



NEW ZEALAND
**PRESS
COUNCIL**

2015

43rd Report
of the
New Zealand Press Council

NEW ZEALAND PRESS COUNCIL

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Penny Harding Journalist, Wellington (until March)

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Vernon Small Journalist, Wellington (from May)

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Tim Watkin (from July)



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Left to right Sandy Gill, John Roughan, Jenny Farrell, Peter Fa’afiu, Chris Darlow, Sir John Hansen, Mark Stevens, Mary Major, Tim Watkin, Liz Brown and Marie Shroff.

Sir John Hansen, formerly a judge of the High Court, is the independent chairman. The members representing the public are Ms Brown, Mr Darlow, Mr Fa’afiu and Mrs Gill. Ms Shroff is the alternate public member.

Mr Stevens and Mr Roughan represent editors and were nominated by the Newspaper Publishers’ Association.

Ms Farrell represents magazines, nominated by the Magazine Publishers’ Association.

Mr Small represents journalists, nominated by the media division of the New Zealand Engineering, Printing and Manufacturing Union (EPMU).

Mr Watkin represents digital media.

Mary Major is the Executive Director.

Glucina Complaints

In mid-2015, the Press Council was called on to determine a large number of complaints against the New Zealand Herald as a result of its reporting on the identity of Amanda Bailey, the waitress whose hair was pulled by the Prime Minister in what became known as the “Prime Minister and the ponytail” case. The determinations are reported as cases 2447 to 2455

Nine complaints were formally considered by the Press Council and a number of similar complaints were resolved or withdrawn at an earlier stage. Between them, the complainants alleged breaches of eight of the twelve Press Council principles, although some of the complaints were based on a misunderstanding of the content of individual principles. Principle 8 (confidentiality), for example, is largely about ensuring the reliability of confidential sources and about their protection, but was cited by complainants concerned that the New Zealand Herald had failed to protect confidential information about Ms Bailey. Principle 2 (privacy) was more relevant.

Even allowing for such misunderstandings, there were substantial issues to be considered under Principles 1 (accuracy, fairness and balance), 2 (privacy), 9 (subterfuge) and 10 (conflicts of interest).

As well as dealing with the complexity of the multiple complaints, the Press Council had only incomplete information on which to base its findings. Several of the complainants clearly believed that the Press Council has powers of investigation and would be able to question those involved in the events that led to the complaint, or at least to require them to provide information. In fact the Press Council determines complaints on the information supplied to it by

complainants and by the media outlet that is the subject of the complaint, supplemented by any relevant information that may be in the public domain. It has no power to require information from other sources.

After considering all the information before it, the Press Council found itself unable to make a definitive finding on one of the core issues, which was the allegation that the New Zealand Herald, through its reporter, Rachel Glucina, had used subterfuge to obtain information from Ms Bailey. It was, however, satisfied that Ms Bailey had been misled about the nature of the article that was to be based on the interview and that there had been elements of subterfuge and unfair treatment on the part of the New Zealand Herald.

The Press Council therefore had regard to its objectives as stated in the preamble to its Statement of Principles, which states that the Council is concerned with “. . . maintaining the press in accordance with the highest professional standards.” It also noted that the twelve principles are not exclusive. Complainants may nominate other ethical grounds for consideration.

On this basis, it found that the New Zealand Herald had generally fallen far short of those standards in its handling of a sensitive issue and its failure to respect the interests of a vulnerable person. It also upheld complaints of a breach of Principle 10 (conflicts of interest).

In general, the case is a good illustration not only of the complexity of some complaints but of some of the limitations on the Press Council’s powers and of the use of the flexibility of its Principles to help overcome those limitations in the interests of keeping the media up to the highest professional standards.

The Genre Provision

Most of the complaints considered by the Press Council are against national, regional or local news publications, but its remit goes much wider. In recent years it has considered complaints directed at several specialist or technical publications such as NZ Farmer (case 2404), NZ Property Investor (case 2379), and Model Flying World (case 2330). It receives complaints about student magazines, foreign language newspapers, women's magazines: in fact about all the diversity of publications available to the New Zealand public on a regular (and sometimes irregular) basis.

While in general the Press Council principles apply equally to all publications, there is provision for special treatment for some publications. The Council acknowledges "that the genre or purpose of a publication or article, for example, satire, cartoons or gossip, calls for special consideration in any complaint." A cartoon may make a valid point in a manner that some people find offensive without breaching the principles, and gossip is not held to the same standards of accuracy as news reporting.

A case considered in 2015 (case 2477 – Grant Hannis v Woman's Day) tested the limits of this special consideration. The complainant was concerned that an article about Rachel Hunter, a New Zealand model, purported to be a record of the magazine's recent interview with Ms Hunter complete with direct quotations attributed to her, when the material had been purchased from an agency and was likely to have been pieced together from a variety of sources, including previously published interviews. Some of the material was several years out of date.

While the Council was unanimous in rejecting the editor's submission that the material had been purchased from a reputable agency and the complaint should therefore be dismissed, there was much more debate about the issues of

accuracy and fairness. There was a strong minority opinion that the readers of magazines such as "Woman's Day" do not expect accuracy and that they read for entertainment rather than for information. While largely accepting this view, the majority opinion was that there are limits to the allowance that should be made for the type of publication and that the publication of positively misleading information goes beyond those limits.

The case was not dissimilar to an earlier complaint about Woman's Day (case 2339 in 2013) which was not upheld. In that case, however, the complaint was more about the use of extravagant and potentially misleading language in a headline than about inaccurate information in an article.

In a very different context, the Council was also called on to consider a complaint against "Rip It Up", a magazine devoted to rock music and its diverse culture. The complaint concerned a review of a film in which young black actors frequently described themselves by a word that is usually considered too offensive to publish (the n-word). The reviewer used the same word several times.

While the case did not hinge on the specialist nature of the magazine, the fact that it is generally directed at a particular and limited audience contributed to the majority finding that the complaint should not be upheld. In the context, including the nature of the publication, the word was used to reflect the writer's delight in hearing it used for a confident, self-affirming purpose. The majority of Council members considered that while there is always a risk that accepting its use in the right context will be wrongly taken to mean it may be freely used in any context, that risk does not warrant the total prohibition of the word. It should, however, only be used with extreme care, and it is doubtful whether it should ever be used in a more mainstream publication.

An Analysis - 2015

Of the 68 complaints that went to adjudication in 2015 twenty were upheld in full; one was upheld by a majority; two were upheld in part; six were not upheld by a majority; and 39 were not upheld. A further 12 complaints were resolved informally.

Forty two complaints were against daily newspapers; four were against Sunday newspapers; ten were against community newspapers; seven were against online news sites (exclusively); four were against magazines; and one was against a Chinese language community newspaper *Chinese Times*.

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 leaves the meeting and 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 2015 there were 21 occasions where a member declared an interest and left the room while the

complaint was considered. There were also 13 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 (Cases 2436, 2437, 2441, 2459, 2460, 2477 and 2481.)

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 one complainant attended the meeting to make his case. The editor did not attend.

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 2015.

Press Council Complaints Statistics

Year ending 31 December	2012	2013	2014	2015
Complaints Determined	92	67	61	77
Decisions issued	76	61	49	68
Upheld	16	9	2	20
Upheld by majority	2	2	2	1
Part upheld	3		1	2
Part Upheld by majority				
Not Upheld by majority	5	3	5	6
Not upheld on casting vote of Chairman		1		
Complaint declined				
Not upheld	50	46	40	39
Mediated/resolved	16	6	12	9
Complaints received and not determined	65	75	95	96
Withdrawn	5	9	3	2
Withdrawn at late stage	1			1
Not followed through	36	37	38	62
Out of time		2	3	5
Not accepted	4	14	15	4
Outside jurisdiction		7	22	14
In action at end of year	19	6	14	8
Total complaints	157	142	156	173

Decisions 2015

Complaint name	Publication	Adjudication	Date	Case No
Stanley Dsouza	<i>NZ Herald</i>	Not Upheld	February	2414
Fiona Graham	<i>Otago Daily Times</i>	Not Upheld	February	2415
Sandra King	<i>Hawke's Bay Today</i>	Not Upheld	February	2416
Joanna Malcolm	<i>The Press</i>	Not Upheld	February	2417
Ministry of Justice	<i>Waikato Times</i>	Upheld	February	2418
NZ Customs	<i>NZ Herald</i>	Upheld	February	2419
Jayne Routhan	<i>The Dominion Post</i>	Not Upheld	February	2420
Jack Ruben	<i>The Dominion Post</i>	Not Upheld	February	2421
Smart Whanau	<i>Southland Times</i>	Not Upheld	February	2422
Complainant	<i>Kapi-Mana News</i>	Upheld	March	2423
Catherine O'Brien	<i>NZ Herald</i>	Not Upheld	March	2424
Science Media Centre	<i>Wairarapa Times-Age</i>	Not Upheld	March	2425
Mark Hanna	<i>Wairarapa Times-Age</i>	Not Upheld	March	2426
Craig Smith	<i>Otago Daily Times</i>	Not Upheld	March	2427
Mike Talks	<i>Stuff</i>	Not Upheld	March	2428
Taupo District Council	<i>Taupo & Turangi Weekender</i>	Not Upheld	March	2429
Lee Vandervis	<i>Otago Daily Times</i>	Not Upheld	March	2430
Association of Nigerians in New Zealand	<i>NZ Herald</i>	Not Upheld	May	2431
Martin Bates	<i>Stuff</i>	Not Upheld	May	2432
Earthquake Commission	<i>The Press</i>	Upheld	May	2433
Xoe Hall	<i>Kapi-Mana News</i>	Upheld	May	2434
Robert Miller	<i>Wairarapa Midweek</i>	Not Upheld	May	2435
George Preddey	<i>The Dominion Post</i>	Not Upheld with Dissent	May	2436
Russell Tregonning	<i>The Dominion Post</i>	Not Upheld with Dissent	May	2437
SKYCITY	<i>Sunday Star-Times</i>	Not Upheld	May	2438
Trunk Property/Sam O'Connor	<i>Sunday Star-Times</i>	Not Upheld	May	2439
Paul Cronin	<i>Herald on Sunday</i>	Upheld	June	2440
Michael Dee	<i>NZ Listener</i>	Not Upheld with Dissent	June	2441
Stephan Ferris	<i>GayExpress</i>	Not Upheld	June	2442
Alice Flett	<i>The Press</i>	Upheld	June	2443
Deborah Greene	<i>Herald on Sunday</i>	Not Upheld	June	2444
Brooke Philpott	<i>Northern Outlook/ The Press/ Stuff</i>	Part Upheld	June	2445
John Shone	<i>NZ Herald</i>	Not Upheld	June	2446
Lisa Finlay	<i>NZ Herald</i>	Upheld	June	2447
Bronwyn Hayward	<i>NZ Herald</i>	Upheld	June	2448
Leanne Hermosilla	<i>NZ Herald</i>	Upheld	June	2449
Josh Hetherington	<i>NZ Herald</i>	Upheld	June	2450
Rob Stowell	<i>NZ Herald</i>	Upheld	June	2451
Jasmine Taylor	<i>NZ Herald</i>	Upheld	June	2452
Giovanni Tiso	<i>NZ Herald</i>	Upheld	June	2453
Daniel Webster	<i>NZ Herald</i>	Upheld	June	2454
Julia Woodhall	<i>NZ Herald</i>	Upheld	June	2455
Richard Gee	<i>NZ Herald</i>	Not Upheld	August	2456
Jerry Philip	<i>Northern Outlook</i>	Not Upheld	August	2457
Hinemoa Elder	<i>The Dominion Post</i>	Not Upheld	September	2458
David Grace	<i>The Dominion Post</i>	Not Upheld with Dissent	September	2459
Jane Schaverien	<i>The Dominion Post</i>	Not upheld with Dissent	September	2460
Daniel Hanks	<i>Stuff</i>	Not Upheld	September	2461
Tom Hunsdale	<i>NZ Herald</i>	Not Upheld	September	2462
David Mack	<i>Wanganui Chronicle</i>	Upheld	September	2463
NZ Federation of Budgeting Services	<i>Stuff</i>	Not Upheld	September	2464
Titahi Bay Residents Assocn	<i>Kapi-Mana News</i>	Not Upheld	September	2465

Decisions 2015 cont.

