collided on the Milford Rd near Te Anau. The photograph was taken by a witness and used by *The Southland Times* in its coverage of the accident.

The Complaint

1. Mr Wallner believes the photograph offends two of the Press Council's principles: Principle 2 governing privacy which states, "Those suffering from trauma or grief call for special consideration", and Principle 10 concerning photographs which says those "showing distressing or shocking situations should be handled with special consideration for those affected".
2. He finds the picture very upsetting as it was accompanied by the information in the story that the two people in the car were at that point still alive but about to be burned to death. The accompanying report said, "Witnesses tried to free the trapped men, who are said to have survived the initial impact, before the car burst into flames, killing both of them."
3. The report was also accompanied by photographs of the two named men, young tourists from Germany, taken sometime earlier.
4. Mr Wallner complains that as a person who did not know the deceased, "I can only imagine the emotional stress and horror an image like this will cause family and friends, seeing the car with their loved ones in it moments before they are to die by fire."
5. As the picture shows nobody yet helping the occupants of the car, "and the photographer obviously feeling that taking a picture of the scene was more important than checking on the people in the car or assisting people off the bus, I feel it does nothing to add to the message of humanity nor road safety."

6. Mr Wallner believes the picture did not need to be published and only added horror to one of the most horrible deaths imaginable.

The Editor's Response

7. The Deputy Editor of Stuff, Janine Fenwick, said the photograph of the crash scene was given special consideration for the impact "these unquestionably confronting images would have on viewers and those close to the victims". However, it was "without doubt a horrific accident (and) we cannot shy away from reporting on news because it may offend."
8. It was "a striking and newsworthy image". The decision to publish was based on the public interest in road safety. Road fatalities involving tourists, in Fiordland and elsewhere, were a serious issue and, "accurate and unflinching coverage is an essential part of this national discussion".
9. On the principle of privacy, the Deputy Editor pointed out the occupants of the car were not visible in any way in the photograph. Mr Wallner was not an affected party in the story. His privacy was not breached and the victim's families have not complained.
10. When the Twin Towers in New York collapsed, the footage indirectly showed the deaths of hundreds of people, as did images of buildings collapsing in the Christchurch earthquake and explosions at the Pike River mine. It is the news media's responsibility to report on the horrific consequences of mistakes on the road. Photographs of crashes carry a more powerful road safety message than words alone.

The Decision

11. The Press Council is aware newspapers exercise extreme care with photographs of dead human bodies and rarely publish them unless the bodies are completely covered. The same care ought to be taken when a person is pictured falling to their death or in any situation where death is imminent.
12. In this case the two people trapped in the car and about to die were not visible in the photograph. The complainant was upset not by the picture alone but by the information accompanying it. He is concerned for the distress this may have caused to relatives of the those killed when the car subsequently caught fire. The relatives have not brought a complaint.
13. If the photograph was simply of a car about to catch fire with people inside, the decision in this case might be different, but this photograph showed the car upside down under a bus. It was a powerful, telling image of the collision and what can happen in a road accident. It is in the public interest that this sort of consequence can be seen.
14. In the Council's view the photograph was no less likely to have been published if the occupants of the car had managed to escape. The photograph was not gratuitous image of impending death and the report did not dwell on the shocking element of the accompanying picture.

15. In the Council's view the privacy of those suffering grief is not in question here, the case is a matter for Principle 10 governing the care to be taken with photographs showing people in distressing or shocking situations. That principle does not mean photographs of distressing or shocking situations should never be published. In this case, the Council accepts the editor's assurance that due care was taken and agrees with the editor, the publication was in the public interest. The complaint is not upheld.

Two members of the Press Council Jenny Farrell and Chris Darlow dissented from this decision and would have upheld the complaint.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Ruth Buddicom, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens and Tim Watkin.

CASE NO: 2577 – ELLEN ADOKO AGAINST THE TIMES

Ellen Adoko alleges breaches of our principles of accuracy, fairness and balance, in a report published in *Times Online* on May 10, 2017.

The Complaint

The publication complained of was a short piece noting that a body had been found at Whitford, and the police were at an address "where they say that a "sudden death" has taken place". It continued that formal identification procedures were underway and the police were not treating the death as suspicious. It also states the death would be referred to the coroner. The article concludes that the police could not confirm that it was the body of 55-year old John Prangle, who was missing from his Whitford home since April 13. It was accompanied by a headshot of the late Mr Prangle.

The major thrust of the complaint appears to be that, although the body had not been formally identified, the editor used the photo with the article title because he was "pretty certain" that the body found was the late Mr Prangle.

Although the complainant does not appear to be related or have any knowledge of the late Mr Prangle and his family, she states the family would be devastated and the article will make things worse for them.

The Response

The editor stated that this was not an unusual story, in that a man had gone missing, this had been reported on earlier, and then a body was found. The editor says that this information was relayed to him by a trusted source, and that the body found was almost certainly the late Mr Prangle. The editor notes that the initial Facebook page led to a number of posts which he described as "trolls". He said the complainant was one of those, although he appears to have no evidence to suggest that that was her motivation.

Essentially, his position is that it was a reasonable link to make and he did not breach any principles of the Press Council in the story.

Decision

We do not consider our principles have been breached by this story.

It had already been reported on that Mr Prangley had gone missing some considerable time previously and had not been seen since. He had gone missing in the Whitford area. Given that a body was found, it is almost inevitable that a link would be made to the possibility that it may have been Mr Prangley. The story clearly states that this was not confirmed, although we note it was confirmed the next day. We do not find the publication of the photograph along with the story objectionable in any way, in that it simply added a further human interest element to the story.

Any privacy breach would be that of the deceased family, but they have not complained.

The complaint is not upheld.

The Press Council considered this complaint in committee.

Chris Darlow took no part in the consideration of the complaint.

The complaint was considered by Sir John Hansen, Jo Cribb, Tiumalu Peter Fa'afiu, Mark Stevens and John Roughan.

CASE NO: 2578 – VINCENT BURNS AGAINST NEW ZEALAND HERALD (FACEBOOK)

Vincent Burns complained that a post on the *New Zealand Herald's* Facebook page on April 26, asking “Could a sex trend called stealthing be considered abusive?” breached Press Council principles 1 (Accuracy, fairness and balance), 6, (Headlines and captions), and 7, (Discrimination and diversity).

Background

On April 26, the *New Zealand Herald* posted a link on its Facebook page to an article entitled “Stealthing is the alarming new sex trend where men remove condoms during sex without consent”. The post asked: “Could a sex trend called stealthing be considered abusive?”

The online article covered a study by Alexandra Brodsky, which was published in the *Columbia Journal of Gender and Law*, on the practice of stealthing, and the online communities that encourage the behaviour.

The article quoted extensively from Brodsky's study, in which she said, “Non-consensual condom removal during sexual intercourse exposes victims to physical risks of pregnancy and disease and is experienced by many as a grave violation of dignity and autonomy”.

The *New Zealand Herald* article made no comment on either the practice or the study.

The author said the victims of the practice were “struggling with forms of mistreatment by sexual partners that weren't considered part of the recognised repertoire of gender-based violence, but that seemed rooted in the same misogyny and lack of respect”.

The *New Zealand Herald* immediately removed the post from Facebook when it received a complaint about the wording. The post was ‘live’ for about two hours.

The Complaint

Mr Burns believed the post suggested ambiguity about the legal status of the practice; a reasonable reader could expect

that the article would deal with the ambiguity over the legal definition of consent. The article did not contain such information, but readers would not know that until they had read the entire article.

The complainant said the post (which he refers to as a caption) therefore inaccurately reported the content of the study.

Mr Burns criticised the *Herald* for allowing inaccuracies such as this to be published. By failing to exercise its services responsibly, the *Herald* had “unhelpfully and unnecessarily contributed to the perception of rape culture by publishing misleading information”.

The Newspaper's Response

The *Herald* news editor David Rowe apologised to Mr Burns for offence caused by the Facebook post.

He accepted that the post was poorly worded in that it raised a question of whether the practice described in the article was abusive, when on reading the article, it clearly was.

He did not believe the post in itself had breached any Press Council principles.

He said the *Herald's* swift action in taking down the post, removing the article and apologising to the complainant was, in his view, an appropriate response.

With regard to Principle 1, Mr Rowe argued that there is no factual inaccuracy in the post as, in his view, the article does contain some elements of debate about how the acts are classed legally. The report states: “Such condom removal, popularly known as ‘stealthing’, can be understood to transform consensual sex into non-consensual sex by one of two theories, one of which poses a risk of over-criminalization by demanding complete transparency about reproductive capacity and sexually transmitted infections.”

Mr Rowe also refuted the suggestion that the *Herald* post had unnecessarily contributed to the perpetration of rape culture by publishing misleading information; the post did not describe the sexual acts, but rather directed readers to the article which discussed the issue in a balanced way.

He said the *Herald* had removed the post after it received a complaint because he accepted the post was ‘astray in its emphasis’ and insensitively worded, not because of a breach of Press Council principles.

The insensitivity had been explained to the staff member who wrote the post.

He said he did not feel a public apology or correction as requested by the complainant was necessary as the post had been removed, and there was no statement of fact to be corrected. It would only serve to resurface the original post.

Discussion

The fact that the Facebook post was written as an interrogative sentence forms the basis of this complaint because it was considered by Mr Burns to be inaccurate, ambiguous, and offensive.

Given the sensitivity surrounding the general issue of sexual violence, the Press Council has sympathy for the

complainant's view that *New Zealand Herald* should have systems in place to prevent such a post from appearing on Facebook. In the context of the article, it was a clear case of 'click bait', which reflects poorly on the professionalism of the *New Zealand Herald*.

The Press Council acknowledges the *Herald's* immediate action on receipt of the complaint to remove both the post and the article and to apologise to the complainant.

To suggest that the *Herald* was contributing to the "perpetration of rape culture" by publishing the post is perhaps drawing a long bow, however, and it should be noted that the article in the link was accurately headlined.

The purpose of the Facebook post was to promote the article in the same way that newsstand posters were used in the days before the internet and social media, and clearly did not go through the rigorous editorial processes it should have.

The Press Council has previously noted (Case No 2492) that the same standards apply to a social media post of this nature as to other published material.

The Facebook post in question was unquestionably inappropriate. Had it not been for the quick response in removing the post and apologising, the Council would have upheld the complaint.

Principle 12 acknowledges that a publication's willingness to correct errors enhances its credibility and, often, defuses a complaint. Equally, a correction cannot be considered a guaranteed get-out-of-jail-free card and, in this case, the decision was borderline.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tuimalu Peter Fa'afiu, Hank Schouten, Mark Stevens and Tim Watkin.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2579 – MONIKA CIOLEK AGAINST STUFF

Monika Ciolek of Wellington complained about a Stuff report of a homicide in Southland headlined, "Invercargill shaken by deadly love triangle". The complaint was not upheld.

Background

A policeman was charged with the murder of his estranged wife and the attempted murder of the man she was living with. The tragedy instantly attracted wide interest because the alleged killer was a local policeman and he and his wife were well known in Invercargill. They were said to have been friends with the man she eventually went to live with, who had a wife and children. The two families used to go on outings together.

Stuff's report was built on background information about the accused man and the dead woman and impressions of them from those who knew them. These included comments such as, "He (the accused) just seemed like a nice guy" and, "(She was) a caring, happy great Mum". Summarising these impressions, the reporter wrote: "He was the type of guy

who took his kids on family outings to the river and helped out at local school fund-raisers. He wasn't the type of guy who shoots his wife with a .22-calibre rifle before turning it on a man who was one of his close mates. But that is what allegedly happened on Tuesday evening."

The Complaint

Monika Ciolek complained that the headline phrase "love triangle" was inappropriate and the report as a whole was inconsistent with guidelines published by the Ministry for Social Development for the reporting of family violence. It perpetrated three of the "myths" identified in the guidelines, namely that violence can be caused by a failed relationship, that violence can be associated with love, and that it is surprising that it could involve a police officer.

She was concerned that the story contained no comment from experts in family violence and further, that it appeared to her to "erase" one of the victims by not focusing on the woman's life, work, interests or personality. This was in contrast to coverage of other crimes where the victim's life and the community's loss were normally the focus.

Together, she believed these faults had the effect of perpetuating the idea that family violence was a lesser crime than other assaults and killings. Though this was not the newspaper's intention, its report fitted with a broader pattern that the guidelines were developed to counter.

She invoked the Press Council's principles of accuracy, fairness and balance; the need to distinguish comment from fact; and the accuracy of headlines and captions. But her initial complaint did not specify any breaches.

The Response

Stuff's chief news director, Keith Lynch, said it was a distressing case and the report was compiled a short time after the incident. Until the case came to court little could be known about the relationship of those involved.

It was valid to note that a police officer was involved since that is a role that is supposed to protect and serve people and this one ended up doing the opposite. It was important to try to find out about him, his personality and his background. He had yet to plead to the charge or stand trial. That obviously affected the way the case could be reported.

The newspaper did its best to gather information about the victim but at that stage her family was reluctant to talk about her. If they had been more forthcoming the focus of the story might have been more strongly on her but it included as much information on her as could be gathered.

He believed the term "love triangle" was an accurate description of the case for headline purposes, and he did not believe it diminished the seriousness of the story, nor had any of the reported facts. While Fairfax was aware of the Ministry of Social Development's guidelines, Mr Lynch said, "Our journalism is not bound by a third party, unbidden, developing its own rules for media reporting. It would be a strange and undesirable state of affairs if publishers were expected to abide by reporting restrictions issued autonomously by government departments without media engagement."

The Complainant Responded

Ms Ciolek provided specific examples of statements she believed breached the Press Council's principles. It was factually inaccurate, she suggested, to imply that taking children on outings or participating in community events was incompatible with committing family violence or domestic murder. It was unfair, unbalanced, misleading and discriminatory by social status to suggest domestic violence and murder only affect some types of families. It was unethical and against the public interest to perpetuate such myths.

The term "love triangle;" was speculation and its use blurred comment and fact. There was no basis for an assumption there was "love" between the accused man and his victim. Rather the fact they had separated and he is alleged to have shot her suggested otherwise. Without "definitive facts showing there was 'love', it is inaccurate, unfair, unethical and against the public interest to link this violence either to love or relationship failures. It is not normal to hurt someone you love, and most relationships end without fear or violence. It was also insensitive to speculate about 'love' after an alleged murder and it breached the principle that cases involving personal grief should be approached with sympathy and discretion.

Given the prevalence of family violence in New Zealand, Ms Ciolek says, this story should have included additional information in the public interest. For example, that the 18 months following separation is the most dangerous time for victims of domestic violence. The report should also have given contacts where victims or perpetrators of domestic violence could seek help.

Discussion and Decision

The Ministry of Social Development's guidelines for reporting domestic violence do not appear to have been drawn up in consultation with news media. This case illustrates what could happen if a code written for a social purpose had to be applied in all human circumstances. The complainant objected to the description of this crime as a "love triangle" since the guidelines said, "It is not normal behaviour to bash or murder someone if you love them". It is not normal, but love is possibly a more complex emotion than the Ministry has allowed.

The complainant suggested anything favourable said about a man charged with the murder of his wife would be a breach of the Ministry's guidelines. The complainant cited favourable references to the accused man as breaches of the principle of accuracy, fairness and balance on the grounds that they perpetuated "myths" about domestic violence. The Press Council was not in a position to judge whether the statements reported are myths or not but there was no suggestion they were not an accurate report of what acquaintances had said about the man. The Council did not agree that newspapers should be forbidden to report views such as these.

Nor did the Council consider the term "love triangle" to be mixing comment and fact. The facts were a man had been charged with killing his wife when she was with another man, and with attempting to kill the other man. To describe this as a "love triangle" was not a comment, it was a common

summary of this sort of situation and its use in the headline fairly reflected the story. The Council did not believe the term would have added to the grief of the families involved.

It was not accurate or fair to suggest the story "erased" the victim by failing to focus on her life, interests, work and personality. The story included details of her life in all of those respects. The accused man was the primary focus, the editor explained, because the victim's family was reluctant to talk about her.

Finally, Ms Ciolek suggested the story should have been "balanced" with generalised information about family violence and contact numbers for assistance. The Council strongly disagreed. This was a report of a crime in which the accused had yet to plead, let alone come to trial. To put in the report the information the complainant suggested would have implied this was not a one-off act of violence. That could not only have been inaccurate, it would have been unfair to the accused man and misleading for readers since neither Stuff's reporter nor the complainant knew whether it was true.

This case was considered purely on the Press Council's principles and on each of those cited, the complaint was not upheld.

It was clear from industry members present that there was a general unawareness of the guidelines and apparently no media consultation in regard to them.

Press Council members considering the complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Mark Stevens, John Roughan and Tim Watkin.

Hank Schouten stood down to maintain public member majority.

CASE NO: 2580 and 2581 – DAVID HORNE AND DOUG DALLIMORE AGAINST HERALD ON SUNDAY

The *Herald on Sunday* published an on-line article on statistics about the New Zealand Police's use of force. The article began with information about the use of a police dog to locate an offender. The headline read 'Police set dog on 12 year old hiding in kindergarten.'

The Complaints

Two complaints have been received by the Press Council.

David Horne contends that the headline is inflammatory and breaches Principle 6: Headlines and Captions; whereby headlines, sub-headings, and captions should accurately and fairly convey the substance or a key element of the report they are designed to cover and Principle 1: Accuracy, Fairness and Balance.

Doug Dallimore also includes Principle 2: Comment and Fact stating the article was misleading because it called a sixteen year old a 'child' when the correct term should be young adult. The use of images of police dogs is also included under Principle 4: Photographs and Graphics in Mr Dallimore's complaint.

The Response

The *Herald on Sunday* rejects the complaints stating that the

headline accurately reflects the data outlined in the article and the story is accurate, fair and balanced.

The Decision

Much of the article presents data about the use of Police force on children with commentary from an expert (the Children's Commissioner, Judge Becroft). It also outlines the detail of the incident on which the headline is based.

While the article moves on to consider the over-representation of Maori in the statistics and the use of force on people with mental illness, the headline does convey a message based on the substance of much of the article, albeit a single example of the broader data discussed.

The use of an image of a police dog (noting there were different images in the print and on-line version but portraying a similar image) to accompany the article again is in line with the essence of the article but again only a single example of the types of force described in the article.

The issue raised concerns about the accuracy of the definition of a 'child'. Legal and common sense definitions usually account for the age of children as up to 18. Sixteen year olds are commonly considered children. The article is therefore accurate.

The complaints are not upheld.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Hank Schouten, Mark Stevens and Tim Watkin.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2582 – JAMES FINDLAY AGAINST HERALD ON SUNDAY

James Findlay alleges breaches of no fewer than four of the Press Council's principles, relating to a story published in the *Herald on Sunday* on March 19, 2017.

The Article

The article sets out that Mr Findlay was standing for a seat in the Waikato Regional Council by-election. It discusses his conviction on seven charges of fraud in 2007, and his role in a wide-ranging property fraud involving mortgage brokers, lawyers, accountants and managers. The story goes on to say that Mr Findlay continues to maintain his innocence, notwithstanding that the convictions against him still stand and that his sentence of 12 months' imprisonment was increased to 18 months on appeal.

The story then refers to a woman, Ms Maxwell, who was angry that he was standing, and talked about her own circumstances and how she lost her house. The story concludes by pointing to another by-election candidate who had a conviction of robbing a bank in Australia in 1986.

The story quoted the Waikato Regional Council Chief Executive as saying candidates were not required to disclose their criminal history and that a criminal record was no barrier to standing for Council.

The Complaint

As noted above, Mr Findlay complains of breaches of the

Council's principles of accuracy, fairness and balance; comment and fact; headlines and captions; and corrections.

Much of his complaint to the Council is taken up with his view that he was wrongly convicted and sentenced in relation to these matters. He also continued to maintain there were no victims of these fraudulent activities, and that nobody lost money. He also complained that the serious issues at stake in the election were not reported.

He further complains that he did not inflate 40 valuations of properties for McKelvy (the main fraudster), as he says the *Herald on Sunday* reported.

The Response

The deputy editor of the *Herald on Sunday* gives a detailed eight-point response to what he says are the alleged inaccuracies in the complaint made by Mr Findlay. It is unnecessary to set them out in full here. The deputy editor also pointed out that the print story was not about election issues, but that there was an accompanying video on line (with a link) which quoted Mr Findlay at length talking about the issues he was concerned with, including dairying.

Decision

Whatever view Mr Findlay may have of it, the simple fact is he was convicted on seven charges of fraud. Those convictions still stand. Ultimately, following an appeal, he was sentenced to 18 months' imprisonment. Mr Findlay's view cannot alter the fact of those convictions or the sentence.

His complaint related to 40 inflated reports is not an error, as the reporter was simply repeating the Crown's submission in Court. The report makes this clear.

Mr Findlay's view that no-one lost money is sophistry. The Judge found that the overall loss was \$6.4 million. It was the Judge in sentencing the complainant that used the words "insidious" and "predatory", even if Mr Findlay refuses to accept them. The Council can well understand why the Judge used those words.

The story does not say that Mr Findlay's conviction related to the property of Ms Maxwell. Her complaint is the behaviour of the group, and specifically names the ringleader, McKelvy. We see nothing in that complaint.

Despite Mr Findlay's view, the Council considers it entirely proper for a newspaper to report that a candidate for local office has convictions for dishonesty. Indeed, one would think it was the duty of a newspaper to so report.

This is not the first time where complainants have taken issue with the later reporting of their convictions. In some cases they have also taken issue with the correctness of the conviction, notwithstanding the fact that such conviction still stands. Complainants need to understand that the Press Council is not a forum to argue for the correctness, or otherwise, of established and long-standing criminal convictions.

The complainant opted for a scattergun technique, complaining of breaches of a number of principles. He has not established breaches of any of them. The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiimalu Peter Fa'afiu, Hank Schouten, Mark Stevens and Tim Watkin.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2583 – GRACE HADEN AGAINST THE DOMINION POST AND STUFF

Grace Haden, a former police prosecutor, has been declined a licence to work as a private investigator. *The Dominion Post* and *Stuff* carried a report of her appeal to the Napier District Court against the decision of the Private Security Personnel Licensing Authority.

Ms Haden complained that the report is unbalanced and uses selective quotes to denigrate her. She listed five matters of concern to her. They will be summarised here along with responses from the Chief News Director for *Stuff* and *The Dominion Post*, Eric Janssen, where required, followed by the Press Council's decisions.

The report included a quote from a police file the complainant had not been shown in full, despite her request for it, and the damaging comment about her was made by a police woman who had never met her.

Mr Janssen said the quotes used did not come from a police file but from a court judgment in a defamation action against her in 2008.

The Press Council notes Ms Haden's opinion that the comments about her were unfounded and the Police's refusal to supply her with the complete file has limited her ability to challenge them, but the comments were made and the news report is entitled to refer to them, as they are on the public record.

Ms Haden said the 2008 defamation action involved serious public corruption and she was denied a defence of truth and honest opinion.

The Council notes those are her views of the 2008 case, the details of which are outside the scope of the news report at issue in this complaint.

Ms Haden enlarged on her view of the defamation case, which is outside the scope of the story at issue.

The complainant said she has been unfairly labelled a conspiracy theorist. She did not subscribe to a conspiracy theory, did not use the word conspiracy and would like someone to identify the conspiracy theory.

Mr Janssen responded that she was described as a conspiracy theorist in the Licensing Authority's decision and similarly described in the 2008 court decision. He pointed out that she had made claims in this complaint, about the reporter involved, that supported the description.

The Press Council is not able to rule on whether she is prone to imagine unlikely conspiracies but finds the story accurate as a report that she has been characterised by others in this way.

She repeated her view that she was taken to court for speaking the truth about corruption and had been under personal attack

for doing so ever since. This view is a background to her complaint rather than an issue on which the Press Council can rule.

Ms Haden then formalised her complaint under nine Press Council principles:

1. Accuracy, fairness and balance. She asked, was it fair to label a person in 2017 on the basis of a person's opinion in 2012, especially when it was an unsubstantiated opinion and the Licensing Authority's decision was under appeal. She questioned how *The Dominion Post's* reporter obtained the Authority's decision and believes he had been sent to cover her appeal to the District Court "with the intention of denigrating me..... probably with the article substantially written."

Mr Janssen explained that the article made it clear the opinion of her that was quoted was an opinion. The Authority's decision was not subject to a non-publication order. A copy of the Authority's decision was supplied to the reporter by the Ministry of Justice on request, before the appeal hearing. The newspaper report was written after the hearing.

The Council finds the complainant has identified no factual inaccuracies in the reporting. This was a report of a court hearing. News reports of court proceedings are not permitted to include material that is not part of the proceedings. If this material was unfair or unbalanced in the complainant's view, it was not the fault of the newspaper. There was nothing unfair in the way the Licensing Authority's decision was obtained or in the motives of the reporter and the newspaper.

2. Privacy. Under this Principle the complainant recorded the police's refusal to give her a file that was not redacted and her inability, therefore, to seek corrections under the Privacy Act.

Mr Janssen points out newspapers are not subject to the Privacy Act and in any case, the opinions given of her were not a private matter.

The Press Council agrees. The opinions given, right or wrong, were a matter of public interest in an application for a licence to practice as a hired investigator.

3. Comment and Fact. It was not a fact that she was a conspiracy theorist, it was somebody's opinion. Mr Janssen says this was clear in the article and the Press Council agrees.

4. Headlines and Captions. The headline read: "Private investigator labelled a conspiracy theorist fights loss of licence". Ms Haden says she was not fighting the loss of her licence, she was fighting "the declination of the renewal of my certificate of approval". The Council finds the headline accurate and a fair summary of the story.

5. Confidentiality. Ms Haden repeats her concern about the police file she was not allowed to see except in redacted form. If this was so confidential, she asks, why was it published on the web. Mr Janssen says no non-publication order was placed on this material by the court. The Council can find no breach of any undertakings of

confidentiality by the newspaper in this case.

6. Subterfuge. Ms Haden asks how the reporter obtained a copy of the Authority's decision. She had been assured the reporter was not shown the court file. Mr Janssen repeats his explanation that the decision was supplied by the Ministry of Justice on request. The Press Council can see no subterfuge involved.
7. Conflicts of Interest. Ms Haden says, "The fact he (the reporter) was sent to do a number on me is in my opinion a conflict of interest." This, even if it was true, is not a conflict of interest in the Council's opinion. The complainant cites no personal interest the reporter may have had in the story or any other interest of the newspaper other than to publish a story of public interest.
8. Photographs and Graphics. Ms Haden complains that a photo of her accompanying the story was unflattering. The reporter could have asked her for a better one. Mr Janssen suggests this is not a ground of complaint and he is right. He has invited Ms Haden to send *The Dominion Post* one that she prefers.
9. Corrections. The newspaper failed to publish a correction she requested. Mr Janssen says it had no need to, nor was it prepared to amend or remove the article for the Stuff site. The Council finds no errors requiring correction.

It finds no grounds for this complaint. It is not upheld.

The Press Council considered this complaint in committee.

Sir John Hansen took no part in the consideration of the complaint.

The complaint was considered by Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Tim Watkin and John Roughan.

CASE NO: 2584 – ESTA HOEKSEMA AGAINST MANAWATU STANDARD

[1] Esta Hoeksema takes issue with an article that appeared in the *Manawatu Standard* on May 4, 2017. The story was repeated on stuff.co.nz on the same day.

[2] The complainant alleges that the report of a coronial inquest breaches the Press Council's principle of privacy, and in particular the final portion of the principle stating that those suffering from trauma or grief call for special consideration.

The Article

[3] The report relates to the death of a Feilding woman in a house fire. The report gives the deceased background in the community and adds she was the mother of a well-known local musician. It goes on to report on the Coroner's findings.

[4] The report states that the coroner concluded that the deceased died as a result of the effects of the fire, and that fire was caused by unattended cooking. It continued that the Coroner also concluded that it is likely the deceased attempted to put out the fire before attempting to escape. He notes the presence of burnt clothing in the kitchen to support this finding. He further noted that the deceased had mobility problems, and that when she attempted to escape this possibly impeded her, as both she and her dog

were found close to the back door. The toxicology report, while confirming that smoke inhalation was the cause of death, also noted that the deceased's blood alcohol level was 160 milligrams per 100 millilitres of blood. The coroner contrasted that with the legal driving limit in New Zealand of 50 milligrams of alcohol per 100 millilitres of blood. He found it was possible that the amount of alcohol caused her to exercise less care than usual in preparing her meal, and/or to dose off in the lounge while it was cooking. He also found it was probable that the alcohol "impeded or slowed her already compromised movement, and contributed to her inability to escape the fire".

[5] He found that it was a "reasonably natural reaction" to attempt to extinguish the fire, but concluded "sadly, it may have also been a fatal one, in that, had she simply focused on escaping from the house, rather than stopping initially in an attempt to put out the fire, she may have been able to do so".

[6] The complainant is the partner of the deceased's son.

The Complaint

[7] As noted above, the complainant maintains that the report breached her partner's rights of privacy and ignored the final paragraph of the principle dealing with privacy, set out above.

[8] While she accepted the coroner's finding was a public document, she considered there was no reason for the *Manawatu Standard* or stuff.co.nz to publish it, as there was no public interest in it. Further, she complained that the graphic details mentioned in the story were unnecessary, and suggested that they were designed simply to sell newspapers.

The Editor's Response

[9] In reply, the chief news director (Matthew Dallas) stressed that the coroner's findings was a public document, and disagreed that the report in any way breached the deceased's son's privacy. He also denied the suggestion regarding the motivation.

[10] He said fatal house fires hold a strong public interest in New Zealand, while describing these as rare and tragic events. He also added that the deceased was well-known in the Feilding community and wider Manawatu for her work as a school guidance counsellor, and as the mother of the well-known musician son.

[11] It is unnecessary to cover the other lengthy matters he sets out.

Decision

[12] Kathryn Hansen, a 69-year-old, died as the result of a fire at her residence, 2 Fitzroy Street, Feilding, on the evening of 24 August 2016. It is unclear when the coroner's hearing was conducted, but his reasons were dated 20 March 2017, but apparently were not released by the Ministry of Justice until 4 May 2017, the date of the report complained of.

[13] The coronial findings are clearly a public document. While a coroner has power to suppress certain parts of his findings, in this case no such suppression order was made.

[14] We also do not accept the editor's description of fatal house fires as rare. While other forms of accidental death are more frequent, fatal house fires are a matter of concern

in New Zealand. Indeed, the New Zealand Fire Service regularly has dramatic advertisements dealing with fires caused by a number of accidental causes, particularly from unattended cooking.

[15] While the Council sympathises with the feelings of the complainant and the sensitivity of her partner, we are more than satisfied that there is no breach of the privacy principle. We note that the principle states:

Nevertheless the right of privacy should not interfere with publication of significant matters of public record or public interest.

[16] The coronial findings were a matter of public record. We also are more than satisfied that the publication of those findings is a matter of significant public interest.

[17] It is very much in the public interest that the cause of house fires, particularly fatal house fires, are reported by the news media. It is a salutary warning to readers of the dangers of, in this case, unattended cooking. The report also highlights that, while attempting to put out a blaze is a natural reaction, the more appropriate course is to try and effect an escape from the house. Finally, it is of significant public interest that the coroner found that the level of alcohol consumed was a probable contributing cause impeding escape.

[18] We are conscious of the need to give special consideration for those suffering from trauma or grief, paying careful attention to their sensibilities. We consider in this case the publication goes as far as possible in this regard, given its public interest obligation to properly, and in depth, report on the coroner's finding with a view to warning the general public of the causes of fatal house fires and the dangers inherent in them. It is a critical educational role that the media ought to carry out.

[19] We reiterate the finding is a public document. It appears no request was made to suppress any part of the finding and the Coroner saw no cause to make any such order of his own volition. We do not consider it is for the publication, or the Council, to effectively censor a public document.

[20] While we sympathise with the complainant, and her partner, the Council is satisfied that the report is a fairly standard one of a coronial finding.

[21] The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiimalu Peter Fa'afiu, John Roughan, Hank Schouten, and Tim Watkin.

Mark Stevens stood down to maintain the public member majority.

CASE NO: 2585 – ANDREW HUBBARD AGAINST THE DOMINION POST

The Press Council considered a complaint that a *Telegraph Group* article on the alleged gas attack on a rebel-held Syrian town of Khan Sheikoun published in *The Dominion Post* failed the test of accuracy, fairness, balance. Fairfax was also criticised for failing to uphold journalistic standards by not fact checking stories supplied by overseas news agencies.

Complaint

Andrew Hubbard complained that a story published on April 15, 2017 headed "Assad accuses US of inventing attack" was inaccurate.

The headline "Assad accuses US of inventing attack" was misleading when the word used by Syrian President Bashar al-Assad was "fabricated". The article also failed to fairly report other points made by Assad in an AFP-TV interview in which he denied using chemical weapons as alleged by the United States.

In support of his complaint Mr Hubbard provided documentation, including photos, which he said were evidence the attack was fabricated and that there was no evidence that "victims" suffered the effects of sarin poisoning.

He said the paper's coverage of the attack at Khan Sheikoun was inaccurate and lacked balance. Statements of the Syrian and Russian Governments were not published, while unsubstantiated assertions of the US and UK were given ample space.

This was a story of great importance on an escalating international conflict and maintenance of journalistic standards in international affairs was critical. Outsourcing foreign stories to external organisations without internal fact checking or quality control was a systemic failure of journalism practice.

International news made up a substantial part of *The Dominion Post* and the paper was applying no meaningful oversight or rigor to its international content. This was incompatible with Fairfax's obligations as a member of the Press Council.

Response

Fairfax central region editor Bernadette Courtney did not respond to specific criticisms of the article made by Mr Hubbard.

She said it needed to be viewed in the context of all coverage on this matter and she struggled to see that Mr Hubbard's evidence on this story was any more reliable or better than that of the *Daily Telegraph's* reporter.

Fairfax did not have overseas-based reporters and its international coverage came from news agencies which were relied on to be accurate. Fairfax did not have fact checkers to work on international content.

While this might not be acceptable to Mr Hubbard it was the harsh reality for all New Zealand media.

Discussion and Decision

New Zealand news media have always relied heavily on news agencies for their international coverage and this will always be the case as it is impractical to cover the globe any other way.

It is axiomatic that they have to rely to a large degree on the veracity of reportage the agencies provide and editors need to exercise their judgement in selecting stories to ensure they provide accurate, fair and balanced coverage. It is understood that any fact-checking will have been undertaken at source.

The Dominion Post draws its international cover from a variety of agencies and has for many years used the *Telegraph Group* as one of its suppliers.

As for Mr Hubbard's specific complaints about the story published on April 15 it is hard to support his view that the headline is inaccurate. The words "fabricated" and "invented" are common synonyms and little turns on the use of one rather than the other.

The story was based largely on a lengthy AFP-TV interview with Assad. It concluded with comment and counter-arguments from other sources.

It led with Assad's defence of his position and more than half the story was devoted to it. It covered his claims that the US fabricated the chemical attack to justify its military strike and that his Government could not be responsible as it no longer had chemical weapons. It did not detail all his arguments but it fairly and accurately conveyed key points.

The documentation Mr Hubbard provided supported his contention that sarin gas was not used at Khan Sheikhoun. While that may be correct all the major protagonists in this conflict agree that a chemical agent was used. *The Dominion Post* story repeatedly refers to it as a chemical attack although it includes a line from the Organisation for the Prohibition of Chemical Weapons that sarin or a sarin-like substance had been detected in samples taken from three victims. This is still clearly a contentious issue and the story reflected that.

Mr Hubbard also argued the paper's coverage lacked balance because it failed to publish Syrian and Russian Government statements. However, the specific story on which he chose to base his complaint was evidence that the paper did offer balance with a story that clearly outlined Assad's position.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiumu Peter Fa'afiu, John Roughan, Hank Schouten and Mark Stevens.

Tim Watkin stood down to maintain public member majority.

CASE NO: 2586 – ANDREW HUBBARD AGAINST THE DOMINION POST

Andrew Hubbard complained that cartoons depicting Syrian leader Bashar Al Assad and Russian President Vladimir Putin were based on unsubstantiated accusations of war crimes and that a depiction of them as less than human was a form of hate speech.

The Complaint

Andrew Hubbard complained of three cartoons by Tom Scott, Trace Hodgson and Al Nisbett which were published in *The Dominion Post* following an alleged chemical weapons attack in the Syrian town of Khan Sheikhoun in April 2017.

He said that while the Press Council viewed cartoons as opinions which included the right to offend, these had far exceeded these guidelines.

There was a requirement for the opinions to have a foundation in fact. There was no evidence that Assad and Putin were responsible for the attack. Accusations had been made by

Western government sources and these had been refuted by the Russian and Syrian governments.

He said the Trace Hodgson "goblins" cartoon, headed "What sort of creatures would murder little children with chemical weapons", depicted Assad and Putin as sub-human. This was a form of hate speech comparable to the way Jews were portrayed as rats by 1930s German cartoonists and has no place in a newspaper.

If any content is acceptable as opinion, then no cartoon is too offensive and no expression is off-limits.

The combined result of publishing these cartoons in this way and at this time was to influence public emotion in a manner more akin to xenophobia and political propaganda than to journalism.

The bully pulpit afforded the editor had a valid place and purpose if constrained by ethical concerns. It was being abused. The right to publish and to offend did not exist in a vacuum.

Mr Hubbard also complained about an article in *The Dominion Post* on the same chemical weapon attack. This will be dealt with separately.

The Response

Bernadette Courtney, Fairfax central region editor in chief, said the cartoonists were all entitled to their own views. The cartoons were opinion and clearly identified as such.

She added the Press Council had noted cartoonists may express their own opinions and in doing so may cause disquiet or offense.

Discussion and Decision

These cartoons, which were published within seven days of each other, were three separate takes by three different cartoonists on the subject of a chemical weapons attack on the Syrian rebel-held town of Khan Sheikhoun on April 4.

International media reported more than 80 people were killed after the town was attacked by Syrian Government aircraft.

The cartoons all vilify Assad and Putin, although Scott's cartoon also took an incidental swipe at President Donald Trump.

They are harsh, but not unduly so, given the gravity of the alleged war crimes they are commenting on.

While the Press Council has long held that cartoons are expressions of opinion, Mr Hubbard argued that expressions of opinion had to have a foundation in facts. He said there was no evidence that Assad or Putin were responsible for the use of chemical weapons and that accusations had been "strongly refuted" by the Syrian and Russian Governments.

It is hardly surprising that anybody would deny they were party to war crimes and to do so does not refute or disprove it.

However, there was strong evidence that the attack took place and that many people died. To suggest that opinions should be withheld until all the facts are established beyond doubt (and to whose satisfaction?) on such a major global issue, would make it impossible to comment in a timely

fashion on many important events as they occur. This would be an unwarranted gag on freedom of expression.

As for the contention that the “goblins” cartoon was equivalent to Nazi-era hate speech, the subjects here were individual politicians, not representative of racial groups. Cartoonists have often characterised politicians as monsters, ogres, clowns, fools or animals to make their point and this is an unexceptional example of that.

The complaint was not upheld.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, John Roughan, Hank Schouten and Mark Stevens.

Tim Watkin stood down to maintain public member majority.

CASE NO: 2587 – KUMARA RESIDENTS’ TRUST AGAINST THE PRESS

Background

[1] The Kumara Residents Trust (KRT) complains about an article published in *The Press* and on Stuff on April 28, 2017. It complains under **Principle 1 (Accuracy, Fairness and Balance) and Principle 4 (Comment and Fact)**. In *The Press* the article is headlined “Smalltown row over mysterious Chinese garden” and on Stuff is headlined “Westland District Council allows town ‘nest egg’ to be used for Chinese garden”.

[2] The article tells of the KRT’s efforts to build a memorial Chinese garden in Kumara, the “beleaguered” council’s support for \$150,000 from the town’s endowment fund to be spent on the garden and the controversy caused that decision and the debate leading up to it. The town has a population of just 300 and there is division over how the money should be spent.

[3] The article includes critics and defenders of the project and reveals claims by four elderly townsfolk, plus “West Coast tourism boss” Jim Little, that they did not vote in favour of the garden by proxy, as the KRT had claimed. A former KRT chair denies any “fake votes”. The debate over the garden and voting is put in the context of wider controversies surrounding the Westland District Council (WDC), with the report saying it has “allowed a self-appointed trust to use some of the town’s decades-old nest egg to build it”.

The complaint is upheld.