Complaint name	Publication	Adjudication	Date	Case No
Womens Health Action Complaint Jackie Elliott	<i>Waikato Times</i> <i>Rotorua Daily Post</i> <i>Kapiti Observer, Stuff</i> <i>The Dominion Post</i>	Not Upheld Upheld Not Upheld	September November November	2466 2467 2468
Falun Dafa Neil Henderson Keith Jefferies Eamon King Michelle Rogers James Russell Geoff Smith Liz Clayton Grant Hannis Brendan Moriarty Right to Life Frank Zwitter Bee Mabey	<i>Chinese Times</i> <i>Gisborne Herald</i> <i>Stuff, The DomPost</i> <i>The Star</i> <i>NZ Herald</i> <i>Stuff</i> <i>Stuff</i> <i>NZ Herald</i> <i>Woman's Day</i> <i>Horowhenua Chronicle</i> <i>The Press</i> <i>NZ Herald</i> <i>Rip It Up</i>	Part Upheld Not Upheld Not Upheld Not Upheld Not Upheld Not Upheld Not Upheld Upheld Upheld with dissent Upheld Not Upheld Not Upheld Not Upheld with dissent	November November November November November November November December December December December December December	2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481

Adjudications 2015

CASE NO: 2414 – STANLEY DSOUZA AGAINST NEW ZEALAND HERALD

Stanley Dsouza complained about a report in the *New Zealand Herald* concerning the imminent release of a film entitled *Exodus: Gods and Kings*. He was particularly concerned at the report's descriptions of Moses, a central character in the film. The Press Council does not uphold the complaint.

The Complaint

The report, based on an internationally syndicated article from *The Observer* newspaper, appeared in the *Herald* on December 1, 2014. Mr Dsouza was upset that two complaint emails he sent to *NZ Herald* publications were not answered. Nor had he had responses to previous letters of complaint about other matters.

He then complained to the Press Council, saying the published "Exodus" report was a libel against the Bible and thus to the God that he served. It was insensitive and coarse. The narrative of the Exodus was factual, because Biblical revelation was factual.

He backed up his claims with quotes from the Bible and said that archaeology was imperfect. A major challenge in reconstructing an accurate view of history was that, through the ages, most negative or embarrassing evidence was never written down or was intentionally destroyed by later rulers. Many scientists did not want to acknowledge anything that could even suggest the existence of God.

The Response

The Press Council's receipt of the complaint resulted in the matter being referred to the *NZ Herald*, whereupon the newspaper responded to Mr Dsouza. The *Herald* said the complaint was sent to the wrong email addresses. Its reply stated that the report did not breach any Press Council principles and was from an internationally syndicated source (*The Observer*).

NZ Herald editor Shayne Currie said it was a fair and balanced news feature which reported - in the lead-up to the new movie - on the historical debate over Moses' existence. He invited the complainant to submit a letter to the editor on the topic, which would be considered for publication.

Mr Dsouza declined the offer.

Press Council Decision

The complainant suggested the report had breached four Press Council Principles (Accuracy Fairness and Balance, Comment and Fact, Headlines and Captions, Discrimination and Diversity).

Headlined "Moses – more myth than a man?" the report is, however, an objective account about the film. It can be summed up in the following two sentences from its second paragraph: "What light does it cast on the historical figure of Moses? The rather surprising answer is: none."

The report explores the biblical tale from religious and academic viewpoints. Comparing the Moses story with that of an Egyptian pharaoh, Akhenaten, the first monotheist known to history, the report quotes a historian: "Moses is a figure of memory, whereas Akhenaten is a figure of history, but not memory."

It also says that having little historical evidence for biblical narratives is not the same as having none, adding that the story of the exodus has a power entirely independent of its historical truth.

"For many, regardless of whether he existed, Moses is as alive today as he ever was."

The Press Council does not consider that any of the principles cited have been breached. The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Chris Darlow, Tim Beaglehole, Liz Brown, Jenny Farrell, Sandy Gill, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

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

CASE NO: 2415 – FIONA GRAHAM AGAINST OTAGO DAILY TIMES

1. Fiona Graham complains that a report in the *Otago Daily Times* dated September 15, 2014 is inaccurate and biased, in breach of Press Council Principle 1.
2. The Press Council does not uphold the complaint.

Background

3. For more than ten years Dr Graham and the Queenstown-Lakes District Council have been engaged in litigation over a property owned by Dr Graham's company. From time to time the *Otago Daily Times* has reported on the litigation. A report in 2012 was the subject of an earlier complaint by Dr Graham to the Press Council, and the complaint was not upheld.
4. On September 15, 2014 the *Otago Daily Times* reported a judgment by Justice William Young in the Supreme Court. Justice Young had granted Dr Graham and her company an extension of time to make submissions in support of an application for leave to appeal but had refused a stay in relation to fines imposed on them by the District Court.
5. The report summarised Justice Young's decision and then explained that Dr Graham's appeals had been dismissed in the High Court and that both the High Court and the Court of Appeal had refused her permission to appeal to the Supreme Court. She was now asking for leave to appeal directly to the Supreme Court. In the final three paragraphs it gave a brief history of the litigation, saying:

- The proceedings had begun more than ten years previously as a civil action against Dr Graham's company.
- The Council alleged she was running the property as visitor accommodation, in breach of the District Plan, and that it was a fire hazard.
- In 2006 a fine was imposed for contempt of court in continuing to run an illegal visitor accommodation centre, and in 2006 19 tenants had been evacuated for safety reasons.

Dr Graham's complaint

6. Dr Graham's complaint is mainly directed at the accuracy of the final two paragraphs of the *Otago Daily Times* report, but she also complains that the editor is biased against her. She says there has been no publication of her successes in the course of the litigation and in particular that there has been no publication of a determination that the property in question is not backpackers' accommodation.
7. Dr Graham also complains of inaccuracies and bias in the earlier Press Council determination and asks that the determination be withdrawn.

The Otago Daily Times response

8. The editor of the *Otago Daily Times*, Murray Kirkness, rejected the claim of biased or unbalanced reporting. He said as far as he was aware the report of Justice Young's decision was accurate, and that a correction would be published if it was inaccurate. He also reiterated an earlier offer to interview Dr Graham after the conclusion of the court processes and then to consider whether there was anything that would warrant further publication.

Discussion

9. While Press Council Principle 1 requires that in articles of controversy or disagreement a fair voice must be given to the opposition view, there is an exception for long-running issues and for reportage of proceedings where balance is to be judged on a number of stories rather than a single report.
10. At least on the face of it, the report in question is a simple and accurate report of a further step in some very lengthy proceedings that have been the subject of several earlier reports. Dr Graham does not suggest that the report of Justice Young's decision was inaccurate but takes issue with some of the background material published along with that report.
11. It is very clear that the three paragraphs of background material cannot be read as a full history of the litigation and that a reader seeking to understand the context of the proceedings would need to undertake further research. The question therefore is whether the material presented is accurate and whether, within its limitations, it is fair and balanced.
12. The first two of the three paragraphs are clearly accurate and are a fair representation of the origins of the litigation. Dr Graham claims that at a later stage it was determined that the property was not visitor accommodation and was not a fire hazard, but it remains true that these allegations were the foundations of the Council's case against her and her company.
13. It is also indisputable that the company was fined for contempt of court, and that the Council later evicted tenants from the property, although in a somewhat unclear submission Dr Graham may be disputing either the number of tenants evicted or the reason for the eviction. However this is not sufficient basis for a finding of inaccuracy.

14. It is not true to say that the *Otago Daily Times* has failed to publish reports of decisions favouring Dr Graham. The earlier Press Council determination notes some such reports, though it is fair to say that in general the outcome of the litigation has not favoured Dr Graham and that the reportage reflects this. In addition some of Dr Graham's submissions are based on her subjective selection of findings and statements from the many decisions and determinations that have been made in the course of the proceedings and to an objective observer seem to represent an over-optimistic view of the outcomes.
15. The Press Council is of the view that the report in question is accurate and that in the context of the long-running proceedings, it is neither unfair nor biased. It notes with approval Mr Kirkness' offer of a final opportunity for Dr Graham to put forward her views once the court proceedings are complete. The complaint is not upheld.
16. Dr Graham has complained that the earlier Press Council determination contains negative and wrong information, is "full of mistakes" and has damaged her and her company's reputation. She asks for it to be removed from the Press Council website. However she has not responded to a request to identify the mistakes.
17. The Press Council's complaints process, which has at all times been available to Dr Graham (the form used by Dr Graham to lodge both her first and her second complaint is an appendix to the complaints process as published on the Press Council website), makes it clear that all decisions are made available on the Council's website and are published in its annual report. A party may request non-publication, and in exceptional circumstances the Council will agree not to publish its decision. Dr Graham did not request non-publication at the time of the first complaint and in the Council's view there are no exceptional circumstances that would warrant non-publication of its determination on either complaint.

Press Council members considering the complaint were Sir John Hansen, Chris Darlow, Tim Beaglehole, Liz Brown, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

CASE NO: 2416 – SANDRA KING AGAINST HAWKE'S BAY TODAY

Background

Hawke's Bay Today on December 11, 2014 carried a story on the death in a quad bike accident, which had taken place the previous day, of a Dannevirke farm worker. A brief report with prominent headlines and a photograph of the victim with his name was given on page 1, a fuller story on page 3.

The Complaint

Sandra King, in making the complaint at the request of Nikki Christian, the wife of Rob Christian the accident victim, laid particular stress on the paper's publication of victim's name before the Police had officially released it. The effect of this, she claimed, had been to give insufficient time for relatives

and friends overseas to be contacted and told of the tragedy. In addition the paper had published a photograph of the victim (which they had on file) and a map showing where the accident had occurred, ‘without express permission from the family or Police’. Before making the complaint Ms King had rung the editor of the paper but she felt he was unsympathetic and lacking compassion. The Council principles she cited were Privacy, Confidentiality, and Photographs and Graphics.

The Newspaper’s Response

The editor did not share Ms King’s view of their telephone conversation, writing that he had apologised if the paper ‘had upset the family’ and he believed that he had expressed compassion for them. He went on to address the Council Principles invoked by Ms King. He believed that the paper had respected the family’s privacy and had not approached them for comment. The decision to publish the deceased’s name was made in the belief that that the ‘immediate family’ had been informed and that in a district where such news quickly becomes widely known by word of mouth nearly 24 hours was a reasonable gap between the death and the report. The Principle of Confidentiality was not, he believed, relevant to this case. On the Principle relating to Photographs and Graphics he wrote that the photograph used was a ‘neutral image of the deceased’. The editor went on to express his belief that Mrs King was ‘mistaken in believing that newspapers need the permission of police or family to publish names or images of people killed in accidents and that that misunderstanding may be at the heart of her complaint’.

Discussion

The Council shares the editor’s view that it is important that newspapers have the right to decide when they will publish names of people killed in traumatic situations. This was explicitly stated in 2012 (Case number 2249 Julie and Peter Keast against *The Southland Times*) where the Council stated: ‘people suffering from trauma or grief call for special consideration. Newspapers have agreed they should give special consideration to people in this situation. The duty of care does not mean that media must never publish a deceased’s name until the police release it, though editors should be mindful that Police might not have been able to notify all of the deceased’s immediate family.’ In deciding not to uphold that complaint the Council expressed the view that the interval of around 22 hours between the accident and the publication of the name ‘seemed sufficient to satisfy the special consideration required’.

But in confirming the view the Council expressed in the case referred to above it is also mindful that circumstances can differ; that the appropriate time to publish the name of a person killed, almost invariably with great distress and trauma for the family, must be considered in the circumstances of the particular case. One guiding principle – that the immediate family of the deceased has been notified of the death – while very important uses a term, ‘immediate family’, which is open to varying interpretation. In the case being considered the editor, at the time he took the decision to publish, had the clear understanding that the ‘immediate family’ had been told.

Council is deeply sympathetic towards the Christian family in the tragedy which they faced. However it believes that the editor of *Hawkes Bay Today* took the decision to pub-

lish the name after a careful consideration of the particular circumstances and with due regard for the Press Council’s Principle relating to Privacy.

The Council finds no breach of the Confidentiality Principle.

The newspaper was not required to obtain permission from either the police or the family before publishing the file photograph.

The complaint is not upheld

Press Council members considering the complaint were Sir John Hansen, Chris Darlow, Tim Beaglehole, Liz Brown, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

CASE NO: 2417 – JOANNA MALCOLM AGAINST THE PRESS

Joanna Malcolm complained that the inclusion of a Facebook post by Tina Nixon in the article “Roger Sutton and his dramatic downfall” published in *The Press* on December 6, 2014, breached Principle 1: Accuracy Fairness and Balance.

The complaint is not upheld.

Background

On December 6, 2014, *The Press* ran a 3000-word feature on the issues surrounding the resignation of Canterbury Earthquake Recovery Authority (CERA) chief executive Roger Sutton at a press conference on November 17, after a complaint of sexual harassment against him was upheld by the State Services Commission. The handling of the complaint by the State Services Commission and Sutton’s resignation had been the subject of intense national interest in the weeks before publication.

The Press article sought to provide background and context to the debate on the issue, and quoted a number of sources both named and unnamed. It included a comment posted by former CERA communications staff member Tina Nixon on her Facebook page, which said, “I call on all journalists to apply some logic to this and get past the breathtaking PR snow job perpetrated by the self serving egotistical dictatorial narcissistic nasty prick Sutton is.”

The article noted that Nixon had herself been the subject of a complaint about bullying a female staff member. The complaint was made in the context of a wider personal grievance against CERA, which had been settled with a payout of about \$5000. Nixon said she had not been disciplined. She had subsequently left CERA.

It also quoted an open letter written by the Canterbury Communities Earthquake Recovery Network, which praised Roger Sutton’s work.

The Complaint

The complainant did not initially develop an argument in relation to any Press Council principles, but asked the Council to consider *The Press*’ use of Tina Nixon’s Facebook post which she believed crossed an ethical boundary into personal abuse and vitriol.

She suggested that had Nixon been asked for a direct quote for *The Press* story, she would not have used such inflammatory language.

In a subsequent email, responding to points raised by the editor of *The Press*, the complainant cited Principle 1: Accuracy, Fairness and Balance, and alleged the two quotes from the other side of the debate did not do enough to balance the article.

She said she accepted that media now uses Facebook posts for information and quotes, but said none of the comments on Nixon's Facebook post that had been critical of Nixon and positive about Sutton had been quoted. She described the paper's use of the post as "gratuitous and highly offensive".

She complained that Sutton's personality was described in subjective and "highly negative" terms in the article, and objected to some comments that were not attributed. She noted that Sutton was not interviewed for the article.

The Response

The editor of *The Press*, Joanna Norris, said the Facebook comment about Sutton had been widely reported in the media, and widely viewed on Nixon's Facebook page, and had been important to include in *The Press* story as it had played a part in shifting the tone of the public debate.

She said that using the full post, "including her strong language", provided context as readers had been given an indication of "the possibly intemperate nature of her broader comments which related to her view of Mr Sutton's behavior, and had only been partially quoted in the news previously".

She stated that the comment was accurately reported, and the article was balanced in that the inclusion of "both ends of the spectrum of opinion effectively illustrated the heated nature of the discussion relating to Sutton". She said Sutton had been approached for comment, but had declined to do so.

She believed the question of whether Nixon would have made the comment had she been phoned for an interview is hypothetical.

Discussion and Decision

The complaint raises an important question about the fairness of quoting personal abuse on social media in the pages of a newspaper. Jo Malcolm rightly questions whether the gratuitous insult would have appeared in a newspaper had it been made to one of its reporters. The editor of *The Press* is not sure on that point. It was difficult to respond hypothetically, she said. But in this case the comment was treated as one that was already in the public domain. Extracts of Tina Nixon's comments had appeared in other media. *The Press* decided to use the full quote, including her strong language, the editor explained, "to give readers an indication of the possibly intemperate nature of her broader comments."

The complainant clearly feels the effect of the abuse was quite different, unfairly damaging to Mr Sutton and produced an unbalanced article because no favourable quote of comparable force was published.

The Council's newspaper representatives were divided on the question of whether words such as those quoted would normally be published. Clearly it is a matter of editorial judgment that may vary with circumstances.

In this case a majority of Council members took the view that the words on Facebook were in the public domain and the article was sufficiently balanced by positive comment

about Mr Sutton by the Canterbury Communities Earthquake Recovery Network.

The complaint was not upheld.

Press Council members considering the complaint were Chris Darlow, Tim Beaglehole, Liz Brown, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

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

CASE NO: 2418 – MINISTRY OF JUSTICE AGAINST WAIKATO TIMES

The Press Council has upheld a complaint by the Ministry of Justice that two *Waikato Times*' reports of cuts in the number of court bailiffs lacked balance.

The reports, published on November 26 and 29, 2014, covered concerns that the cuts posed a danger to remaining bailiffs and at-risk children since the work could involve clamping vehicles, seizing property and preventing the removal of children from their primary caregiver. It often meant facing gangs or violent offenders.

An unnamed source, who had provided the newspaper with a ministry document on the cuts, said there was significant concern for the safety of solitary bailiffs. They could get police help but this meant negotiating suitable times and was not practicable for urgent work.

The *Times* sought comment from the Minister of Justice and Courts, Amy Adams, but she declined, saying it was "an operational matter".

The Complaint

Antony Paltridge, media and external relations team leader for the Ministry of Justice, complained that the newspaper's failure to put questions to the ministry after being referred to it by the minister's office, breached the Press Council's principles of fairness and balance.

He had contacted the reporter after the first story appeared and attempted to explain the distinction between "policy", which was the minister's role, and "implementation" which was the ministry's territory. He said the reporter refused to put questions to the ministry because she believed the minister ought to be answerable.

The complainant then approached the acting chief reporter who invited him to submit a statement, but Mr Paltridge would only respond to questions from the paper. He took his complaint to the editor, Jonathan MacKenzie, who suggested an interview with the ministry's general manager, collections. Again the complainant insisted on receiving questions for the ministry to answer.

The Editor's Response

Mr MacKenzie told the Press Council the *Waikato Times* had reported the ministry's reason for the cuts as set out in the leaked document and the newspaper "simply had no questions to put to the Ministry of Justice. The document says it all."

He agreed with his reporter that the minister ought to be answerable for the cuts. "If a bailiff were injured or killed on the job because of budget cuts and resulting lay-offs, readers of the *Waikato Times* would hold the elected minister re-

sponsible, not a faceless bureaucrat who implemented the change.”

Mr MacKenzie drew the Council’s attention to a subsequent story, published after the complaint was filed and dated the day of his response. The story included a statement from the ministry that bailiffs would have the same safety procedures and equipment as previously. These included a risk assessment before a visit and working in pairs alongside police if it was considered necessary.

The Decision

The Council has sympathy for the view that ministers of the government should be answerable for any decision and action of their ministry. News media and their audiences want a recognisable figure, accountable to voters, to answer their questions.

However, a newspaper’s responsibility is to inform its readers as fully as it can. Having highlighted the possible dangers to bailiffs the *Waikato Times* published two reports that left readers with an obvious question: what do the decision-makers say about this?

The first story could have answered the question. It did not, nor did a follow up three days later, which reported the concerns of the Police Association and the Sensible Sentencing Trust. It was not until the third story published, more than a month later, that readers were given the ministry’s statement. Readers were then able to decide for themselves whether its precautions seemed sufficient.

It is unfortunate that the complainant did not accept the newspaper’s first invitation to submit a statement. That offer satisfies the principle of fairness. Had Mr Paltridge accepted it, the ministry’s safety procedure for bailiffs might have been reported much earlier. Public information was not well served by his insistence on dealing with questions from the paper.

But the primary fault lay with the newspaper which could have obtained the information that would have produced a more balanced report at the outset. On that ground the complaint is upheld.

Press Council members considering the complaint were Sir John Hansen, Chris Darlow, Tim Beaglehole, Liz Brown, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

CASE NO: 2419 – NEW ZEALAND CUSTOMS AGAINST THE NEW ZEALAND HERALD

Background

New Zealand Customs have complained about an article published by the *New Zealand Herald* online on November 7, 2014 headlined “Built in 10 day buffer: Documents reveal Customs’ system ‘for OIA delay’.”

The nub of the complaint focuses on part of one sentence in the article: “Customs developed a special process for releasing public information to the media which included an increase in delays and the freedom for its Cabinet minister to change whatever was released, according to documents provided to the *Herald*.”

Customs argued the second part of that - that the minis-

ter had the freedom to change whatever was released - was factually wrong and was not borne out by the specific documents referred to or by practice in the department.

It concedes that ministers are consulted and kept informed about OIA requests but says there is an important difference between that and the freedom to change whatever is released. It claims what the *Herald* has printed implies a breach of the Cabinet Manual rules that ministers should not be involved in day to day operations.

It has cited a breach of the principles of accuracy, fairness and balance and comment and fact.

The Process and the Response

Customs asked the *Herald* to withdraw the article, and publish a correction and apology and give the department a written apology from the reporter. In subsequent correspondence with the Council Customs added the minister to those who should receive an apology.

It was explained to Customs that the Council sanction, if a complaint was upheld, was publication of the decision and annotation to the article and that a withdrawal would only be expected where an article breached privacy or caused some harm to the individual.

After some delays over the summer Shayne Currie responded on behalf of the *Herald* standing by the story.

As background he pointed to the context including an interview with former Customs lawyer Curtis Gregorash who had said he was told by senior Customs executives to refuse OIA and Privacy Act requests and that he believed this was at the direction of former Customs Minister Maurice Williamson.

Ombudsman Beverly Wakem has launched an inquiry into OIA practices and the *Herald* quoted her saying she was appalled by the allegations made and that anecdotally she had been told similar stories by a number of people.

Dame Beverley has chosen 12 agencies for formal review, including Customs, and ministers’ offices will be asked to complete a survey of OIA practices.

The *Herald* said the part of the sentence mentioned in the Customs complaint was an interpretation of two clauses in a Customs policy document.

Currie said that under the sub-heading “feedback from the minister’s office” the ministerial team “will pass the feedback to the P&S team for appropriate *review and revision* (my emphasis) in conjunction with the area responsible for preparing the response, and Legal-Corporate. The *Minister’s Office brings a new perspective to requests and its comments can enhance a response*. (My emphasis)

In addition the Minister may wish to discuss a request and the information it has brought together and he may wish Customs Communications to work with his office regarding any responses to media enquiries.”

(The council notes that at the first point emphasised by the *Herald* the policy actually reads “review and possible revision”.) Currie said that while the sentence complained about “may be confronting, the essence is correct” and was backed up by comments by the former senior Customs lawyer.

The *Herald* offered to append a comment to the article stating Customs had taken exception to the part-sentence.

Customs refused that and proceeded with its complaint reiterating that it was wrong to imply the minister had the freedom to change any response and that it would be outside guidelines to do so - and they were in line with other departments' guidelines.

The Decision

Wide concerns among the media and the public have led the Ombudsman to launch an investigation into Official Information Act practices in the public sector.

The *Herald* may have been entitled to form the view that departmental rules and guidelines, including requirements for consultation, do open the way to political influence and interference in information releases.

But the documents provided to the *Herald*, and referred to in the article, do not grant the minister the freedom to change whatever is released.

Therefore the part-sentence included in the article is factually incorrect and the Council upholds the complaint on that basis.

Press Council members considering the complaint were Sir John Hansen, Chris Darlow, Tim Beaglehole, Liz Brown, Jenny Farrell, Sandy Gill, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

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

CASE NO: 2420 – JAYNE ROUTHAN AGAINST THE DOMINION POST

Jayne Routhan (the complainant) complained about an article published in *The Dominion Post* on September 27, 2014.

She said that the article breached Principles 1 (Accuracy, Fairness and Balance) and 6 (Discrimination and Diversity) of the New Zealand Press Council Statement of Principles.

The complaint is not upheld.