Complaint

[4] The KRT’s complaint is multifaceted and broken down into bullet points, and can best be followed that way. It has been submitted by Chair Julie Rowe and, overall, says “the article is not a true and unbiased account of our project and our trust”. She admits that the Trust has “made mistakes” and that trustees “chose not to answer” the reporter’s questions because he was “pushy” and “accusatory”. When approached by the reporter, she replied with a short, general statement that did not address his questions.

[5] To start, she says the newspaper headline labelling the garden “mysterious” is “misleading and inaccurate”. Rowe says work on the project started in June 2014, when a leaflet was dropped in every mailbox in town inviting participation.

Since, there have been community meetings, more letterbox drops and regular updates both in the monthly community newsletter, on Facebook and on the Kumara website.

[6] Rowe says the online headline that “Westland district council allows town ‘nest egg’ to be used for Chinese gardens” is also misleading as it implies it uses the entirety of the endowment fund, when in fact only \$150,000 of the \$338,000 fund has been released for the garden.

[7] Despite what the article says, Rowe argues that the KRT is “simply not a self-appointed trust”. The report says that “the beleaguered Westland District Council has allowed a self-appointed trust to use some of the town’s decades-old nest egg to build it”, whereas Rowe says the board members now are not those who started the Trust in 2008, and many are not the board members who started the garden project in 2014. She says any resident or ratepayer in Kumara and the surrounding area can join the Trust and it’s those members who vote for the board. There are currently 84 members, she says. The Trust’s deed, supplied by Rowe, shows that membership of the Trust is open to “all residents and ratepayers of the Kumara community” and it is those “registered members” who elect the board. Rowe does, however, acknowledge that the trust’s Companies Office register was not up to date and until the article still listed the board members from 2014. Rowe says, however, that the reporter “should have researched more to ensure his claim of a ‘self-appointed trust’ was accurate”.

[8] The article quotes garden critic Des McGrath saying the money would be better spent on the memorial hall or sports ground and reports “some townsfolk” would prefer it spent on the school. Rowe complains that the endowment fund is tagged for “council reserves” only and supplies legal advice to support that. Those other properties are not reserves, so the money could not be spent on them. Omitting that fact is misleading.

[9] The article discusses a 2014 meeting at which the Trust got its mandate to go ahead with the garden. It says that four elderly residents recorded as having voted by proxy in favour of the garden have signed affidavits insisting they did not vote. The article continues “The votes were not counted at the meeting, no minutes were kept and the Trust was unable to provide the voting record”. Rowe complains that minutes were in fact kept. In response to *The Press* claim that the reporter had asked for the minutes and been told they were confidential, Rowe supplies emails she exchanged with him showing no mention of the minutes. (They did however also talk on the phone). She says the Trust has shared the minutes “with anyone who has asked”. “He didn’t ask us and if he was told by someone that they were confidential then that still shows that minutes were kept”. (The minutes have since been posted on the Trust’s website).

[10] As for the voting record, Rowe says that rather than being “unable” to provide it, the Trust simply refused because the vote was a secret ballot. They are willing to provide it to police.

[11] The KRT is also unhappy about how *The Press* reported a 2015 survey carried out in the town. The article says it showed about half the town’s population did not want the

garden. This was important because the Trust told the WDC the vote in favour of the garden was “unanimous” and the Council then released funds. The KRT argues the survey was organised by McGrath and “the surveyors were biased and selectively door-knocked”. The Trust supplies a submission based on the survey, which reads, “Families of Trust members were not approached”.

Editor’s Response

[12] Fairfax’s deputy editor, Canterbury Otago, Kamala Hayman stands by the article, saying the reporter interviewed eight Kumara residents, read all available documentation and got copies of signed affidavits from the residents who deny voting in favour of the garden by proxy. She stresses the KRT refused to answer many of the questions asked, and serious questions remain unanswered.

[13] Hayman argues the story has corrected two factual errors put about by the Trust. First, it has admitted that Little’s supposed proxy vote should not have been counted. Second, the Trust has also admitted – in correspondence after the article – that its claims public submissions to the WDC ran 108-8 in favour of the gardens were wrong and the town is more evenly divided. It has failed to explain how either error arose. Hayman argues, therefore, that taken as a whole the article is accurate, unbiased and in the public interest.

[14] Responding to the specific points in Rowe’s complaint, she says that, first, *The Press* believes the project is “mysterious” because most *Press* readers would have been unaware of the project. What’s more, it’s a mystery to “many in the local Kumara community” because so few details are available. For example, just why the project was initially costed at \$1.5m and more recently at \$398,000 remains unexplained.

[15] Next, Hayman says the “summary above the article” did not specify how much of the “nest egg” was being spent. It simply indicated the nest egg was being used. Precisely how much was to be spent was detailed in the body of the story.

[16] *The Press* says calling the KRT “self-appointed” is fair because of “the process which sees trustees nominated and appointed by other trustees”. The minutes of meetings in 2013 and 2014 suggest only trustees attended and there was no record of a vote, she says.

[17] On the endowment fund only being for council reserves, Hayman points out that “the status of the land for the memorial garden was changed in order to designate it a reserve”, therefore the other assets mentioned in the story, such as the hall, could be similarly changed to be eligible for grants from the fund.

[18] Hayman concedes minutes were taken at the June 2014 meeting, but says the reporter was refused access to them (although she doesn’t say by whom) and points out that they were only posted to the KRT’s website the day after the article was published. She says that crucially, the minutes do not provide a voting record nor explain the use of proxies.

[19] Finally, Hayman admits it is *The Press*’s preference to provide as much context as possible around surveys, but argues the survey was still pertinent because it showed more disquiet about the project than the Trust was admitting

publicly. (In an earlier letter to Rowe, Hayman writes, “I agree that we should have reported who carried out the survey and how”).

Discussion and Decision

[20] It’s worth saying at the outset that the questions surrounding the garden project, the public money involved and the voting irregularities are undoubtedly worthy of investigation and reportage. The KRT’s insistence that it’s not news and that journalists should focus on the good things happening in Kumara does not do it any favours and simply creates suspicion from journalists and readers alike.

[21] The Trust also does itself no favours by refusing to answer questions about how it hopes to spend a substantial amount of public money, regardless of how pushy a journalist may or may not be. It’s reasonable for journalists as the public watchdog to push for transparency.

[22] On the specific points in the complaint, the use of the word “mysterious” is curious. While questions remain unanswered, the issue has clearly been a matter of significant public discussion in the area for several years, with meetings, leaflet drops and websites all providing information. To argue that it’s “mysterious” because *Press* readers may not be aware of it, is to suggest that just about all news could be labelled “mysterious”. However a single misjudged word does not make the story as a whole unfair or unbalanced.

[23] The Council accepts that the sub-head indicates only that the “town’s nest egg” is being used for the gardens, not how much will be spent. Sub-heads cannot be expected to carry detailed information and those figures are clearly spelled out in the story. It is not misleading.

[24] The article’s assertion that the KRT is “self-appointed” is however problematic. It’s not unusual for certain individuals to dominate committees, especially in small communities. In addition, the rules are quite clear that any local can stand and the trustees are elected by all members. That was backed up in a video posted on Facebook by WDC mayor Bruce Smith. He added that calling the Trust a self-appointed body is “untrue... they’re publically elected in a very transparent process”. *The Press* presents no evidence the Trust is in breach of its deed and in using the term is unfairly maligning the Trust and insinuating that it is not operating by its own rules.

[25] While readers would have undoubtedly benefited from being told the endowment fund is only available for council reserves, Hayman makes a reasonable point that if the status of the garden land can be changed, so can other land in the township. Critics of the project have every right to express their view that the money should be spent elsewhere and, given that those wishes wouldn’t be impossible to enact, the coverage is fair. Indeed, debate over how to spend the money is key to the story.

[26] *The Press* however is clearly wrong when it says, “no minutes were kept” of the 2014 meeting. While the story has done a public service by flushing out those minutes, being refused the minutes (something disputed by Rowe anyway) is quite different to their not being taken at all. That paints a very different picture of the Trust members’ abilities and

integrity. The Council also notes that while the article says the Trust was “unable” to provide the voting record, Rowe insists they were simply unwilling to reveal it. There is, again, a significant difference.

[27] As to the survey, Hayman admits *The Press* fell short of best practice by not telling readers it was carried out by the project’s leading critic and that it was selective of the townsfolk polled. As she initially wrote, that should have been reported. Again, however, it’s worth noting that this did draw more transparency from the Trust.

[28] Despite complaining under Principle 4, the KRT offers no substantive evidence that the article breached this standard; it is a clearly a news article and is presented as such. **The complaint against Principle 4 is not upheld.**

[29] However, the KRT has revealed several inaccuracies in the story that together are significant. The story does not lack balance, and *The Press* rightly argues that more was sought from the Trust and it could have done much more to explain itself. Indeed, the story covers some important issues of legitimate public interest and reveals important issues. Yet in describing the Trust as “self-appointed”, by reporting that “no minutes were kept” and the KRT was “unable” to provide the voting record, and by not clearly describing the nature of the survey, the article is not fair to the complainant. **The complaint against Principle 1 is upheld.**

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, John Roughan, Mark Stevens and Tim Watkin.

Hank Schouten stood down to maintain the public member majority.

CASE NO: 2588 – FRITZ LINDEKILDE AGAINST WHAKATANE BEACON

Introduction

Fritz Lindekilde complains a *Whakatane Beacon* story about the court sentencing of two companies operating a chain of bike stores breaches Principles 1 (Accuracy, Fairness and Balance), 4 (Comment and Fact), 6 (Headlines and Captions), 11 (Photographs and Graphics) and 12 (Corrections).

The complaint is **upheld** with one member of the Press Council dissenting.

Background

The *Beacon* story covered the Auckland District Court sentencing of Bike Retail Group and Bikes International, joint operators of Bike Barn in New Zealand, in February of this year.

However, the story was published in late March, and was largely based on the Commerce Commission’s reaction to the judgement.

Both companies had pleaded guilty to charges brought by the Commission under the Fair Trading Act and were fined \$800,000.

The charges related to marketing and sales conduct between 2013 and 2015, effectively attracting customers with misleading impressions about discounts on bikes, and the timeframe around those discounts.

The *Beacon* story featured a photograph of the Whakatane branch of Bike Barn, under a headline which read ‘Bike Barn fined for misleading pricing’, and a final paragraph pointing out the location of the town’s store.

Whakatane’s Bike Barn was, at the time, owned by Mr Lindekilde’s company Lindekilde Industries. It has since been sold to another private operator.

The story did not include any detail about the specific ownership of the Whakatane store, which is one of five independently-owned branches out of 20 operating in New Zealand. The remaining 15 are owned by the two prosecuted companies.

Complaint

Mr Lindekilde argues the timing of the story nullified its news value. The Commerce Commission investigation had kicked-off in 2015 and the court judgement was handed down in early February, 2017, attracting some national news coverage. The *Beacon* picked up the story too late.

Its coverage was the publication of ‘an unedited press release’ from the Commerce Commission, without any additional research or effort to contact any of the companies.

The article was misleading in that it implied the owners of Whakatane’s Bike Barn were fined in the District Court. The large photo supported that implication.

There is no clarification in the article that the fined companies did not own the Whakatane branch.

Following a meeting with the editor and owner of the paper, what Mr Lindekilde perceived as a promise of a follow-up clarifying article never eventuated.

Response

Beacon editor Geoff Mercer said the story was not published earlier because a) it wasn’t aware of the Commerce Commission action in 2015 and b) it wasn’t aware of the court judgement in February, 2017.

Being community-focused, the *Beacon* newsroom did not have the resources to be ‘all knowing’ or to “slavishly follow” the national news agenda.

It published the story after following up a public news tip. At that time, it was still newsworthy to many of his readers.

The editor attached qualified privilege to the Commerce Commission press release and viewed it as a dispassionate account of the court judgement.

It saw no obligation to contact the guilty parties. And Bike Barn Whakatane wasn’t one of the parties identified in the story as being guilty anyway.

Mr Mercer makes the point strongly that, although Lindekilde Industries (as owner of the Whakatane store), wasn’t charged or fined, it still benefited from practices which led to the judgement.

He argues equally as strongly that the story didn’t imply the Whakatane store was part of the court action. Because of this, any suggestion there was need for clarification of ownership or a correction was irrelevant.

There was never an undertaking to follow-up with another story clarifying the points challenged by Mr Lindekilde. Instead, there was an undertaking to do a business story about

the store's new owners. Although that hadn't happened, it still would.

Discussion

Although the publication date of the story could not exactly be described as timely, it's not true to say it completely lacked news value to the Whakatane audience.

However, the almost sole reliance on the Commerce Commission statement was lazy journalism at best. A simple phone call or visit to the store would have clarified ownership.

It is very clear that Whakatane's Bike Barn - and its owner - was not prosecuted by the Commerce Commission.

It is a big stretch for the editor to argue that, because the story didn't specifically say that Whakatane's store was involved in the court action, it wasn't implied.

The story also didn't specifically say it wasn't involved – and given the copy was wrapped around a large photo of the store, under a 'Bike Barn fined...' headline and referenced the local outlet – it was very much implied.

This, in counter to the editor's argument, makes the discussion around clarifications relevant and, in the Press Council's view, warranted.

It is not for the editor to determine as fact, and by way of a general news story, that Whakatane Bike Barn benefited from deceitful advertising practices. That is a role of the courts. Again we point out that *Whakatane Beacon* conducted no investigation and provided no evidence to support their claim.

Aside from Principle 4, which the Council did not consider on the basis the story was clearly a news report and not an opinion piece, all elements of the complaint are **upheld**.

Chris Darlow dissented from this decision.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Hank Schouten, Mark Stevens and Tim Watkin.

CASE NO: 2589 and 2590 – BOB MCCOSKRIE AND BRUCE ALDRIDGE AGAINST THE SPINOFF

Introduction

Bob McCoskrie and Bruce Aldridge separately complain about an anonymous first person piece published on *The Spinoff* website on May 18.

Mr McCoskrie argues breaches of Principles 1 (Accuracy, Fairness and Balance) and 4 (Comment and Fact) and Mr Aldridge argues breaches of Principles 1, 7 (Discrimination and Diversity) and 12 (Corrections).

For the purpose of this decision, the Council has considered the argument around a breach of Principle 12 to be irrelevant, as *The Spinoff* editor does not accept any error was made.

The complaints are not upheld by a majority of the Press Council 5:2.

Background

An Auckland girls' high school invited Family First national director Bob McCoskrie to speak to Year 13 Social Studies students, who were looking at opposing viewpoints as part of an assignment.

The topic discussed was gay marriage and a student in attendance shared her experience by way of a first person account told to a *Spinoff* editor.

The student was bylined only as 'A Student' and was described as a 'guest writer' for the article, headlined 'I had a social studies lesson from Bob McCoskrie'.

In short, the student's account of what was said during the presentation was different from Mr McCoskrie's. And she strongly disagreed with what she took to be his opinions.

Mr McCoskrie subsequently wrote a column on his own Family First website, giving his interpretation of the event and arguing it had been misrepresented in *The Spinoff* column.

The Family First column referenced supporting correspondence from staff and students.

Although *The Spinoff* stood by A Student's column, it did acknowledge Mr McCoskrie disputed her account of the event and included a prominent link to his own column.

Complaint

Mr McCoskrie primarily argues that the column was based on the testimony of only one person, with no corroboration, and painted him a bad light.

It was an 'attack piece' which would not have occurred had checks being carried out by *The Spinoff* with other people present.

The material facts which A Student's opinion piece were based on were incorrect.

Mr Aldridge acknowledged that a) Mr McCoskrie and A Student had differing opinions and b) that *The Spinoff* included a disclaimer that it was 'one student's side of the story'.

However, it was sensationalist clickbait without fact checking, corroboration and balance.

Based on Mr McCoskrie's column, A Student's account was wrong.

Additionally, Mr Aldridge pointed out some of the very negative comments about Mr McCoskrie which *The Spinoff*'s Facebook post attracted.

Response

Editor Duncan Greive said the author's friends had similar recollections of the event.

The column was not a news story; it was 'an essay, a mixture of recounted memory and the subject's emotional response to the events'.

Disputed comments attributed to Mr McCoskrie were in line with his previous public comments.

A first person account of an event, by its very nature, cannot include 'both sides'. This is also the reason Mr McCoskrie's comment wasn't sought.

The same event can leave different people with different impressions - what was published was clearly presented as only one of those impressions.

Follow up inquiries were made with the author and, indirectly, her friends which reaffirmed her recollection of the event.

Despite this, Mr McCoskrie's differing account was still linked to.

Discussion

The Spinoff could not have been clearer in what it was publishing, ie a first person account of one student's impressions of an event.

The complainants are right that opinion must be based on material facts. But it is not for the Press Council, without evidence, to take sides in what is effectively a 'he said - she said' scenario.

Although Mr McCoskrie has put forward supporting evidence from unnamed staff and student sources, the author and editor argue similar corroboration from unnamed friends in attendance. None can be verified.

The Press Council has no evidence before it to determine which version of the event is 'correct', having not attended the presentation. And, even if it did, accuracy in this case is subjective when the column is clearly the author's genuinely held interpretation of what she heard.

The complaints are **not upheld**

The Press Council would, however, note that the tone of the comment thread on the Facebook page is entirely inappropriate and uncalled for. While it accepts that the Facebook platform does not allow pre-moderation of comments, it does allow for post-moderation.

Beyond the Council's primary role of resolving public complaints, it is also concerned with holding the media to the highest professional standards. The comment thread for this particular column on *The Spinoff's* Facebook page is a very long way from meeting those.

Dissent

Two members disagreed with the decision. Hank Schouten and John Roughan would uphold the complaint on the principle of fairness. They took the view that though the article was clearly an opinion, it was commenting on an event that the vast majority of *The Spinoff's* readers would have known nothing about. In these circumstances, the two members believed, an opinion writer should, and normally would, recognise an obligation to provide the reader with a fair summary of the material being criticised.

This piece seized on a few words or phrases and ignored their context. It must have been evident to the editor that no attempt was being made to fairly represent the complainant's statements to the school audience. The Press Council's principles of accuracy and fairness allow a great deal of latitude for opinion but this piece fell so far short of a minimum standard of fairness, in the members' view, that it was not worth publishing.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiimalu Peter Fa'afu, John Roughan, Hank Schouten and Mark Stevens.

Tim Watkin stood down to maintain the public member majority.

CASE NO: 2591 – EWAN MORRIS AGAINST NORTHERN ADVOCATE

Background

1. Ewan Morris complained that a story published by *Northern Advocate* on May 13, 2017 titled "Pre Maori Northlanders?" breached the Press Council's Principle 1 (accuracy, fairness and balance).
2. The *Advocate* story (published in abridged form on the NZ Herald site on or about May 17) summarised the views of a "Northland historian" Noel Hilliam in connection with the origins of certain early New Zealand inhabitants. Basically Mr Hilliam claims ships from Europe and China visited New Zealand long before Maori arrived from Polynesia. Mr Hilliam claimed to have recovered skulls of "pre Maori Northlanders". The skulls had been examined by a "forensic expert" from Edinburgh University with the expert concluding that the skulls depict people with Celtic and Mediterranean characteristics. Mr Hilliam also said work carried out by a London pathologist in 1997 did not consider the skulls to be of Polynesian origin. The story included two images, purportedly face reconstructions worked up from the skulls Mr Hilliam said he had in his possession.
3. The story mentioned Mr Hilliam's argument that insufficient attention had been given to New Zealand's history. If the issue was left to government and official historians "we'd be left in the dark forever". The story noted Mr Hilliam's refusal to name the Edinburgh forensic expert or the pathologist because of the "expected controversy over their findings".
4. Mr Morris complained to the newspaper within days of the May 13 story. His concerns were two fold. First, Mr Morris said the newspaper failed to "cross check" Mr Hilliam's claims as to the findings of the so called forensic expert and the pathologist. Mr Morris said enquires with Edinburgh University showed that no one from that institution had ever assisted Mr Hilliam or analysed the skulls in question. Further it was impossible to track down the pathologist Mr Hilliam had mentioned. Mr Morris claimed the "expert" evidence was worthless". Secondly, Mr Morris said it was impossible to determine skin and hair colour from a skull as Mr Hilliam claimed. The paper had "clearly failed to check these claims with a forensic anthropologist or other relevant professional".
5. Mr Morris went further. He referred to Messrs. Hilliam, Doutre and Bolton (the latter being mentioned in the stories as authors of works supporting Mr Hilliam's theses) as being people having a long association with far right and anti-Maori views. Mr Morris raised the possible legal and ethical implications of Mr Hilliam's alleged removal of human remains from burial sites. At its most basic Mr Morris claimed that the May 13 story lacked balance. There was nothing in the story suggesting the Hilliam claims were in any way controversial or that most "relevant professionals" (historians and archaeologists) believed the claims to be wrong.
6. As a result of these complaints the newspaper followed up with a story titled "Amateur Northland historian

asked to explain source of skulls” published on June 1, 2017. The article reported a NZ Heritage archaeologist as enquiring of Mr Hilliam as to the origins of the skulls. It went on to say that Edinburgh University was unaware of the face reconstructions published by the *Advocate* or the skulls. A NZ heritage historian was quoted as saying “Maori were the first humans to colonise New Zealand... [and] there is no evidence of people arriving before the Maori...”.

7. The second story reported that the editor had apologised for publishing the 13 May story before it received word from the Scottish University about Hilliam’s claims. The editor also acknowledged some counter claims to Hilliam’s theories should have been included to provide balance and that the paper was now “acutely aware” that the sensitive nature of history meant balanced reporting was important.

The Complaint

8. Mr Morris complained to the Press Council before the May 31 article was published. The complaint to the Council expanded on the matters first put to the newspaper. Mr Morris is particularly concerned as to the paper’s failure to make any enquiry of “genuine experts” to test the Hilliam claims. Mr Morris has supplied the Council with material he says supports the allegation the Hilliam views are held by those with far right sympathies.
9. Mr Morris says the newspaper’s follow up story, which included the editor’s apology, does not excuse the Principle 1 breaches arising from the original article. Mr Morris says the paper “has not acknowledged its responsibility to check and evaluate claims of fact before publishing such claims”.

The Response

The *Advocate* acknowledges the first story breached Principle

1. The newspaper had twice sought comment from the Scottish university but none had been received at the time of publication. It was wrong to publish the story without any counter claims, but the story did emphasise that it contained Mr Hilliam’s opinion or theory.
10. It says however that it moved to rectify the breach by publishing the follow up piece. A separate apology was issued to the Maori television programme “The Hui”. The newspaper has advised the Council that “the original story has provided an opportunity for the *Northern Advocate* to reflect on its news gathering processes... The paper regards this experience as a strong lesson and reminder regarding its responsibility to adhere to the principles of journalism that [it is] accountable for”.

The Decision

11. The Press Council found the story published in the *Northern Advocate* on May 13 breached basic journalistic principals of accuracy, fairness and balance.
12. This story touched on sensitive historic and cultural issues, yet it reported, without checking, Mr Hilliam’s claims that the skulls he had found showed Chinese or European seafarers came to New Zealand centuries before Polynesians.

13. The paper failed to check with the unnamed experts Mr Hilliam cited or any other credible historic or forensic experts to test whether his claims could be valid. The story should not have been published without rudimentary checks.
14. These deficiencies were compounded by the editor’s subsequent actions. He was slow to acknowledge problems with this story. His first response to the complaint was to acknowledge just one oversight. This was its failure to report it had not yet heard back from Edinburgh University before publication. Other compelling points raised by Mr Morris were not addressed and he was instead invited to submit a letter to the editor.
15. It took some days before the paper publicly acknowledged any failings in its reportage. This was in a letter to the *The Hui* on May 26 where the editor said he regretted the way the story had been seen by some people and noted “we have learned many lessons from this story, which has also embarrassed our matua within the *NZ Herald*.”
16. It took another five days before any of this was conveyed directly to the paper’s readers. This was at the bottom of a follow up story where it was reported the editor had apologised for publishing the May 13 story before it received word from Edinburgh University about Mr Hilliam’s claims. The editor was also reported to have said some counter claims to Mr Hilliam’s theory should also have been included in the story and that ...”the paper was now acutely aware that the sensitive nature of history meant balanced reporting was important”.
17. This was nearly three weeks after the first story was published on the front page. It was far from prompt and was given none of the prominence of the original story.
18. While the editor has acknowledged in his correspondence with the Press Council that the paper breached Principle 1, he has still not admitted this to *Advocate* readers.
19. Pursuant to Principle 12 the Press Council regularly gives credit to publications which promptly acknowledge errors and gives them fair prominence. The *Advocate* has failed to do so.
20. The paper should have promptly and prominently published a frank apology to its readers for failing in its duty to provide fair, accurate and balanced reporting. The majority of the Council consider the time taken by the publication was too long to allow it to avail itself of Principle 12.

The complaint is upheld.

Chris Darlow dissented from this decision considering the time taken was reasonable in terms of Principle 12 given the fact checking the publication had to undertake.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiimalu Peter Fa’afiu, Hank Schouten, Mark Stevens and Tim Watkin.

John Roughan stood down to maintain public member majority.

CASE NO: 2592 – ROB PATERSON AGAINST BAY OF PLENTY TIMES

Background

Rob Paterson complains that an opinion (‘guest view’) piece published by *Bay of Plenty Times* on February 4, 2017 titled “Learning nation’s past a way to safeguard future” breaches Press Council Principles 1 (accuracy, fairness and balance), 4 (comment and fact) and 12 (corrections).

The *BoP Times* piece comprised comments by the Race Relations Commissioner Dame Susan Devoy as to the importance for New Zealanders to understand history. Dame Susan referred in particular to a battle fought during the New Zealand wars in which “women and children who sought shelter in a local church were locked inside and the church burnt to the ground”. Local children visiting the site recently were “horrified” to hear of the event. Their “lives were changed forever” on realising the significance of land they knew well. In Dame Susan’s view young people deserve to know “the good and the bad”. Trying to hide the past is “neither true nor fair”. The piece concluded with comment to the effect New Zealand is an ethnically diverse but peaceful country. For it to stay this way New Zealanders need to understand the consequences should they not “get on with one another”.

Following approaches by the complainant *BoP Times* published a follow up editorial on March 11. The follow up was titled “Battle of Rangiaowhia” (Rangiaowhia being the site of the events referred to by Dame Susan in her February comment). The paper had referred the complaint to Dame Susan. She had responded by saying “various people had told her that women and children were burned to death in a place of worship”. This comment was included in the editorial. Dame Susan then said she was prepared to change her opinion if she was wrong. Dame Susan was quoted however by saying, further, that an “atrocious” had occurred which, if it had taken place in 2017, would have been investigated as “war crime”.

The *BoP Times* March 11 editorial proceeded to refer to the debates that have raged ever since over the Rangiaowhia battle. Historians say houses not churches were burned with people inside although official military sources are “coy” as the ages and genders of those who died. Local iwi are certain women and children were “murdered and burnt to death” as they sought “protection in their churches”. With this said eyewitness accounts are “irreconcilable”. The editorial concluded with the remark that readers should make up their own minds.

The Complaint

The complainant takes strong exception to both *BoP Times* pieces. Essentially he says the claims women and children were burned to death in locked churches at Rangiaowhia are baseless. The complainant refers to the works by Cowan (*The NZ Wars* (1922)) and O’Malley (*The Great War for New Zealand* (2016)), neither of whom say churches were burned. A contemporary 1864 *NZ Herald* article supports the view as does Bruce Moon who published a piece in 2015 under the auspices of the NZ Centre for Political Research.

The complainant says Dame Susan’s remarks are “wrong,

misleading and demonstrably untrue and must therefore be retracted”. The March editorial does not rectify matters. The complainant asks the Council when upholding his complaint to direct *BoP Times* to print a retraction and correction under the heading “Setting the record straight on Rangiaowhia”

The Response

BoP Times rejects the complaint. *BoP Times* says “there are different perspectives of history in the controversial matter – that of historians, members of the public and that of iwi”. The newspaper points particularly to the dispute as to whether churches (as such) were burned or whether the troops set fire to a whare karakia (or a house of prayer) in which a group of supposed noncombatants were killed. Whatever the truth iwi have consistently claimed women and children were burned to death during this tragic event.

BoP Times makes four further points. First, had it published a “retraction” it would possibly be subjected to a Press Council complaint by iwi. Secondly, it is not the newspaper’s place to decide the correct version of history but, rather, set out the differing views. Thirdly, and in relation to Dame Susan’s comments about the schoolchildren, the paper says she was referring just to students’ reactions as to what they had been told. Finally, Dame Susan’s “guest view” piece was demonstrably opinion. And with the paper publishing the March 11 editorial no correction as sought by the complainant is merited.

The Decision

The complainant faces two insurmountable difficulties.

For a start Dame Susan’s comments, over which the complainant takes the greatest exception, were expressed as opinion. Opinions neither have to be fair nor balanced. While principle 4 requires facts upon which opinions are based to be accurate it is impossible to establish what really happened at Rangiaowhia over 150 years ago.

Secondly *BoP Times*’s 11 March editorial squarely pointed to the historical controversies. It effectively presented both sides of the divide.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, John Roughan, Hank Schouten and Mark Stevens.

Tim Watkin stood down to maintain a public member majority.

CASE NO: 2593 – PETER SCOTT AGAINST THE DEVONPORT FLAGSTAFF

Overview

A picture framer whose shop and home were damaged by a deliberately lit fire complained about coverage of the event in *The Devonport Flagstaff* published on April 7, 2017.

The Complaint

Peter Scott, proprietor of The Picture Framers of Devonport alleged his local newspaper’s reportage and editorial comment about a fire which damaged his shop and residence was inaccurate, breached his privacy, mixed comment and fact, breached confidentiality and also breached principles on the use of photographs.

He was upset the paper's reportage and editorial suggested the fire had been deliberately lit and that he may have been specifically targeted rather than, as he contended, the result of some random vandalism in the area.

Mr Scott said that when he was approached by the newspaper's reporter on the morning after the fire, he told her he had nothing to say.

He said she ignored his request not to photograph him or his property and he later rang the paper to tell them he had nothing to say and did not want photos of him or his home printed. He asked it not to publish his name, address and phone number.

Mr Scott also said the paper had delved into his life and had re-victimised him when the reporter rang his friends and neighbours. The story was sensational and comment made in the editor's column in the same paper, which noted he was a man who held strong views, had suggested that somebody was trying to get at him and the editor had taken the opportunity to damage his name.

The reporter's actions were intrusive. It had been a harrowing experience and dealing with the editor's insensitive probing and lies had been extremely distressing.

The Response

The Devonport Flagstaff editor Rob Drent said that as far as he could tell the facts of the story printed in the paper were not disputed by Mr Scott.

When the reporter approached Mr Scott on the morning of the fire he told her he did not want to talk to her because the paper had previously published a story about vandalism of his building.

She accepted that, spoke to a police officer and took eight photos of the scene from the street as she had a right to do. The sequence of eight photos she took on her phone that morning was sent to the Press Council to show that she had not photographed Mr Scott.

The building was in the main street of Devonport and the phone number for Mr Scott's business had been on the side of the building for many years.

Questioning nearby residents after a fire or accident was standard news gathering practice and there was a suggestion that Mr Scott had been rescued from the house.

The Devonport fire station officer Ken Lousley mentioned Peter Scott by name more than three times and the fact he was on the premises when the fire was lit was central to the story.

Mr Scott was well known in the area where he had run his picture framing business for at least two decades. It would have been nonsensical not to name him.

In publishing the story the paper was following the basic tenets of news reporting.

As for comment in the paper's editorial column, this was opinion clearly separate from the news coverage. The comment that Mr Scott was a forthright character was based on occasional calls and messages left on the paper's answerphone.

Discussion and Decision

The paper ran a straightforward report of a fire which caused significant damage to Mr Scott's premises. The Fire Service said it was deliberately lit using paper and an accelerant. In an editorial column on another page the editor said he was appalled that Mr Scott's business may have been targeted and hoped the offenders would be caught.

While Mr Scott did not wish to comment, as was his right, this did not mean he could restrict the paper's reportage of an important local news event. His premises front onto a street and the signage, which advertises his business and its phone number, are on the street frontage. That signage was an unexceptional element of a photo showing police gathering evidence at the scene and it disclosed no more information than would have been visible to anybody walking down the street.

Mr Scott was understandably distressed by the fire and he clearly did not welcome the publicity but advanced nothing in his complaint supporting his claims that the paper was inaccurate, breached his privacy, or breached confidentiality.

The paper correctly judged that the publication was a matter of public interest that outweighed Mr Scott's right to privacy.

It also clearly separated its news coverage and its editorial comment. The views expressed in the editorial were sympathetic and we do not believe readers would see them as a slur as Mr Scott contended.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, John Roughan, Hank Schouten, and Tim Watkin.

Mark Stevens stood down to maintain the public member majority.

CASE NO: 2594 – ST JOHN AGAINST THE AKAROA MAIL

Background

[1] Health charity and ambulance provider St John has complained about an article published in *The Akaroa Mail* on March 10, 2017, headlined *Akaroa ambulance crisis – Don't panic!*.

[2] The article is based on an interview with local doctor Alex Shaw and concerns about changes to the service St John provides in Akaroa. It's written by editor Michael de Hamel. Alongside it, *The Mail* has run part of a statement by St John, headlined '*Alternative Facts*' from St John.

Complaint

[3] St John's South Island Area Committee Relationship Manager, Ian Henderson, has complained the article contains "many incorrect facts" and "is without research, balance accuracy or truth" that the reporter "showed a total lack of regard for the truth". He complains that the article fails under **Principle 1, Accuracy, Fairness and Balance; Principle 4, Comment and Fact; and Principle 12, Corrections.**

[4] The complaint is broken down into a series of points, starting with the claim that St John did not get an opportunity to provide its version of events. Henderson says, "at no point

in the emails between St John and *The Akaroa Mail* did *The Akaroa Mail* indicate that there would be a story published of this size or containing such damaging allegations”.

[5] The reporter showed “a total lack of regard for the truth... [which] extended to the incorrect spelling of our name St Johns with an ‘s’ throughout”.

[6] The information St John did provide in good faith was published with the heading ‘*Alternative facts*’ from St John, demeaning its answers. St John was not told its answers would be included alongside the article.

[7] Henderson supplied “work volume” data that from October 1 to February 1 there are on average 26 cases in or around Akaroa, compared to 13 cases a month during the rest of the year. While he does not explain what these cases are, Henderson argues it shows their volume is “extremely low”, so on the days St John could not raise coverage “there was very little impact on the community that could not have been attended to by PRIME [ACC funded] doctors or a Christchurch-based ambulance”. He says de Hamel was given this data.

[8] Henderson then itemises specific parts of the story he says are inaccurate, starting with the article’s claim that there is a “lack of ambulance and first response paramedic service in and around Akaroa”. He argues that St John provided staff from Christchurch, while PRIME GPs and a rescue helicopter are available if needed.

[9] The article reports “at many times there is no-one on the roster, let alone anyone trained to provide emergency medical assistance”. Henderson says occasionally the roster is not filled, but St John provides cover from Christchurch. From late December to late January full-time coverage was offered when a Ministry of Education house became available in Akaroa, and he again points to support from GPs and the rescue helicopter.

[10] The article says St John replaced a van bought by Lions and housed at the fire station with an ambulance, but Henderson says that’s untrue. He says the van was bought without consultation and was not fit for purpose, so it was “upgraded” to a \$180,000 ambulance.

[11] Where the story says “Akaroa was left without a local service” because ambulances were sometimes being asked to take patients right into Christchurch, Henderson says GPs contracted by ACC to attend emergencies were available.

[12] The report says in December ambulance volunteers quit, concerned the workload was dangerous. St John continued coverage from Christchurch and began recruiting and training new volunteers, “but from February 6 St Johns [sic] ceased its regular coverage in Akaroa”. Henderson confirms coverage was from Christchurch and during that time volunteers were being recruited and trained, but he insists it’s wrong to conclude that meant regular coverage in Akaroa had ceased.

[13] At one incident the previous weekend, two French tourists had driven off the road. The story quotes Akaroa medic Dr Alex Shaw saying a St John recruit turned up but couldn’t help clinically. Henderson says the volunteer was

“first aid qualified” and could have helped, but the doctor didn’t allow it.

[14] Shaw described another traffic incident, on French Farm Rd, the same weekend, saying it was lucky there was space where the rescue helicopter could land nearby. “If there hadn’t been that we wouldn’t have been able to transport any patients to the helicopter”, because St John couldn’t raise a driver. Henderson says an ambulance did attend from Christchurch and could have transported the patient if required.

[15] A third incident involved a hang-glider crash. “First response was provided by the Little River Fire Brigade which turned up with ropes and clinically-trained people”. But Henderson says this description overstates their skill, “making them sound as if they are more clinically advanced than our volunteers”.

[16] The newspaper quotes Dr Shaw saying local clinicians had raised concerns with St John but not had “a serious response”, going on to say “we haven’t been able to have any discussion with St Johns” or any “constructive dialogue”. Henderson says meetings have been held, adding that other offers to meet have been declined. The clinicians have been “contemptuous and insulting”.

[17] Henderson is also outraged that Shaw claims St John seems “to be more interested in their ‘brand’ than patient safety”. They were not asked to respond directly to that claim.

[18] Shaw is reported saying the local clinicians believe the problem would be solved if the fire brigade took over as first responders, as they have five trained people and more keen to join. Henderson argues this would contradict a 2015 Memorandum of Understanding between St John and the NZ Fire Service. de Hamel had been told NZFS management did not want that. Henderson adds that St John also has five trained volunteers, “so where is the difference?”

[19] Finally, the article describes the van replaced by the ambulance as having been “taken over by St John”. Henderson says again that it was upgraded to be fit for purpose.

Editor’s Response

[20] *The Akaroa Mail* editor – and the writer of the article – Michael de Hamel, says St John’s complaint is “a case of shoot the messenger”, and a “blunderbuss attack” at that, “shooting assertions at all possible targets”. His article is critical of St John, but true, he says.

[21] Unhelpfully, de Hamel says he does not have time to address each of St John’s complaints but instead offers “background” and veers into issues not covered in the article and conjecture. However the Council will seek to match his background to St John’s complaints.

[22] First, de Hamel says that contrary to claims St John did not get the chance to reply to assertions, he rang and/or emailed three St John representatives, including Henderson, starting on February 28. Henderson only replied on or after March 2 (de Hamel is not clear). He says “despite specific questioning” he got two short statements that did not address

some of his questions. He was “not able to get an interview”.

[23] Even after the story, de Hamel says he has continued to seek answers from St John, following up “again and again”.

[24] de Hamel admits occasionally putting an ‘s’ on the end of St John, but says sometimes that was in a quote from Dr Shaw and he corrected it in the next edition.

[25] The editor defends his use of the headline ‘*Alternative Facts*’ from St John in part because St John’s reply did not answer his questions in any depth and he doubted some of its accuracy. As an example, he says St John claimed it was providing care for the community “as we have always done”. de Hamel says St John has only served Akaroa for “about 20 years”, compared with his newspaper which has served for 141 years.

[26] The article did not discuss St John’s work volume, so there is nothing to correct on that point, de Hamel writes.

[27] *The Akaroa Mail* stands by its claim there was a lack of services in Akaroa over the summer. At the time of the story, the editor says, St John’s placement of staff from Christchurch in the township had “largely ceased”. He says Henderson in his complaint actually confirms the story’s core concern that at times St John services have not been available from “in and around Akaroa” as they had before. The township has instead been dependent on St John services from Christchurch, local GPs and the fire brigade, and that’s what worried the local clinicians.

[28] Where Henderson argues the van was not replaced with an ambulance, de Hamel says that’s exactly what his complaint confirms. He says Henderson confirms the van “was taken away and another vehicle was substituted. Isn’t that replacement?” de Hamel also claims St John was consulted over the van and that some locals believe the Mercedes ambulance amounts to a “downgrade” because the 4WD van was better suited to Banks Peninsula conditions. “Replacement” is neutral, he says.

[29] The editor supplies two letters from Akaroa doctors – one to St John and one to local MP Amy Adams – in which they complain St John is not listening to their concerns for the public’s safety. The letter to St John describes the doctors’ version of the three incidents on the weekend of March 3-5. It is in line with the article. de Hamel says that the article’s discussion of those events was clearly attributed to Dr Shaw and amounted to “factual reporting of Dr Shaw’s opinions”, based on the letter and an interview.

[30] On Henderson’s claim that there’s no difference between the five NZFS volunteers and the five St John volunteers, de Hamel argues that at the time the story was published the five St John volunteers in Akaroa had not done their First Response training. “They were recruits, with just bare first aid training. No wonder that one was ‘forbidden to assist’ with a technical procedure by the GP present at a serious accident scene”. The NZFS volunteers did have First Response training.