Background

The article was headed "Ministry 'couldn't have halted Ashburton killings'". The report covered a report released by the Ministry of Social Development (MSD) following the fatal shooting of two employees in Ashburton earlier that month at the MSD office.

The article outlined the findings of an independent report commissioned by MSD to look at what, if anything, could have been done by MSD that might have prevented the tragedy. The report did not identify anything that could have prevented it but made recommendations for future consideration.

Complaint

The complainant said that the article was unbalanced as it did not contain information as to why the person who carried out the shootings had acted in this way and she felt this gave an inaccurate picture to the reader and created discrimination.

The article would have been more balanced if it had included a more accurate picture that included an overview of what people who suffer from health and mental health issues have to cope with from government and community agencies. That would have given the reader a more accurate picture of why a person might feel driven to act in a way they would not normally act.

She did not condone the Ashburton shootings but believed that the reader needed to know how people with health and mental health issues were being treated to avoid creating further discriminatory images of people with health and mental health issues.

The complainant, who is a long term protester against what she terms unjust and unfair treatment of people with health and mental health issues, has also complained that the newspaper does not publish coverage of her protests and the information she provides to the public regarding discrimination and unjust treatment of people with disabilities.

The complainant also alleges that the newspaper ignored her initial complaint and it took repeated attempts to get the complaint even acknowledged.

The Newspaper's Response

In reply to the complaint, the editor said the article was clearly coverage of the MSD report and accurately published the findings of that report.

The newspaper was not able to make any comment on the shootings as it was now governed by sub-judice provisions preventing the media from any speculation on possible causes, to ensure a fair trial for the person.

That the newspaper did not respond to what the complainant called the initial complaint, was because the complaint was not actually specific or detail what Press Council principles had been breached.

The editor also said that staff had been instructed by her not to deal directly with the complainant as the complainant had been repeatedly insulting and abusive to newspaper staff.

She stated that the newspaper "was not interested" in discussing the complainant's personal situation which is entirely irrelevant to the Ashburton case which is currently before the court.

The editor ended the letter with direct comments about the complainant and informing her that the newspaper office had "moved buildings" since her last protest activities.

Discussion and Decision

The article outlined the findings of an independent report commissioned by MSD following a shooting at the Ashburton office. Following the shootings, an arrest was made and the matter is now before the courts.

The article did not look at reasons that created the shootings but focused on what might have prevented the action from occurring and what could help prevent any risk to staff safety in the future. It did not breach Principle 1 or Principle 6.

While the complainant has a viewpoint on the possible causes of such a situation, the newspaper is correct in stating that it cannot comment on possible causes while the case is before the court.

Likewise, while the complainant has a viewpoint as to what people who suffer from health and mental health issues have to cope with from government and community agencies and how they are treated, the newspaper is not obliged to print her views.

The content of a newspaper is decided by the individual newspaper and is not subject to Press Council direction as long as it complies with the Press Council Principles.

The right to express an opinion and have a viewpoint,

whether we agree with such a viewpoint, is the same for both a newspaper and a complainant.

Three members of the Press Council were surprised by the tone of the letter sent by the editor to the complainant. It was a little terse and impolite. While a complainant's behaviour may be seen as unpleasant and or abusive, it is important to remember that complainants should still be treated with courtesy and when replying to a complaint it is important to reply in a manner that is both professional and courteous. The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Chris Darlow, Tim Beaglehole, Liz Brown, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

CASE NO: 2421 – JACK RUBEN AGAINST THE DOMINION POST

Jack Ruben complains that a Tom Scott cartoon published in *The Dominion Post* on December 5, 2014 breached Principle 1 of the Press Council Principles: accuracy, fairness and balance.

Mr Ruben attended the Press Council meeting to speak to his complaint. An invitation to attend was extended to the editor but was declined.

The Cartoon

The cartoon depicts Dr Martin Luther King Jr in front of microphones. To the left side of his head appears a quote from his most famous speech "I have a dream". The quote refers to the dream of the grandsons of slaves and the grandsons of former slave owners sitting together. The quote is headed in bold, 'THEN'. On the right-hand side, under the heading 'NOW', are the words "I have a dream one day on American streets the grandsons of former slaves can wear hoodies and tuck their hands in their pockets without being shot by white cops".

The Complaint

Mr Ruben complains that the quote under the heading 'NOW' is inaccurate, unfair and lacks balance. He said Martin Luther King would never utter words which he considers to be racially offensive. He stated that Martin Luther King consistently preached inter-racial peace and reconciliation, and would never have used the words that appear on the right-hand side of the cartoon.

The Dominion Post Response

The editor, Bernadette Courtney, stresses that as a columnist, Mr Scott, the cartoonist, was given a wide licence to bring the issues of the day to readers. She states that sometimes this is in a provocative way, but cartooning was integral to it, and it was not for the paper to censor such opinion. Ms Courtney accepted that some cartoons were not to everyone's taste, but noted that Mr Ruben's complaint was the only one received by the paper on this cartoon's content.

Importantly, she continued "cartoons are an important part of any newspaper, and widely used for social and political comment".

Decision

The fourth paragraph of the preamble to our Principles states clearly that freedom of expression and freedom of the media are inextricably bound. It continues that there is no more important principle in a democracy than freedom of expression. We note that freedom of expression is also guaranteed in the New Zealand Bill of Rights Act 1990. Principle 4 states that the clear distinction should be drawn between factual information and comment or opinion. The page in question was clearly marked 'opinion'. The Principle concludes, "Cartoons are understood to be opinion". An expression of opinion is just that, it is not an expression of fact.

The Council has strongly supported the right of newspaper cartoonists to express their views. (See for example: Case Number 2261 Hall v The Dominion Post; 2067 Kiwis for Balanced Reporting on the Middle East v Sunday Star Times; 2269 Bolot v The Press; The Canterbury Refugee Council v The Press). The Council accepts that cartoons can be provocative, thought-provoking, amusing, unkind or indeed offensive. Cartoonists frequently use hyperbole to make the point of the cartoon.

In Mr Ruben's view Dr King would never have referred to the race of police officers and police officers would not shoot a young black person for wearing a hoodie and having their hands in their pocket. He implied the police would only shoot if they had good grounds. That is his opinion. But he objects to the cartoonist having a contrary opinion. Clearly, it could not be any more than the cartoonist's opinion of what Dr King may have said or thought given his assassination many years ago. While proffering his own view of what Dr King would have said Mr Ruben would deny the same right to Mr Scott.

Dr King stood up against orchestrated prejudice and bigotry directed towards his people. He spoke out against racial segregation, economic injustice meted out to his people, lynching and disenfranchisement. It is true, as Mr Ruben pointed out, he advocated peaceful and non-violent means of protest.

The shooting of an unarmed young black in Ferguson, Missouri led to widespread protests and comments both in the United States and around the world. The heirs to the legacy of Martin Luther King, including the President of the United States, expressed their concerns. The Scott cartoon did no more than highlight that. While an expression of opinion in New Zealand it would appear that there is a strong body of world-wide opinion aligned with Tom Scott's opinion.

Mr Ruben does not like Mr Scott's opinion. However, many people would agree with it. This is an expression of opinion; it does not breach any of the Press Council Principles. The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Chris Darlow, Tim Beaglehole, Liz Brown, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

CASE NO: 2422 – SMART WHANAU AGAINST THE SOUTHLAND TIMES

Southland Community Law on behalf of Linda Smart and whanau complain that an article headed "Man found dead in prison cell" published in *The Southland Times* on July 19,

2014 breaches several Press Council principles including Principle one (Accuracy, fairness and balance) two (Privacy) six (Headlines and captions) seven (Discrimination and diversity) eight (Confidentiality) and nine (Subterfuge). Complaint is also made in relation to a piece published in *The Southland Times*' subsidiary publication *Newslink* published on 17 July 2014.

The complaint has been made outside the Council's period for the lodging of complaints. The Council has the discretion to receive late complaints where the circumstances warrant it. This is one of the rare occasions where the Council exercises this discretion. The Council accepts the deceased's family have been grieving hence the late referral.

The complaints are not upheld.

Background

The Southland Times story covered the death of a Matakana man, Rowan Edwards, in his cell at Invercargill Prison on 15 July 2014. The death was possibly suicide. Mr Edwards was facing a "raft" of serious charges at the time he died. The piece quoted comments by the manager of Invercargill Prison and referred to the fact that the death was being investigated by police and by the coroner. The report mentioned Mr Edwards' family had requested privacy. The *Newslink* piece referred to the fact that an unnamed Matakana man was facing serious charges at the Invercargill District Court. The *Newslink* piece mentioned the charges. The charges were similar to those referred to in the *The Southland Times* story.

The Complaint

Southland Community Law Centre on behalf of Mr Edwards' family complains that *The Southland Times* piece was published following the unsolicited and unwelcome approaches to them by *The Southland Times* reporter. The reporting according to the family was "incredibly insensitive" and also "reprehensible". The piece breached the family's privacy at a time when they were grieving. The complainants referred to the approach the reporter made to the funeral director handling the arrangements and said the reporter breached promises he gave that person as to the timing of the story. The complainants say that the *Newslink* piece was equally inappropriate given that Mr Edwards had already died when this segment went to print.

While acknowledging the *Newslink* report did not name the accused the complainants say that the reference to the accused's home town was sufficient to link him to the deceased.

The Response

The Southland Times responds by saying that its reporter did his job in a "sensible and thorough manner". The reporter had given the family the opportunity to speak about the deceased, an opportunity they declined. The newspaper says that the fact that Mr Edwards died in his cell was public knowledge and the publicity given to the death was in the public interest.

The newspaper disputed the family's account as to the manner in which the reporter approached both the funeral director and them. The newspaper says that the reporter's behavior was respectful. No promise was given as to when the story would be published.

The newspaper says the *Newslink* report was prepared

independently of *The Southland Times* piece. The information contained in the *Newslink* story was obtained before Mr Edwards' died, the charge list having been obtained from a regular weekly police briefing. The *Newslink* article was sent to print before Mr Edwards' death had become known.

While the newspaper acknowledges Mr Edwards' death has been distressing for his family the fact that Mr Edwards died in prison and the fact that investigations are underway are of public interest. The newspaper says that the media has a responsibility to hold those in authority "to account" if there is a lapse in procedures designed to look after those held in custody.

The Decision

The Press Council does not agree that any of its principles have been breached in this case. The reports were factual and balanced. While *The Southland Times* piece referred to Mr Edwards as having two children no privacy issues arise. The complainants acknowledge that as soon as they told the reporter he was not welcome he departed. The headline to the article is, in the Council's view, measured. No issues of discrimination or diversity arise and nor is there any question of breach of confidentiality. And finally, despite there being a dispute as to the actions of the reporter in his discussions with the funeral director (a dispute which the Council is in no position to determine) there is no suggestion the reporter acted by subterfuge, misrepresentation or with dishonest means.

There is undoubtedly a public interest in the reporting of deaths in custody and any investigation that follows.

While The Press Council has every sympathy for Mr Edwards' family in this tragic case it cannot uphold the complaints.

Press Council members considering the complaint were Sir John Hansen, Chris Darlow, Tim Beaglehole, Liz Brown, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

CASE NO: 2423 – COMPLAINT AGAINST KAPI-MANA NEWS

1. The complainant claims that an article published by the *Kapi-Mana News* was inaccurate, unfair, unbalanced and in breach of Principle 1 of the Press Council principles. She further complains that the apologies and correction offered by the publication are inadequate.
2. The Press Council upholds the complaint in part.
3. The complainant has requested anonymity in view of the history of the dispute that related to the subject of the article. The Press Council is satisfied that her request should be accepted. For the same reason, this determination includes only those facts which are essential to an understanding of the case.

Background

4. In November 2014 the *Kapi-Mana News* published an article about the complainant's brother and his dispute with her and other members of their family over the administration of their mother's estate. There had been extensive litigation over a number of years and the brother,

after the Court of Appeal had denied him leave to appeal to the Privy Council over an award of costs, had recently lodged an application for leave with the Privy Council itself.

5. In 2009 the same reporter had written, and the *Kapi-Mana News* had published, an article about the dispute's earlier stages. At that time the complainant complained about imbalance and inaccuracies and she appears to have received an apology and an acknowledgement that there were inaccuracies.
6. After the publication of the 2014 article the complainant again contacted the *Kapi-Mana News*. There was considerable email correspondence and some conversations between her, the editor and other relevant Fairfax staff. As a result the editor acknowledged that the article was unbalanced, offered a verbal apology and agreed to submit a written apology if the complainant would accept it in settlement of her complaint.
7. The complainant responded by email, accepting the verbal apology but asking for a written apology from the reporter. The editor sent her a draft of such an apology, but the complainant found it unacceptable.
8. On December 9, 2014 the *Kapi-Mana News* published a correction and apology, addressed to the executors of the estate. It had previously been sent to the complainant, who found it inadequate, but there had been no response to her request for amendments.

The Complaint

9. The complainant initially complained that the family had not been consulted before the article was published and had therefore not had an opportunity to correct inaccuracies or to present their point of view. The lack of consultation was particularly disturbing as the reporter knew the history of the dispute and had been contacted with similar concerns over his 2009 article.
10. Points the complainant could have made if contacted were:
 - The brother said he “had not seen a cent of his share of the estate” when he had been paid his share in full.
 - The proposed appeal to the Privy Council was on a costs award of \$2,000 and below the threshold for such appeals. It was not on the substantive dispute.
 - She had obtained a protection order against her brother who had taken multiple malicious proceedings against her and her family. Among other things it prohibited him from using third parties to harass her.
11. She had accepted a verbal apology from Joseph Romanos, the editor of the *Kapi-Mana News*, but had requested a written apology from the reporter. A draft of such an apology was offered but was “utterly inadequate” and

she did not accept it. After that Mr Romanos sent a “very impoverished” apology that he proposed to publish. He then refused to answer emails from her. The apology was published without notice to her and with no opportunity to correct it.

12. Mr Romanos said there was one inaccuracy in the article, but there were eleven, listed by the complainant in her comment on his response to the complaint.
13. The complainant also requested the removal of the online version of the article and all links to it.

The Kapi-Mana News response

14. Mr Romanos described his contact with the complainant immediately after the story was published:
 - While she described the article as full of mistakes, it contained only one error of fact
 - He agreed that no more stories about the dispute would be written without consulting her, though he did not agree that no more stories would be written¹.
 - The complainant accepted his verbal apology and said she did not want any apology or correction printed

The discussion was amicable and on its basis he understood the complaint to be resolved.

15. The complainant then sent him a succession of emails and also contacted other Fairfax staff. Among other things she asked for an apology from the reporter, asked to see the draft of the apology, demanded reparation from Fairfax, asked about deadlines for printing a retraction and sought the removal of the online version of the article.
16. Although he felt that an apology and retraction from the editor should have been sufficient, he asked the reporter to write a draft apology. He considered the draft to be sincere and thorough, but the complainant then wanted to have a correction and apology published and wanted to write it herself.
17. He then drafted and published a correction and apology. He did not contact the complainant again.
18. He is of the view that he and Fairfax made every possible effort to correct the situation.
 - He offered a verbal apology, which the complainant accepted
 - The *Kapi-Mana News* published a correction and apology as the complainant had eventually requested

¹ Although it is noted that in an email dated 3 December 2014. Mr Romanos said “In particular, I have . . . undertaken not to write any further stories on the matter.”

- The reporter drafted a sincere apology
- The online version of the 2009 story was removed even though the complainant had not requested this.

Discussion

- In the view of the Press Council, and indeed as accepted by all parties to the complaint the article published by *Kapi-Mana News* was unbalanced and contained at least one inaccuracy. It was in breach of Press Council Principle 1. All parties are agreed that, particularly in view of his knowledge of the history, the reporter should have contacted the complainant and/or her family to obtain their side of the story and to check for accuracy. If he had done so, he would have been fully informed and in a position to write a more balanced article.
- The extent of the inaccuracies is disputed – Mr Romanos considers there was only one, while the complainant has listed eleven. In a literal sense, there were no inaccuracies as the article seems to have reported accurately the words of the person who was the subject of the article. There is very little comment by the reporter and that comment is mostly undisputed. However there were at least one overt and one implicit inaccuracy in the reported words, both of which inaccuracies could easily have been detected by a little research into the background of the case and/or consultation with the complainant.
- It was inaccurate for the brother to say he “had not seen a cent of his share of the estate” when there is clear evidence that he was paid his share. However, and more importantly, the implication of the article is that he was seeking leave to appeal to the Privy Council against a decision about the merits of his claim against the estate. In fact leave is sought to appeal only against a 2003 decision of the Court of Appeal awarding costs of \$2,000 against him. In addition, the article does not mention that the Court of Appeal had already denied him leave to appeal to the Privy Council. These inaccuracies make the potential appeal appear much more substantial than it is and have not been corrected.
- The remaining inaccuracies identified by the complainant are generally concerns about her brother’s views and the words he used to describe them rather than genuine inaccuracies on the part of the reporter. If he had consulted her before finalising the article, he could have taken those concerns into account, but they relate more to the matter of imbalance than to inaccuracy.
- To summarise, this appears to have been a story based on a single source, whose reliability was questionable, when the reporter could easily have obtained balancing information from the complainant, the other executor(s) and/or from court documents. This is poor journalism and a clear breach of the obligations undertaken by the *Kapi-Mana News* in accepting the Press Council principles.
- The remaining question is whether Mr Romanos took sufficient action to remedy the breach of Principle 1. When the complainant first contacted him, he offered an immediate apology, which she accepted. There is a dispute as to whether she requested a written apology from the reporter at that stage, but she certainly requested it later, and a draft apology was submitted to her for comment. She found it inadequate and insincere, but the only reason she gave at the time was that it did not mention that the reporter had been aware of the background to the litigation since his discussion with her in 2009.
- At some point after the initial discussion, the complainant also requested the publication of a correction and apology. Mr Romanos agreed to the request and sent the complainant a draft of the proposed wording. It was a single paragraph correcting the statement that the brother had received nothing from the estate, saying the brother believed he was entitled to a larger share of the estate while the executors believed otherwise and ending with an apology to the executors of the estate for the embarrassment caused by the identified inaccuracy. He said it would be published in the next edition of the newspaper.
- The complainant did not consider the draft adequate and (in an email of 4 December) supplied a draft of an acceptable format. It was very similar to the one drafted by Mr Romanos but omitted the reference to the brother’s belief that he was entitled to a larger share in the estate, added a reference to the subject matter of the proposed appeal to the Privy Council and ended with a more extensive apology.
- Mr Romanos did not reply to this or to any subsequent emails from the complainant but on 9 December the *Kapi-Mana News* published the correction and apology as originally drafted by Mr Romanos.
- The Press Council has some sympathy for Mr Romanos, who with some justification seems to have felt he was faced with ever-increasing demands for further action. It is unusual for a reporter (in addition to the editor) to offer an apology, and this is some indication of the seriousness with which the complaint was taken. To this extent the action taken by Mr Romanos was appropriate and sufficient. The draft apology from the reporter is not obviously insincere or inadequate, and the Press Council does not propose to consider this issue further.
- The published correction and apology is another matter. The complainant clearly understood that Mr Romanos had referred his draft to her for comment, but he did not respond to her comments or indeed to any further communications from her. The Council does not suggest that the complainant’s draft should have been accepted but
 - She should have been told that it was not acceptable and given a reason for the decision
 - Mr Romanos should have confirmed his decision to publish and the proposed date of publication

- Although she did not specifically request this, it would have been appropriate to apologise for the failure to consult her (or the other executors) before publishing the article
 - There should have been a correction of the implication that the proposed appeal was about the substance of the claim rather than about a minor award of costs, and there should have been a mention of the Court of Appeal's dismissal of the application for leave to appeal to the Privy Council.
30. The complainant has requested that the online version of the article be taken down. The Press Council is of the view that the potential harm in retaining the article outweighs the need to keep the public record intact and agrees this would be appropriate. The *Kapi-Mana News* is required to remove the article. The Council recognises that there may be technical difficulties involved in removing or amending the digital facsimile of the article, but understands that it is possible to remove the page on which the article appears. If necessary, this should be done. In any event the *Kapi-Mana News* should ensure that there is a prominent link from the edition to this determination on the Press Council website.

Press Council members considering the complaint were Sir John Hansen, Tim Beaglehole, Liz Brown, Peter Fa'afiu, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, and Stephen Stewart.

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

CASE NO: 2424 – CATHERINE O'BRIEN AGAINST NEW ZEALAND HERALD

Catherine O'Brien claims an opinion piece by John Roughan and published in the *New Zealand Herald* on March 1, 2015, was offensive and irresponsible and, therefore, breached Principle 1 (Accuracy, Fairness and Balance) and Principle 7 (Discrimination and Diversity).

The complaint is not upheld.

Background

The opinion piece is headlined 'Trifling afflictions that make us stronger', with a sub heading of 'Our little redhead will quickly learn that insults hurt only if you let them'.

It references the writer's grandson having red hair, like him, and how he suspects the mother, his daughter, worries the boy will be teased. He is certain he will be.

The opinion piece goes on to talk of the columnist's own experiences of growing up with red hair, including references to it being an 'affliction' and having a possible 'cure'.

He draws analogies with his other 'affliction'; colour blindness.

In ending the opinion piece, he makes warm reference to his grandson being stronger because of what he will experience having red hair, and to the special connection the pair will enjoy because of it.

Complaint

The complainant, describing the opinion piece as an article, says references to 'affliction' and 'cure' make it offensive and irresponsible. It also perpetuates the "phenomenon that it's acceptable and funny to malign people who have red hair".

It isn't acceptable to make derogatory comments about someone's skin colour, so nor is it acceptable to do so in regards to hair colour. It borders on racism.

The columnist makes a sweeping generalisation that red hair is unattractive.

The complainant is aware of discrimination of red haired people, including in the media. It is irresponsible.

In the complainant's correspondence to the editor, she says she finds it strange that the writer would belittle his own grandson.

The column is defamatory of people with red hair.

Editor's Response

The response was provided by *New Zealand Herald* editor Shayne Currie.

The editor is surprised and sorry the column has offended.

Roughan does not belittle his grandchild or perpetuate the maligning of people with red hair.

The column is not racist and is the columnist's own opinion, based on his experiences.

The editor upholds the columnist's right to freedom of expression.

The complainant was offered the chance to submit a letter which would be considered for publication.

Discussion

The column was very much in the newspaper's style of an opinion piece and was clearly marked as such.

The Press Council sets a very high bar for complaints about opinion pieces, on the basis that there is no more important principle in a democracy than freedom of expression.

Mr Roughan is entitled to his opinion and, as a red head, was well placed to comment on the experiences of people with red hair.

Beyond this defence, the Council does not believe the column could be reasonably viewed as irresponsible, offensive or discriminative. Instead, it carried the tone of a loving grandfather comparing his experiences of having red hair with those likely ahead of his grandson, and the strength those experiences would build.

The complaint is not upheld.

Note John Roughan, the author of this piece, is a member of the Press Council. Mr Roughan took no part in the consideration of this complaint.

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

CASE NO: 2425 – SCIENCE MEDIA CENTRE AGAINST WAIRARAPA TIMES-AGE

Science Media Centre (the complainant) complained about a story published in the *Wairarapa Times-Age* on February 10, 2015.

They believe that the story breached Principle 1 (Accuracy, Fairness and Balance) of the New Zealand Press Council Statement of Principles.

The complaint is not upheld.

Background

The story was headed “Use of natural remedies is on the rise”. It included comments and stories from New Zealanders who claimed the use of natural remedies had alleviated or cured their disease, comments from natural remedy practitioners and concluded with a comment from a DHB cancer care co-ordinator who encouraged those living with cancer to consult their doctor or specialist before using any alternative therapies.

The story did not include any comment on the reporter’s or newspaper’s own opinion regarding the use of natural remedies, only comments and opinions of those interviewed.

Complaint

The complainant said that the story was unbalanced as it did not include information or any commentary questioning the efficacy of homeopathic or herbal treatments.

They agree that the reader will make up their own minds, but believe that the story should also have contained comments from those who have an opposing view which would have provided balance.