[31] Finally, de Hamel says he has been happy to publish corrections of any facts shown to be wrong; “I just cannot correct something that isn’t wrong”. He has also published

all letters to the editor on the matter, including two from Henderson. One of these is the Press Council complaint and took almost a full page of the newspaper.

[32] Above that letter, an editor’s note responds, amongst other things, to Henderson’s argument that using the fire brigade as first responders would contravene an MoU between St John and the NZFS. In it, de Hamel says that was a suggested solution by local doctors and the MoU could be renegotiated.

Discussion and Decision

[33] To start, both parties to this complaint have done themselves no favours by taking a scattergun approach. St John claims some parts of the article are inaccurate, when it’s clear they simply don’t like the criticism and the way the story has been angled. Equally, *The Akaroa Mail* has been less than precise in some parts of the article and the editor’s response has not addressed the complaint – however much of a blunderbuss attack it may be – in a methodical manner.

[34] While St John does not like *The Mail*’s view that coverage from Christchurch amounts to a lack of coverage that is a reasonable interpretation of the facts. Indeed, as *The Mail* indicates at the start, the story is based on an interpretation of the facts supplied by a local doctor.

[35] St John admits “there are occasions when the roster is not filled” and, as de Hamel writes, the complaint actually confirms *The Mail*’s claim that there was a “lack of ambulance and first response paramedic service in and around Akaroa”. The Council (and indeed *The Mail*) accepts there was relief cover in Akaroa for a month, from St John in Christchurch, plus local GPs and a rescue helicopter. But that does not contradict *The Mail*’s concern about a lack of specific services in a specific location at a specific time.

[36] St John clearly interprets *The Mail*’s use of the word “service” as medical services as provided by PRIME GPs, Christchurch St John and the rescue helicopter, whereas *The Mail* is clearly using the word to describe ambulance services in and near to Akaroa. Readers will understand it is the latter that the article is about.

[37] Similarly, discussion of the van is not a dispute over fact, but over interpretation. St John suggests the story lacked sufficient detail about the substitution of the van with the ambulance. But that does not make it inaccurate for *The Mail* to say the van was “replaced”.

[38] Again, the complaints about the description of the Little River fire brigade, using the fire brigade as first responders and St John’s interest in patient safety are all matters of opinion the organisation disagrees with, not inaccuracies. In two of those instances, they are the opinions of Dr Shaw and *The Mail* has every right to report his views. St John is not immune to criticism.

[39] It seems St John is simply wrong in its complaint that the local fire brigade has “five already-trained first responders”. It argues there is no difference between them and the five St John volunteers, but in its own statement it says that those five volunteers weren’t due to start their First Responder training until March 13, three days after the story was run and 10 days after the weekend discussed in *The Mail*.

[40] While there is a dispute between Shaw and St John as to just how much they have talked about the doctors' concerns, *The Mail* has presented Shaw's complaint about a lack of discussions as a quote; Dr Shaw is entitled to his view. While it would have been better for *The Mail* to have reported (then or later) St John's claim that it is the doctors who have declined to meet, the Council notes that *The Mail* says it has approached St John "again and again" for comment without success. Contrary to St John's complaints it never had the chance to respond, it seems numerous approaches were made before and after the article complained against. The Council notes that when a newspaper asks questions it does not have to explain how or where in the newspaper it intends to use the answers. Further, a newspaper cannot correct inaccuracies if a complainant is not willing to engage.

[41] *The Akaroa Mail* also printed two letters to the editor from St John expressing its concerns. Therefore **the complaint against Principle 12 is not upheld.**

[42] Another disputed fact is whether an ambulance did attend the French Farm Rd crash or not, but the Council does not have sufficient evidence to know what exactly happened there. Similarly, it's unclear whether the St John volunteer couldn't or wasn't allowed to help at the French tourists' crash, but the point is immaterial to the substance of the story.

[43] *The Mail* did, clearly, erroneously add an 's' to the end of St John's name at times, however it did correct that, albeit in a snarky manner. Either way, it is a minor error that does not amount to a breach of principles. There are no substantive errors of fact in the article.

[44] The Council notes that the story was written in an unusual manner, most notably separating St John's comments into a separate article. While that's risky, St John does still have a right of reply and the coverage clearly is news, not opinion.

[45] Putting that point together with St John's failure to prove inaccuracies in the story, **the complaints against Principle 1 and Principle 4 are not upheld.**

[46] That leaves us with the headline, '*Alternative facts*' from *St John*. Those two words are heavily loaded at the moment, given their recent emergence into popular culture after they were used by an advisor to President Donald Trump in January. They were used to defend what the interviewer at the time called "a provable falsehood". The use of the phrase was widely mocked and is associated with deceit.

[47] Under Principle 1, the Council requires newspapers to give opposing views "a fair voice". Regardless of whether St John's reply addressed the questions asked, it was entitled to a fair hearing. This headline instead implies that the organisation was trying to deceive readers and therefore **a complaint against the second story headline under Principle 1 is upheld.**

Two members of the Press Council, John Roughan and Hank Schouten would not have upheld the complaint about the headline.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiimalu Peter Fa'afiu, John Roughan, Hank Schouten, and Tim Watkin.

Mark Stevens stood down to maintain the public member majority.

CASE NO: 2595 – RENEE WELLS AGAINST NEW ZEALAND HERALD

Overview

Renee Wells has complained about an opinion piece from James Harkin published in the *New Zealand Herald* (May 24, 2017) about the Manchester bombing. The crux of the piece centres on the elements of Western culture which Islamic State despise. Mr Harkin's opinion piece was based on his understanding of and experience with Islamic State which included regularly reporting over the years on the rise in Islamic State.

The Complaint

Renee Wells complained to the *Herald* that the article was incredibly offensive and rude. It was demeaning to Ariana Grande and those who lost their lives or were injured during the attack. Ms Wells believed there was no need for such "negative publicity" so soon after the attack. She urged the *Herald* to in future write "factual and information" articles rather than clickbait ones.

In her response to the editor's response, Ms Wells believes that the article does convey that Grande was in some way responsible for the bombing. The article does not suggest that but comments on the online version of the article and *Herald* Facebook reaffirm that she might not have been the only one of that view. Moreover, the online comments show "the offence and damage" the article has caused.

Ms Wells cites Press Council principles relating to accuracy, fairness and balance; opinion and fact; and discrimination and diversity.

She demanded the removal of the article as it was offensive to the Islamic Community, Ariana Grande and those who were victims of the attack.

The Response

Oskar Alley, Senior Newsroom Editor responded on behalf of *New Zealand Herald*. The main points can be summarised as following:

- James Harkin is a director of the Centre for Investigative Journalism and an author who has spent considerable time based in Syria and northern Iraq since 2011 reporting on the rise of Islamic State. In short, his credentials are impeccable on the subject of Isis, based on his own personal experience and research in Syria.
- British authorities had confirmed the Manchester bomber had links to Islamic State. In the context of this terrorist attack, it was entirely plausible for the coverage to extend to discussion of why this particular event in a public place would be a target for a deliberate terrorist act.
- **Accuracy, fairness and balance:** Ms Wells does not cite any specific errors in the article, which accurately conveys factual information about previous terrorist plots/attacks in London and Paris.

The article also includes anecdotal information the author obtained about Isis while he was based in Syria.

- Harkin’s article was one of more than 30 articles published by nzherald.co.nz in the days after the Ariana Grande concert bombing. In terms of balance, the article correctly notes that Islamic State has previously made public statements relating to music, and at the time of writing Isis had publicly claimed responsibility for the Manchester attack.
- It is not necessary for the author to seek balancing comment from Islamic State (and given the Manchester bomber was killed in the suicide attack).
- The article does not suggest that Grande was in any way responsible for the bombing. It merely notes accurately that she is known for wearing “revealing” stage outfits and displays “unabashed sexual confidence”. The article explains why this could be anathema to Islamic State members, given its previous terrorist attacks targeting music venues.
- The article speaks specifically to Islamic State and its beliefs – they are a radical jihadist terrorist group. The article takes considerable care to target Isis in its comments, not the Islamic community in general.
- **Comment and fact / Columns, Blogs, Opinion and Letters:** The article is clearly labelled as an “Opinion” in both the synopsis (the one-paragraph blurb directly underneath the headline) and the article was also tagged to the “Opinion” section and the main (search-engine optimised) headline states: “Comment: Manchester attack: Ariana Grande and her outfits are a symbol of everything Islamic State hates”. The article was clearly labelled as Opinion, in accordance with these principles.
- **Discrimination and diversity:** The article takes considerable care to target Islamic State and its members’ beliefs, with Isis directly referenced in the article’s introductory and third paragraphs - and a further 12 times in the article.
- Principle 7 enshrines a publication’s right to “report and express opinions” on matters relating to issues such as religion and minority groups. The article does not come close to placing gratuitous emphasis on Islam in general, but makes a series of observations specific only to Islamic State – an organisation which has publicly claimed credit for the Manchester bombing (and many other acts of terrorism).
- The article does not seek to impugn anyone of Islamic faith, or to discriminate against anyone of this faith - but it does speak directly to the public comments and actions of Islamic State.

The Decision

The article in question is an Opinion Piece and clearly tagged

as such. In addition, it is a piece from someone who has significant experience with the topic at hand, Islamic State and their reasons for carrying out terrorist attacks against Western targets.

James Harkin’s opinion piece makes it clear, on a number of occasions, that Islamic State is the target of his criticism not the Islamic or Muslim community. A reasonable reader of the article will see the difference between Islamic State and Islamic or Muslim Community.

Opinion pieces are based on elements of fact which often come through the lived experience of the writer. The Press Council agrees with Mr Alley that there is clear evidence that Isis is intent on destroying elements of any culture including Western music and lifestyle which does not align with its orthodoxy. Other articles on Manchester from New Zealand publications and around the world also covered the view of many Muslim leaders condemning the attack and intent behind it. Given Mr Harkin’s credentials, the reader would appreciate the insights given.

The bombing of Manchester was a horrific terrorist attack for which IS claimed responsibility. Reporting on the attack from all angles would naturally be negative in nature given the damage and impact of the atrocity. As Mr Alley notes, this opinion piece was one of 30 or so articles from the *NZ Herald* in the days following the attack. A number of these covered the background stories of the victims and families impacted. It also covered stories about those who came to the aid of many of those injured. Whilst clearly a negative situation, such stories or articles bring a sense of optimism to those who read them.

Following these IS terrorist attacks, one of the questions most often asked by the public, media, politicians and others is why Islamic State is intent on destroying any culture that they (IS) regard as evil. Mr Harkin’s opinion piece gives the reader one view point amongst a flood of other articles and opinion pieces seeking to answer that question.

We acknowledge Ms Wells’ point about some readers having had come to similar views as hers in regards to the piece. The views (and expression of these) of other readers on the *NZ Herald* Facebook and on the online version of the article is part and parcel of a free society, which ironically is not present under the territory that is occupied by Islamic State.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, Hank Schouten, Mark Stevens and Tim Watkin.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2596 – BOB BOARDMAN AGAINST ROTORUA DAILY POST

[1] Bob Boardman alleges a lack of balance, and bias, in reporting by the *Rotorua Daily Post* in a number of articles and editorials dealing with the issue of Easter trading, between 2 November 2016 and 18 April 2017. He alleges the Press Council principles of accuracy, fairness and balance have been breached.

[2] Between the dates mentioned above, the *Rotorua Daily Post* published four articles and five editorials dealing with the issue of trading over Easter and in particular on Easter Sunday. It was obviously a matter of some moment for the local mayor and council, no doubt because Rotorua is such an important tourist destination.

The Complaint

[3] Central to the complaint is Mr Boardman's belief that Easter Sunday is an important festival for Christians, and that this should be recognised by shops remaining closed. He said it is a highly significant issue in Rotorua, as in the 2013 census half of the population of 65,000 people called themselves Christian. He pointed to the fact that one councillor mentioned in the article of 2 December 2016 stated that there was not enough mention in the proposed consultation document about the reason Easter Sunday was observed by the almost 42 per cent of Rotorua residents who were Christians and believed the day was the anniversary of the resurrection of Jesus Christ

[4] He also maintained that the newspaper made no effort to determine the veracity of information supplied by the council and business interests.

The Newspaper's Response

[5] The regional editor maintained they had not breached the principle of accuracy, fairness and balance. He pointed out that two articles specifically mentioned the religious aspect, including one quoting Mr Boardman.

[6] He also stated that in two others, balance was not required because no-one was criticising or passing judgment on the religious importance of Easter. Rather, the articles did not present statements of controversy that required a reply. He further went on that this was a longstanding issue in Rotorua and he did not feel that every article focused on retail shopping needed comment from church leaders on the religious significance of Easter.

[7] He further rejected the assertion that the *Rotorua Daily Post* colluded with local politicians and business interests, or was biased. He said this is not true, and editorial content decisions are completely independent of any commercial influence.

Decision

[8] Whether or not trading should occur on Easter Sunday has been a matter of considerable controversy in New Zealand for many years. It comes into particular focus in those cities where tourism is an important element of local life and economy. The arguments on both sides have been rehearsed for many years. As the Press Council has noted previously,² where controversy or arguments have existed for long periods of time and both sides of the divide are well-known to the reading public, it is not necessary to bring balance to every article published.

[9] The first editorial of 2 November 2016 notes that church leaders and workers' unions were not opposing calls to allow Easter trading. It mentions the mayor and many councillors support it, as does the local Chamber of Commerce. One

minister was quoted supporting the move as long as workers' rights were protected. The editorial then goes on to note that the council was going to consultation that month on the issue, and that a Colmar Brunton survey found that 79 per cent support for Easter trading.

[10] The first article, of 2 December, is a report on the Council agreement to consult the public about the proposal. One Councillor, Ms Tapsell is noted as saying there was not enough mention in the consultation document about the reason Easter Sunday was observed, by the 42 per cent of Rotorua residents who were Christians, as the anniversary of the resurrection of Jesus Christ. As noted, the mayor clearly supported the situation, as did the former Rotorua Chamber of Commerce and the vast majority of Councillors. Two ministers of religion were quoted, essentially not opposing as long as workers' rights were protected.

[11] The next article of 4 September 2016 has a photograph of submitters relating to Easter Sunday, including the complainant. Mr Boardman is quoted at some length on his views that the day should be protected from shopping because of its Christian significance.

[12] There was an editorial clearly based on this article on 7 February 2017 that expressed support for Easter trading. The writer notes that, not being the religious sort, Easter Sunday was treated as a day off for her. It noted the number of submissions received: 78 in support and 43 opposing. It also noted that eight people wanted to have submissions heard but only three in fact turned up, of whom only Mr Boardman was against.

[13] The third article, dated 10 February 2017, noted the councillors at the Council strategy policy and finance committee voted to allow local retailers to choose whether to open or not. Only Councillor Tapsell, quoted previously, was against it. It then gave details of the consultation, the submissions received and the response of a number of Councillors and business figures. It also quotes Ms Tapsell at length, but on this occasion her argument appears to be based on the people approaching her with the message that they only get three guaranteed paid days off a year. (Rather than her earlier comments regarding Easter Sunday being significant to Christians and a large number of Rotorua residents stating in the census they were Christian).

[14] The next editorial of 13 February 2017 was written by someone who had worked in retail through high school and university. She talked of the long hours she worked and of being told if she did not work those hours she would not be given any hours. This was a real threat, but six months later she stood up for herself and resigned. She stressed that not all retailers treated their staff like this, but finished by saying that Easter Sunday was one of three days afforded to retail staff and it was not unreasonable if employees were miffed it was taken away. It urged that people looked at the issue from the point of view of employees.

[15] The fourth editorial of 1 March 2017 compares the situation between Rotorua that had approved trading on Easter Sunday and Tauranga which had not. And, while critical of the Tauranga situation, the writer, who also had experience of being engaged in retail' ended with the

2 Case 2559 — *Right To Life NZ Inc against The Press*; Case 2370 — *Simon Clark against Stuff*; Case 2380 — *Jan Rivers against Stuff*.

question, “are three and a half days off a year really too much of an ask?”

[16] The fourth article, of 17 April 2017, essentially surveys shoppers who were out over Easter, and sought their views. Most were supportive. At the bottom there was a “Street view” with four photographs. Three were supportive, and one person said “Well, I don’t think they should be open, so I feel guilty being here. I am a Christian.”

[17] The fifth editorial deals with the Easter Trading that occurred and notes, “there was hardly a stampede of people waving wallets and pushing for bargains.”

[18] The second and third editorials are clearly labelled opinion, and rather obviously the other editorials are also the opinion of the editorial staff writing them.

[19] We have already mentioned the exception to principle one, where there are long-running issues where every side of an issue or argument cannot reasonably be repeated on every occasion. The same applies where there is reportage of proceedings where balance is to be judged on a number of stories rather than a single report.

[20] Both of those apply here. First, the issue of Sunday trading at Easter, as we have already noted, has been canvassed for many years in New Zealand. The side of the argument put forward by Mr Boardman, that it is a celebration of the resurrection of Jesus Christ, is well-known to all readers, as are the opposing views. As well, this was a series of editorials and articles on an issue in the Rotorua community where the Council had determined to go to consultation, hear submissions, and had ultimately decided that Sunday trading should be allowed if the retailer opted for it. We see no breach of principle one.

[21] As noted, two of the editorials have been noted clearly as opinion, and the other editorials are also opinion. There is a foundation of fact for those opinions, and in circumstances, in accordance with principle 5, balance is not essential.

[22] For those reasons, the complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, Jenny Farrell, John Roughan, Vernon Small, Mark Stevens, Christina Tay and Tim Watkin.

CASE NO: 2597 & 2598 – PETER BOLOT & DAVID CUMIN AGAINST WANGANUI CHRONICLE

Background

[1] Readers David Cumin and Peter Bolot have separately complained about a column published May 30 in the *Wanganui Chronicle* and on the NZ Herald website. In the newspaper it was headlined ‘Trump seals unholy alliance’ and on the internet, ‘Iran the bogeyman as arms dealers hold court’. The similarities of the complaints mean they can be dealt with together.

[2] The column was written by a regular *Chronicle* columnist, Fred Frederikse, who describes himself as a “self-directed student of geography and traveller”. It covers the nascent relationship between President Donald Trump’s America and Benjamin Netanyahu’s Israel and arms dealing in the Middle

East. It concludes that Iran was used as a bogeyman to justify America’s arms deal with Saudi Arabia, its largest ever.

[3] The column describes the new US ambassador to Israel David Friedman; Israel’s ambassador to the US Ron Dermer; and Trump’s son-in-law and advisor Jared Kushner as “orthodox Jews”. It also points out that two of the past five US ambassadors to Israel were Jewish.

[4] Frederikse begins the piece stating that Jews when they meet often try to identify people they have in common and that there are 14-20 million Jews worldwide – roughly a third in Israel, a third in the US, and the final third spread around the world.

Complaint

[5] Bolot and Cumin both complain under **Principle 7, Discrimination and Diversity**, arguing that, contrary to that standard, the column places gratuitous emphasis on the fact that many of those mentioned are Jewish.

[6] Cumin goes on to argue there is no good reason to focus on the faith of those discussed and it is not “important or relevant to the opinion... that Iran is a ‘bogeyman’.” He singles out the repeated use of “orthodox Jew” as gratuitous as well.

[7] Bolot seem to accept the column does not describe the people and their faith in pejorative terms, but argues that to breach Principle 7 it simply has to place “unnecessary emphasis” on their religious or ethnic background.

[8] Both men suggest Frederikse is perpetuating a “conspiracy theory”. Bolot spells this out, writing, the piece “repeats a long-standing anti-semitic libel, namely that persons of the Jewish faith or Jewish descent conspire together to manipulate political events.”

[9] Cumin refers to the mention at the start of the article of the number of Jews in the world and points out that the columnist never returns to those numbers.

[10] Bolot argues the piece implies it’s their religion that “leads them to behave in a reprehensible manner”. “This sort of Jewish conspiracy theory could have been written in Germany in the 1930s” and is an affront to standards of decency and tolerance, he says.

[11] Finally, Bolot argues: “It is no defence that a person pejoratively described as Jewish is in fact Jewish.”

Editor’s Response

[12] *Chronicle* editor Mark Dawson begins his response with a series of bullet points, stating that the column is an opinion piece and clearly marked as such; he is unaware of any factual errors; the article makes no derogatory comments about Jews; and aside from the opening two paragraphs the article deals with individuals not the Jewish people as a whole. He also explains that Frederikse’s columns focus on “human geography” in discreet regions and he has previously written on Wahhabism, Buddhists, Palestinians, Tibetans and Hong Kong Chinese, amongst others.

[13] His final bullet points more specifically address the complaints under Principle 7. First, he notes the influence of Friedman and Kushner on US policy is worthy of comment

and has led to what he calls a “more extreme” position on Israel-Palestine issues.

[14] Second, he says the influence of a wide range of lobby groups in US politics is a matter of public interest and does not amount to the conspiracy the complainants allege. Indeed, there is no conspiracy referred to.

[15] Dawson adds that while the author in this case deals with Jewish influences on Middle East affairs, just as the week before he wrote about Arab influences and, in the past, Muslim influences. It is an article primarily not about religion, but rather politics.

[16] He warns that the complainants’ logic would stifle the media’s ability to write about any and all religions for fear of being gratuitous. The column is one man’s opinion and the complaints amount to an attempt to stifle free speech and censor debate.

Discussion and Decision

[17] Principle 7 is clear that news organisations have the right to publish opinions on what can be sensitive issues. The key is whether or not the opinions expressed place gratuitous emphasis on – in this case – a person’s “race” or “religion”.

[18] In considering this column, it then comes down to whether the religious views of those being criticised in the article are pertinent to that criticism. There is nothing directly pejorative in Frederikse’s description of Jews, the question is one of context.

[19] By starting his column with generalisations about 14-20 million Jews and their supposed closeness, Frederikse certainly sails close to the wind. Quite why he thought such generalisations useful is unclear and more care was needed. However rather than head down a gratuitous path, he instead narrows his focus to three particular men and their influence on Middle Eastern politics.

[20] It becomes clear that the columnist believes their religion is driving what he sees as extremist policies in that part of the world. That does make their religion central to his opinion. Indeed, he argues it’s their “orthodox” Judaism that has led to a change in US policy. To underline that he usefully identifies two Jewish former US ambassadors on the opposite side of the debate.

[21] So describing Friedman, Kushner and Dermer as “orthodox Jews” is not to libel them, but rather to attribute to them a certain conservative world view, in the same way we might discuss “fundamentalist Christians”. Frederikse has the right to be critical of that world view, just as the complainants have the right to be critical of his.

[22] To label the trio as followers of a particular faith – and even to criticise their expression of it – is not to place gratuitous or unnecessary emphasis on that faith, particularly when discussing a region where politics and religious beliefs are so intertwined.

[23] While Bolot argues “It is no defence that a person pejoratively described as Jewish is in fact Jewish”, it is equally true that to describe a Jewish person in pejorative terms does not amount to a criticism of all Jews.

[24] Finally to suggest, as Frederikse does, that these three powerful men share a particular agenda (or are even conspiring together) is not the same as suggesting all Jews – or even all orthodox Jews – are part of a global conspiracy, even in the context of those poorly worded opening lines.

The complaints against Principle 7 are not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, Jenny Farrell, Vernon Small, Mark Stevens, Christina Tay and Tim Watkin.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2599 – CHRISTIAN GOSPEL MISSION AGAINST THE HERALD ON SUNDAY

Introduction and background

1. The complaint relates to an article published on May 20, 2017 in the *Herald on Sunday* (HoS) headlined “Kiwi women targeted by religious group hunting brides for convicted rapist”.

2. The article centred on interviews with two women, whose identities were protected, and their experience with the Christian Gospel Mission (CGM) - which they knew by another name - and its jailed leader Jung Myung Seok.

3. It included the views and experiences of Auckland University chaplain Carolyn Kelly, Presbyterian Reverend Wayne Toleafoa and a Massey University professor and specialist in religious history Peter Lineham.

4. The CGM has complained that the publication did not fact check its article nor allow an opportunity for balance by the CGM before or after publication. It could have used material readily available online to help present a more balanced article.

5. It asserts breaches of Principle 1 (accuracy, fairness and balance) and Principle 12 (corrections).

The Complaint

7. Christian Gospel Mission complained that the article was inaccurate including its claims of sexual exploitation of young women.

8. The CGM did not believe its pastor Jung was a serial rapist or a sexual predator. He was wrongfully convicted in South Korea and the subject of an injustice. If the reporter had made “objective inquiries he would have come to know that this is the view of CGM members worldwide regarding Pastor Jung’s conviction”.

9. The CGM does not believe in sexual exploitation but encourages a pure life and abstention from sexual immorality.

10. The experts quoted had little interaction with the CGM and no understanding of its members’ faiths and beliefs.

11. The CGM had a history of negative and incorrect reporting dating back to 1999 in South Korea.

12. The person the reporter approached was not the “Morning Star leader” as the article stated. She was frightened by the reporter’s approach and on further consideration had decided not to meet him.

13. The complaint took issue with other specific matters in the article, including

1. Describing women as “taken” to Korea. It said the trips were undertaken willingly and no-one was “asked to fly” to Seoul to visit Jung in prison. Visitors make a request themselves to visit Jung.
2. Saying that Jung “fled” to Taiwan and Hong Kong. He left before accusations were made.
3. That the name of the organisation is rightly the Christian Gospel Mission. It is not Jesus Morning Star as referred to in the article.
4. A claim by Kelly that not Jesus, but Joshua Jung, was at the centre of its belief system was wrong.
5. Lineham’s view that the CGM links sex and spirituality and sees sex as the final consummation with God was wrong.
6. More men, children and the elderly and other groups are members of the church than young women and so it is impossible, as the article claims, that it seeks to “sexually exploit young women”.
7. That the CGM does not “recruit” members but evangelises and the use of the term was malicious and inaccurate.
8. That the article incorrectly referred to the CGM offering modelling “contracts”.
9. That one of the sources of the story was “made to wake up at 3am”. The CGM’s position was that members pray in the predawn hours by their own preference.
10. It is wrong to say the CGM encourages people to cut family ties.
11. The use of the term “reapers” relates to another church.
12. It is wrong to say Jung was a former member of the Unification Church. He was not, though he visited it briefly in 1975.

The Response:

14. In response on behalf of the editor of the *HoS* deputy editor Stuart Dye said the newspaper stood by its article.
15. It reflected the concerns of two organisations and two individuals about a religious organisation and its tactics. The university and the Presbyterian Church were concerned and issued warnings as did Lineham.
16. CGM’s leader was serving a prison sentence for raping and molesting followers.
17. In response to the individual points (paragraph 13) above he stood by the claim its source was asked to fly to Seoul (point 1). The wording did not imply force.
18. Dye offered to remove “fled” (point 2) and add a correction.
19. The organisation used numerous names (point 3) and this was reflected in the story. Jesus Morning Star was the name the newspaper’s sources knew it as.
20. Points 4 and 5 - about Jung being at the centre of the organisation’s belief system and its links between sex and

spirituality - were Lineham’s and Kelly’s views.

21. Having members from all ages and genders (point 6) does not preclude the sexual exploitation of women.
22. Recruiting (point 7) was the correct word to use for approaching people asking them to join.
23. He accepted the modelling offers were not “contracts” (point 8) and agreed to correct it online. (It should be noted CGM were unhappy with the correction to “offering work for modelling agencies” because it said it had never run or been affiliated with any modelling agencies.)
24. The word “told” was changed to “ask” (point 9) within hours of publication.
25. It was widely reported Jung was a member of the Unification Church (point 12).
26. The claims of exploitation were made by the two women and backed by a respected academic.
27. The *HoS* had approached the CGM for a response to all the allegations. It had made numerous attempts to contact spokespeople. The member approached, who it had been told was a leader, had arranged to meet and talk but had not kept an appointment.
28. It seemed she had not offered the right person to talk to nor passed on the request to the relevant person.
29. *HoS* had offered to publish a letter to the editor, but in its complaint the CGM said it did not see this as remedying the inaccuracies and imbalance in the piece.

Discussion

30. The Council has seen nothing to suggest the newspaper’s account of the experiences of the two women and the views of the experts was portrayed unfairly or inaccurately in any significant way, although as noted the newspaper later made some minor changes of wording.
31. The Council is in no doubt the CGM representative and many of its members believe in the Jung’s innocence, but his convictions and imprisonment are agreed facts. The council - and therefore the newspaper - cannot be expected to substitute the CGM’s beliefs about its leader for the factual record. An in-depth investigation of Jung’s history, behaviour and conviction and the treatment of the church were outside the scope of the article.
32. Nor does reference to the group’s stated beliefs or teachings refute the experiences of those interviewed for the article or make it inaccurate. There are numerous examples of practices that are not “official” policy and may not be condoned - recent revelations of sexual crimes within the Catholic Church being the most obvious.
33. To briefly address some other minor points raised by the complainant (33-35); the argument that having members from all ages and genders makes it impossible that it seeks to sexually exploit young women does not follow logically.
34. The use of the word “recruiting” is entirely appropriate and in common usage to describe of an organisation seeking new members.
35. The *HoS* mentioned the organisation used other names,

including the one known by its interviewees, so the failure to list CGM specifically was not material and did not mis-identify the organisation.

Conclusion

36. It is a core role of the media to examine issues such as this and publish warnings made by individuals and organisations when they are well-sourced and well-grounded as this one was.

37. The *HoS* believed it had approached a suitable spokesperson for the CGM and had no reason to believe it was wrong. The editor said numerous efforts were made to contact a CGM spokesperson, although he did not provide details.

38. Had the *HoS* subsequently refused to offer the CGM a right of reply, the Council may have taken a different view on whether the need for balance had been met. But the *HoS* had offered to publish a letter to the editor from CGM, but this was declined by CGM. That is its right, but it undercuts the complaint of lack of balance.

39. The Principle 1 complaint on the grounds of inaccuracy, fairness and balance is not upheld.

40. Similarly, the complaint on the grounds of Principle 12 corrections is not upheld.

41. The relevant parts of the principle state that significant errors should be promptly corrected with fair prominence and that it may be appropriate to offer an apology and a right of reply. The publication made some minor corrections, as noted above in the editor's response, in reaction to the CGM's points but the council does not believe significant errors remain uncorrected.

42 As stated in 38, the *HoS* offered a right of reply to CGM via a letter to the editor, where it could have corrected the record from its point of view. That was rejected by the CGM.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, Vernon Small, Mark Stevens, Christina Tay and Tim Watkin.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2600 – COASTLANDS SHOPPINGTOWN AGAINST KAPITI OBSERVER, DOMINION POST AND STUFF

Background

Coastlands Shoppingtown complains that a story published by each of *Kapiti Observer*, *Dominion Post* and *Stuff* on either 17 or 18 May 2017 titled, variously,

Don't like it? Then leave,

Don't like the sign. Don't stop here and

'Intimidating' 900 word sign warns Coastlands shoppers where they can and can't park

breaches Press Council Principles 1 (accuracy, fairness and balance) and 6 (headlines).

While the story differed a little between publications its

thrust was the same. It focused on Coastlands' parking policy at its Paraparaumu mall. The story referred to the lengthy parking conditions notice erected at the car park entrances. It recorded adverse customer reactions to the notice and the (apparent) restrictive parking terms. The stories referred to Coastlands' policy of fining parking violators (including fines levied on Coastlands' tenants' staff who parked on site). The story concluded with a brief response from Coastlands' manager to the effect ticketing issues had been resolved and that the erection of the notices was a legal requirement.

The Complaint

Coastlands says the story failed to fairly set out its position on the parking issues. It had been asked several questions by the reporter before the story was written. Coastlands says its responses to all the questions, responses which would have provided balance, were not published. Importantly as far as Coastlands is concerned, the story failed to mention that non-mall customers have been using the park to the detriment of mall customers. Coastlands says its parking policies, which have been in place for some time, are common elsewhere.

Coastlands also maintains that the story's headlines are misleading. It argues the headlines imply that Coastlands itself has said "don't like it, then leave" when this is not so. It claims the headlines do not accurately reflect the story's substance.

The Response

The publications reject the complaints. They say the story was fair and balanced. It accurately recorded mall customers' reactions to the notice and other of Coastlands' parking restrictions. They do not accept Coastlands' claims that it has not been fairly treated. They refer to the Coastlands' manager's comments which were published. It was not necessary to include them all. Comments are "often edited down for space requirements". Coastlands' point was "got... across in the article". The publications say that "[Coastlands] needs to accept that it was customers and retailers that complained about what they felt was a heavy handed approach by centre management". This was a topical issue. They say, basically, that the complaint is merely a reaction to a story which was adverse to Coastlands.

The publications do not agree the headlines were inaccurate. The headlines conveyed the story's essence.

The Decision

The Council finds that the story is not balanced in one respect. When Coastlands' manager was asked for comment before the story was published she mentioned the problems being caused by non-mall users, some being Wellington commuters and others being car poolers, who parked on site for lengthy periods thereby putting pressure on the facility. She also said Coastlands' parking terms were similar to those at other shopping centres. These references were not included in the stories. Had they been, a more balanced picture would have emerged. The restrictions the reported customers were complaining about would, to an objective reader, have made more sense.

The Council does not agree with Coastlands in relation to the headlines. The parking notice concluded with a statement to the effect that if people wishing to park did not agree with

the terms then they should not park at the site. While blunt the headlines were not misleading.

The complaint in relation to Principle 1 is upheld. The complaint in relation to Principle 6 is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, John Roughan, Vernon Small, Mark Stevens, Christina Tay and Tim Watkin.

CASE NO: 2601 – JULIE FOGARTY AGAINST STUFF

1. Julie Fogarty complains about an article published by Stuff on March 2, 2017, and updated in May 2017. The complaint is mainly of a breach of Press Council Principle 1, concerning accuracy, fairness and balance, but Principles 4 (opinion and fact) and 6 (headlines) are also cited.
2. The Press Council does not uphold the complaints.

Background

3. On March 2, 2017, Stuff published a short article, sourced from a Fairfax publication in Australia, but originating from the USA. It was headed “Grieving Mum’s message: “If I’d given him just one bottle, he’d be still alive” and concerned the death of a newborn baby, apparently from severe dehydration. The article described the events leading to the death of the baby, who was exclusively breast-fed, and included a link to the “Fed is Best” website.
4. The article included an excerpt from the much longer story (also headed “If I’d given him just one bottle, he’d be still alive”) on the “Fed is Best” website, including a quote from the mother, Jillian Johnson, as follows “And the best advice I was given by one of his NICU doctors while he was on life support is sure breast is best, but follow with the bottle. This way you know your baby has eaten enough...”
5. After Ms Fogarty had complained to Stuff about the March 2 article, it was amended by
 - the removal of information not relevant to New Zealand practice.
 - the addition of a section headed “New Zealand Advice”, quoting from Plunket’s national adviser.
 - a link to a much longer Stuff article which combined the stories of two mothers’ experiences with advice on breast feeding and a list of warning signs for dehydration or malnutrition.

The Complaint

6. Ms Fogarty’s main complaint is of inaccuracy and a lack of balance in the article. In particular she says it
 - “Raised the idea of exclusive breastfeeding as an unquantified mortality risk, omitting the greater level of health risks involved with the bottle and/or formula use in newborns
 - Raised the idea (a paediatrician’s recommendation) of universal bottle supplementation for breastfed

newborns, omitting information on that practice’s tendency to feature in newborn dehydration cases

- Raised the idea of the global Baby Friendly Hospital Initiative’s prioritisation of breastfeeding being dangerously biased, omitting scientific evidence that “its practices have improved newborn health outcomes (including dehydration issues) at population level”.
7. To summarise, Ms Fogarty submits that the article is biased and inaccurate in its depiction of breastfeeding as risky while ignoring or downplaying the greater dangers of bottle feeding or bottle supplementation.
 8. Ms Fogarty acknowledges that amendments and additions were made to the story after her complaint, but does not consider them sufficient to counter the bias and inaccuracy she has identified.
 9. Under Principle 4, Ms Fogarty complains that in paraphrasing opinions, the journalist has presented them as fact. She refers to the opinions of the mother and the co-founder of Fed is Best (a medical doctor) and to two specific examples – the normal spacing of feeds and the message that the Baby Friendly Hospital Initiative prevents mothers from electing to formula feed.
 10. Under Principle 6. Ms Fogarty says the key message from the article is that breast feeding should be supplemented (“Sure, breast is best, but follow with a bottle. That way you know your baby has eaten enough”). It is specifically described as a message, rather than being put in a more general “human interest context. However at no point is the mother quoted as saying “Just one bottle . . .” She notes the “Just one bottle” is a campaign run by the Fed is Best Foundation and counters an established global health message that “Just one bottle” can introduce health risks.
 11. In general, Ms Fogarty says the story could have been run in a way that respected and gave voice to Jillian Johnson’s experience and opinions while carefully offering some information to counter the inaccuracies. It should be noted that Ms Fogarty has supplied a substantial amount of scientific and medical evidence in support of her complaint. She has also supplied an analysis and critique of Stuff material on breastfeeding, ranging from articles to advertisements, and expresses concern about the general trend of the material.

The Stuff response

12. Geoff Collett, National Life and Style editor for Stuff, responded to the complaint. He made five main points:
 - The original article was a valid news item which was reported in line with journalistic convention.
 - The complainant’s concern was considered fully and seriously in a timely fashion, and further content was added to the original article to address that concern
 - Stuff acted responsibly in ensuring ongoing coverage of the wider issues that concerned the complainant

- The article and the Stuff response are in line with the principle of balance and fairness
- The article is clearly a piece of reportage and does not breach the Press Council principle regarding news and comment.

13. In Mr Collett’s view, Ms Fogarty does not understand the role of the news media in covering stories such as the one in question. It is different from the role of medical researchers and health educators, and is to “report newsworthy issues in a way which will interest our audience, not to “encroach” on the educational responsibilities of the state health sector”.
14. To summarise, Mr Collett submits that the article was an accurate representation of the mother’s experience with no attempt to mislead or deceive. It would be unreasonable to include the level of detail apparently expected by Ms Fogarty.
15. In relation to Principle 4, the story was sourced from a reputable news organisation, clearly reported and linked back to further information from which the wider context of the story was evident. The reporter was not expressing a personal opinion. In relation to Principle 6, the headline is a direct quote from the article and a fair representation of the mother’s message.

Discussion

16. It needs to be said that the Press Council cannot look into Ms Fogarty’s concerns about the trend of Stuff stories about baby feeding as the time for accepting a complaint about them is long past. Equally it is not the Press Council’s function, nor does it have the expertise, to weigh up the scientific and medical evidence presented by Ms Fogarty. It can only consider the submissions made to it and determine whether there has been a breach of the Principles.

This case needs to be considered in the context of the conflict between the complainant’s concern that mothers be given accurate and detailed information about the risks and benefits of both breast and bottle feeding, and the publication’s concern to present a simple “human interest” story to evoke an emotional response in readers.

17. While the Press Council largely accepts Mr Collett’s submissions on the role of the media and the difference between news reporting and public health education, if it had been called on to consider only the original article published by Stuff, it is very likely that it would have upheld the complaint under Principle 1. The article gives a somewhat sensational account of the sad story of the death of a baby in what appear to be highly unusual circumstances. The general message of the article, and of the website to which Stuff supplied a link, is about risks of exclusive breastfeeding without any counterbalancing material on the risks of bottle feeding. The Press Council accepts that the article was intended as a “human interest” rather than as an educational story, but that does not exempt Stuff from its obligations of accuracy and balance. The impression given is that little, if any, thought was given by the editor to the messages underlying the story, or, indeed to its relevance and

suitability for New Zealand readers. It is certainly not placed in the context of an ongoing debate about baby feeding and could well alarm an uninformed reader into uncritical acceptance of the unbalanced message.

Two members of the Council - Mark Stevens and Vernon Small - disagreed that the original version of the story breached Principle 1. They felt even the earlier version carried enough balance about the benefits of breastfeeding in what was otherwise a specific account of the Johnson’s situation. They also noted that media reporting around breastfeeding benefits was very long running and so it would not be necessary when assessing it against the principle of balance to look at this particular story in isolation.

18. However, to its credit, Stuff took immediate and substantial action on receipt of Ms Fogarty’s complaint. The question, therefore, is whether that action was sufficient. Ms Fogarty considers that it was not. She says it really addresses only one misleading point from the original story and that most of her original concerns remain.
19. The Press Council is of the view that Stuff took adequate steps to counter the imbalance of the original story. That story was a “human interest” story and Stuff countered it with two further stories that gave a much wider perspective. It also added some advice appropriate to the New Zealand context and indicated where further reliable information could be found.
20. As to Principle 4, the Press Council can find no indication of the expression of opinion by the reporter in the story. It appears to be largely straightforward factual reportage with any opinion material attributed to the mother or the medical personnel involved.
21. Similarly with regard to Principle 6, the headline reflects a key point from the Stuff article, which in turn reflects the same point from the longer article on the “Fed is Best” website. It may not have used the precise words of Ms Johnson as quoted in the article, but the import is clear.