While the Press Council’s principle of balance allows an exception if the subject of an article is a long-running issue, the editor of the *Wairarapa Times Age* had offered no examples of the debate on alternative remedies playing out in his newspaper. Clippings available from its archive show its previous stories on homeopathy in recent years have been similarly uncritical and unbalanced.

The Science Media Centre has been working constructively with journalists, editors and producers for seven years to improve coverage of science-related issues. It offered to work with the *Times-Age* after the publication of the article concerned but found no willingness to address the issue.

The Newspaper’s Response

In reply to the complaint, the editor said the theme of the story was about ardent proponents of alternative treatment – practitioners who could speak to their practice and opinions from those who use, or have family members who use, alternative treatments and concluded with a comment from the DHB.

While the complainant challenges the information as to the efficacy of alternative treatment as described in the story, those interviewed believed in the truth of what they were saying.

The story expressed no opinion on behalf of the newspaper regarding alternative treatment.

While there are diverse views on the subject, those who believe in alternative treatment such as those interviewed are as entitled to their view as those who hold an opposing view. The story was about personal views of actual people.

The story had generated debate within the community in the comment section of the newspaper’s website with the majority of participants not in favour of alternative treatment.

Discussion and Decision

The story did not advocate for alternative treatment nor express a view as to the efficacy of alternative treatment on behalf of the newspaper.

It was very clear that the views described in the story were those of people who either practiced alternative medicine or who had been involved either personally or as a support person in the use of alternative medicine.

The story concluded with a comment from the DHB that anyone with cancer considering alternative medicine should consult their doctor or specialist before embarking on any alternative therapies.

Alternative medicine is a topic that creates debate with proponents on both sides. It is a longstanding and ongoing debate and it is not in the expertise of the Press Council to comment regarding the efficacy or not of alternative medicine.

The story was clearly written as the views of those interviewed and any reasonable reader would have recognised it as such. There was no subterfuge and the newspaper did not express a view itself.

While the complainant would have preferred the newspaper to write a story that included their view of alternative medicine, the story was about people and their own experience not that of the two sides of the debate.

It was clear from the debate on the newspaper’s own website that there are differing views held in the community and that people are able to make up their own minds as to how they feel about the issue.

The Press Council agrees with the editor that the debate over alternative remedies is sufficiently well known not to require balancing comment in every story about them. The subject falls within the exception to the principle of balance for issues of enduring public discussion.

The complainant in this case raised the important question of whether the exception can be invoked for an article in a newspaper that may not itself have covered both sides of the debate. The Council considered this point closely and came to the view that the exception has not been applied as narrowly as the complainant contends and should not be. A newspaper, even if it is the sole newspaper of its locality, does not exist in a vacuum. Its readers, meeting an uncritical story on the supposed popularity of homeopathy and natural remedies, are likely to be aware the efficacy of these treatments is strongly contested by medical science.

Newspapers ought to take greater advantage of the service the Science Media Centre provides. The story in this case would, in the Council’s view, have been better if the claims made for alternative remedies had been balanced by a scientific view. The final paragraph, giving the district health board advice to consult a doctor, was not sufficient for balance, especially as it referred only to cancer sufferers. Its inclusion suggests the newspaper was aware of the story’s deficiency.

Nevertheless, this is a subject covered by the exception to the balance principle. The article was not advocating the therapies mentioned, or offering a critique of them. It was

reporting the views of people in its locality who offered or used them. It goes without saying that the medical science does not support them.

The complaint was not upheld.

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

Vernon Small abstained from voting.

CASE NO: 2426 – MARK HANNA AGAINST WAIRARAPA TIMES-AGE

Mark Hanna (the complainant) complained about a story published in the *Wairarapa Times-Age* on 10 February, 2015.

He believes that the story breached Principle 1 (Accuracy, Fairness and Balance) of the New Zealand Press Council Statement of Principles.

The Press Council received a similar complaint from the Science Media Centre (see case 2425).

The complaint is not upheld.

Background

The story was headed “Use of natural remedies is on the rise”. It included comments and stories from New Zealanders who claimed the use of natural remedies had alleviated or cured their disease, comments from natural remedy practitioners and concluded with a comment from a DHB cancer care co-ordinator who encouraged those living with cancer to consult their doctor or specialist before using any alternative therapies.

The story did not include any comment on the reporter’s or newspaper’s own opinion regarding the use of natural remedies, only comments and opinions of those interviewed.

Complaint

The complainant said that the story was unbalanced as it did not include information or any commentary questioning the efficacy of homeopathic or herbal treatments.

He believes that the story in its current form has the capacity to do serious harm and that the newspaper should publish a prominent correction or publish a follow up story that discusses the lack of evidence and plausibility underlying the treatments discussed in the story.

While the Press Council’s principle of balance allows an exception if the subject of an article is a long-running issue, the editor of the *Wairarapa Times-Age* had offered no examples of the debate on alternative remedies playing out in his newspaper.

The Newspaper’s Response

In reply to the complaint, the editor said the theme of the story was about ardent proponents of alternative treatment – practitioners who could speak to their practice and opinions from those who use, or have family members who use, alternative treatments and concluded with a comment from the DHB.

While the complainant challenges the information as to the efficacy of alternative treatment as described in the story, those interviewed believed in the truth of what they were saying.

The story expressed no opinion on behalf of the newspaper regarding alternative treatment.

While there are diverse views on the subject, those who believe in alternative treatment such as those interviewed are as entitled to their view as those who hold an opposing view. The story was about personal views of actual people.

The story had generated debate within the community in the comment section of the newspaper’s website with the majority of participants not in favour of alternative treatment.

Discussion and Decision

The story did not advocate for alternative treatment nor express a view as to the efficacy of alternative treatment on behalf of the newspaper.

It was very clear that the views described in the story were those of people who either practiced alternative medicine or who had been involved either personally or as a support person in the use of alternative medicine.

The story concluded with a comment from the DHB that anyone with cancer considering alternative medicine should consult their doctor or specialist before embarking on any alternative therapies.

Alternative medicine is a topic that creates debate with proponents on both sides. It is a longstanding and ongoing debate and it is not in the expertise of the Press Council to comment regarding the efficacy or not of alternative medicine.

The story was clearly written as the views of those interviewed and any reasonable reader would have recognised it as such. There was no subterfuge and the newspaper did not express a view itself.

While the complainant would have preferred the newspaper to write a story that included his view of alternative medicine, the story was about people and their own experience not that of the two sides of the debate.

It was clear from the debate on the newspaper’s own website that there are differing views held in the community and that people are able to make up their own minds as to how they feel about the issue.

The Press Council agrees with the editor that the debate over alternative remedies is sufficiently well known not to require balancing comment in every story about them. The subject falls within the exception to the principle of balance for issues of enduring public discussion.

The complainant in this case raised the important question of whether the exception can be invoked for an article in a newspaper that may not itself have covered both sides of the debate. The Council considered this point closely and came to the view that the exception has not been applied as narrowly as the complainant contends and should not be. A newspaper, even if it is the sole newspaper of its locality, does not exist in a vacuum. Its readers, meeting an uncritical story on the supposed popularity of homeopathy and natural remedies, are likely to be aware the efficacy of these treatments is strongly contested by medical science.

Newspapers ought to take greater advantage of the service the Science Media Centre provides. The story in this case would, in the Council’s view, have been better if the claims made for alternative remedies had been balanced by a scientific view. The final paragraph, giving the district health

board advice to consult a doctor, was not sufficient for balance, especially as it referred only to cancer sufferers. Its inclusion suggests the newspaper was aware of the story's deficiency.

Nevertheless, this is a subject covered by the exception to the balance principle. The article was not advocating the therapies mentioned, or offering a critique of them. It was reporting the views of people in its locality who offered or used them. It goes without saying that the medical science does not support them.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Tim Beaglehole, Liz Brown, Peter Fa'afiu, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart. Vernon Small abstained from voting.

CASE NO: 2427 – CRAIG SMITH AGAINST OTAGO DAILY TIMES

The Complaint

Craig Smith has laid a complaint related to an article and photo on page four of the *Otago Daily Times* dated January 20, 2015. The article was entitled "Nest puts dog owners on notice" and the photo is of Mr Smith walking his dog off the lead on Aramoana Beach in an area where there was now DOC signage for dogs to be on a lead. This restriction was required because of a yellow-eyed penguin nesting site.

Mr Smith argues the article, photo and interaction with the publication is in breach of the Press Council Principles of Accuracy, Fairness, and Balance; Photos and Graphics; Privacy; and Subterfuge.

There were a number of emails from Mr Smith to both the publication and the Council however the complaint can be summed up as:

- *The Otago Daily Times* should report in a fair and balanced manner. Mr Smith argues that not returning his phone call is a breach of this responsibility.
- The article itself was not fair and balanced which included a lack of understanding by the reporter of the beach and community. Moreover the DOC sign does not cover all ingress points and is small in size.
- Mr Smith was recognisable in the photo and has impacted on his reputation including his profession.

The Otago Daily Times response

The acting editor of the *Otago Daily Times*, Barry Stewart, responded to Mr Smith a number of times by email however his points can be summed up in his letter of January 29 to the Press Council. Mr Stewart argues:

- Mr Smith did phone the newspaper asking that his photo not be published and to speak with the photographer. The photographer did not wish to discuss the matter as the photo was taken in a public place so no permission was required. Mr Stewart reaffirms this view to Mr Smith on behalf of the newspaper.

- There was no expectation to return Mr Smith's phone call, rather it was only if the newspaper wished to discuss the matter with the complainant.
- Whilst Mr Smith claims he wasn't aware of the sign, the article was only seeking to highlight the change of nature of the beach given the DOC decision to require dogs to be on a lead.
- The assertion by Mr Smith that the sign was small was wrong.
- The photograph was not there to embarrass Mr Smith but rather highlight very real concerns of the DOC and the local community.
- Mr Smith was offered an opportunity for a letter to the editor but declined the offer.

Discussion

The Principle of subterfuge (9) is not breached.

In terms of Principle of Privacy (2), the Council does have some sympathy for Mr Smith. Given the small community he is likely to have been recognised by some. We are unable to determine whether this might have been negative publicity and in turn impact on Mr Smith's profession but we acknowledge his concern.

However, the photo was taken in a public place and the Council agrees with the newspaper's editor that it was taken to highlight a very real issue for DOC, and to alert the public to the extension to the controlled area. There was certainly public interest in dog owners not abiding by DOC rules related to rare penguins.

Under Principle 1 – accuracy, fair and balance – the majority of the Council is of the view that the article does not breach that principle. The Council acknowledges Mr Smith's assertion that his published quote might have been given more context given the relationship between Mr Smith and "Bradley" however this does not deflect from the accuracy of the article in its entirety.

However three members of the Council thought there was an element of unfairness to the story as it did not include Mr Smith's reasonable explanation of his presence on the beach with an unleashed dog – the by-law had only just come into effect, the sign had only just been erected, he was not aware of either and he had come on to the beach at a point where there was no sign.

The Council noted that the editor had provided an opportunity for a right of reply which he was not required to do.

Principle 11 regarding photos is not breached.

The Press Council does not uphold the complaint.

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

CASE NO: 2428 – MIKE TALKS AGAINST STUFF

The Press Council has not upheld a complaint against an opinion piece comparing Islamic State's abhorrent actions with the punishments and attitudes of Saudi Arabia.

The complaint, by Mike Talks, was made against a col-

umn published on the Stuff.co.nz website on January 22, 2015. The column, *The Saudis are every bit as sickening as Islamic State*, originated from Fairfax Australian correspondent Paul McGeough.

The Complaint

Mr Talks said the column was hugely xenophobic and “somewhat laced with hate” against Muslims. He found it deeply offensive.

While he was not Islamic or from Saudi Arabia, and while Saudi Arabia had “a huge way to go” in terms of crime and punishment, he found the piece xenophobic and racist. He was particularly concerned at its comparisons between Saudi Arabia and IS.

Execution was practised in many countries as a form of criminal punishment - for example, he had not seen United States’ policies compared with IS.

His complaint said that news stories written for consumption in Australia came across as vulgar and xenophobic when published elsewhere. While he believed in freedom of speech, the piece did not set out to perform a political analysis of Saudi Arabia but to inflame hatred against Islam.