Decision

22. The complaints are not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, Jenny Farrell, John Roughan, Vernon Small, Mark Stevens, Christina Tay and Tim Watkin.

CASE NO: 2602 – DAKOTA HEMMINGSON AGAINST NEW ZEALAND HERALD

Dakota Hemmingson complains a *New Zealand Herald* story about her disqualification from a Mediaworks competition breaches principles 1 (Accuracy, Fairness and Balance), 4 (Comment and Fact) and 12 (Corrections).

The complaint is **upheld**.

Background

The *Herald* story covered Ms Hemmingson’s disqualification from a Mediaworks radio competition to win free cosmetic surgery.

Disqualification occurred after the company operating the voting platform alerted Mediaworks to what it called fraudulent voting activity.

Ms Hemmingson, who was initially deemed to have received most votes, was disqualified and the contestant who received the next most votes won the surgery.

Mediaworks reserved its right to take further action in regard to the voting, and ‘evidence you [Hemmingson] have provided of obtaining unlawful access to the voting website’.

The *Herald’s* article included social media posts from Ms Hemmingson, saying she hadn’t been told of the situation until it was too late to remedy it, as well as interview comments.

Those comments including one where Ms Hemmingson apparently told the *Herald* she had altered her computer settings to turn off cookies (small files stored on a user’s computer), allowing her to vote more than once a day. The competition allowed only one vote per person.

Complaint

Primarily, Ms Hemmingson’s complaint is one of being misquoted.

She says she did not say she’d altered her cookies to allow multiple votes. Instead, she said, a friend had told her this was possible. She didn’t change her cookies and, in fact, did not even own a computer.

And she says the quote, “It’s just hurtful. All I want is an apology,” was only a part quote, and she actually went on to say, “... for how they dealt with it”.

A secondary plank of the complaint is that she was told she could review the article before it was published, but wasn’t given this opportunity.

After being challenged on the above point, Ms Hemmingson was able to provide screengrabs of an exchange between herself and a *Herald* staffer where, as well as being invited to be involved in the story, she was told she could read the story first.

Ms Hemmingson also pointed out that the story attracted more than 1000 facebook comments.

Response

The *Herald*, after being contacted by Ms Hemmingson, stood by the notes but added to the story that she disputed them.

Senior newsroom editor Oskar Alley responded to the Press Council for the *Herald*.

In regard to Accuracy, Fairness and Balance, Mr Alley reiterated that the interview notes were reviewed and that the *Herald* stood by the content.

Specifically, he says the interview notes show the following exchange:

Reporter: “*So you don’t feel you cheated in any way to gain these extra votes?*”

Ms Hemmingson: “*No, apart from the cookies thing. If you turn off your cookies, you can vote more than once a day, but I don’t think that was enough to make that much of a difference.*”

Her response to the reporter’s question was considered by the *Herald* to be confirmation she had breached the rules.

On the matter of whether the apology quote was abridged, Mr Alley said the full quote as noted by the reporter was used.

Mr Alley, in his initial comment to the Press Council, initially stressed no promise was made to Ms Hemmingson that she could review the content prior to publication. It was against *Herald* policy.

In his second response, he changed the *Herald’s* stance, acknowledging that a junior social media producer for the *Herald* - untrained in journalism - had suggested Ms Hemmingson could review the article. He stressed, however, that the social producer did not have the authority to give such an assurance and that the reporter had advised Ms Hemmingson of the *Herald’s* actual policy of not allowing pre-publication review.

His second response to the Council also saw the *Herald* back down on another point:

Mr Alley initially claimed Ms Hemmingson was wrong in her count of Facebook comments the story had attracted. He argued it was only 445 but later conceded that, for a period of time, comments had topped 1000. The number was then reduced after some comments - including those critical of Ms Hemmingson - were culled in post-moderation.

Discussion

The Council is less concerned about the partial quote allegation. It does not significantly change its meaning or the tenor of the story.

On the ‘cookies’ quote, however, the question is less about whether Ms Hemmingson was misquoted than it is about the interpretation of the quote.

Mr Alley believes it provided the *Herald* with confirmation of Ms Hemmingson’s vote tampering. Ms Hemmingson believes she was referring to the fact it was possible and, had others done it, the impact on the final competition result would have been negligible.

The Council has some sympathy for Mr Alley taking a strict interpretation of the quote. But, equally, it accepts that if the friend’s cookie tampering tip had come up during the interview, then seeking further clarification on exactly whether this tip had been acted on by Ms Hemmingson would have been appropriate.

Ironically, review of the content prior to publication would likely have resolved any misinterpretation of the quote and it is here that the matter of whether Ms Hemmingson was right to expect that or not comes into play.

The Council recognizes what is generally accepted newsroom policy around not granting interview subjects pre-publication review of articles.

Notwithstanding that, it is absolutely clear here that Ms Hemmingson was given such an undertaking, albeit from a junior staffer without the appropriate authority.

It would be wrong of the *Herald* to expect Ms Hemmingson

to understand the organisational structure of its newsroom. As far as she was concerned, a *Herald* staffer who invited her to be involved with the story, assured her she'd get to see it first.

It's also noted that the *Herald* cited the social producer's lack of any journalism training as a factor. This is something the *Herald* might like to consider in its recruitment of newsroom staff.

While the complaints of breaches of Principles 4 and 12 are not relevant (the article was clearly a news story rather than a comment piece and a correction would not have been warranted in a case where the *Herald* considered it had nothing incorrect), the matter of Principle 1 is relevant.

The Council is inclined to accept the reporter's account of the interview, ie the accuracy of the quotes, despite an obvious need for the reporter to have been more thorough in clarifying the cookies comment.

In regard to matters of fairness, however, it was clear that a representative of the *Herald* played a part in getting Ms Hemmingson involved in the story and, in doing so, rightly or wrongly, assured her she'd be able to review the article ahead of publication. She was not given this opportunity once offered.

The complaint re Principle 1 is **upheld**.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, Vernon Small, Mark Stevens, Christina Tay and Tim Watkin.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2603 – JOHN MCCORMICK AGAINST THE DOMINION POST

Overview

[1] John McCormick complains that a newspaper article published by *The Dominion Post* on June 15, 2017 titled "Israel relations on 'good footing' breaches Press Council Principles 1 (accuracy, fairness and balance) and 12 (Corrections).

[2] The article discusses Israel restoring diplomatic relations with New Zealand.

[3] In the article it is stated, "The country [Israel] broke off relations with New Zealand after it co-sponsored a UN Security Council measure condemning continued Israeli settlements in Palestinian territory just before Christmas last year."

[4] The article refers to the withdrawal of the Israel ambassador from New Zealand, "After the resolution passed [Benjamin Netanyahu] withdrew his ambassador from New Zealand and barred the Kiwi ambassador from Israel."

The Complaint

[5] The complaint is based on the article that appeared in *The Dominion Post* dated June 15, 2017 but the complainant has made reference to several other newspaper articles over the past 6 months including the *Otago Daily Times*, *New*

Zealand Herald as well as other *Dominion Post* articles. For the purposes of this NZ Press Council complaint, we will focus on the article dated June 15, 2017 as this is the article that has been discussed with Editor in Chief for *The Dominion Post*, Bernadette Courtney.

[6] Mr McCormick, Chairman of Hawkes Bay Friends of Israel Association, has complained the article contains inaccuracy, "The point being Israel did not break off relations with New Zealand over the incident." Mr McCormick has requested that *The Dominion Post* run a correction "I would ask that you publish a correction to the June 15th, 2017 item that states that 'Israel did not break off diplomatic relations with New Zealand as a result of UNSC 2334' and that you should do that forthwith." **Principle 1 Accuracy, Fairness and Balance and Principle 12, Corrections.**

[7] Mr McCormick has asked that the correction go beyond *The Dominion Post* and be applied to all Fairfax newspapers and to the Stuff website. His request is based on the position of Bernadette Courtney as the Editor in Chief Central Region.

[8] In his complaint letter to the editor of the Dominion Post, Mr McCormick has maintained that "Israel did not break off relations with New Zealand, it recalled its Ambassador as a result of our involvement and support of UNSC resolution 2334."

[9] In a further comment to the editor Mr McCormick explains the international diplomatic activity involved with 'breaking off relations'. "That means to close its Embassy and withdraw all its staff. That did not happen. The Embassy in Wellington continued to function under the leadership of its Deputy Head of Mission."

The Response

[10] In a response to Mr McCormick, Dominion Post Editor in Chief, Bernadette Courtney describes the use of the wording "broke off relations" as a 'matter of interpretation.' She acknowledges that Israel did recall "its ambassador and banned [NZ] diplomats, but agreed with Mr McCormick that Israel "did not fully close relations, keeping its embassy open."

[11] Ms Courtney agrees with Mr McCormick that the use of the words "broke off diplomatic relations" would have been "more strictly accurate".

[12] However, Bernadette Courtney does not believe that readers were misled, "It is our belief though that the original wording however did not mislead readers."

The Decision

[13] Firstly, it is worth acknowledging that Mr McCormick was correct to approach *The Dominion Post* to outline his concern about the wording adopted in describing the diplomatic relationship between Israel and New Zealand following the sponsorship of a UN Security Council measure condemning continued Israeli settlements in Palestinian territory.

[14] Ms Courtney has accepted that the use of the of the words "broke off diplomatic relations" would have been "more strictly accurate." This acquiescence is followed by an explanation to Mr McCormick that *The Dominion Post*

does not believe that their readers were misled.

[15] The NZ Press Council Principle 1 states that “publications should be bound at all times by accuracy... and should not deliberately mislead or misinform readers by commission or omission.” In applying this principle to this complaint, it is our view that whilst the wording surrounding the description of the relationship between Israel and New Zealand could have been more accurate there was no intention to deliberately mislead or misinform readers. This conclusion is arrived at on the basis that the article describes how Israel did recall the Israeli ambassador from New Zealand and barred the New Zealand ambassador from Israel. The other articles provided by Mr McCormick all discuss this action that was taken by Mr Netanyahu. This article was focusing on the restoration of the relationship between Israel and New Zealand following the co-sponsorship of the UN resolution. **The complaint of inaccuracy under Principle 1 is not upheld.**

[16] Mr McCormick has requested that a correction be printed not only within *The Dominion Post* but across all Fairfax newspapers as well as the Stuff website. As we have concluded that there is no breach of Principle 1, there is no correction to be made therefore the complaint against **Principle 12 is not upheld.**

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afu, Jenny Farrell, John Roughan, Mark Stevens, Christina Tay and Tim Watkin.

Vernon Small took no part in the consideration of this complaint.

CASE NO: 2604 – OTAGO MENTAL HEALTH SUPPORT TRUST AGAINST OTAGO DAILY TIMES

The Otago Mental Health Support Trust has complained about a story in the *Otago Daily Times* describing a charity fundraising experience being set up in the old Dunedin Prison. The report said the prison would be transformed into a “military-style asylum” and, “thrill-seekers would make their way to the psychiatric ward, past the cells crammed with clowns (as) masked patients await the visit”. The Trust complains that the story adds to the stigma of mental illness, creates a false impression of psychiatric wards and ought to have been balanced with expert comment on the harm this sort of portrayal can do.

The complaint is not upheld.

The Complaint

Grant Cooper, Team Manager, believes the story breaches the Press Council’s principles of accuracy, fairness and balance, and discrimination and diversity. It was inaccurate, he suggests, to portray people who access mental health wards as scary, violent and dangerous. The event was promoting this myth when, to be fair, people with experience of mental illness were more likely to be victims of crime than perpetrators.

He was dismayed that the newspaper would promote stigma and discrimination by placing gratuitous emphasis on mental disability. The article came across as an advertisement

without balancing criticism of the event. The paper ought to have considered what this kind of promotion is like for somebody who has been in a psychiatric ward. It could discourage people from seeking help from mental health services, possibly suicidal people.

The Editor’s Response

Though he rejected all the grounds of complaint, Barry Stewart, Editor of the *Otago Daily Times*, had given Mr Cooper a written apology for any upset caused by the story. It was not the paper’s intention to offend anyone with mental illness or working in that field. Its intention was to highlight the redevelopment of the former prison and its use for a “horror event”, as the organisers described it. The event was for a worthy cause, Heart Kids Otago, which he felt deserved coverage.

The story was an accurate description of the charity event and the editor believes that, in that context, the report did not require a range of views. The complainant’s concerns would be better taken up with the organisers. It was their decision to use a psychiatric ward scenario. The story did not reflect the newspaper’s view of mental illness, which it took extremely seriously. The paper had published many stories about the work of mental health organisations in its community, and provided helpline numbers when relevant. It had published stories that “disconfirmed” stereotypes associated with mental illness or called for more funding, support or understanding of the issues.

The Decision

Like the editor, the Press Council believes the Trust is directing its complaint in the wrong direction. If this “house of horrors” type of entertainment is perpetuating a stigma for mental illness and undermining confidence in psychiatric services, then it is for organisations such as the Trust to take this up directly with the business providing it, or publicly. It is an issue that would interest the news media. Indeed, it is surprising the *Otago Daily Times* did not do a follow up story reporting the trust’s concerns.

But the complaint is limited to the published story, as it must be to come within the Council’s jurisdiction. The Trust believes the story unbalanced because it included no criticism of the event from a mental health professional. The Council does not think it reasonable to expect the newspaper to have anticipated these criticisms before its report was published. It had no reason to think anyone would have taken its story as a serious portrayal of mental illness or modern psychiatric treatment.

The story carried no claim to be an accurate fair and balanced account of these subjects and the Council does not believe a complaint on those grounds can be upheld.

The complainant has also invoked the discrimination and diversity principle under which media are obliged to ensure references to mental disability are not gratuitous. The fundraiser was playing on historical accounts of the “Bedlam” era of institutional custody. The story did no more than reflect the subject and character of the event. References to psychiatric patients and an “asylum” were not gratuitous in this context.

These sorts of entertainment make no claim to be anything but nonsense. If they are considered harmful today, it is for the mental health profession to say so, not the Press Council. The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, John Roughan, Vernon Small, Mark Stevens, Christina Tay and Tim Watkin.

CASE NO: 2605 – JO-ELLA SARICH AGAINST NEW ZEALAND HERALD

Jo-Ella Sarich has complained about an online article and associated video (9 May) published on the *NZ Herald* website about a child found wandering the street alone. The video was filmed by the member of the public who had found the child and she had uploaded it on to her Facebook page. The article covered the circumstances leading up to the child being found as conveyed by the grandmother who also spoke on behalf of her daughter, who is the toddler's mother. The re-posted video accompanied the article.

The Complaint

Jo-Ella Sarich complained to the *NZ Herald* that the article and re-posting of the video by the *NZ Herald* was a breach of principles related to privacy and children and young people. She argued that there was no genuine public interest in the re-posting of the video. In response to the *Herald's* argument around public interest, the complainant countered that public interest was not the same as 'what the public is interested in.' It is not comparable to a story such as the Wahine disaster.

The complainant said the toddler's case did not appear to have been one of child abuse or neglect rather an error of judgement by the mother. The article itself explained this. In response to one of *NZ Herald's* points, the complainant said the *Herald* could have reported the incident and the family's version of events without the re-posting of the video which subjected the family to "further humiliation."

The complainant acknowledges the point about child abuse being a major issue however the re-posting of the video doesn't bring home the horrors of child abuse but aims to shame and invite criticism of the child's mother and in doing so violated the child's privacy.

The re-posting of the video would impact the toddler when she became older. The re-posting of the video amounted to the "salacious exploitation" of a young child to elicit page views.

The Response

Oskar Alley, Senior Newsroom Editor responded on behalf of *NZ Herald*. The main points can be summarised as following:

- Ms Sarich's complaint fails to fully appreciate the fact that the (unpixelated) video of the child was already in the public domain. It had been posted on Facebook by the woman who found the child - and had been viewed more than 100,000 times before the *Herald* became aware of its existence.
- The woman who filmed the video has declined to speak to media or to explain why she chose to post

the footage on Facebook. The *Herald* therefore cannot speak to her motivation for doing so, but her original post indicated her serious concern (and frustration) that an unsupervised, extremely upset child was found wandering in the street clad only in her underwear.

- When the *Herald* newsroom learnt of the video they took steps to confirm its veracity and immediately notified Police which, it was submitted, was the logical and responsible course of action.
- Ms Sarich bases her complaint on the fact that this incident was not one of neglect but one of a parent's "error of judgment" – but this perspective relies on the benefit of hindsight – based on the *Herald's* subsequent interview with the child's grandmother.
- At the time of viewing the initial Facebook post this was a case of a near naked child found wandering the streets in an extremely distressed state. This situation is entirely a significant matter of public interest – and a matter of urgent priority to alert Police and assist them to locate the child and confirm she is safe.
- A series of public campaigns to prevent child abuse has repeatedly stressed the need for anyone who suspects that a child is being abused/neglected to report it to authorities – whether it's a teacher, family member, neighbour, a stranger in the street – or indeed the media itself.
- While more than 100,000 people had viewed the Facebook video no one had actually done anything about it – Police confirmed they were not aware of the matter till the *Herald* reporter brought it to their attention and this was when their inquiry began.
- The publication was compelled to publish it to highlight how serious this situation was and in the interest of assisting the Police investigation. It is frequently the case that media coverage of an incident leads to vital information and it is worth noting that Police had very little to go on other than that the woman who filmed the video lived in the suburb of Otara.
- While the child is briefly identifiable in the Facebook video (the vast majority of the footage is in fact of the pavement as the woman films on her phone as she walks) the *Herald* decided to blur the child's face in order to protect her privacy. This was a responsible stance to take and is entirely consistent with the Press Council's Principle 3.
- By blurring the child's face and deciding not to publish any information that could identify the child or her family the *Herald* has acted entirely responsibly and in accordance with Press Council guidelines. The video was clearly filmed in a public street and no one can expect privacy in such a place. The filming was not "covert" – the woman is clearly holding her phone in her hand.
- In reality this woman rescued this child from a gravely serious situation – wandering alone, scared in the street – and returned her to her home and explained to her mother what had occurred. The publication cannot speak to the woman's motivation

to film the incident and to later post it to Facebook, but her decision to do so, and after the *Herald's* intervention, led to the Police becoming involved and that was absolutely the correct course of action.

- The toddler's family have not asked for the video to be taken down and the child's grandmother welcomed the opportunity to explain the background to this incident.

The Decision

The two Press Council principles being considered here are related to Privacy (Principle 2) and Children and Young People (Principle 3).

Under Principle 2, everyone is normally entitled to privacy of person, space and personal information and these rights should be respected by publications. However this should not interfere with the publication of matters of public record or public interest. The *NZ Herald* has made a compelling case in relation to their article and most importantly the re-posting of the video being of public interest.

In relation to Principle 2, no person or property was identifiable in the video or article.

One of the key elements put forward was in relation to Police not being contacted about the incident until the journalist made contact with them and at that point assistance with the investigation was important. As it became clear that the situation was an error of judgement, the publication gave the family through the grandmother the opportunity to explain in detail the circumstances.

The article does relay the emotions of both the grandmother and mother, which readers would appreciate, and allows the family to present their 'side of the story.'

In relation to Principle 3, the publication has satisfied the Council that the public interest in providing immediate support for the investigation, to what was at the time a possible case of neglect, was exceptional. The publication's blurring of the child's face was responsible, and essential in the Council's view.

At the same time, the rawness of the video would have brought home to readers that, even though it was an error of judgement, a child alone on a public street is simply not a good situation for any child to be in.

A final point – At the time of publication the video had already received widespread viewing from the Facebook post and it would have been easily traceable from the article alone.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, Vernon Small, Mark Stevens, Christina Tay and Tim Watkin.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2606 – MILLY WOODS AGAINST STUFF

Children's names to be removed immediately.

Milly Woods complained that an article published online on Stuff NZ, 'Bath bombs cause painful reaction among females' breached Press Council Principles 2 (Privacy) and 3 (Children and Young People).

Background

On July 23 Stuff NZ published an article headed 'Bath bombs cause painful reaction among females' about a painful skin reaction suffered by two girls, in separate incidents, after they had bathed in water infused with bath bombs sold by nationwide retailers.

The story identified and quoted the mothers, who described their daughters' vulvas as "red and irritated" and 'red raw, raised and sore' after their baths. Both children, one a toddler and another a preschooler, were named in the story.

Complaint

Ms Woods complained that it was inappropriate for Stuff to have mentioned the names of the children particularly when the state of their vulvas was being described.

"This is on the internet, which as everyone knows, means it can be around forever," she said.

She quoted Press Council Principle 3, Children and Young People, which states: "In cases involving children and young people editors must demonstrate an exceptional degree of public interest to override the interests of the child or young person."

Naming the girls in this case was not necessary for public interest, she said.

In response to the editor, the complainant agreed she would not have complained about the identification of the children if the story was about a different body part.

She agreed that the assumption the article would remain online was hypothetical, but the assumption that it wouldn't be, is also hypothetical, she said.

She felt it was better to "err on the side of caution when taking the interests of the children into account".

She acknowledged that the mothers consented to the identification of their children. "They are not the ones who are meant to abide by the Principles of the Press Council," she said. "That is the role of the editor."

Editor's response

Fairfax Media's National Life and Style Editor Geoff Collett said one of the mothers in question had offered the initial suggestion for the story to be reported, and both parents were comfortable with Stuff using their daughters' names.

He argued that the topic was a valid matter for reporting: to inform parents that bath bombs can cause unpleasant skin reactions to the genital area was important and it was firmly in the realm of public interest.

He acknowledged that some readers could find discussing genitalia awkward but he did not consider that to be an overriding consideration in this case.

The editor said the children were so young as to rely entirely

on their mothers to represent their interests and concerns. He had checked with the mothers subsequent to the complaint, and both had confirmed they had no concerns about the story or the fact their daughters were identified.

The editor argued that a news organisation's first priority was to provide relevant information, not to suppress it. The naming of the children added credibility and a genuine human element to the story.

He said the complainant's suggestion that the article could live on the internet for all time and come back to embarrass the children in years to come was a "hypothetical and speculative argument."

He described the story as a straightforward, wholly appropriate report about a minor bath-time skin irritation, which did not affect the interests of the children.

He denied that the report had breached Principle 3, and maintained that as the parents freely shared their details and names for the story, Principle 2 also had not been breached.

Discussion

The point of Ms Woods' complaint is that the children should not have been named in the story because it gave details of the reaction on their genitalia in very direct terms.

There is no suggestion by the complainant that the story should not have been published; it is indeed a cautionary tale, and should serve as a warning to other parents.

Identifying the two girls, because the parents had consented, and because it added to the credibility and genuine human element of the story is contentious however - most parents of young children would heed the warning about using bath bombs purely on the basis of the description of the skin reaction.

Whether or not the story could live on the internet for all time and come back to embarrass the children in years to come is a complete unknown but it is a relevant issue given that news organisations are generally reluctant to remove stories from their archives unless there is a compelling reason to do so.

The editor's response that the mother of one of the girls approached Stuff with the information, and that both parents agreed to have the children's names published, and were happy with the story after it was published, offered the Press Council a compelling argument against upholding the complaint under Principle 2, Privacy, in that the parents are the legal guardians.

The Press Council finds that the circumstances of this case however did not warrant naming the children. Principle 3, Children and Young People, states: **"In cases involving children and young people, editors must demonstrate an exceptional degree of public interest to override the interests of the child or young person."** We see no public interest in naming the children, let alone the exceptional degree required by the Principle.

The thrust of the story is a warning that bath bombs can cause an allergic skin reaction in children. In our opinion, naming the sufferers of that reaction does not add to the validity of the story in any way other than to provide a human element.

Given the explicit and highly personal nature of the details published, it is likely the children would be embarrassed if they found their names linked to such details in the future.

Accordingly, we have refrained from naming any of the family members in this decision, and require that the publishers remove the names in the online report.

The complaint is upheld on Principle 3.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, John Roughan, Vernon Small, Christina Tay and Tim Watkin.

Mark Stevens took no part in the consideration of this complaint.

CASE NO: 2607 – GLENDA BELL AGAINST THE SOUTHLAND TIMES

The Press Council received a complaint from Glenda Bell concerning an article *The running Walker* published in *The Southland Times* on August 26. This complaint has been considered using the fast-track procedure for dealing with complaints arising out of the general election.

Background

Todd Barclay, Member of Parliament for Clutha- Southland, announced on June 21, 2017 that he would not be seeking re-election following the revelation he had secretly taped conversations of a staff member in his electorate office.

A selection process for a new candidate was undertaken and on August 16 Hamish Walker was selected as the National Party candidate for the electorate.

A profile on Hamish Walker was published in the *Southland Times* (A5) on August 26 and on Stuff.

Complaint

Glenda Bell complained that the article breached the Press Council Principle relating to Accuracy Fairness and Balance. She contended that to publish such an extensive piece on Hamish Walker, with no mention of any of the other candidates, could have negatively swayed some of the unthinking public to believe that Walker was the only candidate of note and that the others were immaterial. All candidates should be treated equally. She saw this as editorial bias.

The Response

Natasha Holland, editor of *The Southland Times* responded that that Hamish Walker had been profiled because of the high news value and public interest in the appointment. The circumstances of the appointment were unusual and it was strongly in the public interest to profile the Todd Barclay successor. It would have been remiss of journalists not to delve a little deeper into who the new candidate was.

She did not believe this one profile would sway voters, or that it showed gross bias towards a candidate. Neither did the profile breach any Press Council Principle.

Other election coverage was continuing and all candidates would feature in this.

Discussion and Decision

The circumstances that led to the publication of the Hamish Walker profile were indeed unusual. The Council agrees with the editor that having a candidate selected just six weeks before a general election gave the story high news value and that there was a strong public interest in informing *The Southland Times*' readers about the candidate.

The Council notes that similar profiles had run on the Labour candidate in March 2017; the Greens candidate in April; and the New Zealand First candidate in May all on the announcements of their candidacy. What made this profile different was the proximity to the election, but that was an issue not of the newspaper's making.

While it was perhaps unfortunate that the profile did not at least include the names of the other candidates, if only for the benefit of its readers, the Council does not consider that this would have led readers to conclude that they were immaterial to the election.

The Press Council also notes that further extensive coverage of all four candidates' points of view on matters including immigration, electricity costs, water tax/quality, regional development and jobs, housing, capital gains tax etc has been published on August 29, in a report on a "meet the candidates" meeting in Balclutha.

The complaint is not upheld.

CASE NO: 2608 – BERNHARDT BENTINCK AGAINST THE PRESS

1. The complainant makes wide-ranging allegations against *The Press* and one of its reporters in relation to his tenancy of a property at 50 Banks Avenue, Christchurch. Only one of these complaints falls within the jurisdiction of the Press Council, and our decision is limited to that. That is the complaint relating to an alleged breach of privacy.

Background

2. The complainant leased the property at 50 Banks Avenue from a Ms Morgan (the registered owner may well have been a corporate entity but nothing turns on that). He apparently told her he was involved in traffic engineering and transportation matters, and wanted the property for himself, his wife and his children, and that he was earning \$170,000 per year.

3. The owner was alerted by neighbours that a great many people seemed to be coming and going from the property. As a consequence, the owner, along with the reporter, visited the property.

4. We note for the sake of completeness that the complainant has gone to the Tenancy Tribunal alleging breach of the lease, and states he has made a complaint of criminal trespass against the reporter concerned.

The Article

5. As noted already the article related to the complainant's tenancy of the property. In it the owner alleges she was misled by the complainant and this led to a lease being granted. Despite a limitation on the number of tenants she stated the complainant allowed many more people to stay at the property essentially running it as a backpackers. The

article points out that the complainant, under a different name had behaved in this fashion previously. The complainant's convictions and the numerous names he has used over the years were also featured.

The Complaint

6. The complainant states that his privacy was breached because the reporter entered the house, took photos of the interior, and failed to leave when he instructed him to do so. The complainant said the owner had no authority to invite the reporter inside the property, and nor did a person called Hendrik, who appears to have been one of the occupants of the house. In correspondence, the complainant acknowledges his background, which we will turn to in our decision.

The Response

7. *The Press*'s position is that the reporter was invited into the property by the owner. In any event, the editor states that given the complainant's background, which he acknowledges, the public interest outweighs his privacy considerations.

The Decision

8. The Principle Privacy reads, where relevant, as follows:

"Everyone is normally entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of significant matters of public record or public interest."

9. In our opinion, the background of the complainant is relevant to the complaint before us. The complainant goes by many names and aliases. He has been known as Wayne Eaglesome, as well as Richard Mountjoy, Ari Ben Yitzhak, Bernhardt Augustus Longwater, Alexander De Villiers amongst others. It appears from the material before the Council that he currently holds a passport in the name of the complainant, which we can only assume came about by way of a change of name by deed poll. In 2006, as Alexander De Villiers, he was jailed for five years for sexually violating and indecently assaulting an 18 year old backpacker and indecently assaulting another youth. While in prison, he was apparently reprimanded for impersonating a corrections officer. In 2012 he was jailed for three years for various fraud offences. Earlier, in 2003, he was jailed for fraud offences, including impersonating a priest named Father Anthony Garibaldi. A report from the parole board in August 2013 said a psychologist found Eaglesome was at medium to high risk of sexual offending, and at high risk of general reoffending, particularly fraud.

10. *The Press* also states he has been imprisoned in the USA, which he does not deny.

11. *The Press* revealed last year that the complainant was operating several hostels for backpackers and temporary workers under the name Richard Mountjoy.

12. At the time of the alleged breach of privacy, it appears the complainant was in Thailand, which he confirmed by telephone call to the Council's executive director, who documented the conversation. He says he was alerted by

a fellow “flatmate” by phone that a reporter was on the premises. It appears this is when he alleges he ordered the reporter to leave.

13. As noted, he also alleges that neither the owner nor one of the occupants (Hendrik) had any lawful authority to enter the property.

14. The complainant stated that he had a number of witnesses to his version of events, but we have no such material before us. Nor has he supplied us with a copy of the lease. While it is impossible for us to rule definitively, it would seem to us highly likely that an owner of a property would have a right of inspection as well as a right to enter where there was a serious breach of the terms of the lease. The owner, in the article, states the lease limited the occupancy to the complainant and 4 others. Apparently this is not denied.

15. The complainant also maintains that no-one has found he breached Christchurch city bylaws or has run a “doss house”. However, the Press Council has been supplied with documentation from the Christchurch City Council to the owner of the property (as noted the actual registered owner may well be a corporate entity, but that Ms Morgan is undoubtedly the beneficial owner). In a letter, the compliance officer for the CCC states that there was an inspection of the property on 13 July, when it was established that the complainant, i.e. the tenant, was providing accommodation to 19 persons, with higher numbers of guests on weekends. It was pointed out that this was in breach of the District Plan, and a contravention of the Resource Management Act 1991 (RMA) as a non-compliant activity. The owner was therefore told to cease the non-compliance or apply for an obtain a resource consent for the non-compliant activity. The letter was accompanied by the necessary RMA direction. The statement that he has not been found to have breached CCC by laws etc is strictly true. However, it is quite misleading. The breach, occasioned by his actions, has, of course, been visited on the owner.

16. The complainant maintains this has nothing to do with the breach of his privacy. Again, we are hampered by not seeing the lease. But any lease could not contract out of the provisions of the RMA. And a tenant breaching the provisions of the Act would clearly be in breach of the lease, which would likely entitle the owner to enter and investigate.

17. The complainant alleges that he made no money from this operation and it was not a backpackers or “doss house”. He said the people occupying it were merely flatmates who contributed to the running costs of the house. One of the occupants was spoken to the by *The Press*, and his response clearly contradict this. The photographs also illustrate the accuracy of *The Press* report and we consider the use of the colloquialism “doss house” is appropriate.

18. In the circumstances, particularly the absence of the lease, it is impossible for the Council to definitively determine whether or not the reporter had a right to be in the house. In any event, the complainant has made allegations of criminal trespass in that regard, and that is the appropriate forum. However, it does seem to us likely that the owner was entitled to invite the reporter into the house. Furthermore, in the light of that invitation it is understandable that the

reporter considered he had a legal right to be there.

19. The other problem with the complaint is that it is unclear exactly how the complainant’s privacy was breached. At the time, he was in Thailand, so his personal privacy could not have been breached. There is nothing to suggest that any of the occupants of the premises who were present considered their privacy was breached, and in any event there is no such complaint for the Council to consider. In fact, given that the complainant also rents another property in Christchurch, it has not been established that he was actually a resident of this property. On balance, we find no breach of his privacy has been established.

20 More importantly is the second sentence of our principle, set out above, that we must consider. The complainant, under various names and aliases, has a considerable criminal record for fraud and has also been convicted of sexual offending against backpackers. The parole board report states that a psychologist suggests that he is at high risk of future fraudulent offending. It appears he obtained the lease of this property by telling the leasing agent an untrue story. He does not deny that he told the leasing agent, that the property was for himself, his wife and family. The photographs illustrate the state of the house, which clearly breaches the provisions of the Christchurch District Plan, as established by the matters we referred to previously. The comments from one of the occupants, and the photographs, also suggest an exploitation of backpackers. This appears to be a continuation of the complainant’s past behaviour, and we are satisfied that there are significant matters of public interest contained in this story which the public should be made aware of and in our view they outweigh the complainant’s right to privacy. Indeed, we consider the publication of this story was responsible and very much in the public interest.

21. The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens, Christina Tay and Tim Watkin.

CASE NO: 2609 – JOHN CHEN AGAINST WAIKATO WEEKLY

The New Zealand Press Council has upheld a complaint against the *Waikato Weekly* by John Chen of the Falun Dafa Association of New Zealand. Mr Chen complained that two reports in the April 13 issue breached principles of accuracy, fairness and balance, presented opinion as fact and were written from a conflict of interest that was not declared.

The first report, on page 10, was entitled, “Grand social event held recognising achievement of New Zealand Chinese community in welcoming Premier Li Keqiang to New Zealand”. The second, on page 12, was entitled, “Large Demonstration held by Chinese community groups protesting against the Falun Gong ‘Shen Yun’ performances and revealing the true facts”.

Mr Chen complained that the articles were severely critical of the Falun Gong, describing it as a cult carrying out “despicable and disgraceful actions”, seeking to harass and

sabotage the Chinese Government and its friendly relations with New Zealand. The articles suggested its Shen Yun stage show had the same political purpose. After the articles appeared, Mr Chen and other members of Falun Gong approached the *Waikato Weekly* asking for their views to be fairly reported but were not given the opportunity.

In response to Mr Chen's complaint to the Press Council, the director of *Waikato Weekly*, Zhu Xi told the Council the articles were supplied by Chinese community organisations. He confirmed he was the current President of the China Peaceful Reunification Federation of New Zealand but said the *Waikato Weekly* does not belong to any organisations. He characterised it as, "an independent community newspaper/business". He rejected Mr Chen's accusation that the publication had a conflict of interest.

Mr Zhu said that since the articles appeared he has been harassed by phone calls and protests in front of his office by people displaying banners, playing loud music and distributing leaflets against him. The police had been called but they took no action.

In its decision, the Press Council found it fair to describe Falun Gong as a cult, a word commonly applied to a movement outside the mainstream of a religious or cultural tradition and having its own distinctive practices and beliefs. But the Council found the *Waikato Weekly* articles to be unfair and unbalanced because they sought no views from the cult being severely criticised and gave it no right of reply.

The articles were presented as factual reports though they were highly opinionated, especially the second article. Items of opinion do not need to observe the rules of fairness and balance expected of a factual report, but they must be clearly labelled as opinion and identify whose opinion it is. According to Mr Zhu they were supplied by community organisations but the articles do not carry the names of an organisation and would be read as the views of the *Waikato Weekly*. In any case, the newspaper director's affiliation with the China Peaceful Reunification Federation presents a conflict of interest for a publication that calls itself an independent community newspaper and ought to have been declared.

The Press Council believes the large and growing Chinese community in New Zealand deserves its own newspapers that meet the standards of fairness and professionalism expected of all news media in this country. The Council welcomes the *Waikato Weekly*'s acceptance of those standards through its membership of the Community Newspapers' Association and offers its advice if publications wish to take it.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens, Christina Tay and Tim Watkin.

Addendum

Subsequent to the release of the Chinese translation of this ruling the complainant has brought to the Council's attention his view that the Chinese character used for the term "cult" carries pejorative connotations.

The way the word was used by the Press Council was not, nor intended to be, pejorative.

CASE NO: 2610 – YI LIU AGAINST HOME VOICE

Yi Liu is a member of the Falun Dafa Association of New Zealand whose members practice Falun Gong. *Home Voice* is a Wellington publication in the Chinese Language. On May 5 it carried a report of Falun Gong practitioners' protests against another Chinese publication, the *Waikato Weekly*, that had printed two articles critical of Falun Gong.

The *Waikato Weekly*'s articles were also the subject of a complaint to the Press Council which was upheld. (Case No 2609)

The Complaint

Mr Liu complained that *Home Voice* breached the Council's principles of accuracy fairness and balance, presented comment as fact and had an undeclared conflict of interest since the editor was also chair of the Wellington Association for Promoting Peaceful Reunification of China. He considered it inaccurate to call Falun Gong a "cult" and unfair to deny them a right of reply to an article that was not balanced by including their point of view.

The Response

The owner of *Home Voice*, Kevin Zeng, responded that it was an independent newspaper fully funded by advertising and income from his other businesses. He believed his paper had the right to adopt a forthright stance or advocate on any issue, to publish an article that differed from the views of the Falun Dafa Association and to reject material supplied by the association that were in conflict with views his paper had published.

The Decision

This complaint is identical in almost all details to the *Waikato Weekly* but differs in an important respect. The article in the *Home Voice* was clearly attributed to two organisations, the China Peaceful Reunification Federation of New Zealand Inc and the United Chinese Associations of New Zealand Inc. The complaint therefore cannot be upheld on the grounds that the paper failed to distinguish opinion and fact or declare a conflict of interest. The article was clearly labelled as the opinion of the two organisations and the paper had declared their interest.

As an item of clearly identified opinion, the article is not subject to the same standards of fairness and balance as a report presented as fact. *Home Voice* readers would have known they were receiving a one-sided view of Falun Gong. On the question of accuracy, the Council does not think it untrue to describe Falun Gong as a "cult". The term is commonly used for religious or cultural groups outside the mainstream of their religion or culture.

While not upholding the complaint the Press Council finds it regrettable in this case that the newspaper saw no need to allow those criticized a right of reply. As we noted in the *Waikato Weekly* decision, the Chinese community in New Zealand is a large and growing one and deserves to be served by fair, objective, independent newspapers that meet the standards expected of news media in New Zealand as laid down in the Press Council's Statement of Principles. As an example many newspapers would have offered a right of reply by publishing a letter to the editor for instance. The

Council can offer advice to newspaper on the application of our Statement of Principles.

This complaint is not upheld for the reasons stated above.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens, Christina Tay and Tim Watkin.

CASE NO: 2611 – BARBARA COWIE AGAINST OTAGO DAILY TIMES

Background

Barbara Cowie complains that a story published by *Otago Daily Times* on June 30, 2017 titled “Stalker jailed for 8 months” breaches Press Council Principle 2 (privacy). Principle 2 provides as follows

“Everyone is normally entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of significant matters of public record or public interest. Publications should exercise particular care and discretion before identifying relatives of persons convicted or accused of crime where the reference to them is not relevant to the matter reported”

The story referred to the conviction and jailing, for “stalking”, of the granddaughter of a well-known Dunedin identity who has died. The story detailed the offence along with similar offences for which the woman had been previously convicted. The story opened by mentioning the woman’s family relationship with the man.

The Complaint

Mrs Cowie’s concerns relate to the naming of the man. She says she represents the man’s widow, the convicted woman’s grandmother. Mrs Cowie says the widow is distressed by the connection the newspaper makes. The reference is irrelevant and inappropriate. She says the convicted woman is in need of psychiatric treatment. The family reference adds nothing to the story. Mrs Cowie says while the story may be “interesting to the public” its publication “is not in the public interest.”

Mrs Cowie also claims the *ODT* journalist penning the story was motivated by a “vendetta” against the convicted woman.

The Response

ODT rejects the complaint. The newspaper refers to the convicted woman’s regular reported brushes with the law. While acknowledging the report will be distressing to the woman’s relatives the family is well known in Dunedin. The surname is recognised and “clarity is desirable”. The family link is relevant.

The newspaper refers to instances where other publications have linked convicted individuals with well-known families of which they are members. Such linking is not uncommon. The paper says family connections are in the public interest. These connections are handled responsibly.

ODT refers to “threats” the woman has made against its journalist but otherwise does not accept the story was in any way prompted by this element.

The Decision

Principle 2 requires newspapers to exercise particular care before identifying relatives of convicted persons. While the named man has no privacy to protect, his widow is still alive. As *ODT* acknowledges the family is well known in the Dunedin area. The community will know of the widow. The Council accepts that the widow will have been upset by this article particularly since there is no connection whatever between the granddaughter’s offending and her.

The Council sees no justification in this case for the family link to have been mentioned.

On the other hand it sees nothing justifying the complaint that the story was written as result of a vendetta on the journalist’s part.

The complaint is upheld by a majority 8:3.

Council members upholding the complaint were Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, Jenny Farrell, John Roughan, Hank Schouten and Christina Tay.

Council members dissenting from this decision were Sir John Hansen, Mark Stevens and Tim Watkin.

CASE NO: 2612 – TOM FREWEN AGAINST SUNDAY STAR-TIMES

Background

[1] Tom Frewen has complained about a series of articles run in the *Sunday Star-Times* and on *Stuff* from June 18 to July 30 2017 under the ‘Nurture Change’ tagline.

[2] Each article introduces a New Zealand business or sporting leader who will be speaking at this year’s Nurture Change Business Retreat in Fiji and features the chance for readers to win flights and one of four “scholarships” to attend the event.

[3] The articles are written by Zac de Silva, a business coach, “long-time columnist of the *Sunday Star-Times*” and the co-founder of the Nurture Change event. They appeared in the Business section of the paper and website.

Complaint

[4] Mr Frewen complains under Principle 10 ‘Conflicts of Interest’ and says that the content displayed on the Business pages as news stories are anything but. “They should have been clearly marked “advertising”, “advertorial” or “sponsored content”.”

[5] He initially complained about the June 18 story, saying that “the article has no discernable news value and does nothing to enhance the newspaper’s claim to having an independent editorial stance... It seems to me that the obvious commercial relationships, both hidden and declared, between the author of the articles, its subject, the newspaper and its owner, would require that it be labelled as an advertisement or, at the very least, as advertorial.”

[6] As more stories appeared over the coming Sundays, Frewen added to his complaint.

[7] He points out that the author of the articles about the Nurture Change retreat is one of three directors of Nurture Change Ltd. One of Nurture Change Ltd’s shareholders is Nurture Travel Ltd. Frewen claims its main business is

running this very annual five-day retreat in Fiji.

[8] Frewen says none of this is declared in the first, third or fourth articles. In the second, the paper has included a photo of de Silva and Steve Pirie, captioning them as “Nurture Change founders”. Reading the others readers would be unaware of the commercial interest the by-lined author has in the event. Yet, Frewen says, “clearly the purpose of publishing these articles is the promotion of a commercial enterprise”.

[9] He concludes: “The newspaper’s contribution seems to be a relaxation of the usual journalistic standards of sceptical inquiry in pursuit of objective truth to allow the company to promote the supposed educational benefits of its retreat.”

Editor’s Response

[10] The Council has two responses from the *Sunday Star-Times*; one from Business Editor Jayne Atherton to Frewen and another from Business News Director Roeland van den Bergh.

[11] Atherton thanks Frewen for his vigilance, but defends the series, saying that as a “long-standing columnist” de Silva has had a relationship with the *Star-Times* for three years “with regards to the annual competition to allow four of our readers the chance to attend his business retreat”. She feels “we have made the commercial/competition relationship clear at the end” of the articles, with a declaration that this is “a special collaboration”. It varies slightly from week to week, but the declaration essentially reads: “Nurture Change and Fairfax are giving away four scholarships worth around \$5,000 each. For full terms and conditions go to Stuff.co.nz and search “Nurture Change 2017”.

[12] She says where a photo of de Silva and Pirie was used, they were captioned as the event’s founders.

[13] In his reply to the Council, van den Bergh denies any commercial arrangement between Nurture Change and the *Star-Times*, but rather describes the relationships as “an entirely non-commercial media partnership”.

[14] Van den Bergh argues the stories are not advertorials “because the *Sunday Star-Times* is not being paid to write the articles. Indeed, we retain complete editorial control over the content of the articles”. Neither are they sponsored content, because advertorials and sponsored content require sign-off from a client. This is not the case for the Nurture Change series.”

[15] He goes on to say that while the complaint only covers four articles, there were at least six print articles run and the photo and caption of de Silva and Pirie disclosing their connection to the event ran in three of them. Online, they ran in six of eight articles published.

[16] While the *Star-Times* run the competition, it “has not bought, or in any way owns, the tickets provided for the scholarships. There is therefore no pecuniary advantage to Fairfax Media from the arrangement.

[17] Finally, the news director says staff have now reviewed the pages and decided to clearly identify de Silva as the co-founder of NurtureChange.com. “This will ensure that his relationship is more clearly disclosed”. Further, on August 8

a paragraph was added to all the online articles in the series identifying de Silva as the event’s co-founder.

Discussion & Decision

[18] Principle 10 states that newspapers must be independent of their sources to be good watchdogs and where a story is enabled by gift, sponsorship or financial inducement, it should be declared. Any link the author has to the story should also be declared.

[19] The *Sunday Star-Times* has roundly failed to fulfil this principle and, indeed, to uphold the highest professional standards as per our pre-amble.

[20] Each article subject to this complaint is displayed as a news story, with no declaration of the author’s interest in promoting the event from which he is profiting. The declaration in bold at the end of each story is in most cases, merely an invitation to enter a competition. It tells the reader nothing about the author’s conflict of interest.

[21] The exception is the July 9 column, which includes the photo of de Silva and Pirie captioned as founders, but it is not a prominent or adequate declaration. The more fulsome declaration at the end of the article does more to promote the event, but nothing more to spell out the fact the author is profiting from the retreat.

[22] It should go without saying that offering a partial declaration on some, but not all, of the articles in a series falls below the standards required of this principle. Getting it partly right some of the time is insufficient.

[23] The *Star-Times* has not helped its case with the internal contradictions in its responses. While van den Bergh describes the relationship between Fairfax and Nurture Change as “an entirely non-commercial media partnership”, Atherton properly acknowledges a “commercial/competition relationship”.

[24] Further, while van den Bergh insists the *Star-Times* does not “in any way” own the tickets for the scholarship, he goes onto highlight the declaration at the end of each piece that clearly states “Nurture Change *and* Fairfax are giving away four scholarships...”. As if Fairfax can give away something it does not own in any way.

[25] Van den Bergh also argues the articles cannot be advertorials or sponsored content because the *Star-Times* was not paid to write them and the client did not sign-off the articles. Yet clearly a transaction of sorts has occurred here. The *Star-Times* has gained content and four “scholarships”, while the author has been granted prominent space to write about an event from which he will profit. As for sign-off, when the client has been granted the rare privilege of writing the articles himself, sign-off is hardly needed.

[26] If, as van den Bergh says, editorial control was retained over the articles, it is hard to see where it was exercised.

[27] Undoubtedly, and despite their display as news stories, de Silva has written the articles predominantly to promote a commercial event from which he will profit. As such, the author’s conflicts of interest should have been declared on every piece, or, in line with standard practice, the person profiting from an event should not be commissioned to write about it.

[28] It seems incredible to the Council that the *Star-Times* would argue these articles stand alone on their news merit, given the promotional lines deployed (eg “Graham spoke at our inaugural Nurture Change Business Retreat. He was such a hit that he will be back by demand...”); the repeated references to the conference while tickets were on sale; and the uncritical praise that runs through each piece.

[29] But even if the paper believes the author came to such judgement independent of his stake in the retreat, it should have allowed its readers to decide for themselves.

[30] If, as the *Star-Times* decided, the co-founder should be permitted to write about his own event in its news pages, the articles should be clearly displayed as advertising, advertorial or sponsored content, so that readers can judge for themselves their rigour and exactitude. Anything less compromises Fairfax’s independence.

[31] While the paper defends its approach, its decision to add declarations of de Silva’s interests to each article - while still insufficient - suggests it does realise it has fallen short.

[32] On the matter of the complainant’s emails being lost, the Council is concerned that Fairfax would leave its complaints email “unattended” for some weeks, but is encouraged to learn from van den Bergh that “steps have been taken to ensure that all mailboxes are properly monitored”.

[33] The complaint against Principle 10 is upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afiu, Jenny Farrell, John Roughan, Hank Schouten, Christina Tay and Tim Watkin.

Mark Stevens took no part in the consideration of this complaint.

CASE NO: 2613 and 2614 – FRIENDS OF THE EARTH AUSTRALIA AND JULIE FOGARTY AGAINST THE SPINOFF

[1] Both Friends of the Earth Australia and Julie Fogarty complain about three articles published by *The Spinoff* in July 2017. Ms Fogarty also sought to lodge a complaint about an article published on November 24, 2016, but this complaint is out of time for consideration. The complaints are mainly of a breach of Press Council principle 1, concerning accuracy, fairness and balance, but principles 4 (opinion and fact), 6 (headlines and captions) and 10 (conflict of interest) are also relevant.

[2] The Press Council does not uphold the complaints.

Background

[3] On July 4, 2017, *The Spinoff* published an article written by Jess Berentson-Shaw, its “parents’ science writer” commenting on an Australian study commissioned by Friends of the Earth that raised concerns about the potential toxicity of certain nanoparticles found in some brands of baby formula. The writer characterised the study as “bad science”, questioned the methodology of the study and noted that it was a single study rather than a body of research. She also referred to the extensive testing that must be carried out under food safety regulations. Her article included a link to

more extensive comment in a blog post by a nanoparticle scientist, Dr Michelle Dickinson.

[4] After Friends of the Earth had lodged its first complaint, and in response to it, *The Spinoff* published (on July 8) Dr Dickinson’s post in its entirety, together with comment from Peter Griffin of the Science Media Centre and comment from Louise Sales, Emerging Tech Project Co-ordinator for Friends of the Earth.

[5] On July 20, *The Spinoff* published an article by a guest writer, Roz Palethorpe. The main focus of the article was the use of dubious marketing practices to target parents, but it included two paragraphs directed at the Friends of the Earth study which the writer described as based on shaky methodology and poor science.

The Complaints

[6] Both complainants’ main complaint is of inaccuracy and a lack of balance in both the original article and the two further articles.

Friends of the Earth makes the following main points

- The stories were prompted by an article in the *Sydney Morning Herald* that included quotes from concerned members of the scientific community, but none of *The Spinoff* articles acknowledge these concerns, thus leading readers to believe that there is scientific consensus on the safety of the nanoparticles in infant formula.
- Food Standards Australia New Zealand has breached its own standards and taken down a standard from its website to conceal this, but *The Spinoff* articles do not mention this.
- There are claims that the study commissioned by Friends of the Earth is based on unsound methodology and poor science. There is no mention that the study was carried out by leading nanometrologists at Arizona State University, using a method that had previously been used in a peer-reviewed paper.
- Similarly Dr Dickinson dismisses the findings of the European Commission’s Scientific Committee on Consumer Safety when it concluded that there was insufficient evidence to find that the nanoparticles were safe to use in oral cosmetic products, such as toothpaste.
- Dr Dickinson’s article says that the Friends of the Earth study involved infant formula bought in America, when all the formula studied was bought in Australia.

Ms Fogarty generally makes the same points but adds concerns that:

- The article ignores the intrinsic health risks of infant formula.
- It ignores identified systemic issues in the Australian and New Zealand regulatory systems.

- In discussing the work of international regulatory agencies, the article provides a link to an abstract written by Nestle rather than one produced by such regulatory bodies.

[7] After Friends of the Earth complained to the editor of *The Spinoff*, they were offered an opportunity to submit a further article setting out their views. *The Spinoff* undertook to put it in front of a neutral arbiter, but in fact submitted it to the Science Media Centre and published the ensuing comment from the Centre's Peter Griffin along with the Friends of the Earth article. Mr Griffin was not neutral as he had already criticised the research. Moreover he has no nanotoxicity qualifications.

[8] Both Friends of the Earth and Ms Fogarty complain that the articles present opinion as fact.

[9] Friends of the Earth complains about the headline to the July 8 article "Sensational Headlines and Intimidation over "potentially toxic" nanoparticles in baby formula". It says it does not accurately and fairly reflect the content of the post.

[10] Finally, both Friends of the Earth and Ms Fogarty complain that *The Spinoff* and Dr Dickinson have conflicts of interest. *The Spinoff* website includes an acknowledgement that its science content is supported by the MacDiarmid Institute for Advanced Materials and Nanotechnology. Friends of the Earth say that there have been a number of articles published by *The Spinoff* about the potential benefits of nanotechnology but none discussing the risks in any meaningful way. In addition, Dr Dickinson is a nanomaterial engineer and has worked with nano-hydroxyapatite systems. Ms Fogarty notes that Dr Dickinson works for the MacDiarmid Institute and says she has disclosed academic but not commercial interests in protecting the image of the nanotechnology sector.

The Spinoff Response

[11] Duncan Greive, editor of *The Spinoff*, responded to the complaints on behalf of *The Spinoff*. In both cases he said that "we read and corresponded with and published those who had issue with these stories. The science is complex and specialised, and we do not profess to be experts. However we do trust the science media centre – hence our going to them for a response. We published both the FoE response and the science media centre's in one post, so as to make sure our lay readership was able to know the proper context with which to view the FoE response."

Discussion

[12] The Press Council does not have either the expertise or the power to investigate competing scientific theories, but in this case, it notes that there is very little, if any, disagreement about the basic science involved. The disagreement is over the reliability and significance of the study commissioned by FoE. Nanoscience and nanotechnology are new fields and it is to be expected that differences of opinion will arise, will be vigorously debated and may eventually be settled by further research. The "inaccuracies" that are the subject of this complaint are generally differences of scientific opinion rather than debatable facts.

[13] In this context, *The Spinoff* appears to have acted with

good sense and integrity. It published a story based on material supplied by an expert in the field under discussion. When it became aware of the views of the Friends of the Earth, it offered them an opportunity to publish their views, and it also recognised its own lack of expertise by referring the issue to an independent authority. There is no doubt that the Science Media Centre provides competent and authoritative general scientific comment. It then published that comment along with the Friends of the Earth article and Dr Dickinson's blog post, thus providing readers with a range of material on which to form their own views. This approach is both fair and balanced.

[14] The only factual inaccuracy that the Press Council can find is in the first article where reference is made to the purchase of baby formula in America when it was purchased in Australia. It does not consider this a material inaccuracy, and notes that it was corrected in the second article.

[15] Similarly, the Press Council does not find any breach of Principle 4. The articles are presented as scientific opinion and to the extent that the opinion is based on facts, there is no real dispute about the accuracy of the facts themselves rather than their interpretation.

[16] Finally, the complainants appear to have misinterpreted the application of Principle 10. It does not prohibit the publication of sponsored material or of articles where the author has a financial interest in the subject matter, but it does require that such sponsorship or interest be disclosed. The sponsorship of the MacDiarmid Institute is clearly disclosed on *The Spinoff* website, and Dr Dickinson's own background is explained in her blog post.

Decision

[17] The complaints are not upheld

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens, Christina Tay and Tim Watkin.

CASE NO: 2615 – ANDREW GEDDIS AGAINST NEW ZEALAND LISTENER

Andrew Geddis complains a *New Zealand Listener* editorial looking at drug laws breaches Principle 1 (Accuracy, Fairness and Balance). It was published on July 6.

The complaint is not upheld.

Background

The *Listener* article was clearly an editorial, and was labelled as such.

Primarily, the editorial focused on various political positions on the decriminalisation of some drugs.

Complaint

Mr Geddis complained there was no factual basis for the following claim within the editorial:

"Peter Dunne now advocates we follow Portugal's state-controlled, medically supervised system with respect to the less-harmful drugs. This is wise counsel, but as the minister who presided over our disastrous experiment

with so-called legal highs – the oft-dangerous and increasingly potent synthetic drugs of ever-morphing formulation – he is a poor opinion leader. Under the regime he designed – since heavily modified – more young people used drugs than before, reassured that as synthetics were now legal, they were safer.”

Instead, he argued, the “regime” - the Psychoactive Substances Act 2013 - made it harder to get the synthetic drugs by:

- Requiring it be proved new substances were safe before being sold, and limiting the number of those already on the market.
- Radically reducing the number of outlets retailing the drugs.

Mr Geddis challenged the *Listener* to prove more people used the drugs after the Act was passed.

Later in the complaint process he went on to point out that the synthetic drugs in question were already legal prior to the legislation, which served to regulate the market for them.

Response

New Zealand Listener editor Pamela Stirling argued the Press Council’s Principle 5 (Columns, Blogs, Opinion and Letters) was also relevant in this case.

Ms Stirling said the editorial, in its entirety, looked at various approaches to reducing drug use and the effects of drugs on young people.

It was the view of the author that legalising drug use increased the risk of young people using it, both because of the ease of access to the drug and its perceived safety.

The editorial was balanced, well researched and based on study results and much anecdotal evidence. This laid a significant foundation of fact for the author’s opinion.

It was acknowledged that additional changes to the Psychoactive Substances Act could have resulted in a decrease in the use of the drugs by young people. But the point of the editorial was to highlight the effect of legalisation on young people’s drug use, and the potential damage to the development of their brains.

The Listener offered - or, as Ms Stirling said, urged - Mr Geddis to write a letter to the editor outlining his objection to the editorial.

Lastly, in response to Mr Geddis’ point that the synthetic drugs were already legal, Ms Stirling argued they were legal only because they were, at that point, unclassified. They didn’t yet have the ‘endorsement’ of Parliamentary permission; the legal status which could be interpreted by young people as a signal of safety.

Discussion

The editor has advised that substantial anecdotal evidence was drawn on to support the author’s opinion. This included information from police, parents, members of parliament, local mayors and principals. While this may not be empirical evidence the Council considers it sufficient to base an opinion on.

The Council puts little stock in the semantics of synthetic drugs being ‘legal’ prior to the legislation. It is quite clear the author was looking at the impact of an overt ‘legal’ label which came only with the passing of the Act, and the potential that it would be perceived as a safety tick by young people. Effectively, synthetics were legal before the legislation only because they had not yet been declared otherwise.

Furthermore, and possibly more importantly, the prior legal status is not a matter which would have led the audience to misinterpret the intent or angle of the editorial.

But, in reaching its decision, the Council relies most strongly on the author’s right to freely express his or her opinion, and the public interest that is served in editorialising on such an important matter.

Both the author of *The Listener*’s editorial and Mr Geddis are equally entitled to their opinions.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tuimalu Peter Fa’afiu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens, Christina Tay and Tim Watkin.

CASE NO: 2616 – RENEE GERLICH AGAINST SALIENT

Renee Gerlich complained that an article called “Sex Work and Self Care: The Taboo of the Unrepentant Whore” published in *Salient* on July 31 was sexist, inaccurate and misleading.

Background

Salient is a student magazine published by the Victoria University of Wellington Students’ Association. Its main target audience is students attending Victoria University.

On July 31, *Salient* ran a story called “Sex Work and Self Care: The Taboo of the Unrepentant Whore”, which was written by a sex worker. In the opening paragraph of the story, the writer announces: “My name is Min, I am 23 years old, and I am a whore”.

The story is a first-hand account of Min’s journey from sexually abused teenager to “happy and healthy” sex worker.

The writer says that though there is a perception that people who enter the sex industry do so because they have been damaged by abuse, it was not the case with her. “Sex work has allowed me to move past my trauma by experiencing consensual sex in a safe environment with men who value my time and body.”

She says she has been able come off medication for depression, and can now afford to focus on self-care and recovery. She tells readers she enjoys her work, and if she is not in the mood to share her body, she can take a day off.

She says sex work has changed her life, made her confident, self-assured and in charge of her sexuality. “I am a terribly happy, healthy whore,” she says.

The Complaint

Complainant Ms Gerlich believes the article represents an unacceptable editorial commitment to promoting prostitu-

tion: publishing it was irresponsible on *Salient's* part. She accepts that the story is a personal account, but believes it was promotional in that it discusses a dangerous industry in a misleadingly positive light, without any editorial warnings about the dangers and risks.

Salient has made no effort to provide balance of its positive representation of prostitution through in-depth, investigative, critical and/or conscience-based articles, she says. In publishing the article *Salient's* editors have demonstrated that they are willing to promote prostitution in spite of health and safety risks. "I am concerned how many female students may have entered prostitution as a result of *Salient's* encouragement."

Ms Gerlich says when she complained to *Salient's* editors, and requested they publish an article critical of prostitution to redress the problem of imbalance, they referred her to the New Zealand Prostitutes Collective (NZPC), a suggestion she strongly rejected.

Ms Gerlich complained that the language, jokes and slurs used in the article in question were deeply sexist, and for the magazine to promote the author's enthusiasm for the sex trade was irresponsible.

She says she shared the testimonies of six survivors of prostitution in a comment box on *Salient's* Facebook page but the editors deleted her comment. "It was therefore censored," she says.

The Response

The editors of *Salient* pointed out that sex work is legal in New Zealand, and the article was a first-person narrative by the author.

The author clearly consented to sex, and there was no suggestion she had been coerced or pressured into working. In fact she states: "I fully enjoy every day for sex work."

The author discusses only her own experiences and does not claim to represent all sex workers, they say.

The editors acknowledge that they could have run a disclaimer that the article was from the perspective of a sex worker, but they felt that point came across clearly in the story. In the future, they say, they would consider including links to student support services at the end of the article. These have since been included at the end of the online version. The article carried a content warning about sexual assault and violence.

They defended the publication of the author's rape jokes as in context she was clearly denouncing those who make such jokes. As to her use of the word 'whore', she self-identifies as a whore and doesn't use the word to describe others in the industry.

The editors published the article because they believed Min's story was important as she was a survivor of sexual abuse. "Min's experience is uniquely their own. It is also an experience of sex work that we haven't read elsewhere and felt it was important to share."

They had invited the complainant to respond with a 500-word article for *Salient's* opinion section, but set clear parameters

that she respond generally to sex work in New Zealand as opposed to Min's personal experiences. It was particularly relevant that Min was a survivor of sexual assault, and that was why they had blocked the complainant from posting on the Facebook post of the story. They explained that blocking the complainant's comments had inadvertently resulted in all her comments being deleted: it had not been their intention to censor the six testimonies of prostitution survivors.

The editors maintain the right to block comments. They say they are open to criticism and feedback and had published a letter which addressed the debate in response to "Sex Work and Self Care: The Taboo of the Unrepentant Whore", in a subsequent issue of the magazine.

Discussion

As has been noted by the Press Council before (case 2508), student magazines as a genre have a history of provocation and pushing the boundaries of what may be considered decency with content that is challenging, irreverent and offensive. The Press Council acknowledges the genre and is prepared to make some allowances for it as long as essential principles are maintained.

The merits or otherwise of students working in the sex industry while studying at university is not an uncommon topic for student magazines and although the idea of teenagers entering into prostitution as a means of earning money is abhorrent to many, the fact is that sex work is legal in New Zealand, and they have every right to do so, the risks to health and safety notwithstanding.

The sex industry is therefore a legitimate subject for discussion and we see no reason why publications, student media or otherwise, may not report and express opinions provided they abide by Press Council principles.

"Sex Work and Self Care: The Taboo of the Unrepentant Whore" is a first-person account of a young woman's experiences as a sex worker, and though the tone is deliberately provocative and some of the language is confronting, it is one person's view and as such must be considered opinion. The sexist jokes and slurs within the piece are quite deliberate, but in context can not be considered sexist, as the writer is clearly making a point that sex workers are frequently discriminated against because of what they choose to do.

The Press Council preamble states: "There is no more important principle in a democracy than freedom of expression." As an opinion piece, according to Principle 5, Columns, Blogs, Opinions and Letters, balance is not essential.

The article did carry a content warning. We note that the editors of *Salient* have stated their intention to provide links to support services at the end of any future articles of this type, and have added links to the online version of the story in this complaint.

We note that the editors have admitted they are still on a learning curve with regard to their social media postings, and did not intend to censor the complainant's link to a blogpost containing narratives by six survivors of prostitution when they deleted her comments attacking the article. By happy circumstance, another reader had also posted the link to the blogpost, which was not deleted.

We also note that the complainant was invited to write a 500-word opinion piece expressing her views on student sex workers and the risks of the industry; this demonstrates a willingness to continue an open debate on the topic.

For these reasons we do not consider *Salient's* decision to publish irresponsible, nor does it demonstrate an unacceptable editorial commitment to promoting prostitution.

Ms Gerlich's complaint does not specifically cite Press Council principles, but we have considered it under Principle 1, Accuracy, Fairness and Balance and Principle 5, Columns, Blogs, Opinions and Letters.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens, Christina Tay and Tim Watkin.

CASE NO: 2617 – JULIE HALES AGAINST THE PRESS

This is a complaint that an article in *The Press* about the return of exhibits used in the David Bain trial breached principles of accuracy, fairness and balance by suggesting that while he had been acquitted, Bain had killed his own family. It was also claimed that the article and photographs appeared to deliberately sensationalise and provoke. The complaint was not upheld by a majority of the Press Council 9:2.

Background

The Press ran an article on June 21, 2017 reporting that the .22 rifle used to kill the Bain family in Dunedin in 1994 and other court exhibits were to be returned to David Bain through his advocate Joe Karam, despite objections from surviving family. The rifle was an exhibit in the trial of David Bain who had initially been found guilty and ultimately acquitted in 2009 after he was retried on charges of murdering his father, mother, sisters and brother.

The article was illustrated with photographs of the rifle being held by a witness during the retrial, David Bain's shorts and socks and a blood-soaked glove. Also included were photos of David Bain, Joe Karam and David's father Robin.

One sentence in the article stated:

"Other items to be returned to David Bain include the bloody white gloves allegedly used by the killer, his T-shirt, socks and underpants, and items from his bedroom."

The Complaint

Julie Hales said the article, which ought to have been a simple fair statement of facts about the return of exhibits, was sensationalised by being given prominence, large headlines, confronting colour photographs of court exhibits and 22 paragraphs of mostly biased content.

The use of a photo showing a witness holding a gun to his own head was unjustified, confronting and out of context given the trial had taken place eight years earlier, and inappropriate given the country's high teenage suicide rate.

The article was intended to shock and provoke continued

controversy in spite of the acquittal eight years earlier.

She said that the sentence - "Other items to be returned to David Bain include the bloody gloves allegedly used by the killer, his T-shirt, socks and underpants, and items from his bedroom" - can only be read as "the killer" referring to David Bain.

The paper had an agenda when it ran this story and the journalist Martin van Beynen was biased. This was evident three weeks later with the publication of a further full page story, an extensive broadcast media interview and a four hour podcast on the case in which van Beynen said he was certain Bain killed his family.

The Response

Kamala Hayman, deputy editor Canterbury Otago, said the Crown's decision to return exhibits relevant to the Bain trial was a key development in this long running case, of significant public interest and warranted front page placement. Its position and headline were in keeping with it being judged the most significant news story of the day.

As for bias, she said the article was a largely factual account of the situation with sparing use of adjectives. Martin van Beynen was arguably New Zealand's foremost expert on the Bain murders and had expressed his views on who the killer was. However, as a senior investigative journalist he was experienced in writing balanced factual accounts of news developments regardless of his views, which were restricted to clearly labelled opinion pieces.

The particular sentence complained of was an accurate statement. It did not say who the killer was and she rejected the suggestion it could only be read as referring to David Bain. The article clearly stated in the third paragraph that Bain had been acquitted.

While it was recognised publication of the photograph of the rifle could be confronting to some readers, its use in the context of this article was relevant and in the public interest. This rifle was a key exhibit in the trial and the photo illustrated a key moment.

The photos were not shocking or distressing in the context of a case well known to most New Zealanders and involving the violent death of five members of the Bain family.

The Decision

The Bain case has been a matter of great public interest and controversy over the many years since the murders took place. There have been two trials, the second ending in an acquittal, an ex- gratia payment to David Bain and a finding that he had not established his innocence on the balance of probabilities.

The return of the rifle and other personal items to Bain and other family members is of some moment and the Press Council is not in a position to argue that it did not warrant front page treatment. The photos were shocking but so was the case. The main photo, taken at the trial eight years earlier, was compelling. It was also confronting, as it was to Ms Hales, but it was not gratuitous or unwarranted in the context of this story.

Whether it was inappropriate, given the country's high

suicide rate, we can only make the point that all editors must weigh that matter carefully when making editorial decision like this.

A worrying aspect of this complaint is the suggestion that *The Press* and its journalist were biased against David Bain. This is always a danger when reporters, who are required to cover events without favour, are then allowed or encouraged to express their views, albeit in separate and clearly marked opinion pieces. However, many readers will see the same by-lines on both “news” and “opinion pieces” and be confused by the distinction. Any hint of bias can be corrosive. The blurring of lines between reportage and editorial opinion can erode trust in the media and publishers and journalists need to reflect on that.

Although *The Press* reported high up in the article that Bain had been acquitted, Ms Hale’s view that *The Press* was biased in its reporting of this case was, we believe, based on a misreading of the sentence she complained of.

The word “alleged” is pivotal here. The Crown alleged he was the killer. *The Press* was not inaccurate when it reported that the items returned to Bain included the bloody white gloves “allegedly used by the killer.”

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afu, Jenny Farrell, John Roughan, Mark Stevens and Tim Watkin.

Hank Schouten and Christina Tay dissented from this decision and would have upheld the complaint.

CASE NO: 2618 – HILARY LAPSLEY AGAINST NEW ZEALAND HERALD

[1] Hilary Lapsley complains that a *New Zealand Herald* online article dated 2 August 2017, carrying the original headline, ‘Best Tweets about Jacinda’s womb’ breaches the following NZ Press Council principles:

- Principle 1: Accuracy, Fairness and Balance
- Principle 2: Privacy
- Principle 6: Headlines and Captions
- Principle 7: Discrimination and Diversity

The majority of the Press Council has upheld the complaint under Principle 7 – 8:2.

[2] The article discusses the announcement of Jacinda Ardern as the new Labour Party Leader and questions put to her about her plans for having children including an on-air interview with Mark Richardson on the *AM Show*.

[3] In the article there is a conversation between Mark Richardson and Jacinda Ardern where Mr Richardson has said in relation to asking Ms Ardern about her intention of having children, “If you are the employer of a company you need to know that type of thing from the woman you are employing...the question, is it okay for a PM to take maternity leave while in office?”

[4] Ms Ardern responded to Mr Richardson by saying, “It

is a woman’s decision about when they choose to have children, it should not predetermine whether or not they are given a job, or have job opportunities.” She had also said to Mr Richardson that it was most definitely not okay for an employer to ask that of a potential employee in a job interview.

[5] The article prompted a number of responses via twitter on the same day, 2 August 2017 including a response by the NZ Human Rights Commission which served to “remind everyone that it is not okay for employers to ask that question.”

[6] The complaint file captured the twitter responses from 11 tweeters including the Human Rights Commission and the tweet that the article was premised on, as follows: “I just wanna hear about some policy; Don’t waste my time with pie jokes or querying potential womb statuses. Election is coming.”

The Complaint

[7] The complaint is based on a *NZ Herald* Lifestyle article that appeared online dated 2 August 2017.

[8] Dr Lapsley has complained the article breaches four NZ Press Council principles. She has commented on the article headline, ‘Best Tweets about Jacinda’s womb’ and has described the headline as being “outrageously disrespectful.” She further comments, “I would think it’s unacceptable” and, it is also “sexist”.

[9] Dr Lapsley has added weight to her complaint by providing the following example (which supports the alleged breach of principle 7), “I just couldn’t imagine a headline saying ‘best tweets about Bill’s [English] testicles’ for example.”

[10] Dr Lapsley has described the *Herald’s* headline as discriminatory, “They could have used less invasive ways of reporting on the issue of whether it was okay to ask Ms. Ardern about her intentions around parenthood, as they showed when they later changed the headline to refer to ‘baby plans’ rather than ‘womb’.”

[11] In further correspondence with the *NZ Herald*, Dr Lapsley extends her comments about the headline and thus describes the article headline as being “very offensive and degrading” and “not up to your usual standards as a newspaper.” Principle 6: Headlines and Captions

[12] The article originally carried two headlines:

The shortened version: “*The best tweets about Jacinda’s womb*” appeared on the website’s homepage.

“*The best tweets about whether Jacinda’s womb is any of our business*” was published above the online story.

[13] Dr Lapsley’s complaint also includes the breach of three additional Press Council principles.

Although Dr Lapsley has not attributed specific wording towards the alleged breaches, the wording from her original complaint will be applied to the following three principles in The Decision section of this paper:

Principle 1: Accuracy, Fairness and Balance – this principle

outlines the requirement for accurate content, reporting with fairness to each party, when there is more than one involved, and balanced reporting.

Principle 2: Privacy – this principle refers to privacy of person, space and personal information.

Principle 7: Discrimination and Diversity – this principle refers to issues of gender amongst many other categories. It also highlights that gratuitous emphasis should not be placed on any of the named categories when reporting.

The Response

[14] In a response to Dr Lapsley about the change in the article headline, Senior Newsroom Editor at *NZ Herald*, Oskar Alley explained that with any article on *the NZ Herald* website there are “two versions of headline” for the story. One headline is limited to 43 characters and is therefore shorter and then the full-length version.

[15] This article carried three headlines and Mr Alley has explained that the headline was re-purposed in the evening to read “*The best tweets about whether Jacinda’s baby plans are any of our business*”. He says it is common practice for the *Herald* to re-surface popular articles from earlier in the day for an evening audience which includes refreshing the headline. He also denies that the headline was changed in response to a complaint or negative feedback.

[16] Mr Alley explained that the headline accurately summarised the content of the article beneath it, specifically a tweet which was posted at 4.40pm 1 August 2017, which read:

“I just wanna hear about some policy; Don’t waste my time with pie jokes or querying potential womb statuses. Election is coming.”

[17] Mr Alley went on to further explain to Dr Lapsley that the *Herald* website had “published many articles surrounding the ascension of Jacinda Ardern to the Labour leadership and the public reaction to the fact she was asked about her personal family plans. This article captures the social media reaction to this debate.”

[18] The *Herald* did not accept that the headline was an attempt to “sexualise”, “degrade” nor “disrespect” Ms Ardern. The headline was “simply a sassy entry point into an article canvassing a debate that had played out publicly all day.”

[19] Mr Alley in his response has remarked on his modus operandi in providing a response to a reader complaint in the context of Dr Lapsley’s intention to base her complaint on the four aforementioned NZ Press Council principle breaches, “Ordinarily at this stage, I would dutifully respond to each of the Press Council principles Dr Lapsley claims have been breached (and she has cited just about all of them). Instead I submit that Principle 6 is the relevant principle and in this case the headline accurately reflected a comment contained in the article (Cate Owen’s tweet).”

[20] As part of his response to the complaint by Dr Lapsley, Mr Alley has included an article by Human Rights Commissioner Dr Jackie Blue which is essentially a response to the public queries that Ms Ardern had received on television and radio

about her future plans to have a family. In reference to the language used within the article Mr Alley has suggested, “Ms Blue repeatedly references Ms Ardern’s womb – and I submit that if it is appropriate language for a Human Rights Commissioner to use publicly then it must stand to reason that it is also acceptable for mainstream media to do so.”

[21] Mr Alley has acknowledged that Dr Lapsley did find the article headline “distasteful”.

The Decision

[22] Before turning to discuss the complaint, it is necessary to address the point that Dr Lapsley has based her complaint on the breach of four Press Council principles as stated earlier in this decision. However, in addressing the complaint, Mr Alley has stated “Instead I submit that Principle 6 is the relevant principle...” Principle 6: Headlines and Captions

[23] As this is a principle that is agreed between the parties, this will be the first principle that will be addressed and then the remaining three principles will then be considered for the sake of completeness and as an acknowledgement that the NZ Press Council did accept the complaint from Dr Lapsley on that basis.

[24] The headline complained about does comply with Principle 6 “...should accurately and fairly convey the substance or a key element of the report they are designed to cover.” The use of the word ‘womb’ in the headline was also captured in the tweet which was the basis for the article. Therefore the Press Council has ruled that the complaint in relation to Principle 6 is not upheld.

[25] The Principle 1 states that “publications should be bound at all times by accuracy, fairness and balance... and should not deliberately mislead or misinform readers by commission or omission.” The content of the article satisfied the requirement set out in Principle 1 and there was no specific querying of the article content per se. The consideration for this principle can therefore be set aside. The Press Council agreed unanimously that this principle has not been breached and therefore this is not upheld.

[26] The Principle 2 refers to privacy of person, space and personal information. In this matter for consideration, Ms Ardern has been questioned on her future plans for having children. Ms Ardern had recently been announced as the new Labour Party leader, a very public role especially in an election year. As Ms Ardern has openly engaged in public dialogue about the subject of her future plans for a family this principle has not been breached. Not upheld.

[27] The final principle to be considered is Principle 7 – Discrimination and Diversity. Dr Lapsley contended the headline was discriminatory in referring to Ms Ardern in a sexualised and sexist manner in a way that would not happen to a male politician; she couldn’t imagine an article headline carrying a message about a male politician’s testicles. In relation to this principle the majority of the Press Council members agree and uphold the complaint under Principle 7.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afu, Jenny Farrell, Hank Schouten, Mark Stevens, Christina Tay and Tim Watkin.

Mark Stevens and Chris Darlow dissented from this decision and would not have upheld under Principle 7.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2619 – GRAHAM ROBERTSON AGAINST THE PRESS

On Monday May 1, 2017 *The Press* published an article titled ‘Demise of a Canty fishing paradise’ that discussed the pollution of the Irwell and Selwyn Rivers and range of associated creeks and streams. Using the recollections of a resident, the demise of fish in the rivers is outlined. Comment from the Chief Scientist at Environment Canterbury is included that states that the streams do have poor water and they have suffered from low flows (driven by low rainfall and extraction for irrigation). The Chief Scientist also states the water quality in the streams has improved due to ‘stock exclusion’ and ‘better riparian management’.

The Complaint

Mr Robertson complains about the article citing Principle 1 Accuracy, Fairness and Balance and Principle 7 Discrimination and Diversity.

He argues, under Principle 1, that:

- The picture of the cows in the stream accompanying the article is misleading. The picture is a stock photo and not of the streams in question. He also argues that image of the stock in the stream does not fit the current practice where most waterways are fenced.
- The other two photos are of streams other than those discussed in the article.
- The placement of the story as front page misleads the reader by suggesting it is breaking news.
- That the mention of land-intensification and agricultural pollution as a reason for pollution is inaccurate as this area has historically always been farmed.

Under Principle 7, he argues that farming families have unduly been the subject of unfair reporting.

The Response

The Press, through deputy editor Kamala Hayman, responded to the complaint in the following ways:

- The stock were in a stream mentioned in the article. However, the photo was taken in 2000 and Ms Hayman acknowledges that the date of the photo should have accompanied the image.
- The two other images were taken at the stream in question.
- The story is news worthy, is part of a long-running issue and is balanced as it included comment from an expert (the Environment Canterbury Chief Scientist).
- The district has always been farmed but Ms Hayman cites numbers to show that the number of cows in the district has doubled in recent years and farming techniques have changed over the past century to include more fertiliser and irrigation.

The Decision

Water quality issues and the role of farming in them is a long-running and on-going issue that attracts media coverage. This article must be viewed in this context and a range of views are included in the article. Given this, it is a long bow to suggest farming families have been discriminated against. The complaint under Principle 7 is not upheld.

In regard to the issues raised under Principle 1, editors must be free to place articles where they see fit. Placing an article on the front page of the paper cannot be inferred to imply that issue is ‘breaking’ but rather that it is deemed of enough importance by the editor to take this position.

In regard to the photo of the cattle in the stream, it is unfortunate that the date was omitted. A reader could expect that this photo represented current practice and may not be so. This error falls well below what would be expected as industry best practice.

The Press Council is not an expert in identifying streams in the Selwyn district. We will take *The Press* at its word that the photos were taken where they claimed they were. Further, the Press Council is not an expert in the intensification of farming. However, a quick investigation suggests that the numbers of cows in the Selwyn district has likely to have risen (Dairy NZ statistics for the Canterbury region for 2015/16 show 930 086 cows compared with 891 843 in 2013/14). Therefore, the complaint’s claims of inaccurate reporting cannot be substantiated.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa’afu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens, Christina Tay and Tim Watkin.

CASE NO: 2620 – PETE ROSE AGAINST THE RODNEY TIMES

Pete Rose complained that an article in *The Rodney Times* breached Press Council Principle 1 (accuracy, fairness and balance).