He cited Press Council principles of Discrimination and Diversity, and Subterfuge, in making his complaint.

The Response

Stuff’s editor Patrick Crewdson said the report was an opinion column, not a news story, and clearly identified as such. The column was a valid expression of the author’s opinion. The author used strong language to express his point, but it was not racist or xenophobic.

As a critique of the Saudi justice system it was not confined to their use of the death penalty but also the manner in which executions were carried out and the “crimes” in question.

The column’s content had not been gained by subterfuge, misrepresentation or dishonest means.

In terms of the other principle cited, Discrimination and Diversity, he said the Press Council Principle acknowledged that religion and race were legitimate subjects for discussion where they were relevant and in the public interest. The Principle allowed publications to report and express opinions in these areas provided the emphasis was not “gratuitous”.

Stuff.co.nz did not promote racism or xenophobia. “The emergence of Islamic State and the policies of Western-allied governments of the Middle East are self-evidently issues of relevant public interest.”

The columnist was the chief foreign correspondent of the *Sydney Morning Herald*, an experienced journalist who had specialised in the Middle East who had earned the right to comment on the behaviour of the region’s governments.

The complainant said the column made comparisons between IS and Saudi Arabia “as they are both Islamic”. However, the columnist’s critique was much more specific and detailed than that.

“It is entirely reasonable for someone of Mr McGeough’s considerable experience to criticise what he sees as the excesses of a justice system that allows for beheading or fatal stoning for ‘crimes’ such as homosexuality, and caning for those who express dissent. To do so is no more anti-Muslim than critiquing the Vatican’s contraception policy would be

anti-Catholic.”

The column did not criticise the Saudi population in general or Muslims as a group. Rather it used the term “the Saudis” as shorthand for the Saudi state.

The Press Council’s Principle 5 would probably be more appropriate than the principles cited by the complainant. It allowed for the wide freedom of expression when opinion pieces were clearly marked as such - as this column was. Freedom of expression was one of the Council’s guiding principles and the Council had repeatedly upheld the right of opinion authors to be provocative and outrageous.

“While strongly worded, this column is a valid, actual critique of the Saudi legal system. It neither promotes xenophobia nor fans the flames of racial hatred.”

While admittedly provocative and capable of offending some readers, the column deserved the protection of freedom of expression which the Council had previously advocated for columnists.

The Decision

As noted in Press Council decision 2380, in May 2014, opinions by their very nature may be arguable. They may be robustly expressed and even on occasion offensive or unacceptable to some readers without breaching the standards to be expected of a reputable media outlet. The Press Council has many times endorsed freedom of expression, a fundamental right in a democratic society and a right set down in the New Zealand Bill of Rights Act.

It is clear that the Stuff article in question is an opinion piece, by an experienced journalist well qualified to comment on Middle Eastern affairs. It was a provocative but legitimate comparison of Saudi policies with the widely criticised, widely publicised, abhorrent actions of IS. There is no suggestion by the complainant that it is factually incorrect.

The piece did not involve subterfuge, nor did it contravene the Council’s Discrimination and Diversity principle. The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Tim Beaglehole, Liz Brown, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

Peter Fa’afu took no part in the consideration of this complaint.

CASE NO: 2429 – TAUPO DISTRICT COUNCIL AGAINST TAUPO & TURANGI WEEKENDER

The Complaint

The Taupo District Council’s complaint against *Taupo and Turangi Weekender* related to a front-page article, headlined *Fired-up chief quits*, published on December 11, 2014, which reported on a controversy between the Council and the Omori Volunteer Rural Fire Force.

The article followed the removal of a number of hoses from the Omori fire truck after they had been inspected and tested for the Council, an action which the Omori volunteer fire chief was reported as saying had been done without explanation and which he claimed would affect the Rural Fire Force’s capacity to act as a first response to building or house fires until the urban firefighters from Taupo or Turangi could

get to the scene. The article was illustrated with a photograph of the fire truck showing empty compartments where the hoses which had been removed had been housed.

The Taupo Council's view was that the article and photograph, with its caption, seriously breached the Press Council's principle of accuracy, balance and fairness by focusing on the removed hoses, four out of six of which failed to pass their test, rather than the equipment as a whole. In a subsequent addition to their complaint the Council contended that a further Press Council principle had been infringed in that subterfuge had been used in the preparation of the article as permission had not been sought or given for the photograph to be taken on the site which was Taupo Council property. Subterfuge was also used, the Council claimed, in that the story 'was never shown to the Council in its draft entirety prior to going to press'.

The Newspaper Response

In responding to the complaints the editor expressed her belief that the principles of the Press Council had in both cases been adhered to. The photograph showed the vehicle as it had been after the hoses were removed – the fact that a cardboard carton subsequently placed in one of the gaps had been taken out for the photograph did not, she suggested, somehow infringe the principles of accuracy, balance and fairness.

To the further complaint, arguing subterfuge in taking the photograph without permission, she responded that 'the journalist did seek permission from and was accompanied onto the site by the Acting Rural Fire Force Chief' and that given his position it was 'reasonable for her to assume that his permission was sufficient'.

Discussion

The article, on a subject of importance to members of the paper's community, is clear and straightforward. While there could be differing views on the reasons for what appears to be a simmering dispute between the Volunteer Fire Force and the Taupo District Council and the article does not probe these, it is difficult to see it as inaccurate, unfair or unbalanced.

In addition to Council comment in the article the Press Council notes that the newspaper, in its next issue, provided generous space for a representative of the Council to comment on the issues. This would seem to run counter to such an argument. The paper's response to the suggestion that the photograph was 'staged' clearly explains what was done and in that light the caption seems quite unexceptionable.

Similarly, their explanation of how they sought and were given permission to enter the site where the truck was parked – an explanation which the council spokesperson does not refer to or comment on – makes it difficult to sustain a suggestion of subterfuge.

The Press Council does not accept that draft articles must be shown to those discussed in the article before publication.

The complaint of the Taupo District Council is not upheld.

Press Council members considering the complaint were Sir John Hansen, Tim Beaglehole, Liz Brown, Peter Fa'afu, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

CASE NO: 2430 – LEE VANDERVIS AGAINST OTAGO DAILY TIMES

The Complaint

Lee Vandervis, a Dunedin city councillor, has complained about a picture published in the *Otago Daily Times* on February 19, 2015 which depicted a debate in the council chambers about quarrying on Saddle Hill.

The picture centred on Cr Richard Thomson who was on his feet apparently speaking in an animated fashion. Several other people were in shot including Mr Vandervis who was prominent in the foreground.

He has complained that the shot selection was made at a time when he was blinking which makes him appear to be asleep.

He says this was compounded by the text accompanying the photo which did not mention his active contribution to the debate "reinforcing the photographic sleep deception".

The article quotes Cr Thomson and refers to other councillors raising concerns in the meeting but Cr Kate Wilson is the only other councillor quoted and mentioned by name.

The views of officials, representatives of the company and a local MP are included.

After the photo was published Cr Vandervis said many people remarked to him on his sleeping at Council and two days later when he lodged the complaint he was still being accosted in public about being asleep on the job.

Consistent ribbing from friends and acquaintances highlighted the wider damage done to him, he alleges.

The complainant attached other material for context, which he said amounted to a long train of misrepresentation of him. That included a complaint to police about a report card on councillors in 2013 which the police investigated, sought a legal opinion, but did not pursue.

The Newspaper Response

In reply on behalf of the *ODT* its editor Murray Kirkness denied the picture showed Mr Vandervis with his eyes closed, saying "your eyes are open. You appear to be looking at your hands".

He denied it was published to paint the complainant in a negative light and said it was a photo of Cr Thomson and was captioned as such. He suggested Cr Vandervis appeared to be looking at his clasped hands perhaps in a study of concentration and that the picture was no more of him than it was of Cr Doug Hall who was also in shot and could possibly be scratching his ear.

Mr Kirkness said no one other than Mr Vandervis had raised the photo with him nor had any correspondence been received by the *ODT* suggesting he was asleep.

He noted in a smaller wide photograph of the council meeting, published together with the larger photo and story, Cr Vandervis appeared to be taking notes.

Mr Kirkness said the reporter provided an accurate summary of the meeting not a verbatim transcript. Only two councillors were quoted and there was "nothing sinister" in Cr Vandervis not being one of them.

He has also rejected the wider complaint that the newspaper coverage of him had been routinely negative.

Discussion and Decision

Cr Vandervis clearly believes he is the object of unfair treatment over many years by the *ODT* although the paper strongly denies this.

This complaint though is focused on the photograph(s) and the attendant article and the allegation that they are misleading and unfair.

The photograph

While it is difficult to tell beyond doubt in the printed edition, it is clear from the photograph provided by the *ODT* that Cr Vandervis' eyes were open though he was looking downwards. He was not the subject of the photograph and it is fair to assume it was chosen because of Cr Thomson's animated appearance. It was captioned in that way and Cr Thomson was quoted at length. No other person appearing in the shot was named in the caption or quoted in the article. The smaller photo showed Cr Vandervis apparently taking notes at the meeting, adding weight to the editor's contention that photo selection was not motivated by a desire to show him in a bad light.

The text

The Council notes the article contained a balance of opinions about the Saddle Hill quarry controversy including councillors representing the meeting's decision, officials and the owners.

No doubt many councillors would have welcomed their contributions being included in the article.

But just as with coverage of any government debate, be it at a council or in Parliament, not all contributions can be included. While the article might have usefully noted that not all councillors were on the same page - if that was the case - it is hard to see how the published article can overall be seen as unfair, unbalanced or misrepresentative of the meeting because it failed to mention Cr Vandervis' specific contributions.

Cr Vandervis cites other Principles as having been breached, but does not argue them and they have not been considered.

The complaint is not upheld.

Press Council members considering the complaint were Tim Beaglehole, Liz Brown, Peter Fa'afiu, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

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

CASE NO: 2431 – THE ASSOCIATION OF NIGERIANS IN NEW ZEALAND AGAINST NEW ZEALAND HERALD

Introduction

The Association of Nigerians in NZ claims a story published in the *New Zealand Herald* on February 10 breaches the following Press Council principles: Accuracy, Fairness and Balance (Principle 1), Comment and Fact (Principle 4), Discrimination and Diversity (Principle 7) and Subterfuge (Principle 9).

The complaint is not upheld.

Background

The article was headlined 'Nigerian rental scammers rip off desperate house-hunters'.

It outlined a scam whereby house-hunters were lured into paying rental deposits for properties which had already been rented.

Photos and details of rental properties were copied from legitimate advertisements and reposted on the auction website Gumtree, often for cheaper rent.

In one such case, a Herald journalist reporting on the scam rang the telephone number left on the fake advertisement. It had a Nigerian country code and the man who answered attempted to take a rental deposit.

An email from the scammer about one of the properties, seen by the *Herald*, said the renter was in West Africa.

A representative of one of the legitimate rental agencies had contacted Gumtree about the fakes and, according to the *Herald*, been given an apology. The *Herald* did not obtain Gumtree comment directly.

A representative of the same rental agency said they had not approached police but understood a scam victim intended to lay a complaint.

The February 10 story ended with advice on how to avoid being scammed.

A follow-up article the next day, February 11, included police comment. A detective inspector confirmed complaints had been received.

The February 11 story included a further case and referenced a comment on the Gumtree advertisement which was apparently posted from West Africa.

A third *Herald* story, on February 17, also referred to the 'Nigerian property rental scam'. Police were again quoted, saying they were aware of the issue but had not received a formal complaint.

Complaint

The Association of Nigerians in New Zealand, represented by its president Gary Unamadu, complained about the article to the *Herald* editor, and referred it to the Nigerian High Commission in Canberra, Australia.

An attempt was made to find out from the reporter how she determined the scammers to be Nigerian. The reporter was 'not cooperative' and, according to the complainant, hung up on the Association president.

The Association's own investigations found the *Herald* had not been thorough in its approach to the story and was 'completely wrong' in labelling the scammers Nigerian.

The complainant demanded the *Herald* properly determine which country their phone call to the scammer went to, and which country hosted the bank account the deposit for the fake rental was paid into. The phone, although registered to a Nigerian number, could have been roaming at the time.