Background

On August 1, 2017 *The Rodney Times* published an article headlined “Cat curfew divides Rodney residents”. The story was based on public comment made on *The Rodney Times* Neighbourly page which had invited responses to the idea floated by a number of councils that cat curfews could be imposed to protect bird populations. It reported there was support for tighter control on cats.

The Complaint

Pete Rose complained that the headline was inaccurate as it suggested a cat curfew was in place in the area. The article was deliberately misleading as it pretended a wide-ranging community debate was occurring when it was solely based on social website postings on the Neighbourly website and was part of “the ongoing orchestrated libellous propaganda campaign against our cats”. The article did not mention how many posts were made and its purpose was to drive internet traffic to the website rather than educate or inform about a

topic of genuine community interest.

The Response

The Rodney Times editor, Rhonwyn Newson, said the subject of cat curfews was a subject of nation-wide community debate and there had been a number of articles on this. A Neighbourly website item on this recorded 14 likes and 23 replies, which the editor described as a big response compared to other similar news posts. The comments varied and were diverse enough to warrant a story and the article was an accurate snapshot of community sentiment. The article did not state a curfew was in place and the headline was fair. The editor cited other articles in the paper to rebut the claim that it was part of a campaign against cats.

The Decision

The article, based on social media comment, indicated some local interest on the subject of cat curfews and it was written to reflect that and encourage further debate. Mr Rose fairly pointed out that the article should have mentioned the number of posts on which the story was based. That would have allowed readers to gauge the credibility of the report but, apart from that, the story was unexceptional and the headline was a fair indication of what was contained in the article.

The complaint was not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens, Christina Tay and Tim Watkin.

CASE NO: 2621 – GRAHAM WILLAN AGAINST HAWKE'S BAY TODAY

Graham Willan complained about an article published online by *Hawke's Bay Today* on August 2, which covered a fatal crash that killed the driver and sole occupant of the car involved. The online article, which was accompanied by a photograph of the badly damaged vehicle, appeared within an hour of the accident, before the wife of the deceased had been informed by police of her husband's death. The deceased's wife had recognised the vehicle in the photograph, and called police, who confirmed her husband was the deceased driver.

The Complaint

The brother-in-law of the deceased driver, Graham Willan, complained to the Council, saying:

The article was "disgusting and disrespectful".

The photos were uploaded to the paper's website at 2.50pm. This was in advance of his sister being informed of her husband's death.

The photo of the wreckage with a tarpaulin over it did not hide the distinctive paint colour of the vehicle.

When her husband did not return from work and could not be contacted, Mr Willan's sister checked the internet and found the article and the photo of her husband's distinctive vehicle.

The article (recognition of the car) prompted her to call the police.

The Response

Andrew Austin, Editor, *Hawke's Bay Today* responded:

that he acknowledged the grief which led to the complaint and did not wish the Press Council complaint process to prolong that grief.

The publication engaged fully and immediately with the complainant and continued to do so. This included a phone conversation with Mr Willan.

Despite other news outlets running similar photos, the publication used alternative photos in subsequent coverage. This decision was part of the publication's continued review of the published material after accidents, so the decision was made before the first complaint.

Digital news immediacy is providing unprecedented challenges to newsrooms. There is a fine line between public interest and private grief.

The photos were not disrespectful or insensitive.

Although extremely regrettable, the editorial team believed at the time that it was highly improbable that the photos would lead to identification of the victim.

No name was used in the story.

The community has a widespread and legitimate interest in these types of stories.

There is now a new protocol in place to deal with similar stories in the future.

The Decision

The two Press Council principles being considered here are related to Privacy (Principle 2) and Photographs / Graphics (Principle 11).

Under Principle 2, everyone is entitled to privacy of person, space and personal information, and these rights should be respected by publications. However this should not interfere with the publication of matters of public record or public interest. Also, those suffering from trauma or grief call for special consideration.

Press Council Principle 11 warns editors to take care in photographic and image selection and treatment, and states: "Photographs showing distressing or shocking situations should be handled with special consideration for those affected."

The editor of *Hawke's Bay Today* says the editorial team believed it was highly improbable that publication of the photograph would lead to identification of the victim. Such decisions however always carry a risk, and in this case the wrecked car was of a distinctive colour and was recognised by the deceased driver's wife, who had been trying without success to contact her husband.

There can be no doubt that the discovery of the image, and subsequent confirmation of her husband's death, would have been extremely distressing to the victim's wife and loved ones. The question before the Council however, is not so much the nature of the image, but whether publishing it 39 minutes after the accident was in the public interest, given the crash occurred on a busy, well-used highway.

In this case the Council believes the publication failed to

show due consideration: we believe extra caution should have been exercised in making the decision given the subject of the image and the speed with which it was uploaded to the website. Would have it been hard for the reporter to check whether police had made contact with the victim's family? If the police had answered not yet, what impact would that have made on the decision to use that photo?

We note that the photograph in question did not appear in the print version of *Hawke's Bay Today*, which was published the following day; the editor said the decision to use a photograph of the truck involved, despite other news outlets running similar images of the damaged car, was made as a result of a review of material published after accidents, even before the complaint had been received.

Immediacy of news in the digital era is a challenge and the Council is fully aware of the challenges this presents to editors, but that does not give online news outlets the right to ignore the Press Council principles. We note that the editor of *Hawkes Bay Today* has said there is a new protocol in place to deal with similar stories in the future. However in this case, we find *Hawke's Bay Today* was in breach of both Principles 2 and 11.

The complaint upheld by a majority of the Press Council with two members John Roughan and Mark Stevens dissenting.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, Jenny Farrell, John Roughan, Hank Schouten, Mark Stevens, Christina Tay and Tim Watkin.

CASE NO: 2622 – KEVIN BROWN AGAINST THE WEEKEND HERALD

Kevin Brown complains a *Weekend Herald* infographic breaches Principle 1 (Accuracy, Fairness and Balance) and Principle 7 (Discrimination and Diversity).

The complaint is not upheld.

Background

The complaint relates to an infographic attached to a preview report for a Bledisloe Cup match.

Among five things the author identified as 'factors at play' in the match, there was one labelled 'Michael Cheika'.

About the Wallabies coach it said: "Pressure continues to mount. The 2015 Rugby World Cup is fast becoming a distant memory; believers are dwindling by the day. Cheika has limited cattle to work with but some of his selections are odd and his methods don't seem to be getting the best from the squad he has assembled. It shapes as another long year for the Wallabies".

Complaint

Mr Brown said it was insulting and disrespectful to refer to the Wallabies as 'cattle to work with'. He argued it was unlawful discrimination and a breach of their human rights.

Although not relevant to the principles, Mr Brown also took aim at the journalist saying he was neither clever nor insightful; he came across as arrogant with assumptions of grandeur.

The tone of the journalism was derisive and ungracious.

Response

For the *Herald*, senior editor Oskar Alley said the content was part of the writer's analysis of the impending match.

The analysis was correct, and Mr Alley pointed out that it was not uncommon for coverage of an All Blacks match in NZ to be skewed toward the local audience.

The paper reserved 'the right to occasionally stray into some parochialism' - both positive coverage of the All Blacks and negative coverage of the opposition.

Mr Alley put the cattle comment in the same context as the two nations' long history of verbal barbs and antagonistic reporting around rugby. And he noted the respective coaches had been 'duelling' in recent times.

Decision

The infographic content was the writer's analysis of the looming match.

Although not overtly labelled as such, it is clear this was the sport writer's opinion of the 'factors at play' ahead of the test.

The content cannot be considered inaccurate. Nor does the Council consider it unfair or unbalanced.

In regard to discrimination, it is important to consider the context of the content: An analytical commentary ahead of a rugby test match. Referring to the team as cattle for the coach to work with is narrative license rather than an attack on the players' human rights.

As important as context is here, is the position and role of the 'targets' of the comment. Professional sports men and women are fair game when it comes to reporting around their performance and one can only imagine that this article would have had little or no impact on international representatives well used to this type of news coverage.

Lastly, Mr Brown's criticism of the writer has not formed part of the Council's consideration of whether principles were breached. Because it was raised, however, the Council notes that the criticism was unwarranted and it sees nothing arrogant in the tone of writing.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Jenny Farrell, Marie Shroff, Vernon Small, Mark Stevens and Christina Tay.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2623 – PETER BULL AGAINST THE NEW ZEALAND HERALD

1) Peter Bull has complained about a news.com.au story that appeared in the *Herald* online headlined "Violence in Myanmar shows the world needs to stop romanticising Buddhism" published online on September 17, 2017. The index headline on the home page read "Brutal truth about Buddhists we ignore".

2) It was angled on the role of majority-Buddhist Myanmar in the violence against the Muslim Rohingya minority.

3) It cited an expert's view that people around the world

needed to shed their romanticised view of Buddhism and Buddhists as a peaceful religion and confront the reality of what was happening in the region.

4) The article, which drew extensively on an Associated Press feature, said villagers fleeing across the border to Bangladesh told of mobs of soldiers and Buddhist monks setting houses on fire and spraying the area with automatic gunfire.

5) The expert, Dr Maung Zarni, is reported saying the world needed to shed a romanticised view of Buddhists and Buddhism as a peaceful religion and that Buddhism was as susceptible to political manipulation as was Christianity, Islam, Hinduism and Judaism.

The Complaint

6) Mr Bull said the headline on the *Herald's* World online section that read "Brutal truth about Buddhists we ignore" was gratuitous and sensationalist, slandering a whole religion based on the actions of a few in a Buddhist-majority country.

7) He questioned whether any media outlet would publish an article if the word Muslims replaced Buddhists. He said journalists were careful not to link the religion of a terrorist to their violent actions.

"If one reviews Dr Zarni's comments, it's clear that the short headline does not reflect Zarni's relatively mild statements. And regardless of his credentials, his comments represent an opinion only, not 'truth'."

8) He asserted the article was "one-sided and lacks objectivity; it condemns 'Buddhists' based on the accounts of violent insurgents and displaced Rohingya. These claims are presented uncritically without independent investigation or verification, while the accounts of non-Rohingya locals (such as the Hindu minority) are not reported".

9) His complaint cited breaches of Press Council Principle 1 (accuracy fairness and balance), Principle 4 (comment and fact), and Principle 7 (discrimination and diversity). By implication he also complained of a breach of Principle 6 on headlines.

The Response

10) Senior newsroom editor Oskar Alley on behalf of the *Herald* said Dr Zarni was an acknowledged expert commentator and advocate who was entitled to express his views on Myanmar, Buddhism and its history.

11) He said the article was clearly presented as news not an opinion piece.

12) He rejected as simplistic Mr Bull's argument that the act of killing meant that by definition the killer was not a Buddhist, by pointing to the Christian commandment not to kill which had not prevented Christians killing over the centuries.

13) He said it was a lengthy article "which seeks to provide extensive background and historical context to the current plight of nearly 400,000 Rohingya who have fled Rakhine state".

Discussion and Decision

Principle 1:

14) Mr Bull does not catalogue specific inaccuracies and his complaint on this principle rests more on the article's balance and fairness.

15) He alleges the accounts of violent insurgents and displaced Rohingya are presented uncritically without independent investigation or verification, while the accounts of non-Rohingya locals (such as the Hindu minority) are not reported.

16) It is not clear what he believes the Hindu minority view would have revealed. But the article does canvass other issues including, for instance, mention of the Muslim Rohingya insurgents' role in an incident that may have sparked the latest round of violence.

17) It also mentions the claims by Myanmar that Rohingya are burning their own homes and villages, and the compelling view of the UN human rights chief who dismissed that as a denial of reality.

18) Dr Zarni's reported comment that "Buddhism was as susceptible to political manipulation as was Christianity, Islam, Hinduism and Judaism" provides context that weighs against the complaint of bias against Buddhists in particular.

19) It should also be noted that the article is not the only one in recent years to point out the involvement of Buddhists in violence.

Time magazine's July 2013 cover article was about "The face of Buddhist terror: How militant monks are fueling anti-muslim violence in Asia"

<http://content.time.com/time/covers/asia/0,16641,20130701,00.html>.

It was subsequently banned by Myanmar.

20) The *Herald* article quickly moves on from Dr Zarni's views to coverage of the extent of the violence and the size of the refugee problem before returning towards the end to Dr Zarni's comments about the need for international action. It also provides historical context for the current human rights crisis - decades of persecution of the Rohingya - as well as the contemporary international response.

21) Mr Bull also takes issue with the report's failure to mention that Aung San Suu Kyi has no control over the military.

However in her case the thrust of the article is that as de facto leader of the country she had been virtually silent, despite her status in the country and amid widespread calls from the international community for her to speak out and use her influence as a Nobel Laureate.

The Council finds no breach of principle 1.

Principle 4:

22) A news article can include the opinions of those interviewed, as it often will, without becoming an opinion piece. An opinion fairly represented in a news article does not breach the principle on comment and fact unless there is a failure to distinguish between the two.

25) Here Dr Zarni's words are clearly presented as his own view on the prevailing attitude to Buddhism put into the context of the wider news article.

26) However the Council notes it would have been preferable if some background on Dr Zarni's role as a long term advocate for the Rohingya had been included in the article rather than the bare reference to him being an expert.

The Council finds no breach of Principle 4.

Principle 6:

27) The headline, which Mr Bull takes strongest issue with, was a short version headline on the *Herald's* online homepage.

28) The *Herald* has agreed the wording cited by Mr Bull is correct but it could not provide the Council with a copy of it.

29) It seems the summary headline was part of a homepage listing - effectively a list of the stories that can be accessed. Readers who clicked on the item would be taken to the full article and its longer headline, to which Mr Bull expresses no specific objection.

30) Even so, as it stands the short headline is an accurate summary of the article's main angle and the views expressed in it by Dr Zarni.

31) We note that Mr Bull says it does "not reflect Zarni's relatively mild statements". However in the article Dr Zarni makes even stronger claims including of "fully fledged genocide" against the Rohingya in Myanmar.

The Council finds no breach of Principle 6.

Principle 7:

32) This principle notes that, among other things, religion, minority groups and race "are legitimate subjects for discussion where they are relevant and in the public interest, and publications may report and express opinions in these areas. Publications should not, however, place gratuitous emphasis on any such category in their reporting".

33) The issues of religion, race and minority groups are clearly relevant in the context of the violence and refugee exodus from Myanmar of a minority Muslim community fleeing the state forces of a Buddhist-majority state.

34) The Council does not believe the reporting in this case placed gratuitous emphasis on Buddhists' role in the violence but instead represented the views of an expert advocate who wanted to redress what he saw as an imbalanced view of Buddhists as universally peaceful.

35) As cited in the discussion on Principle 1, the article mentioned the Muslim Rohingya insurgents' role in an incident that may have sparked the latest round of violence and provided historical and current context.

36) It also mentions the claims by Myanmar that Rohingya are burning their own homes and villages, which the UN human rights chief dismissed as a denial of reality.

37) Dr Zarni's reported comment that "Buddhism was as susceptible to political manipulation as was Christianity, Islam, Hinduism and Judaism" provides context that weighs against the complaint of gratuitous emphasis.

The Council finds no breach of Principle 7.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Jenny Farrell, Marie Shroff, Vernon Small, Mark Stevens and Christina Tay.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2624 – ALEX CRISP AGAINST NELSON WEEKLY

Alex Crisp complains that a story published by *Nelson Weekly* on 29 August 2017 titled "Link approved" breaches Press Council principles 1 (accuracy, fairness and balance) and 6 (headlines).

The story reported the (former) government's announcement that the Nelson "southern link" roading project had been approved. Work would begin within three years provided the National government was re-elected. The project was controversial. It had been rejected by the Environment Court in 2004. It was still opposed by various groups including the Green party. The Nelson MP Nick Smith was quoted as saying the the law had been "re written". The project would be considered by a board of enquiry. The government believed there was a good chance the work would proceed via this process.

The Complaint

Mr Crisp says the story is wrong. The Nelson southern link has not been "approved". The required consent processes have not been completed. All stakeholders have not "signed off". Mr Crisp says the headline suggests the project was set to commence when it is not. The project is a "politicised local issue". Mr Crisp refers to the pending election and the attention given in the story to Dr Smith, a candidate.

Mr Crisp, essentially, says it is crucial that media reporting on issues such as this is "correct and unbiased" especially in the lead up to an election.

The Response

The newspaper does not accept the complaint. It says the story was fair and balanced with the headline accurately reflecting the government's support for the project. It says the headline cannot be read in isolation as indeed Mr Crisp acknowledges. The story referred to the role a board of inquiry would have, the requirement that the government had to be re-elected and various groups' continued opposition.

The Decision

The Council sees no basis for the claim Principle 1 has been breached. The story was accurate and balanced. The issue relates to the headline.

On a narrow view the headline could be interpreted as implying all required consents to the project had been granted and work was to begin in short order. The Council does not accept such a confined approach is called for. Certainly the Government approval was conditioned. The Council agrees the headline should not just be read on its own. The conditions were fairly mentioned in the story proper. The story itself was not long or complex. Its thrust would have been readily understood by most readers quickly. Given the then Government's support for the work (support crucial for

the work to push ahead) the paper was strictly right in saying it had been “approved”. While short the headline was not misleading.

The complaints are not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Jenny Farrell, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Christina Tay.

CASE NO: 2625 – ANDY ESPERSON AGAINST SUNDAY STAR-TIMES

Andy Espersen complains that a story in the *Sunday Star-Times* headlined, “Christie Marceau’s family ‘devastated’ after killer granted supervised leave from ward”, was unfair to a person mentally ill, intruded on his privacy and discriminated against him on grounds of mental disability in a manner that was not in the public interest. The complaint is not upheld.

The Article

1. The newspaper reported that Christy Marceau’s killer, Akshay Chand, who had been confined to a secure mental health clinic since her death six years earlier, was granted supervised leave and had been seen in public places, including an Auckland library, a supermarket and a McDonalds. The story said the woman’s parents, now living overseas, were shocked to learn Chand was allowed out and worried that he might pose a threat to their family in Auckland.

2. It recorded that he had been found not guilty of murder by reason of insanity, having been diagnosed with paranoid schizophrenia. While the Marceaus had been assured they would be notified if he was granted leave from the clinic, legally the district health board did not have to notify them so long as he was escorted. The woman’s father was quoted saying, “After everything we have been through this is another kick in the face. He is out there and people need to be extremely vigilant. I do believe he is extremely dangerous.”

The Complaint

3. Andy Espersen told the Press Council he is on a “schizophrenia awareness campaign”. He hopes to see a “180-degree about-turn in the way we and our fellow western democracies have looked at insanity over the last 50 years”. There was, he said, “no science as such about schizophrenia, our treatment of its sufferers must necessarily be based on ideology, philosophy and tradition.” Present treatment is “horribly cruel and uncharitable”. It had to be challenged by ethics, empathy and emotions.

4. The article in question displayed a disregard for a human being suffering a terrible illness and for his parents and friends. The writer was undoubtedly ignorant of insanity but that was no excuse. Mr Espersen looked to the Council to assess the ethical and moral aspects of news items like this.

The Editor’s Response

5. The editor, Jonathan Milne, believed there was a legitimate public interest in the story. The case had exposed a number of weaknesses in the criminal justice system’s ability to deal with mentally ill people. Chand had been on bail when he killed Christy Marceau. His release from the Mason Clinic

without the family being informed had exacerbated the pain and helplessness felt by her family

6. The family spoke out in the hope victims’ rights would be taken into account when mentally ill patients were allowed out. Their plea was not that mentally ill killers be locked away indefinitely but that victims, families and affected members of the public be alerted so they can take appropriate precautions. They felt Chand’s day release presented a risk to their family.

7. The editor said unpublished photos of Chand while he was out showed he was mingling with young members of the public with no sign of supervision. Chand had changed his appearance since the court case and the paper chose not to publish the photos of him but believed it was right to alert the family and the public that he was out.

The Decision

8. The complainant expresses a high degree of certainty about the absence of danger presented by the mental illness involved in this case. He has not provided the Press Council with his credentials or authority for his information. The Council does not have the expertise to verify his views of the illness and its public safety implications and, more to the point, nor does the newspaper. It may be that needless anxiety is caused by the reporting of the supervised day release of a person known to have committed homicide and found legally insane, but if there is no cause for concern, it is for mental health authorities to explain why that is so.

9. In this case the newspaper sought comment from the Mason Clinic where Chand had been placed for custody and care. The acting clinical director said any form of leave required approval from the Ministry of Health and patients were escorted by qualified staff, but declined to comment on the specific case.

10. The director also said patients’ privacy prevented staff informing victims’ families of escorted leave and no such notice was required by the Victims’ Rights Act. This application of the Act was criticised in the story by a victims’ advocate and by the Labour Party’s justice spokesman, Andrew Little, since appointed Minister of Justice, who considered the failure to notify the family required an apology from the Director of Mental Health.

11. Clearly the *Sunday Star-Times* report covered legitimate issues of public interest to do with the state of the law governing supervised release, the safety of supervision and whether families of victims have a right to be informed. Under the Press Council principles, a legitimate public interest can justify intrusions on privacy and discrimination by reference to mental disability. The complaints on those grounds are not upheld.

12. Nor can we uphold the third ground of complaint, of unfairness to a sufferer of acute schizophrenia. If there was a lack of fairness or balance in this portrayal of the disease, it cannot be held against the newspaper which gave the Mason Clinic an opportunity to provide the sort of assurances the public needs.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Jenny

Farrell, John Roughan, Marie Shroff, Vernon Small, and Christina Tay.

Mark Stevens took no part in the consideration of this complaint.

CASE NO: 2626 – ANDI LIU AGAINST MEDIAWORKS

The complaint concerns a story featuring a Chinese fishing vessel, which appeared on *Newshub TV3* news and on their website. Following an exchange with the complainant, Andi Liu, and the respondent, Mediaworks, the Press Council accepted the complaint for consideration. The grounds for the complaint included “subterfuge” which is covered in Press Council Principle 9, but does not appear as such in the standards of the Broadcasting Standards Authority, which could also have considered the complaint.

The Complaint

Newshub opened a broadcast and website story on 7 August 2017 with the sentence, “Another Chinese fishing vessel has been found in breach of multiple rules, after being boarded by the Royal New Zealand Navy off Fiji.” The complainant suggests use of the wording “...another Chinese...” without further explanation or accompanying infringement statistics by country, implies that rubbish dumping by fishing vessels from the Peoples’ Republic of China is disproportionately high. This makes the story unfair and unbalanced and tends to lead the viewer down a predetermined route. The footage was obtained through the presence of reporter Michael Morrah on board the RNZN ship *Hawea*, and the complainant believes this constitutes subterfuge, as the apolitical Navy would not have consented to use of the footage in this manner. Press Council Principles 1 Accuracy, Fairness and Balance; 6 Headlines and Captions; 7 Discrimination and Diversity; and 9 Subterfuge are cited by the complainant.

The Response

The Mediaworks Standards Committee (MSC) responded to the complaint. The reference to “another” Chinese vessel arose because a similar story by Michael Morrah from the *Hawea* screened on *Newshub* the previous night, 6 August 2017, had reported on rubbish dumping from a different Chinese vessel. The story was principally about New Zealand/Fiji co-operation on illegal fishing practices, and the Chinese fishing boats were simply examples of that work. The story was not unfair to the boat, whose crew and owners were not identified; and also reported that the vessel’s fish catch was not in breach of maritime regulations. In the context of reporting on illegal fishing practices off Fiji it was not necessary to include references to other nationalities. The MSC were satisfied that the story was fair, accurate and balanced.

In reference to the other principles cited, the MSC considered the headline conveyed a key element of the report; on discrimination and diversity issues there was no gratuitous emphasis; and in relation to subterfuge the reporter was openly and legitimately on board an RNZN ship.

Discussion

Principle 1: the complainant’s main point is about the apparently gratuitous use of the phrase “another Chinese

fishing vessel”. However, a viewing of the two relevant stories on 6 and 7 August 2017 shows that the 6 August report covered dumping of rubbish by a Chinese vessel, as did the 7 August report, which provides a reasonable explanation for the use of the word “another” in the later story. The broadcast reports also refer to more than 300 vessels boarded and inspected by crew from the *Hawea* and more than 54 infringement notices issued, with no suggestion as to particular nationalities involved. There is explicit reference in the story to the possible future threat from unregistered Vietnamese blue vessels “caught stealing” fish in other areas. The Press Council is therefore satisfied that the story met acceptable standards of accuracy, fairness and balance required by Principle 1.

Principle 6: as the opening sentence (or headline) referred to a key element of the story, it did not constitute a breach.

Principle 7 allows for discussion of race, religion etc as long as there is no gratuitous emphasis. In this case the reporter was stating facts, that in two recent cases the *Hawea* had discovered Chinese fishing boats had been involved in dumping rubbish at sea. We do not believe that this can be considered gratuitous emphasis.

Principle 9 subterfuge: for a breach to have occurred, Principle 9 requires the use of “subterfuge, misrepresentation or dishonest means” to obtain information. Since the reporter was openly and legitimately reporting from the RNZN ship *Hawea*, there are no grounds for finding a breach.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Jenny Farrell, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Christina Tay.

CASE NO: 2627 – COMPLAINT AGAINST NEW ZEALAND HERALD

Overview

The complainant (who has a current protection order in place) has laid a complaint about a recent *New Zealand Herald* article published in print and online which included a photograph of herself and her children taken in a public place and without her consent. The complainant alleges that two Press Council principles have been breached:

- Principle 2: Privacy
- Principle 8: Confidentiality

The article was discussing the amount of rain that had fallen across New Zealand since January 2017 and carried a photo of the complainant and her children; in the image the complainant and one of her children are holding umbrellas. The photo is superimposed on a graphic depicting monthly rainfall in New Zealand.

The photograph was taken in a public place in August 2017 by a *NZ Herald* photographer.

The complainant has said that if she had been approached by the photographer she would not have consented to her photograph being taken or published as she currently has a protection order in place.

The Complaint

The complaint is based on a *NZ Herald* article with the headline: *A sodden year – and more on way*: Twelve months of rain since January as yet another miserable bout of heavy falls and gales closes in.

The article focuses on the amount of rain that has fallen since January 2017 and included a photograph of the complainant and her children, which was taken in a public place but without the complainant's consent.

The complainant learned about the photograph when a work colleague showed her the newspaper article, "This is a picture of me and my children on our once in a blue moon family outing. It came as a big shock to me when I returned to work from a two-day course and a work colleague handed this copy to me."

The complainant currently has a protection order in place and for this reason she has said that she would not have agreed to the photograph being taken, "...but [the] fact that your photographer did not ask if it was ok and if he did he would have found out I would have refused due to the fact there is a Protection Order out."

The complainant expressed the concern she had for her family's safety, "You could only [imagine] how I might be feeling right now with the facts of this may now open a big can of worms around the safety of my family."

The complainant posed the following question about keeping her family safe in her original complaint, "My question to you is, how would you keep me and my family [safe] now that I have been identified as being in Auckland and we know this is a small place?"

The complainant acknowledged that photographers can take photographs in a public place, "I understand that photographers have the right to take photos in a public place, but the only thing that indicates a public place here is it states Auckland." Further, the complainant discusses being identifiable in the image, "I appreciate that photos can be taken in public places if individuals are not identifiable and in this case, we are and have been identified, this was not a photo of people at the All Blacks Game or Christmas in the park."

The complainant requested that any online publication be removed, "Also if this has been published on any websites could it be removed."

In later correspondence in reply to the editor's response, the complainant disputes that the photographer was 50 metres away.

The complainant does not agree that the image was removed in good faith because she says she had "Contacted the News Room with advice that someone would call in an hour, [but that] did not happen". She says that she had to make two calls to the Press Council for the email address for the *NZ Herald* and by the time she connected with the *Herald* via email the image had been removed.

The Response

In a response to the complainant on 8 September, Senior Newsroom Editor at *New Zealand Herald*, Oskar Alley

acknowledged that the complainant had contacted the photo editor and he was able to advise that the photograph had been immediately removed in good faith which was an hour before the complainant contacted Mr Alley, "I am aware that you spoke this morning to our photo editor and explained this background. As a result, I immediately removed the graphic containing the image from our website." The photograph was also removed from the database which means it cannot be republished.

Mr Alley confirmed the complainant's knowledge that "photographs can be taken in a public place".

Mr Alley explained that the "Photograph was taken by a *New Zealand Herald* photographer in [a public place] during the month of August." The photograph of the complainant and her children was "taken from a considerable distance of some 50 metres and with a long lens." Mr Alley has explained that the "photographer was not in a position to approach the complainant for her details because of the distance involved."

The photograph of the complainant was taken because of the "looming storm clouds in the background, with the people smaller in the foreground."

Mr Alley has stressed that the photograph was taken "in a highly public place visited by many thousands of people a day."

The photograph was published three weeks after it was taken as part of a graphic for explaining Auckland rainfall for the year.

Mr Alley does not agree with the complainant that Auckland is a "small place". Instead he has referred to Auckland as being "a very large region". He further comments "that there was no information in the article to enable a reader to narrow down the exact location."

In terms of defining the exact location, Mr Alley has said that the "caption details do not identify in any way where the image was taken." He further explains, "because the background sky fills so much of the frame there is nothing to identify the location... it is simply presented as a strip of grass."

In response to the complainant's question about how she and her family could be kept safe, Mr Alley forwarded a link to the police website on protection orders information which includes what to do in the event of a breach of a protection order.

The Decision

The complainant has alleged that a photograph taken of her and her children in a public place breaches Principle 2: Privacy – this principle refers to privacy of person, space and personal information.

The principle sets out that everyone is normally entitled to privacy of person, space... and that these rights should be respected by publications. There is an exception and that is where there is a "significant matter of public record or public interest". Reporting on the amount of rain fall since January 2017 could not be categorised as being a significant matter of public record or public interest.

However, as we have previously noted, the photograph was taken in a public place where privacy expectations are obviously reduced. The Council also notes the *Herald's* responsible and immediate action in removing the photo from the online story and its archives once the particulars of this case were made known to them.

As the photographer had not obtained consent, perhaps the complainant and her children could have been made less prominent in the image. While we acknowledge that this incident has made the complainant feel vulnerable as there is a protection order in place, there is very little detail that identifies exactly where the photograph was taken. Also, the photograph was produced a few weeks after it was taken.

On this basis, the Press Council does not uphold this complaint.

The Council does however wish to highlight that wherever possible, when children are involved, the photographer ought to obtain consent. The Council acknowledges that in this complaint the complainant and the children are identifiable and the protection of children is a paramount consideration.

The complainant also alleges that Principle 8 – Confidentiality has been breached. This principle refers to the protection against disclosure of the identity of confidential sources. As this principle doesn't directly relate to this complaint, as the complaint is about a photograph taken in a public place without consent, this principle is not upheld.

The complaint was not upheld with one member, Liz Brown, dissenting from this decision.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Jenny Farrell, Marie Shroff, Vernon Small, Mark Stevens and Christina Tay.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2628 – ALBERT NIPPER AGAINST NEW ZEALAND HERALD

Overview

The *New Zealand Herald* on Wednesday 6 September published an opinion piece from Rachel Stewart titled 'Men in suits scariest gang of all'. Ms Stewart outlines the comments made by Deputy Prime Minister Paula Bennett regarding removing the human rights of gang members.

Ms Stewart points out that the New Zealand Bill of Rights Act enshrines the principle that everyone is equal under the law. She states that she has a problem with singling-out gang members and goes on to argue that some 'men in suits' also commit a range of crimes. Profiling, she argues, is out-of-date and who is good and bad is not black and white. To her, 'men in suits' represent power, control and patriarchy and the suit represents another gang patch that is against the homeless, poor and needy.

The Complaint

Mr Nipper raises a number of issues with the column. He argues that men are discriminated against in the column and that 'men in suits' cannot be compared to gang members and the column is 'anti-male'.

His view is that gangs are organised crime groups who use intimidation and extortion to control the drug trade. He outlines his views about the crime and destruction that gangs create. He argues that gang members wear a patch to intentionally signal that we should be afraid of them. He sees comparing 'men in suits' to gangs as insulting to hard working men.

In further correspondence, Mr Nipper goes on to suggest the photo accompanying the article depicts only European men in suits and has singled out white men. He is particularly offended by the phrase '[men in suits will be] relegated to their rightful place' [Just as a part of the fabric of society, rather than the dominant force].

The Response

Oskar Alley of the *New Zealand Herald* responds by saying Ms Stewart's column was a direct response to the National Party's election policy launch designed to crack down on gangs and the methamphetamine trade. This included a plan to give police more power to search gang members' cars and homes. The central premise of the column is that focusing law enforcement activity on gang members misses the "alarming crimes of 'men in suits.'"

Mr Alley argues that the column is not designed to be anti-men but focuses on the profiling of gang members and the assumption that only gang members commit crime in New Zealand. Ms Stewart does not state that all men are guilty of criminal activity, rather that incidents of domestic violence, for example, are not restricted to gang members.

Mr Alley responds to specific points in Mr Nipper's complaint. He states that the headline accurately reflects the content of the article and that the article is opinion is clearly set out in the first two paragraphs. He counters Mr Nipper's statements about gangs and the drug trade by stating others are involved in such crimes. He suggests Mr Nipper has taken the statement 'relegated to their rightful place' out of context and that it is Ms Stewart's opinion and wish that the current status quo of male dominance will change. He rejects Mr Nipper's comments that the article undermines the work of police by arguing that it is a commentary on a proposed policy announced during an election.

The Decision

Included in print media is the opportunity to express opinions, particularly on topical current issues. Such columns and opinions provide not only interesting reading but can provoke readers to think and encourage debate. The column in question has done just this.

Ms Stewart has analysed a topical issue and presented a unique angle on it. She has done so openly as her opinion and the *New Zealand Herald* has clearly marked it as such. The complainant clearly disagrees with her views. The *Herald* offered Mr Nipper the opportunity to submit a Letter to the Editor but Mr Nipper declined.

The complaint is not upheld

There were two aspects of Mr Alley's comments that were of concern to the Press Council. First, Mr Alley states that the media is not covered by the Human Rights Commission. The Human Rights Commission advise that should any

media organisation breach specific areas and grounds in their legislation (such as unlawful discrimination) that the Commission could and would use its broad powers.

Second, Mr Alley defends Ms Stewart's column by stating that when Ms Stewart was referring to 'men in suits' she was actually referring to corporations and the 'men in suits' who run them. This statement, however, seems incongruous with the text of the article which in a number of places specifically outlines the actions of white collar men (for example, who are capable of crimes such as intimidation of women). The Press Council, in good faith, offers media organisations the opportunity to respond to complaints and asks that its process is treated with respect.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Jenny Farrell, Marie Shroff, Vernon Small, Mark Stevens and Christina Tay.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2629 – SPCA AGAINST THE PRESS

The SPCA complained that a report published online by *The Press* on August 8 entitled '*SPCA confiscates man's dog based on 'hearsay', he claims*', breached Principle 1, Accuracy, Fairness and Balance.

Background

On August 8 *The Press* published a news report, "*SPCA confiscates man's dog based on 'hearsay', he claims*", which concerned the confiscation by the SPCA of a dog from a Christchurch property.

The Press report was largely based on the dog owner's description of events. Kelly Anderson was quoted as saying the SPCA entered his property illegally by forcing a lock on the gate while he was at work; he found a note from the SPCA informing him that they had removed his dog, and asking him to get in touch "urgently". He questioned the actions of the organisation, saying, "It's quite odd that they'd go in and take a dog based on hearsay."

Mr Anderson said he went to the SPCA the next day and was told that a member of the public had alleged he had kicked his dog at a nearby park. The person had contacted police, who had handed the matter over to the SPCA.

The story said Mr Anderson denied abusing the dog. It quoted him as saying the "worst thing he had ever done to Pipi was to cuddle her". He said it was dark and rainy night and the witness must have been mistaken.

At the time he spoke to *The Press*, Mr Anderson said he had not seen his dog for almost two weeks and he believed she would be upset and suffering from separation anxiety.

The story confirmed that under the Animal Welfare Act, SPCA inspectors can enter properties without a warrant to inspect an animal. They can take an animal, by force as necessary, if they have reasonable grounds to believe it is being ill-treated, or its physical, health and behavioural needs make it necessary.

The article concluded with a sentence saying the SPCA could not comment because the case was still under investigation.

The Complaint

SPCA Canterbury complained that the article breached Principle 1, accuracy, fairness and balance. It provided only one side of the story despite the reporter having been told that the organisation could not comment while the case was still subject to an ongoing investigation.

The SPCA's Anna King said the reporter called to ask for confirmation that inspectors had the legal right to enter a property and seize an animal, but didn't confirm that the story was going ahead at that time; had the SPCA known that, she said, it would have made a general comment relating to the powers of an inspector. "In our opinion, as this scenario is an everyday occurrence in the life of an SPCA inspector, there was no 'story' and we had no indication it would be published without balance. If we had known this we would have requested the reporter wait until the investigation was completed and we would have provided the wider story on the case."

Ms King said the SPCA inspector had acted lawfully and correctly in seizing the dog pending investigation. The inspector was acting on a police referral that involved two credible witnesses to the alleged incident of animal abuse by Mr Anderson. "Because we could not comment due to the ongoing investigation, the story led the reader to believe, by omission, that the SPCA was acting an improper manner, when in fact the opposite was true," she said.

SPCA Canterbury's CEO Barry Helem wrote to the editor of *The Press*, Joanna Norris, to ask for a public apology. In her response to that letter, the editor referred to a second story that was published on August 11 when the dog was returned to Mr Anderson.

The SPCA says that although the second story did provide more comment and context, it did not, in its opinion, excuse the breaches in the first story.

Ms King says the first report caused considerable distress to SPCA staff who were the victims of cyber-bullying after publication. "We are one of New Zealand's most trusted charities and stories like this also put our funding at risk," she said. "We receive no public funding at a local level and rely heavily on the support of our local community."

She believed "the bar was set low in terms of journalistic integrity on this occasion and our charity was thrown under the bus".

Editor's Response.

In her response to the Press Council complaint, Kamala Hayman, acting editor of *The Press*, agreed that the August 8 story could have benefitted from a broader response from the SPCA but "unfortunately the SPCA felt constrained from commenting as it was still investigating the incident".

She said *The Press* published the story because it believed it would be of interest to readers as it outlined the powers of the SPCA to enter a property to inspect the welfare of an animal. *The Press* viewed it as "a cautionary story for other people with an inclination to mistreat animals".

She said the journalist had made it clear that he was planning to do a story, and asked the SPCA to correct anything that

may have been wrong with Mr Anderson's side of the story.

The editor says the journalist had sought to address the underlying issues brought up by Mr Anderson, that the SPCA had the ability to take his animal away under the Animal Welfare Act; *The Press* believed that addressing this provided balance to the story in the absence of a comment from the SPCA.

The Press was not obligated to inform the SPCA that it was running the story, she said. It is common practice in an open and transparent society to write about issues under investigation.

She suggested that a policy of waiting until investigations are complete before applying journalistic scrutiny assumes organisations always conduct investigations in an appropriate manner and that the public has no right to insight or input into these processes until they are complete.

"Whilst we understand Ms King's discomfort with the original story and agree it would have benefitted from more comment by the SPCA, this lay in the hands of the SPCA, which elected not to comment or provide background context," she said.

The purpose of the second story, she said, was to report the outcome of the investigation and the return of the animal to its owner. The journalist sought further comment from the SPCA and included a lengthy comment in the story.

Ms Hayman said while *The Press* has sympathy for public service organisations that rely on charitable funding to cover operating costs, they did not believe this status should put them above scrutiny.

Discussion

The issue in this complaint is whether *The Press'* story breached Principle 1, which covers fairness and balance as well as accuracy. Accuracy is not under consideration here.

Having heard Mr Anderson's side of the story, the journalist sought comment from the SPCA but was told it could not comment until an investigation was completed. The journalist then asked for confirmation that the SPCA has the legal power to remove an animal from a property when the owner is not present, which was included in the story for balance. *The Press* said it believed Mr Anderson's situation provided a cautionary tale to the public, that the SPCA had the power to enter a property and seize an animal whose health and welfare was compromised in some way, even if an investigation into an alleged base of abuse was not eventually proven.

From an editorial standpoint, the journalist did everything required of him: he requested a comment from the SPCA to balance the accusations of the dog's owner, and explained in the story the SPCA's powers under the Animal Welfare Act. The editor made the decision to publish the story rather than wait for the outcome of the investigation, which would have provided balance and context; in hindsight, she agreed the story would have benefitted from more comment by the SPCA, but "this lay in the hands of the SPCA, which elected not to comment or provide background context". The second story, published on August 11, provided comment and background context.

The Press said is common practice to write about issues while they are under investigation, and charitable organisations like the SPCA, which rely on public funding, cannot expect to be above scrutiny because of their status.

In this case, the story was an unfolding one, and three days later *The Press* published a fair and balanced follow-up story, which covered the return of the dog to its owner, and reported the SPCA's reasons for removing the dog from the property, with quotes from the SPCA Canterbury chief executive.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Jenny Farrell, John Roughan, Marie Shroff, Vernon Small, and Christina Tay.

Mark Stevens took no part in the consideration of this complaint.

CASE NO: 2630 – TVNZ AGAINST THE WEEKEND HERALD

TVNZ complains that an article published in the *The Weekend Herald* on August 5, 2017 breached the principles of "accuracy, fairness and balance", and "confidentiality".

The Article

On the front page of the relevant *Weekend Herald* is a "goodie box" promo stating, 'Hilary and Simon's new gig, A3' with photographs of Hilary Barry and Simon Dallow. The article itself, on page A3, is headlined 'Pair tipped to host election night for TV1'. The article states that Hilary Barry and Simon Dallow are tipped to host 1 News' 2017 election night special. It goes on to say this information came from sources, and stated that they would be leading the coverage with other TVNZ stars, including Newstalk ZB's host, Mike Hosking. It notes that TVNZ was tight-lipped about the election night line-up. The article continued — and this is the portion that TVNZ takes particular exception to:

The speculation about Barry and Dallow hosting the election night coverage comes on the heels of talk in the industry that the network is testing the pair's on-screen chemistry, raising the prospect that they could host the prime time 6pm bulletin together.

Barry, who worked in several reporting and presenting positions for rival broadcaster MediaWorks for 23 years before joining TVNZ in August 2016, currently co-hosts *Breakfast* with 1 News' former US correspondent Jack Tame, while Dallow fronts the 6pm news alongside Wendy Petrie.

In July, TVNZ's head of news and current affairs John Gillespie poured cold water on claims Barry may take over from Petrie as the female prime time anchor, emphatically denying major changes were planned for *Breakfast* and *Seven Sharp*.

The next paragraph gives TVNZ's rejection of this specula-

tion, and then continues that it is understood that meetings were held to discuss a Breakfast reboot because of strong competition from Mediaworks rival, The AM Show. It then sets out the relevant Nielsen figures for The AM Show and Breakfast, and concludes by stating that a spokeswoman for TVNZ reiterated Gillespie's statements when asked whether Barry would host the 6 p.m. news.

The Complaint

In its lengthy complaint, TVNZ alleges breaches of the principles set out above. TVNZ maintains that it is incongruous with the Press Council principles of accuracy and balance for NZME publications to repeat allegations that Hilary Barry will move to the 6 p.m. bulletin in the face of TVNZ's categorical denials. It goes on to say that if what NZME has published here, and we assume in earlier editions, is accepted it would mean the news media could publish any fabricated claim, provided an emphatic denial was also published, and thereby achieve balance. It is said this undermines the public interest inherent in preserving the media's right to freedom. There is also reliance on the confidentiality principle which requires the media to "to take reasonable steps to satisfy themselves that such sources are well informed and that the information they provide is reliable."

NZME's Response

The editor of the *Weekend Herald* strongly rejects that the article in any way breached Press Council principles. She stated the "goodie box" on the front page is not misleading, and nor is the headline that Barry and Dallow were tipped to host election night TV. In relation to the paragraph starting with "The speculation...", the editor stresses the use of the terms "speculation" and "talk in the industry". As to meetings relating to the reboot of Breakfast, the editor states that the publication's sources provided information and they stood by it. It goes further, and states that they have been told by several different sources that there continues to be a focus on "Breakfast's performance".

The editor goes on to state that, contrary to the TVNZ allegation, the story does not overplay the extent of Barry and Dallow's involvement in TVNZ's election coverage.

Decision

All modern media appears to have a cult of personality whereby it promotes presenters and others to what is commonly called 'celebrity status'. Almost inexorably speculation follows celebrity.

The focus of the story is that Barry and Dallow will head up TVNZ election coverage. It also reports on industry speculation regarding Barry's ongoing role at TVNZ. There is a reference to sources which demonstrates that NZME have adopted proper journalistic practice of having more than one source.

First, TVNZ complains about the use and accuracy of sources. Yet, the published story (based on sources) regarding the fact that Barry and Dallow would be part of the presentation team for the election coverage, proved to be correct. The story also makes clear that Mike Hosking would also be involved in the election coverage. Secondly, we are satisfied the alleged failure of accuracy, fairness and balance does not exist. When one reads the story, it first makes it plain

that the "*speculation*" about Barry and Dallow hosting election night comes on the heels of industry talk of testing their on-screen chemistry. It is industry speculation that is being reported on. Nothing has been put before us to show this is industry speculation does not exist. Thirdly, as to Barry co-presenting the 6 p.m. news with Dallow, it is also stated to be "widespread speculation". Again nothing is put before us to suggest this speculation does not exist within the industry. This is immediately followed with the necessary balance reporting the comments of the TVNZ head of news and current affairs. It is certainly not a case, as TVNZ complains, that NZME cannot continue to repeat allegations that Barry will move to the 6 p.m. bulletin simply because of denials by TVNZ. Already, the speculation about election coverage has proved to be correct. In any event, it is perfectly proper for the *Weekend Herald* to report on speculation within media circles of Barry's long-term role at TVNZ. Quite clearly the categorical denials from TVNZ have not stopped speculation within the industry, and that is what the story is reporting on.

TVNZ in its complaint seems to suggest that if continued categorical denials are made they need to be accepted. If this indeed is the intent of paragraph 4 of the complaint it strikes the Council as unusual, particularly from a complainant part of whose business is reporting on news. The history of journalism is replete with stories being shown to be true despite a history of categorical denials.

We are also satisfied that NZME has used multiple sources and has complied with the provisions of our Confidentiality principle.

TVNZ falls well short of demonstrating breaches of the two principles, and the complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Chris Darlow, Jenny Farrell, Marie Shroff, Vernon Small, Mark Stevens and Christina Tay.

John Roughan took no part in the consideration of this complaint.

CASE NO: 2631 and 2632 – TOM FREWEN AGAINST NEW ZEALAND HERALD AND STUFF

Background

1. Tom Frewen has made a broad complaint about the links to "recommended" or "promoted stories" provided by "content discovery platform" Outbrain on the Stuff and *New Zealand Herald* websites. The "stories" – also called sponsored content, branded content or native advertising – appear at the bottom of each article, linking readers to other sites which pay Outbrain – and the websites – to be featured on what Outbrain calls "the web's largest and most respected media properties".

2. Outbrain is a New York-headquartered multi-national that presents links to sponsored content on news websites around the world, including Time, the Guardian, the Telegraph, CNN, the BBC and many others.

3. Frewen points to multiple examples of sponsored content on the sites, but his complaint began with a 'promoted story' that appeared on Stuff on October 25, headlined "A Levin

man is the new member of the Bitcoin Millionaires' club". The headline linked to the website www.investingdaily.me, which contains but a single story, headlined "If you bought \$100 of bitcoin 7 years ago, you'd be sitting on \$145.8 million now after new record high". The article goes on to lay out five steps for investing in Bitcoin.

4. This complaint raises questions that go beyond our usual determination as to whether an article meets the standards prescribed in the Press Council's principles. First, is the sponsored content in fact editorial content and therefore within the Press Council's mandate? Or is it advertising and so outside our jurisdiction? Second, does it also fall outside our jurisdiction on the grounds that the links go to content hosted on sites outside New Zealand.

5. Chair Sir John Hansen decided to accept the complaint for consideration by the Council on the grounds that the Outbrain 'stories' look like news stories, contain a mix of news and advertising, link to content both in and outside New Zealand, and, given their preponderance on modern websites, it's a significant industry issue that the Council should consider. At the very least, the Council's scope states that it covers "ethical considerations" while its preamble states that it is "concerned with... maintaining the press in accordance with the highest professional standards". In this case, both those conditions apply. We also point out that while some sponsored content links to ads, some links to news stories elsewhere on the same site or on other news sites.

6. The Council notes there is international precedent for this decision. In a position paper from May this year, Canada's National NewsMedia Council judged "that branded content [one type of sponsored content] is within its mandate... The NNC is aware that the intent of branded content lies with the interests of the sponsor, while the intent of news and opinion writing lies with the interest of public good. The NNC believes it has a role in reminding the industry and the public of that distinction". We take the same view regarding all sponsored content.

7. It should be acknowledged at the outset that both media companies strongly opposed the Council's decision to accept this complaint, saying that the content referred to was advertising and not under the control of its editorial staff. Stuff editor Patrick Crewdson wrote that the content Frewen complains about was "on another site entirely". He pointed out that the Advertising Standards Authority (ASA) has previously ruled on complaints about Outbrain. He cites complaint 16301, which dealt with sponsored content that linked to another story on Stuff. The ASA ruled it to be outside its jurisdiction because it constituted editorial content. In contrast, it did accept complaint 16287, which linked to content on a third party site, which it considered to be advertising.

8. On behalf of the *NZ Herald*, legal counsel Ashleigh Cropp agrees that "the public is entitled to know when it is reading advertising/advertorial content" and in this case says the stories are clearly displayed as advertising. She asks that we adopt the ASA's advertorial test (laid out in Appendix i) to determine this. Cropp points to a 2014 ruling by the UK ASA, which prompted Outbrain to more clearly label

its content as advertising, and 2017 guidelines drafted by the Interactive Advertising Bureau. She argues the *Herald* follows those rules.

9. The Press Council is of the view that if material is being published in a way that makes it look as if it is genuine news it should, at least, be held to the same standards as news content. It is on this basis that the complaint was considered.

Complaint

10. Frewen complains under Principle 1, Accuracy, Fairness and Balance and Principle 2, Privacy. He also raises a third broader ethical complaint.

11. Under Principle 1, Frewen argues that despite the Stuff headline, the story contained no mention of a Levin man and was clearly an advertisement for Bitcoin, not a story at all. The accompanying photo of "a young man wearing sunglasses in front of a mansion" was "fake" and was not of a Levin man. They were therefore inaccurate and in breach.

12. On the *Herald* site, he complains about two similar stories headlined "Paraparaumu kid becomes a millionaire after buying Bitcoin for 12 pounds" and "Christchurch taxi driver got paid \$10 in Bitcoins in 2010, now he's a millionaire". Frewen found the links at least a week after he read the Stuff story. Both link to an ad for Bitcoins that doesn't mention Paraparaumu or Christchurch and so were also inaccurate.

13. On Principle 2, Frewen's complaint rests on the news sites' use of cookies and question as to who owns the cookie. He says Stuff in particular has used information about him - the fact that he lives near Levin - "to expose an advertiser to me. What else is Stuff doing with my information?"

14. Frewen finally raises the ethics of using "deception" to encourage him to look at an ad he would have otherwise ignored and, indeed, the ethics of sponsored content that he believes "attempts to trick readers". As discussed in par five, the Council has decided to consider this part of the complaint under our preamble's commitment to upholding "the highest professional standards" and its scope to adjudicate on ethical issues.

Editors' Responses

15. Both publications acknowledged to some degree that the Bitcoin headlines fell short of acceptable standards, although they argued that those should be advertising standards. The *Herald* says it has resolved this issue by blocking ads containing the word "bitcoin", while Stuff agreed "the headline did not accurately reflect the content it linked to", removed the link and apologised to Frewen.

16. For Stuff, Crewdson points out that the Bitcoin story Frewen complains about came from a section labelled "promoted stories", which is separate from the accompanying section 'more from stuff'. While 'more from stuff' carries links to news stories, 'promoted stories' is clearly distinguished as advertising.

17. Crewdson says, "it is true that Outbrain's formats mimic the style of editorial content. Like with sponsored content articles, this is done in the belief that advertising can [be] more effective if it is in a format that is 'native' to the medium". But Stuff uses "design cues" to alert readers this

is not editorial content, including the word ‘promoted’ in the headline, “the name of the host site beneath each headline link” and the credit “recommended by Outbrain”.

18. He also argues that Frewen has failed to distinguish between the “headline link” on Stuff and the content linked to, which is published elsewhere. “While it is fair to complain about the headline link that was present on our pages, Stuff cannot answer for the content of a story that we did not publish or host”.

19. Crewdson also says that the Outbrain panels are handled by the “promoted stories” units, not editorial staff.

20. On privacy, he says cookies are installed by most websites, including the Press Council’s own site, and are merely messages websites employ to identify users and so prepare customised webpages. Most browsers accept cookies by default and Stuff has a privacy policy published on the website. Stuff is not invading Frewen’s privacy by using cookies.

21. For the *Herald*, Cropp limits her arguments mostly to matters of jurisdiction. Contrary to Crewdson, she believes “the widget itself does not mimic the appearance of the editorial content feed”. The Outbrain content is placed programmatically by Outbrain and so the *Herald* has no editorial control over it. They are third party ads, “not editorial content and not presented within the editorial framework”.

22. Like Crewdson, she says the *Herald* uses “disclosure cues” to distinguish this sponsored content from news and opinion. The *Herald*’s Outbrain content is headlined “‘Recommended’ in bold, centred and above the widget; cue 2, the destination website immediately following the headline link for third party website links; cue 3, ‘Recommended by Outbrain’ at the bottom of the widget; and cue 4, when hovering over cue 3, the words “content marketing” appear, identifying the nature of the widget”. The Council notes that the photos that link to ads carry the word ‘promoted’ in small font on the image.

Discussion and Decision

23. Dealing with the privacy complaint first, the Council accepts that cookies are common across the internet and used properly are usually not considered invasive. Given cookies are a universal technology and have nothing to do with media in particular, we consider the complaint under Principle 2 to be out of the Council’s scope.

24. The broader question of sponsored content and where it sits on the spectrum between editorial and advertising is more complex. That is one of the reasons why the Council wants to wrestle with this complaint about what is now a common feature of most online news pages.

25. It’s impossible – and indeed irresponsible – to consider this issue without appreciating the financial pressures under which newspaper companies are currently operating and which have driven the rise of sponsored content or native. News companies have been reluctant to blur the lines between editorial and advertising in the past, but are now under pressure to do so to make ends meet. Advertisers and other media are encouraged to pay for this sort of content

(not least on the Outbrain website) precisely because it masquerades as editorial content, as Crewdson says.

26. The Council accepts the argument from the news companies that the content of the stories and ads is hosted on other sites, mostly offshore, and is a mix of journalism and ad copy. Those stories are beyond our jurisdiction due to their geography and content. While Frewen can reasonably feel frustrated that the Bitcoin story was in no way a reflection of the headline, the story is out of scope.

27. The headlines however appear in this country, and while some lead to ads and others to stories, member news organisations should be expected to take responsibility for the content they publish, sponsored or otherwise. In this case, that is the headlines and photos. To meet the highest professional standards, they should be seeking the utmost transparency with their readers and when content is created to mimic news stories, news organisations should stand ready to ensure they meet the Council’s principles. Indeed, the freedom guaranteed editors under the Press Council’s statement of principles – that “editors have the ultimate responsibility for what appears in their publications” – comes with an expectation to uphold those high professional standards, including transparency. In the Council’s view, all news content – plus content masquerading as news – comes within the bounds of that ultimate responsibility. That the editors have lost control over content that includes news stories and mimics news to such a degree is of real concern to us, and we hope would also be of concern to the industry.

28. While Cropp denies sponsored content mimics editorial content, the Council (like Crewdson) believes it does. The very definition of native advertising is that it “matches the form and function of the platform upon which it appears” and is “produced by an advertiser with the specific intent to promote a product, while matching the form and style which would otherwise be seen in the work of the platform’s editorial staff” (Wikipedia).

29. Outbrain’s own promotion of its content as “non-disruptive” and “editorial-based content recommendations” acknowledges the effort it makes to ensure its content doesn’t look like advertising. The combination of a photo and headline is clearly designed to mimic a typical news layout, rather than the typical ad layout. That means the line isn’t at all clear and readers could easily be confused.

30. It’s fair to say the sites go some way to distinguishing this content. Cropp lists the “disclosure cues” as outlined in par 21, while Crewdson outlines Stuff’s efforts in par 16. The Council would add that this content is positioned at the bottom of the page, as it is around the world, and it only takes a few clicks for a reader to realise what they are dealing with. The question becomes whether that amounts to a clear declaration to readers that this is not standard editorial content. As it stands, the Council does not believe it amounts to international best practice.

31. It’s notable that neither New Zealand site goes as far as CNN or the Telegraph in clearly labelling the panel “Paid Content”, nor do they shade the area as recommended by the IAB.

32. In the *Herald*, news stories, stories from other news sites and ads are in fact melded together under the ‘Recommended’ banner, as Cropp concedes. Therefore when Cropp asks if the sponsored content is “part of an editorial framework or advertising framework?” the answer can only be: both. ‘Recommended’ as a headline does next to nothing to alert readers to the fact that much of the content below is paid and not independent journalism; quite to the contrary, it implies that the content linked to is somehow special and is endorsed by the *Herald*. Given that this content is paid and includes either advertising or stories from sites of dubious merit, including the made-up Bitcoin headlines, such an endorsement sends a worrying message to readers.

33. Stuff does more to assist its readers, separating the ads and paid content from other sites [promoted stories] from its links to its own stories [more from stuff]. It also has a thin border above and below the content, which the *Herald* does not. Yet it’s disturbing that it still labels the native ad content as “stories”.

34. On Frewen’s complaint under Principle 1, the headlines employed on both sites are clearly inaccurate. There is no Levin man, Paraparaumu kid or Christchurch taxi driver. They are figments of an algorithm’s imagination and are deliberately designed to deceive and dress up advertising as news. In fact, the headlines are total fiction.

35. While the Council operates only according to its own principles, Outbrain failed even by its own standards. Its guidelines prohibit “inaccurate, misleading or overly sensational headlines”. While Outbrain moved quickly to remove the Bitcoin content from Stuff, the same deceit was still being used on the *Herald* days later. There’s nothing to indicate either Stuff or the *Herald* would have removed the inaccurate link if it had not been for this complaint. The complaint under Principle 1 is upheld.

36. On the wider ethical point of sponsored content, the complaint under the Preamble is also upheld. While the sites’ ‘cues’ arguably sit just inside or at the bottom end of industry norms internationally, they are far from being of the highest professional standards. The *Herald* in particular. Contrary to the argument put forward by Stuff and the *Herald*, the visual cues are clearly designed to confuse and present editorial content of various standards and advertising all as news.

37. To achieve the “highest professional standards” in the handling of sponsored content, the sites must be more transparent and earn the trust of their readers. That may include the use of borders, shading and more accurate headlines. It should undoubtedly include a much clearer distinction between the look of independent news and sponsored content, and a clear and unmistakable statement to readers that this content is paid content.

38. If it becomes unmistakable that this sponsored content is paid content, not independent journalism, then the Council will be happy to leave further action to the ASA. But if the lines remained blurred, we would anticipate more confusion and complaints from the public that may need to be considered and resolved by either – or both - us and the ASA.

Press Council members considering this complaint were Sir

John Hansen, Liz Brown, Jo Cribb, Tiimalu Peter Fa’afiu, Hank Schouten, Marie Shroff, Christina Tay and Tim Watkin.

The Chairman ruled that John Roughan could take part in the discussion but not vote on the outcome.

Appendix i

1. Is it part of an editorial framework or advertising framework?
2. Is it independent of control in any measure by the advertiser?
3. Is there any financial consideration affecting the editorial or which has caused the appearance of the editorial?
4. Is the presentation labelled or clearly designated as an advertorial, advertising feature, promotion or supplement, or in some way described as being for the commercial promotion of an advertiser’s services or products? If the labelling is evident, then any complaint against such a presentation should fall under the Advertising Codes of Practice and the jurisdiction of the Advertising Standards Complaints Board.
5. If the feature, program, presentation etc meets the criteria of Tests 1-3 but fails Test 4, it is still clearly advertising and fails to meet the appropriate provision of the Advertising Code of Ethics relating to Identification and Truthful Presentation.

CASE NO: 2633 – MARTY BLAYNEY AGAINST STUFF

Marty Blayney complains about a heading on a Stuff article about a new Labour MP from the Tauranga area. Mr Blayney cites two Press Council principles: Principle 1 (Accuracy, Fairness, Balance) and Principle 6 (Headlines and Captions). The headline read *Newest Labour MP hurriedly writes resignation letter*.

The Complaint

Mr Blayney complains that the Stuff article headline is misleading because it implies that new Labour MP, Angie Warren-Clark, had resigned as a new MP rather than from her previous role leading Women’s Refuge in Tauranga. The heading offers up two possible interpretations. Mr Blayney believes the heading misleads in order to attract the reader: it is more noteworthy to give an impression that a new MP has resigned her new Parliamentary role rather than resigning from her Women’s Refuge role. This is also known as click bait. Without clarification, the reader is left with an impression she resigned from Parliament.

Following the response from Stuff, Mr Blayney notes that if there was no intention to deceive then the editor would not have needed to justify the use of a curiosity gap in his rebuttal. Mr Blayney provides a couple of examples of short titles which would more accurately reflect the story. Mr Blayney believes the title is click bait and argues the majority of readers would see the title and then read the article not thinking the resignation was about the Women’s Refuge role.

The Response

Patrick Crewdson, Stuff Editor, Fairfax responded.

- Headlines are not meant to convey every detail. They are limited.

- Principle 6 notes that the headline should accurately reflect the substance and key elements of the article.
- The editor notes that Blayney claims the headline implies the MP has stepped down from the parliamentary role, but it would be more correct to say that he has inferred that.
- Headline says Angie Warren-Clark has resigned - that is factual and accurate.
- When reading both headline and story no one will be confused.
- Context is important. She had been waiting for special votes. The newsworthy point was being elected by special votes then scrambling to get to Parliament. A candidate who thought they had lost on election night then enjoyed a reversal two weeks later is newsworthy.
- It was common for headlines to employ a “curiosity gap” approach. It leads the reader to want to know more but it’s not clickbait.

The Decision

Whilst Mr Blayney’s complaint argues for Principle 1, the Council is of the view that adherence to this principle or not falls on our view in regards to Principle 6 (Headings and Captions.) Headlines, sub-headings, and captions should accurately and fairly convey the substance or key element of the report that it is designed to cover.

The Council agrees with the editor that context is important here. The readership would be interested in the story of a MP who through special votes would become a Parliamentarian.

The editor’s differentiation between curiosity gap and click bait doesn’t hold weight here. The intention remains the same; to attract the reader to the article with a headline.

The next question for the Council is whether the headline adheres to our Principle 6 or not.

Clarification comes in the third paragraph of the article which notes her required resignation from Women’s Refuge. The standard for the industry is not the optimum headline. The standard is that the headline accurately and fairly conveys a key element of the story. Warren-Clark as a new MP had to resign from a position – that is accurate. The story then clarifies what role she resigned from. The story from paragraph three is clearly about her difficult decision to resign from her Women’s Refuge role.

The complaint on both principles is not upheld, with one member John Roughan dissenting.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Tiumalu Peter Fa’afiu, John Roughan, Hank Schouten, Marie Shroff, Christina Tay and Tim Watkin.

CASE NO: 2634 – MEGAN BOWRA-DEAN AGAINST STUFF

Overview

[1] The complaint is in relation to an article published by Stuff on October 2. The article was originally published in

The Telegraph, UK. Ms Bowra-Dean alleges that two NZ Press Council principles have been breached:

- Principle 1: Accuracy, Fairness and Balance
- Principle 4: Comment and Fact

[2] The Stuff article focused on Professor Miroslav Djordjevic’s professional experience as a genital reconstructive surgeon and his observation of the trend of requests for the reversal of gender re-assignment surgery.

[3] The article also contains commentary on a master’s thesis research proposal by a psychotherapist who specialises in working with transgender people which would have focused on “detransitioning” but was declined by Bath Spa University ethics committee.

The Complaint

[4] The complaint is based on a Stuff article with the original headline: *More transgender people asking for reversal surgery*. This headline was later updated to: *Serbian doctor tells of transgender reversals*.

[5] The article appeared in the Life & Style section of Stuff dated October 2.

[6] The article focuses primarily on the professional experience of genital reconstructive surgeon Professor Miroslav Djordjevic and the trend in requests he observed for the reversal of gender reassignment surgery.

[7] Ms Bowra-Dean complains that Principle 1 has been breached as the article does not provide *Balance*, “There is no voice given to anyone dissenting to the opinions presented in the article and facts have been selectively quoted to reinforce the overall bias of it. This is unacceptable for a sensitive issue of this nature.”

[8] There is a further allegation of a second NZ Press Council Principle breach. Ms Bowra-Dean has complained that reference in the article about a “powerful transgender lobby” group is presented as fact rather than opinion. The comment is in relation to a master’s thesis research proposal by a psychotherapist who specialises in working with transgender people to research “detransitioning”. The full sentence reads, “But after submitting the more detailed proposal to Bath Spa [university], he discovered he had been referred to the university ethics committee, which rejected it over fears of criticism that might be directed towards the university. *Not least on social media from the powerful transgender lobby.*”

[9] A second alleged breach of Principle 4 concerns the closing sentence of the article, again, Ms Bowra-Dean is suggesting that opinion is being presented as fact. The final sentence of the article reads, “These are profoundly life-changing matters around which he [Professor Miroslav Djordjevic] like many in his industry feels far better debate is required to promote new understanding. But at the moment, it seems, that debate is simply being shut down.” Ms Bowra-Dean does not agree with the view that debate is simply being shut down, “There is no evidence to suggest the silencing of these opinions. The very fact that they are being published uncritically by multiple publications of the mainstream media suggests the very opposite.”

The Response

[10] In a response to the complainant, editor of Stuff, Patrick Crewdson, acknowledged that the article had been re-published on Stuff, “notwithstanding the limits of syndication agreements, we acknowledge that Stuff bears ultimate responsibility for the stories we select for publication on our platform, so our reply is written in that context.”

[11] Mr Crewdson has set the context of the article as being “an interview with Professor Miroslav Djordjevic, a Professor of Urology and Surgery at the School of Medicine in University of Belgrade, Serbia.”

[12] Mr Crewdson further adds that the article “follows the recent publication of a number of stories in international media after a UK university rejected a research proposal from a psychotherapist, James Caspian, who specialises in therapy for transgender people. Among the reasons reportedly given was that his research could be seen as ‘politically incorrect’ and could provoke a social media backlash.”

[13] In direct response to Ms Bowra-Dean’s complaint about bias, Mr Crewdson was unsure “what she believes the article is biased towards or against.” Mr Crewdson added further comment, “In a follow up email to Stuff’s Chief News Director Keith Lynch Ms Bowra-Dean wrote that the article is “framed entirely in negative language with unrelated scare-mongering about trans youth and anecdotal stories about WPATH’s surgical standards supposedly not being applied.”

[14] Mr Crewdson states that Stuff does not agree that the story is biased, “It does not misinform or mislead readers. The story does not purport to be an exhaustive look at transgender issues.”

[15] Mr Crewdson posits that the story “instead explores a one particular topic – reversal surgery and the ethical standards applied before surgery goes ahead.” It is suggested that the article “does not take a position opposing transgender surgery.” Mr Crewdson states, “By reporting the concerns of Prof Djordjevic about the evaluation conducted and support available before transition surgery and his views of the reversal process, based on his experience, the story is neither scare-mongering nor presenting a negative picture of transgender transitioning.”

[16] In response to Ms Bowra-Dean’s comments about a lack of balance, Mr Crewdson suggests, “The story’s tone is primarily cautious, and “an alternative voice” would appear, in this case, to simply challenge Professor Djordjevic’s assertions that strict ethical guidelines should be applied before patients undergo life changing surgery and a better understanding of the issue would be beneficial.”

[17] Further, Mr Crewdson does not agree that an alternative view would have provided balance within the article, “This is a case where an attempt to inject ‘balance’ could easily result in a false equivalence between an expert’s experience and an alternative view included simply for the sake of contradiction.”

[18] In concluding remarks relating to the alleged breach of NZ Press Council Principle 1, Mr Crewdson has suggested that the “broad issue” of transgender surgery “is without doubt a long-running one, one where it would be impossible to cover every side.”

[19] Mr Crewdson addressed the complaint by Ms Bowra-Dean that the article breaches Principle 4, Comment and Fact, with specific reference to two sentences within the article, “Not least on social media from the powerful transgender lobby” and “But at the moment, it seems, that debate is simply being shut down”.

[20] Mr Crewdson has responded to the first sentence highlighted by Ms Bowra-Dean namely “Not least on social media from the powerful transgender lobby” remarking, “It is clear the sentence Megan Bowra-Dean has singled out simply reflects [Mr James] Caspian’s view, not the author’s opinion.”

[21] In response to the second sentence highlighted by Ms Bowra-Dean, “But at the moment, it seems, that debate is simply being shut down”, Mr Crewdson does not agree with Ms Bowra-Dean instead he suggests that the author of the article “...is not offering an opinion. He is simply offering context and closing analysis. He sums up the feelings of Professor Djordjevic and the decision by Bath Spa University on James Caspian’s research.”

The Decision

[22] The complainant has alleged that an article published by Stuff on October 2 breaches NZ Press Council Principle 1: Accuracy, Fairness and Balance; and Principle 4: Comment and Fact.

[23] Principle 1 as it relates to this complaint sets out that “Publications should not deliberately mislead or misinform readers by commission or omission. In articles of controversy or disagreement, a fair voice must be given to the opposition view. However, exceptions may apply for long-running issues where every side of an issue or argument cannot reasonably be repeated on every occasion and... where balance is to be judged on a number of stories, rather than a single report.

[24] The second title for the article “Serbian doctor tells of transgender reversals” more accurately reflected the stories content. In line with the provision for an exception under Principle 1 as stated above, this topic is a long-running issue but moreover the article focused on the professional experience of a genital reconstructive surgeon and his lived experience of requests to reverse gender re-assignment procedures. The Council does not uphold the alleged breach of Principle 1 – Balance. Not upheld.

[25] The complainant also alleges that Principle 4 – Comment and Fact has been breached. This principle refers to the clear distinction being drawn between factual information and comment or opinion. Ms Bowra-Dean is not referring to the article in its entirety, but to the two specific sentences within the article as highlighted above. In a commendably sensitive response from Stuff, Mr Crewdson has advised that the first alleged breach is a comment attributable to the psychotherapist referred to within the article and the second alleged breach is a summary and closing analysis of the story. In the Council’s view this does not breach Principle 4.

More care could have been exercised in relation to the alleged second breach of Principle 4, with attribution of the comment to Professor Djordjevic however the Council notes

it is not unusual that a feature piece should end with such a conclusion.

The Council would like to emphasise that the responsibility for this article sits with Stuff as it was published on their website.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Tiumalu Peter Fa'afiu, John Roughan, Hank Schouten, Marie Shroff, Christina Tay and Tim Watkin.

CASE NO: 2635 and 2636 – SIMON LYMBERY AND MIKE LODER AGAINST THE DOMINION POST AND STUFF

1. Simon Lymbery and Mike Loder have separately complained about a story published in *The Dominion Post* and on the Stuff website on October 9 that highlighted the fact firearms were to be sold at a weekend militaria auction held at a Wellington school. Mr Loder also complained about a public opinion survey that appeared on the website. The complaints are not upheld.

The Article

2. The newspaper reported that an “arsenal of weapons, including semi-automatic machine guns” would be on sale at St Patricks College, Kilbirnie, that weekend. The college rector said militaria auctions had been held there for 25 years without an incident or an outcry from parents. Police would be present and it was in school holidays.

3. The story contained criticism from a member of Peace Action Wellington that the auction in a community venue could encourage the view that military weapons were an everyday, acceptable part of modern life. It also contained a defence of the event from the Council of Licensed Firearms Owners.

The Complaints

4. Mr Lymbery considers the story, originally headed “Las Vegas shooter-style assault weapons to go on sale at Wellington school”, was in poor taste, intentionally misleading and put the financial and physical welfare of law-abiding people at risk. He believes the article was not accurate, fair or balanced.

5. Words such as “arsenal” and “high-powered weapons” and “assault rifle” were misleading in his view as all firearms sold to collectors have to be rendered inoperable. The headline reference to the Las Vegas shooting was fear-mongering. The precise make and models of weapons used in that tragedy had not been released.

6. Failure to mention the event’s entry requirements implied anyone could walk in and buy a military firearm. The article did nothing to remind people the event was legal, safe and commonplace, and that of the thousands of items on sale only a few were firearms.

7. The story was illustrated with stock images, not items in the auction, and this was not clearly indicated. A photo of an armed police officer bore no relation to the event. Mr Loder complained about a photo of an AK47 held by a

terrorist, saying this was not a fair representation of a tightly controlled auction.

8. Publication of the story led to an undue public outcry, putting the welfare of attendees at risk and resulting in the event being postponed, costing the venue valued revenue and wasting the money of those travelling to the event.

9. Mr Loder’s complaint alluded to most of those points and also objected to an online survey that appeared on the Stuff site, asking, “Which is more dangerous? Guns. People.” The word “guns” was accompanied by an emoji of an angry face, the word “people” with a sad face. Nevertheless, the vote was “ten to one in favour of sanity”, Mr Loder says. “So the paper pulled the poll. Didn’t suit the agenda.”

The Newspaper/website response

10. Fairfax Media’s Chief News Director for Wellington, Eric Janssen, said the story was prompted by approaches from concerned people. He did not know why they were concerned now rather than previously in the event’s 25 years, but thought it possible recent mass shootings in the world had heightened awareness of firearms in the community. The people were particularly concerned the auction was being held at a school.

11. The organisers declined to comment or engage with reporters for the story, When the Vice-Chairman of the Council of Licensed Firearms Owners contacted Fairfax after the initial publication, the headline was changed online to, “Deactivated firearms to go on sale at Wellington school”.

12. On the accuracy of terms used in the story and original headline, Mr Janssen, says the Las Vegas killer had an AR15 rifle and there was at least one of those in the auction. It may be that deactivated firearms are not “weapons” in the view of gun aficionados but the general public, for whom Stuff and the Dominion Post write, would absolutely classify them as such.

13. On the questions of fairness and balance, Mr Janssen agrees the article needed comment from the event organiser who declined to provide anything useful. Nevertheless, Fairfax did as much as they could to reflect the true nature of the event, its history and rules. They recorded its lack of previous issues, the fact that the police would attend, the fact the auction was for “strictly vetted collectors” and items needed to be disabled.

14. On the use of photographs, Mr Janssen said the firearm in the lead image was the same type as one of the sale items. It was clearly marked “file photo” to indicate it was not a fresh photo related to the auction. The photo of the police officer was cropped to put the focus on his firearm, not the officer.

15. Mr Janssen invited the Vice-Chairman of the Council of Licensed Firearms Owners, Michael Dowling, to write an OpEd article on the issues raised, and his 600 word article ran on Stuff and in the Dominion Post. In response to Mr Loder, Mr Janssen denied the online survey was pulled because it didn’t suit “an anti-gun agenda”. He ordered it taken down because Mr Dowling’s article was on the site at the same time and a reader objected to the article being accompanied by a poll questioning its viewpoint.

Decision

16. These complaints are based on the Press Council's first principles of accuracy, fairness and balance. While references to an "arsenal" of weapons and a "battery" of firearms in the opening paragraphs may be unduly emotive and melodramatic, to suggest words such as "weapons" and "assault rifle" are inaccurate is pedantic. Traders and collectors of firearms might not define them as "weapons" or an "assault rifle" if they are de-activated but most people would refer to them as such. The precise weapon used by the Las Vegas shooter might not have been revealed but he was known to be a collector and his arsenal included an assault rifle. It was accurate and fair for the story to point this out.

17. Nor was the report unbalanced. It explained that the auction had been held for 25 years without incident or outcry, that police would be present. It quoted Mr Dowling saying only strictly vetted collectors could buy militarised weapons, which had to be deactivated once in their collections. In fact nearly half the number of paragraphs in the story were favourable to the event.

18. The original headline, referring to "Las Vegas shooter-style assault weapons" was later changed online and some images removed. The complainants see these alterations as an admission of fault but the Council does not. It is common for reports to be refined online as more information is gained or public feedback indicates a need for clarification. Improvements do not necessarily imply the original was false or unfair.

19. Mr Loder also complained about the online survey. He objected to both its presentation and the decision to take it off the site. The Council can see nothing unusual in the survey — its use of "emoji" is common illustrative practice — and accepts Mr Janssen's explanation for taking it down.

20. The complainants considered the auction mundane and unworthy of the attention *The Dominion Post* and *Stuff* gave it. The Council does not agree. The complainants need to recognise that, rightly or wrongly, some people find the hobby of gun collecting mildly disturbing regardless of whether collectors' items have been rendered incapable of killing. Those readers would have been surprised and disturbed to learn an auction of firearms was to be held in a nearby school, albeit on a weekend in school holidays. The story was of legitimate public interest.

21. The fact the auction had been held for 25 years without attracting the same attention may be a reflection of heightened public concern after mass shootings in the United States, especially the Las Vegas incident a week before this story appeared. But far from this making the story unfair and tasteless as the complainants see it, the heightened concern increases the report's validity in the Council's view. The complaints are not upheld.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Tiumalu Peter Fa'afiu, John Roughan, Hank Schouten, Marie Shroff, Christina Tay and Tim Watkin.

CASE NO: 2637 – BERNARD KERNOT AGAINST SUNDAY STAR-TIMES

Bernard Kernot complains about a statement in the relevant article referring to one of the Brazilians convicted of the murder of the late Sir Peter Blake. The complaint relates to a reference to the murderer's Catholic background.

The Article

The *Sunday Star-Times* commissioned a freelance journalist based in Brazil to interview Ricardo Tavares, who was one of those convicted of the murder of Sir Peter Blake. Mr Tavares remains in prison in Brazil. The article focused on Tavares' background, his involvement in drugs which continued in prison, and how he claimed in the interview that he had more recently turned his life around. It also focused on his two attempts to escape from prison, and offending that occurred in the course of that. In the interview Tavares apologised for his actions. Amongst other things, the article refers to Tavares having come from a wealthy Catholic family. Some details are given of the family and the fact they are so well known in their home town, a street was named after them.

The Complaint

Mr Kernot complains that in the article published by the *Sunday Star-Times* referred to above, there was gratuitous use of religious tagging. He considered the murderer's Catholic background added nothing whatsoever to the news value, and he went on to say it was entirely gratuitous. He considers at a general level that religious tagging in crime reporting is a variation on race/ethnic tagging dealt with by the Press Council in 1986.

The Response

In the response, Jonathan Milne, the editor of the *Sunday Star-Times*, sets out the background to the commissioning of the article, which was apparently the first interview with Tavares. He said in commissioning the article they requested the freelance reporter to investigate Tavares' background, to speak to him in prison, and to seek interviews with his family to shed light on the crime and how he came to be in the situation that led to the murder. He said the fact that he came from a wealthy family was not in line with previous reports that essentially painted him as a street thug. As well as mentioning having a street named after the family, the article pointed out that the family has paid for expensive drug rehabilitation treatment for Tavares. He said all this, including Tavares' religious upbringing, helped paint a greater picture of who he was. He said the article also attempted to give readers a greater cultural understanding of Brazil, which has the largest Catholic population in the world, and included facts about crime and incarceration in that country.

The Decision

Tavares was one of a gang convicted of the murder of Sir Peter Blake. Apparently, he is the only one who remains in prison. The extensive story on the crime from 16 years ago, and Tavares' background, painted a completely new picture of his offending. It showed that, rather than simply being a member of a street gang, he came from a relatively privileged background and had fallen far from grace. The Press Council is satisfied that it is relevant for the story to show that not only did he come from a materially well-off family,

but that they were a Catholic family. This highlighted the extent of his considerable fall. It also showed that the pernicious effects of drug abuse and addiction can fall on any part of society, regardless of background - religious and material. This was an important aspect to the interview of Tavares.

The 1986 matter referred to by Mr Kernot arose from an approach he made to the Council following what, he said, were examples of newspapers unjustifiably giving details of an offender's racial background. The then chairman of the Council, Sir Thaddeus McCarthy wrote to editors to remind them of their, accepted, responsibility to avoid irrelevant mention of a person's colour or race.

The same matter was considered by the Council in 2013.¹ A report of a rape trial mentioned the ethnicity of the offenders. The Council upheld the complaint stating "Without any such context, the description of them as Fijian Indian was quite gratuitous and places an unnecessary emphasis on their race".

We consider that Tavares' religious background was as relevant as his material background in portraying his story. We are satisfied it is far removed from earlier cases, relating to ethnic or racial tagging in relation to criminal offending. This a case about one of the offender's background based on his first interview. Part of its quite proper focus was on Tavares drug addiction and how addiction was no respecter of material wealth or religious belief.

We see no breach of any of the Press Council's principles.

The complaint is not upheld, with one member Liz Brown dissenting.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Tiumalu Peter Fa'afiu, John Roughan, Hank Schouten, Marie Shroff, Christina Tay and Tim Watkin.

CASE NO: 2638 – ELIZA PRESTIDGE OLDFIELD AGAINST THE DOMINION POST AND STUFF

Overview

Stuff ran an opinion piece by Duncan Garner *Dear New Zealand, how do we want to look in 20 years?* on 7 October. The column was also published in *The Dominion Post*. In it Mr Garner discusses his recent visit to Kmart where he observed the long line waiting for the check-out. He used his observations of who was standing in the line to comment on current immigration policy. He considered what the future of New Zealand may be if, he argues, we do not plan better for our future population.

The complaint was upheld by a majority of five members with four members dissenting.

The Complaint

Eliza Prestidge Oldfield complains that the article falls short of Principle 7: Discrimination and Diversity. This principle states that "issues of gender, religion, minority groups, sexual orientation, age, race, colour or physical or mental disability are legitimate subjects for discussion where they are relevant and in the public interest, and publications may report and express opinions in these areas. Publications should not, however, place gratuitous emphasis on any such category in their reporting".

She argues that the article refers to a group of immigrants and suggests that immigration is a concern because the migrants are from those countries. She points out that if the article wanted to avoid a racist subtext particular minority groups should not have been singled out.

She also complains that the article falls short of Principle 1: Accuracy, Fairness and Balance, Principle 4 Comment and Fact, in that "a clear distinction should be drawn between factual information and comment or opinion" and Principle 5 that states that columns, blogs, opinion and letters should be labelled as such.

The Response

Bernadette Courtney, Editor in Chief Central Region, responds by stating that the column is an opinion piece and clearly labelled as such. She acknowledges that the content may not sit well with some readers but defends the right to present a variety of views. She pointed out that the paper published a right of reply from the Race Relations Commissioner Dame Susan Devoy and also published a number of letters with a diverse range of views on the article.

The Decision

The Press Council in the past has ruled on complaints against opinion pieces. While an opinion piece does not require balance and is entitled to take a strong position on issues that it addresses, it needs to be based on facts that are accurate and to take into account relevant Press Council principles (such as Principles 4 and 7).

In relation to principle 7 it should not legitimise gratuitous emphasis on stereotypes or fear-mongering. The Council will not uphold complaints against expressions of opinion simply on the basis that they are extreme, provocative, and/or offensive. However, if the opinion is so extreme in substance or tone as to go beyond what is acceptable as opinion and amount to a breach of Principle 7, a complaint will be upheld.

The parts of the article which are relevant to the complaint start with a statement that the visit to the shopping mall "... fast became a nightmarish glimpse into our future if we stuff it up." The writer then describes "a massive human snake" and continues: "The self-service counter could not cope. It couldn't cope with the pressures of the people. The dozens of stressed faces making up the human snake were frustrated too. I looked around, it could have been anywhere in South East Asia. I wasn't shocked – we have reported this for three years – we have targeted immigrants, opened the gates and let in record numbers. This year's net gain of migrants was 72,000. Indians, Pakistanis, Sri Lankans, Syrians, and many others. I saw the changing face of New Zealand at the cross roads, otherwise known as Kmart's self-service counter".

Much of the article consists of legitimate expression of opinion on questions of immigration and population control. It is clearly labelled as opinion and there is no failure to distinguish between opinion and fact (Principles 4 and 5).

The main questions before the Press Council relate to the requirements that there be a clear distinction between fact and opinion and that material facts on which an opinion is based should be accurate (Principle 4), and to the discrimination and diversity principle (Principle 7).

In relation to principle 4, Mr Garner appears to offer the "fact" that New Zealand's population is growing because of South East Asian immigration. The actual drivers of population growth are more complex than that. It is only

in the last three years that India and China were the top two countries of origin for New Zealand migrants, and in any event, these countries are not generally included in the popular understanding of “South East Asia”. Before that the United Kingdom topped all figures. While the Asian population in New Zealand is the fastest growing (up 33 percent from the 2006 to 2013 census), it still only represents 12 percent of the total population, and not all those of Asian ethnicity are migrants. Population growth can also be driven by New Zealanders returning from overseas or deciding not to migrate. Conflating migration and refugees is also unhelpful.

In addition, Mr Garner singles out migrants from Pakistan, Sri Lanka and Syria, countries which are the source of relatively few migrants. The immediate juxtaposition of the figure of 72 000 with the singled out groups amounts to misleading the reader on a factual issue. At the very least the line between fact and opinion has become blurred in this case.

In presenting the data as he did, Mr Garner has inaccurately targeted a group of migrants in a way that leads the reader to infer that these groups are driving the poor outcomes for all New Zealanders that Mr Garner outlines. Immigration data, however, tells a more complex story. In presenting the data as Mr Garner did, the reader is led to make inferences that the “blame” for New Zealanders’ poor outcomes and standard of living lies with a targeted group of migrants. As such, the complaint under Principle 4 is upheld.

With regard to Principle 7, the Press Council acknowledges and agrees that minority groups, race and colour are legitimate subjects for discussion where they are relevant and the discussion is in the public interest. However there should not be gratuitous emphasis on any such category. In this case, the article was directed at immigration and the consequences of uncontrolled population growth. The arguments are not advanced or aided in any way by singling out certain ethnic or national groups. That certain ethnic groups were singled out and some of these are groups do not provide large numbers of migrants is of most concern. Despite the writer’s protestations to the contrary, his approach can only be seen as gratuitous racism, especially when linked with the description of New Zealand’s future as nightmarish. The Council members upholding the complaint paid due consideration to freedom of expression as discussed in previous cases and concluded that this case went beyond what we deemed acceptable.

The complaint under Principle 7 is also upheld.

Press Council members upholding this complaint were Liz Brown, Jo Cribb, Tiumalu Peter Fa’afiu, Hank Schouten and Marie Shroff

Dissent

The chairman, Sir John Hansen, and three members of the Council, Christina Tay, Tim Watkin and John Roughan, disagreed with the decision to uphold the complaint. In their view the column, while unpleasant, did not overstep the boundaries established by the Council’s principles and previous decisions regarding expressions of opinion on subjects involving race.

They noted the Council is reluctant to limit freedom of expressions of opinion on any subject and its principles and rulings allow ethnic issues to be debated so long as

the references to race are not gratuitous and do not ascribe adverse characteristics or behaviour to an entire racial group. (See cases 2253 and 2260)

The columnist in this case was expressing concern about the ethnic diversity of New Zealand’s high immigration over recent years. He singled out several nationalities as those he thought he recognised in a shopping queue. While these groups were not a large component of New Zealand’s immigration, he was using them as an example of “the changing face of New Zealand”. In this context, the references to ethnic groups were not inaccurate or gratuitous in the minority’s view and he was not ascribing any characteristics to them.

The columnist did not explain why he was concerned at the ethnic diversity as well as the scale of immigration in recent years, and the clear implication that this did not need to be explained gave the column an unpleasant “dogwhistle” odour. But this sort of opinion is best challenged, in the minority’s view, by open debate rather than objections to its expression.

The Council has long stressed the safe guarding of “freedom of expression” in relation to opinion pieces. We find it impossible to distinguish this case from Toailoa also decided by the Council at this meeting. In that case the Council unanimously declined to uphold a similar complaint against an opinion piece.

CASE NO: 2639 – TANYA TOAILOA AGAINST KIWIBLOG

Overview

On 8 November 2017 the online commentary site Kiwiblog published a contribution by David Garrett headed “Guest Post: Pasifika is Bollocks”. The post was made after the recent Tongan/Samoan rugby match and the associated public disturbances including fighting between Tongans and Samoans, as reported in the media. Among other points made, the guest post stated “Samoans and Tongans hate each other with a vengeance”. It also claimed the recent events described above disproved the implications of the term “Pasifika”, i.e. that underneath cultural differences, Pacific Islands people are all one big happy family.

The Complaint

Tanya Toailoa says the guest post is inflammatory, racist and irresponsible. She notes that assertions made by the piece are factually wrong i.e. that all Samoans and Tongans hate each other; and that they all are aware of historical reasons for Tongan/Samoan enmity. She does not accept that the article is acceptable, is fair comment or ‘just an opinion’. She wants the article removed from the site. The complainant cites two Press Council Principles: Comment and Fact; Discrimination and Diversity.

The Response

David Farrar, editor of Kiwiblog, says that from time to time he publishes guest posts offering a variety of points of view. This does not mean he, as editor, agrees with all the opinions expressed, as in this case.

He responds that in relation to Principle 4, Mr Garrett’s article is clearly an opinion piece, and that no reasonable person could regard his assertions as factual. Principle 7

provides that race is a legitimate subject for discussion where relevant, and the context of the piece was extensive media coverage of Tongan/Samoan disturbances.

Mr Farrar says his offer of a right of reply to the complainant was the appropriate response to the complaint; and believes agreeing to the complainant's request for removal of the article would have a chilling effect on the ability of publications to allow strong opinions to be expressed.

Discussion and Decision

A search of the Internet reveals that there are traditional stories of past Tongan and Samoan rivalry, and unverified accounts of recent incidents, including some involving rugby matches. Apart from that is hard to find a basis for Mr Garrett's surprising claim that Tongans and Samoans hate each other. In fact he contradicts himself by noting "you would never know it at pan-pacific gatherings – at least until cocktail hour". Mr Garrett's guest post is unpleasant, grossly exaggerated and provocative for many readers and possibly intended to be so. It is not surprising that many people commented online about the guest post, both positively and negatively.

Sporting events worldwide can provide an emotional environment where racial prejudices are revealed and unruly behaviour occurs. The Press Council believes the media are entitled to report these occurrences, and commentators to express their opinions. The complainant certainly has a legitimate contrary opinion to Mr Garrett. She has been given the opportunity to express that in a balancing Kiwiblog opinion piece, but has to date not taken that up.

On Principle 4, Comment and Fact, the Council believes the article is an opinion piece and marked as such by the heading "Guest Post". The contentious statements in the guest post are assertions, and we accept the editor's submission that they are clearly Mr Garrett's opinions. The facts of the historical basis and recent history of Tongan/Samoan rivalry are publicly (although perhaps not widely) known and do not appear to be contested.

The Press Council Principle 7 notes that issues of race are legitimate subjects for discussion where relevant. In this case Samoan/Tongan sporting rivalry was an essential part of the news story sparking the opinion piece. Given this context, we consider that dealing with the Tongan/Samoan issue in an opinion piece could not be considered gratuitous emphasis on race.

The complaint is not upheld, with one member Hank Schouten dissenting from this decision.

Press Council members considering this complaint were Sir John Hansen, Liz Brown, Jo Cribb, Tiimalu Peter Fa'afiu, John Roughan, Hank Schouten, Marie Shroff, Christina Tay and Tim Watkin.

CASE NO: 2640 – CHRISTINE TOMS AGAINST HOROWHENUA CHRONICLE AND NZME

Christine Toms complained that an article on a Horowhenua District Council meeting contained information that was untrue in breach of Press Council principle 1 (accuracy, fairness and balance).

Background

An online story published by NZME on October 12 and a similar story in the *Horowhenua Chronicle* on October 13 reported that district councillors had called for an investigation into allegations that a local woman, understood to be Christine Toms, had written and signed off emails as the district's mayor.

The story was based on comment at a council meeting by Councillor Piri-Hira Tukapua who said she had received information that an unauthorised person had written and signed off emails purporting to be from the mayor.

It was reported that media at the meeting were offered a copy of an email sent from Mrs Toms' address to the mayor. It was written as if from the mayor and was signed off "Regards, Michael Feyen, Mayor."

Cr Tukapua said this was unlawful and "seriously damaged confidence and good governance."

The articles also mentioned that Mrs Toms had acted as the mayor's advocate. She was not paid by council for this and the mayor said any arrangements he had with her as his advocate were confidential.

The Complaint

Mrs Toms was concerned by reference to "emails" when there was just one email.

This was a draft she had prepared for the mayor to ask about the qualifications of the council's acting chief executive. This email was accidentally copied to the council's chief executive David Clapperton and it was subsequently forwarded to councillors and officers.

Mrs Toms said she had not purported to be the mayor. The article was a wild and deliberate attack on her reputation and had extended social media hate speech into mainstream media.

NZME had also breached her privacy by naming her in the articles.

The Response

NZME head of regional operations Kim Gillespie said the plural use of "emails" in the article was taken from Cr Tukapua's comments at the council meeting. However, he acknowledged this differed from the minutes of the meeting which used the word "email".

As for hate speech NZME did not have control over content on third party sites or social media sites and nor could it control when social media sites shared its content.

Mrs Toms' concerns about being named in the article were misplaced. The email containing her name was given to media at the meeting. Although she was not named at the meeting Mrs Toms could easily be identified when the email was reviewed. He also argued the right to privacy "should not interfere with publication of significant matters of public record or public interest." Mrs Toms' role as the mayor's advocate was of public interest.

However, the article was removed from the NZME website after the complaint was received.

The Decision

There has been extensive reportage and social media comment about the Horowhenua District Council's problems and of clashes between the mayor, his chief executive and councillors who have subsequently passed a vote of no confidence in Mr Feyen. This complaint seems to have arisen out of this history of troubled relations on the council, a situation where mistrust and ill-feelings can inflame issues that would otherwise be settled more easily.

There is legitimate public interest in the council's affairs and at times when there is conflict like this, it is all the more important for the media to report matters fairly and accurately. Comments on social media are not under the control of the *Chronicle* or within the purview of the Press Council.

The key issue is whether there were a number of emails or just one. The paper reported a councillor saying there were emails, while the council minutes refer to an email. However, a late item paper provided to the media at the meeting refers to emails so the publication had basis for the statement.

Cr Tukapua's contention that an email or emails were written by somebody purporting to be the mayor may have misconstrued a situation where Mrs Toms had merely drafted an email for the mayor. But if she made that comment at a council meeting the media were entitled to report it.

The Press Council does not believe there was a legitimate claim for breach of privacy.

It is noted that the article was removed from the NZME website following Mrs Toms' complaint. This was done without prejudice while it looked into the issues raised by Mrs Toms. The Press Council gives credit to publishers who take prompt action to address complaints.

The complaint is not upheld.

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Tiimalu Peter Fa'afiu, John Roughan, Hank Schouten, Marie Shroff, Christina Tay and Tim Watkin.

Liz Brown took no part in the consideration of this complaint.

(Endnotes)

- 1 De Bres v Waikato Times June 2013.

Statement of Principles

Scope

The Press Council's scope applies to published material in newspapers, magazines and their websites, including audio and video streams, as well as to digital sites with news content, or blogs characterised by their news commentary. The Council retains the discretion to decline a complaint if the publication has limited readership or the circumstances make the complaint inappropriate for resolution by the Council.

The Council's adjudications are based on ethical considerations: it does not recover debts or seek monetary recompense for complainants. Its Principles and Complaints Procedures are set out below.

Preamble

The main objective of the New Zealand Press Council, established as an industry self-regulatory body in 1972, is to provide the public with an independent forum for resolving complaints involving the newspapers, magazines and the websites of such publications and other digital media. The Council is also concerned with promoting media freedom and maintaining the press in accordance with the highest professional standards.

An independent press plays a vital role in a democracy. The proper fulfilment of that role requires a fundamental responsibility to maintain high standards of accuracy, fairness and balance and public faith in those standards.

There is no more important principle in a democracy than freedom of expression. Freedom of expression and freedom of the media are inextricably bound. The print media is jealous in guarding freedom of expression, not just for publishers' sake but, more importantly, in the public interest. In dealing with complaints, the Council will give primary consideration to freedom of expression and the public interest.

Public interest is defined as involving a matter capable of affecting the people at large so that they might be legitimately interested in, or concerned about, what is going on, or what may happen to them or to others.

Distinctions between fact, on the one hand, and conjecture, opinion or comment, on the other hand, must be maintained. This does not prevent rigorous analysis. Nor does it interfere with a publication's right to adopt a forthright stance or to advocate on any issue. Further, the Council acknowledges that the genre or purpose of a publication or article, for example blogs, satire, cartoons or gossip, call for special consideration in any complaint.

The Press Council endorses the principles and spirit of the Treaty of Waitangi and Bill of Rights Act, without sacrificing the imperative of publishing news and reports that are in the public interest.

Editors have the ultimate responsibility for what appears in their publications, and for adherence to the standards of ethical journalism which the Council upholds. In dealing with complaints, the Council seeks the co-operation of editors and publishers. News bloggers and digital media are similarly required to participate responsibly.

The following principles may be used by complainants

when they wish to point the Council to the core of their complaint. However, a complainant may nominate other ethical grounds for consideration.

Principles

1. Accuracy, Fairness and Balance

Publications should be bound at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by commission or omission. In articles of controversy or disagreement, a fair voice must be given to the opposition view.

Exceptions may apply for long-running issues where every side of an issue or argument cannot reasonably be repeated on every occasion and in reportage of proceedings where balance is to be judged on a number of stories, rather than a single report.

2. Privacy

Everyone is normally entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of significant matters of public record or public interest.

Publications should exercise particular care and discretion before identifying relatives of persons convicted or accused of crime where the reference to them is not relevant to the matter reported.

Those suffering from trauma or grief call for special consideration.

3. Children and Young People

In cases involving children and young people editors must demonstrate an exceptional degree of public interest to override the interests of the child or young person.

4. Comment and Fact

A clear distinction should be drawn between factual information and comment or opinion. An article that is essentially comment or opinion should be clearly presented as such. Material facts on which an opinion is based should be accurate.

5. Columns, Blogs, Opinion and Letters

Opinion, whether newspaper column or internet blog, must be clearly identified as such unless a column, blog or other expression of opinion is widely understood to consist largely of the writer's own opinions. Though requirements for a foundation of fact pertain, with comment and opinion balance is not essential. Cartoons are understood to be opinion.

Letters for publication are the prerogative of editors who are to be guided by fairness, balance, and public interest. Abridgement is acceptable but should not distort meaning.

6. Headlines and Captions

Headlines, sub-headings, and captions should accurately and fairly convey the substance or a key element of the report they are designed to cover.

7. Discrimination and Diversity

Issues of gender, religion, minority groups, sexual orientation, age, race, colour or physical or mental disability are legitimate subjects for discussion where they are relevant and in the public interest, and publications may report and express opinions in these areas. Publications should not, however, place gratuitous emphasis on any such category in their reporting.

8. Confidentiality

Publications have a strong obligation to protect against disclosure of the identity of confidential sources. They also have a duty to take reasonable steps to satisfy themselves that such sources are well informed and that the information they provide is reliable. Care should be taken to ensure both source and publication agrees over what has been meant by “off-the-record”.

9. Subterfuge

Information or news obtained by subterfuge, misrepresentation or dishonest means is not permitted unless there is an overriding public interest and the news or information cannot be obtained by any other means.

10. Conflicts of Interest

To fulfil their proper watchdog role, publications must be independent and free of obligations to their news sources. They should avoid any situations that might compromise such independence. Where a story is enabled by sponsorship, gift or financial inducement, that sponsorship, gift or financial inducement should be declared.

Where an author’s link to a subject is deemed to be justified, the relationship of author to subject should be declared.

11. Photographs and Graphics

Editors should take care in photographic and image selection and treatment. Any technical manipulation that could mislead readers should be noted and explained.

Photographs showing distressing or shocking situations should be handled with special consideration for those affected.

12. Corrections

A publication’s willingness to correct errors enhances its credibility and, often, defuses complaint. Significant errors should be promptly corrected with fair prominence. In some circumstances it will be appropriate to offer an apology and a right of reply to an affected person or persons.

Membership

The following organisations have agreed to abide by these principles.

Metropolitan

The New Zealand Herald
The Dominion Post
The Press
Otago Daily Times

Regional

Ashburton Guardian
Bay of Plenty Times
The Rotorua Daily Post
Dannevirke Evening News
The Gisborne Herald
The Greymouth Evening Star
Hawkes Bay Today
Horowhenua Kapiti Chronicle
Manawatu Standard
The Marlborough Express
The Nelson Mail
The Northern Advocate
The Oamaru Mail
The Southland Times
Taranaki Daily News
The Timaru Herald
Waikato Times
Wairarapa Times-Age
Wanganui Chronicle
The Westport News
Northern News
The Wairoa Star

Sunday

Herald on Sunday
Sunday Star-Times
Sunday News

Community

APN Community Newspapers
Fairfax NZ Community Newspapers
Community Newspaper Association of New Zealand member newspapers

Business Weekly

National Business Review

Magazines

New Zealand Magazines (APN)
Fairfax Magazines
Bauer Media
Magazine Publishers’ Association
New Zealand Doctor
Pharmacy Today

Digital Members

Billbarcblog
Pundit.co.nz
Business Desk
EveningReport.nz
Scoop.co.nz

Complaints procedure

1. A person bringing a complaint against a publication (namely newspapers, magazines and their websites as well as other digital sites with news content, including blogs characterised by news commentary) must, unless exempted by the Executive Director of the Council, first lodge the complaint in writing with the editor of the publication.
2. The complaint (to be clearly marked as a letter of complaint) is to be made to the editor, online author or publisher within the following time limits:
 - a. A complaint about a particular article, within one calendar month of its publication.
 - b. A complaint arising from a series of articles, within one calendar month of the earlier of the date from which the substance of the complaint would have been reasonably apparent to the complainant, or the publication of the last article in the series.
 - c. A complaint concerning non-publication of any material, within two calendar months of the date on which the request to publish was received by the publication.
 - d. A complaint about an online article or blog, within one calendar month of the date of first publication, with the complaint option kept open for two years if the offending article remains uncorrected electronically, or longer at the Chairperson of the Council's discretion.
 - e. A complaint which does not arise from the publication or non-publication of any material, within one month of the incident giving rise to the complaint.
3. If the complainant is not satisfied by a publication's response or receives no response within 10 working days from the date on which the editor or online publisher received the complaint, the complainant should then complain promptly to the Council.

then, within 10 working days, in approximately 200 words, reply to any new matters raised by the publication. The complainant should not repeat submissions or material contained in the original complaint
4. The Executive Director of the Council has the power to extend time limits but will not do so without compelling reason.
5. In appropriate circumstances, guided by rules of natural justice, the Council may request or receive further information from one or both of the parties
6. Once submissions have been exchanged the Press Council will at its next meeting consider and usually determine the complaint. Most complaints are determined on the papers but, if wishing to make a personal submission, a complainant may apply to the Executive Director of the Council for approval to attend. If approval is given the editor, or representative of the editor or publisher of an online article will also be invited to attend the hearing. No new material may be submitted at the hearing without the leave of the Council.
7. Timeliness of a publication's response will be taken into account in a judgment, and may itself be the subject of a Council ruling.

Publication of adjudications

1. If a complaint is upheld the publication, print or online, must publish the adjudication giving fair prominence. Where an offending print article has been published on pages 1-3, the Council may direct the adjudication to run on page 3, to a maximum of 400 words. If the decision is lengthy the Press Council will provide a shortened version.
2. A short pointer is to run on page 3, with the full adjudication further back if it relates to an article published on a later page.
3. A website or blog should publish the adjudication in the section in which the original story ran.
4. Magazines should publish a pointer on the first available editorial page with the full adjudication appearing on a later page.
5. The decision must be published unedited and unaccompanied by editorial comment, though publications are not proscribed from commenting on the decision elsewhere. If a complaint is not upheld the publication may determine whether to publish the decision and where it should be published.
6. All ruled-against electronic copy that is enduring and deemed to be conveying inaccuracy must be noted as having been found incorrect and why. In cases where a potential harm outweighs the need to keep public record intact, the Council may require the removal of story elements or the taking down of a story in its entirety.
7. If a ruled-against article has been further published on a

Complaint Form

1. Complainants are requested where possible to use the online complaint form available on the website or on a form provided by the Council. The Council will, however, accept complaints by letter. All complaints must be accompanied by the material complained against and copies of the correspondence with the publication. The main thrust of the complaint is to be summarised in up to 500 words. Other supporting material may be supplied. Legal submissions are not required.

Time limits

1. The time limits which will apply on receipt of a complaint are:
 - a. After the Council refers the complaint back to the publication, the publication has 10 working days from receipt of that complaint to reply.
 - b. On receipt of the response, the Press Council will refer it to the complainant. The complainant may

publication's website, or distributed to other media, the Council requires that:

- a. In the instance of a website, the article is to be flagged as having been found to have breached Press Council Principles, and a link provided to the decision on this website.
 - b. Where there has been further distribution to other news media, the Press Council will provide a short statement to be published in each publication known to have published the original item.
8. The Council reserves the right to direct a right of reply, correction, or retraction. In egregious circumstances, with a unanimous decision, the Council may censure a publication. Such a censure must be published in the publication or website giving due prominence.
 9. All decisions will be available on the Council's website and published in its relevant annual report, unless the Council, on its own volition or at the request of a party, agrees to non-publication. Non-publication will be agreed to only in exceptional circumstances.

Other requirements

1. Where the circumstances suggest that the complainant may have a legally actionable issue, the complainant will be required to provide a written undertaking not to take or continue proceedings against the publication or journalist concerned.
2. The Council may consider a third party complaint (i.e. from a person who is not personally aggrieved) However, it reserves the right to require the complainant to first seek written consent from the individual who is the subject of the article complained of.
3. Publications, websites and blogs must not give undue publicity to a complaint until it has been resolved or adjudicated. However, the fact a complaint has been made can be reported.
4. Editors are to publish, in each issue of the publication, the Council's complaints process. This should be by way of a brief at either the foot of a news briefs column, or on the editorial or letters page; on the contacts page for websites and blogs and on the imprint page for magazines.

Financial Statements

The New Zealand Press Council
For the year ended 31 December 2017

Prepared by The Tax Lady Wellington Limited

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Compilation Report

The New Zealand Press Council For the year ended 31 December 2017

Scope

On the basis of information provided and in accordance with Service Engagement Standard 2 Compilation of Financial Information, we have compiled the financial statements of The New Zealand Press Council for the year ended 31 December 2017.

These statements have been prepared in accordance with the accounting policies described in the Notes to these financial statements.

Responsibilities

You are solely responsible for the information contained in the financial statements and have determined that the Special Purpose Reporting Framework used is appropriate to meet your needs and for the purpose that the financial statements were prepared.

The financial statements were prepared exclusively for your benefit. We do not accept responsibility to any other person for the contents of the financial statements.

Audit or Review Engagement

Our procedures use accounting expertise to undertake the compilation of the financial statements from information you provided. Our procedures do not include verification or validation procedures. These accounts have been subject to a financial review by Cornish and Associates Limited.

Disclaimer

We have compiled these financial statements based on information provided which has not been subject to an audit or review engagement. Accordingly, we do not accept any responsibility for the reliability, accuracy or completeness of the compiled financial information contained in the financial statements. Nor do we accept any liability of any kind whatsoever, including liability by reason of negligence, to any person for losses incurred as a result of placing reliance on these financial statements.

The Tax Lady Wellington Limited

Dated: 14 February 2018



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www.cornish.co.nz

12 April 2018

To Whom it May Concern

The New Zealand Press Council

We have reviewed the accounts of The New Zealand Press Council for the period ended 31 December 2017 (12 Months).

In our opinion:-

- Proper accounting records have been kept by the organisation as far as appears from our examination of those records, and the organisations 2017 Financial Statements.
- The accounts comply with generally accepted accounting practice and give a true and fair view of the financial position as at 31 December 2017 and financial performance and cashflows for the year ended on this date of the organisation.

Our review was completed on 5th April 2018 and our unqualified opinion is expressed at this date.

CORNISH & ASSOCIATES LTD.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Directory

The New Zealand Press Council For the year ended 31 December 2017

Nature of Business

The *New Zealand Press Council* is a Non Governmental Organisation which exists to uphold standards in the New Zealand print media and promote freedom of speech in New Zealand.

Registered Address

79 Boulcott Street,
Wellington 6143

IRD Number

013969663

Chairman

Sir John Hansen

Accountant

The Tax Lady Wellington Limited

Bankers

BNZ Bank

Auditor

Cornish and Associates Ltd

Approval of Financial Report

The New Zealand Press Council For the year ended 31 December 2017

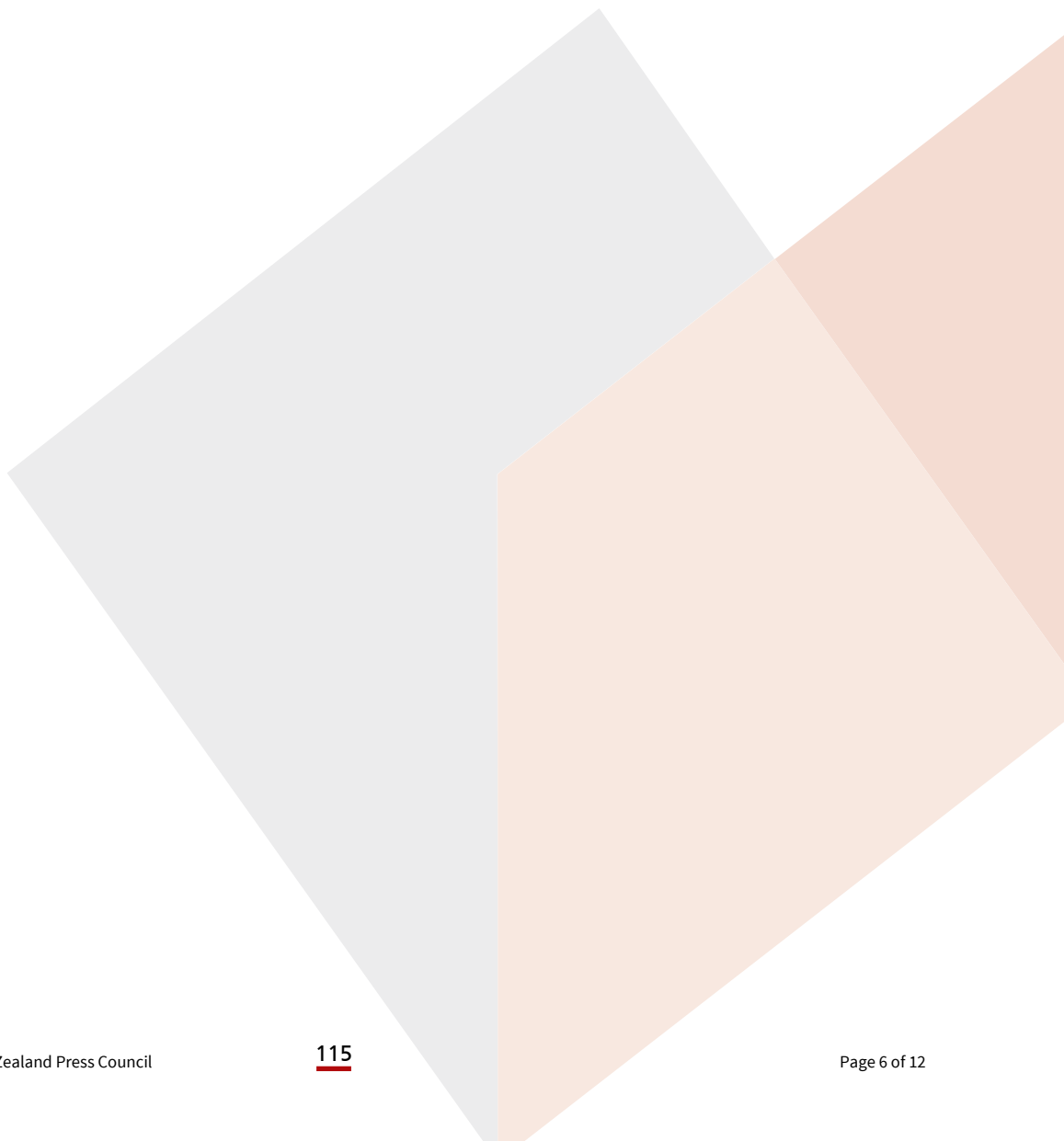
The Directors are pleased to present the approved financial report including the historical financial statements of The New Zealand Press Council for year ended 31 December 2017.

APPROVED

For and on behalf of the Board.

Chair

Date



Profit and Loss

The New Zealand Press Council For the year ended 31 December 2017

| | 2017 | 2016 |
|--|----------------|-----------------|
| Trading Income | | |
| Associate Membership | 43,223 | 1,800 |
| Community Newspapers | 11,360 | 12,660 |
| Magazines Contribution | 18,875 | 18,875 |
| NPA Contribution | 220,000 | 220,000 |
| Union | 2,700 | 2,700 |
| Total Trading Income | 296,158 | 256,035 |
| Gross Profit | 296,158 | 256,035 |
| Other Income | | |
| Interest Income | 1,708 | 3,648 |
| Total Other Income | 1,708 | 3,648 |
| Expenses | | |
| Travel and Accommodation | 20,755 | 22,764 |
| Accident Compensation Levy | 266 | 302 |
| Accounting & Xero Fees | 2,148 | 2,243 |
| Advertising & Promotion | 2,001 | 1,394 |
| Annual Leave Owing | (1,145) | 3,213 |
| Audit Fees | 1,000 | 1,000 |
| Board Fees | 31,120 | 27,438 |
| Chairmans' Expenses | 12,823 | 13,223 |
| Chairmans Honorarium | 60,000 | 60,000 |
| Cleaning | 529 | 480 |
| Computer Expenses | 2,500 | 2,489 |
| Contractors | 22,542 | 1,250 |
| Depreciation | 6,692 | 10,542 |
| General Expenses | 6,077 | 6,092 |
| Insurance | 3,070 | 2,870 |
| Legal expenses | 10,771 | - |
| Postage & Courier | 1,271 | 1,342 |
| Power & Telephone | 1,312 | 1,260 |
| Printing & Stationery | 2,790 | 2,050 |
| Rent - Carpark | 1,920 | 1,920 |
| Rent - Office | 7,736 | 7,736 |
| Salaries | 96,982 | 97,529 |
| Subscriptions | - | 3,518 |
| Total Expenses | 293,161 | 270,655 |
| Net Profit (Loss) Before Taxation | 4,706 | (10,971) |

| | 2017 | 2016 |
|---------------------------------------|--------------|-----------------|
| Taxation and Adjustments | | |
| Income Tax Provision | 74 | 155 |
| Total Taxation and Adjustments | 74 | 155 |
| Net Profit (Loss) for the Year | 4,631 | (11,127) |

Balance Sheet

The New Zealand Press Council As at 31 December 2017

| | 31 DEC 2017 | 31 DEC 2016 |
|--------------------------------------|----------------|----------------|
| Assets | | |
| Current Assets | | |
| Cash and Bank | | |
| Business First Oncall Account | 60,922 | 29,166 |
| Non Profit Org Account | 13,956 | 8,419 |
| NZPC - Term Deposit | 53,851 | 52,156 |
| Total Cash and Bank | 128,729 | 89,741 |
| Trade and Other Receivables | 5,635 | 31,694 |
| Other Current Assets | 1,053 | 1,170 |
| Total Current Assets | 135,417 | 122,605 |
| Non-Current Assets | | |
| Property, Plant and Equipment | 13,273 | 19,965 |
| Total Non-Current Assets | 13,273 | 19,965 |
| Total Assets | 148,690 | 142,570 |
| Liabilities | | |
| Current Liabilities | | |
| Trade and Other Payables | 9,425 | 4,243 |
| GST Payable | 7,885 | 10,488 |
| Income Tax Payable | 518 | 548 |
| Employee Entitlements | 2,803 | 2,719 |
| Total Current Liabilities | 20,632 | 17,998 |
| Non-Current Liabilities | | |
| Other Non-Current Liabilities | 4,493 | 5,638 |
| Total Non-Current Liabilities | 4,493 | 5,638 |
| Total Liabilities | 25,124 | 23,636 |
| Net Assets | 123,566 | 118,934 |
| Equity | | |
| Retained Earnings | 123,566 | 118,934 |
| Total Equity | 123,566 | 118,934 |

Depreciation Schedule

The New Zealand Press Council For the year ended 31 December 2017

| NAME | COST | OPENING VALUE | PURCHASES | DISPOSALS | DEPRECIATION | CLOSING VALUE |
|---------------------------------------|---------------|---------------|-----------|-----------|--------------|---------------|
| Furniture & Fittings | | | | | | |
| Boardroom Furniture (share of) | 2,482 | 1,704 | - | - | 273 | 1,432 |
| Crestline Desk | 1,598 | 1,183 | - | - | 154 | 1,029 |
| Dexion Storage Unit | 4,455 | 3,549 | - | - | 355 | 3,194 |
| Side Chairs x 2 | 878 | 21 | - | - | 4 | 17 |
| Total Furniture & Fittings | 9,413 | 6,457 | - | - | 785 | 5,672 |
| Office Equipment | | | | | | |
| Computer | 2,345 | 2,149 | - | - | 1,075 | 1,075 |
| Computer | 2,467 | 148 | - | - | 74 | 74 |
| Printer | 876 | 1 | - | - | - | - |
| Website | 7,335 | 3,515 | - | - | 1,757 | 1,757 |
| Website | 14,670 | 5,501 | - | - | 2,751 | 2,751 |
| Total Office Equipment | 27,693 | 11,313 | - | - | 5,656 | 5,656 |
| Office Fitout | | | | | | |
| Office Fitout | 22,397 | 2,196 | - | - | 250 | 1,945 |
| Total Office Fitout | 22,397 | 2,196 | - | - | 250 | 1,945 |
| Total | 59,503 | 19,965 | - | - | 6,692 | 13,273 |

Notes to the Financial Statements

The New Zealand Press Council For the year ended 31 December 2017

1. Reporting Entity

The New Zealand Press Council is incorporated under the Incorporated Societies Act 1908, and is a Non Governmental Organisation which exists to uphold standards in the New Zealand print media and promote freedom of speech in New Zealand.

This special purpose financial report was authorised for issue in accordance with a resolution dated 14 February 2018.

2. Statement of Accounting Policies

Basis of Preparation

These financial statements have been prepared in accordance with the Special Purpose Framework for use by For-Profit Entities (SPFR for FPEs) published by Chartered Accountants Australia and New Zealand.

The financial statements have been prepared for taxation purposes

Basis of Preparation for the 2016 / 2017 Year

For periods up to and including the 2016 / 2017 financial year, The New Zealand Press Council prepared its financial statements in accordance with approved Financial Reporting Standards (FRSs) and Statements of Standards Accounting Practice (SSAPs) as appropriate for entities that qualified and applied for New Zealand differential reporting concessions. The financial statements for the year ended 31 December 2017 have been prepared in accordance with SPFR for FPE which is not New Zealand Generally Accepted Accounting Practice (NZ GAAP).

Historical Cost

These financial statements have been prepared on a historical cost basis. The financial statements are presented in New Zealand dollars (NZ\$) and all values are rounded to the nearest NZ\$, except when otherwise indicated.

Changes in Accounting Policies

There have been no changes in accounting policies. Policies have been applied on a consistent basis with those of the previous reporting period.

Depreciation

| Account | Method | Rate |
|----------------------|--------------------------|-----------|
| Furniture & Fittings | Diminishing Value (100%) | 10% - 18% |
| Office Equipment | Diminishing Value (100%) | 48% - 50% |
| Office Fitout | Diminishing Value (100%) | 11.4% |

Income Tax

The Income Tax liability is limited to Interest Revenue only, less a \$1,000 exemption granted by Inland Revenue. The liability is charged to the Profit and Loss statement in accordance with the income tax return to Inland Revenue.

Goods and Services Tax

All amounts are stated exclusive of goods and services tax (GST) except for accounts payable and accounts receivable which are stated inclusive of GST.

| | 2017 | 2016 |
|---|----------------|----------------|
| 3. Equity | | |
| Current year earnings | 4,631 | (11,127) |
| Retained earnings/Accumulated funds | 118,934 | 130,061 |
| Total Equity | 123,566 | 118,934 |
| | 2017 | 2016 |
| 4. Property, Plant and Equipment | | |
| Plant and Equipment | | |
| Plant and machinery owned | 27,693 | 27,693 |
| Accumulated depreciation - plant and machinery owned | (22,036) | (16,380) |
| Total Plant and Equipment | 5,656 | 11,313 |
| Furniture and Fittings | | |
| Furniture and fittings owned | 31,810 | 31,810 |
| Accumulated depreciation - furniture and fittings owned | (24,193) | (23,158) |
| Total Furniture and Fittings | 7,617 | 8,652 |
| Total Property, Plant and Equipment | 13,273 | 19,965 |