The reporter's information used to report the story, and a further report disassociating Nigeria from the story, were sought.

The Association's Press Council complaint described the *Herald* article as a figment of the reporter's imagination, claimed Nigerian officials would investigate and demanded a retraction. Not enough was done by the reporter to confirm the scammers were Nigerian.

The Association claimed its own inquiries with police

failed to reveal any complaint about the scam, and that the rental agency would not confirm it was even aware of the issue.

The *Herald* article had dented the reputation of productive and law-abiding Nigerians in New Zealand. It also stereotyped all Nigerians as scammers.

Editor's response

The response was provided by *New Zealand Herald* editor Shayne Currie.

The editor spoke to the reporter and checked information, including the phone number, and was satisfied the story was fair, accurate and balanced.

An invitation was made to the Association to share positive stories about its members with the *Herald*.

Policy and ethics prevented the *Herald* sharing its information with the Association.

The rental agency was aware of the scam and was quoted as such.

The editor said the *Herald* had reported that police were aware of the issue but had not received a formal complaint.

The story was a public service.

Discussion

Reporting scams is a worthwhile pursuit of the media, and can be considered very much in the public interest.

The reporter saw an email where the scammer claimed to be from West Africa.

The *Herald* sought balance and corroboration by contacting the scammer. There is no suggestion subterfuge was used or that the *Herald* reporter claimed to be anyone else.

The phone the scammer was reached on, although potentially roaming at the time, was registered to a Nigerian number.

It is not unreasonable, therefore, to conclude the scam originated out of Nigeria.

There was no gratuitous emphasis placed on the race of the scammer. It was a reported fact and relevant to the story in the sense potential renters were warned against dealing with property managers based abroad.

Rightly or wrongly, Nigeria has earned a reputation of being a source of scams. Our Government's own scamwatch-style site references the 'commonly known' Nigerian scam.

Although two of the *Herald's* follow-up stories differed in whether the police were simply aware of the issue or had received a complaint, it was enough of a concern for the police to issue a warning.

There is no obligation on the *Herald*, or any other media, to provide details obtained in the course of reporting to a third party.

The *Herald* went as far as offering to consider stories from the Association which painted Nigerians in a more positive light.

No Press Council principles were breached and the complaint is not upheld.

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

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

CASE NO: 2432 – MARTIN BATES AGAINST STUFF

Martin Bates complains that a "Breaking News" banner headline and one-sentence article published briefly on Stuff breaches the Press Council's principles of accuracy, fairness and balance.

The Complaint

Mr Bates complains that the banner headline and one-sentence article reading "A Tsunami alert has been issued for New Zealand", or a very similar wording, was inaccurate and breached the principles referred to above. Although no date is given by Mr Bates, it appears to be common ground that what is complained of was posted online on 30 March 2015. Mr Bates complained there was no source for the one-liner, nor any link. Nor was there a differentiation between an alert and a warning. Given the potential speed of such events, he says he was worried for his father, who was on holiday in a coastal area. He rang Civil Defence and was assured there was no warning for New Zealand. He says about 15 minutes later the article was edited and updated to include that it was a Pacific Tsunami Warning Centre advisory and no Pacific-wide tsunami was expected. It is his view that Stuff Online should have waited to run the story when there was a source and Civil defence advice. He said it was misleading to run what was said to be an urgent banner without source, and it was misleading, alarmist and poor journalism. He stated he could not access the original article, and he only had a copy of the most recently updated article which is not the subject of the complaint.

Mr Bates also complains that the response from Stuff Online when he complained to them was offhand and did not take the matter seriously enough.

The Response

Mr Crewdson, the editor of stuff.co.nz, provided a fulsome response. He states that at 12.55pm on March 30, the Pacific Tsunami Warning Centre issued a threat message saying an earthquake of magnitude 7.6, at a depth of 33 kilometres, had struck Papua New Guinea. It said hazardous tsunami waves were possible for coasts located within 1000 kilometres of the epicentre. The message gave estimated times of arrival of tsunami waves in countries including New Zealand and Australia.

He goes on to say that Stuff is an international, as well as national, news site. A large earthquake in the Pacific that prompts such a risk is a valid story that demands prompt coverage. He considered a quake of such magnitude should be covered, regardless of any risk to New Zealand. The duty home page editor decided it warranted a "Breaking News" alert recording the magnitude and location of the earthquake, and the possibility of tsunami waves. It is clear Mr Bates' complaint was sparked by that "Breaking News" alert on the desktop site. He also explained that for technical reasons stuff.co.nz does not have an archive of desktop "Breaking News" alert messages. He explained that unlike story files, which are permanently archived, the "Breaking News" alert is a piece of code on the site that is overwritten each time it is used.

He says that the staff member's recollection is that the alert did not refer to NZ. He said this is reinforced by the con-

tent of the initial story published at 1.06pm under the headline, “A magnitude 7.7 quake hits near Papua New Guinea”. Because few details were available at that stage, the entire story read: “A tsunami alert is in place after an undersea 7.7 magnitude quake in the New Ireland region of Papua New Guinea”. He denies Mr Bates’ claim that the Breaking News alert was accompanied by a one-sentence article featuring a tsunami alert for New Zealand. He said there was no reference to a threat for New Zealand in that first story. He then sets out a fuller story at 1.13pm. He points out that within 11 minutes of the initial story, which referred only to a quake in Papua New Guinea and legitimate critical tsunami information statement that was issued, the story had sufficient local detail to address the risk to New Zealanders. He considered this to be a fast and diligent response to breaking news.

Decision

There is obviously a dispute between what Mr Bates says and what the editor says. Mr Bates said the line was, “A Tsunami alert has been issued for New Zealand”, or a very similar wording. It is apparent that he is not certain as to what exactly appeared. The recollection of the staff member responsible at stuff.co.nz was that the Breaking News alert did not refer to New Zealand, reinforced by the content of the initial story. It is impossible for the Council to resolve that issue of fact, particularly where there is a lack of certainty from both parties.

In any event, this was clearly a fast-breaking story of importance and significance. We are satisfied that stuff.co.nz responded to it in a responsible and measured way. There are no breaches of the principles as alleged by Mr Bates.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Tim Beaglehole, Liz Brown, Chris Darlow, Peter Fa’afiu, Jenny Farrell, Sandy Gill, John Roughan, Vernon Small and Mark Stevens.

CASE NO: 2433 – EARTHQUAKE COMMISSION AGAINST THE PRESS

The Earthquake Commission (EQC) complained that *The Press*’ coverage of a civil suit between Cameron and Suzanne Kelly, EQC and Southern Response (SR) breached Press Council Principle 1 because it lacked balance.

The complaint is upheld.

Background

In September 2014, Cameron and Suzanne Kelly sued the EQC and SR for \$590,000 for the rebuild of their 100-year-old Christchurch home, which was damaged in the February 2011 earthquake.

The hearing took place in three stages - a week in late September/early October 2014, a further week in December 2014, and a final two days in March this year.

The delay in proceedings was due to the fact that the hearing was originally set down for five days but most of this time was taken up with the plaintiffs’ evidence, requiring a new court date to be set.

The Press covered the first week of the hearing when the plaintiffs’ evidence was presented, and published daily updates on the case. The reports were also carried online on Stuff.co.nz

The Press did not cover the hearing when it resumed in December to hear the respondents’ evidence, nor on the final two days in March when both sides summed up.

Complaint

In the first week of the hearing, *The Press* ran daily updates on the claim against the EQC and SR, reporting “serious allegations of bullying, denial of entitlement, and systemic issues with EQC’s assessment of damage” by counsel for the plaintiffs and their witnesses.

The EQC presented evidence over a number of days in the second week of the hearing in December, but this evidence was not covered by *The Press*.

On December 17, the EQC complained to *The Press* about the lack of balance, and suggested that coverage of the remaining days of the hearing in March would go some way towards addressing the imbalance, provided the EQC’s evidence was given prominence.

The EQC presented its summary of evidence on March 2. *The Press* did not cover the EQC’s summary.

The EQC acknowledged that it was normal to expect that coverage of an ongoing case “will include individual accounts which are slanted to one side or the other, and which may contain strenuous allegations”, but pointed out that a publication can achieve balance by reporting both sides’ evidence.

The EQC said the “totality of coverage has created serious imbalance and had not served the interests of *The Press*’ readership in presenting all the salient facts”.

Response

The editor of *The Press*, Joanna Norris, defended the extensive coverage of the first week of the hearing in September because she believed the story was important.

She said the coverage was fair, accurate and balanced, and included reportage of the cross-examination of the plaintiff’s witnesses by the EQC’s counsel.

She acknowledged that this did not make up for *The Press*’ failure to cover the respondents’ case adequately by reporting the EQC’s evidence in December, nor the final addresses in March.

The error was brought about by a “regrettable failure” of the newspaper’s diary systems caused in part by the piecemeal nature of the hearing, and the uncertainty of the hearing dates, she said.

The editor noted that while the EQC Stakeholder Communications Manager Iain Butler had contacted the newspaper to express his views that further hearing dates should be covered, he did not identify the dates in his correspondence. Although it was not the EQC’s responsibility, it would have been of assistance given the concern raised, she said.

The editor requested the Council to note that *The Press* has worked hard to maintain a strong working relationship with the EQC, and had published 489 pieces of content on the EQC in the past 12 months. “We believe robust coverage of the activities of the commission is in the interest of Cantabrians,” she said. “We seek to deal with any complaints the commission makes as effectively and pragmatically as possible.”

Discussion

The Press’ failure to cover the second and third hearings

of the Kellys' claim against the EQC, for whatever reason, meant the EQC's evidence was not reported in the newspaper or on the Stuff website. Because of the extensive coverage of the plaintiffs' evidence, and the serious nature of the allegations made by their counsel and witnesses, the EQC rightly asserted that the newspaper's readers deserved to hear the counter arguments to test the credibility of the opinions.

The editor of *The Press* has acknowledged the error however, and accepted full responsibility. In her response, she undertook to cover the High Court judgment, when it is delivered, "thoroughly and fairly" in the newspaper.

While the Council accepts that the lack of coverage of the EQC's evidence was a mistake, which can be attributed in part to the stop/start nature of the hearing, there was no excuse not to attend the March hearing. This was a fundamental error in court reporting where balance is of vital importance.

The failure to achieve that balance is a clear breach of Press Council Principle 1.

Decision

The complaint is upheld.

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

CASE NO: 2434 – XOE HALL AGAINST KAPI-MANA NEWS

Introduction

The central issue in Xoe Hall's complaint related to a front-page skybox headline given to an article inside the paper which described a mural she had painted in Titahi Bay. She claimed the headline was quite inaccurate and while she listed a number of Press Council Principles she believed to have been infringed those most directly relevant appear to have been Accuracy, and Headlines and Captions.

The complaint is upheld.

Background

The article, "Mural Brightens Titahi Bay", on page 7 of the *Kapi-Mana News* of April 7, 2015, gave an account of a mural painted by Xoe Hall in a Titahi Bay bus stop. The work was commissioned by the Porirua City Council as part of a plan to reduce graffiti and brighten up the community.

The Complaint

Ms Hall complained that the front-page skybox headline that read "XOE'S MISSION Porirua Artist on Graffiti Warpath" was quite untrue and that she had said nothing to justify the headline in her interview. She believed that the view expressed as hers could be taken as a challenge by local graffiti taggers and, indeed, the work was severely vandalised the weekend after the article appeared.

She further felt she had been misquoted by the reporter in comments she made on talking with members of the community about ideas for the mural.

In her view, the editor, Joseph Romanos (who wrote the headline) had become "rude and sarcastic" over a number of interchanges which followed her initial complaint.

The Newspaper's Response

The newspaper's response came from Bernadette Courtney, the Editor-in-chief of *The Dominion Post*. She noted that the article was "entirely complimentary of Ms Hall" but she did not accept Ms Hall's opinion that "the tagging was a direct consequence of the article and skybox", characterising such a belief as "entirely speculative".

On the complaint of misquoting she responded that what was written "was exactly what she told the reporter during the interview".

Ms Courtney submitted that the Council's Principle 6: Headlines and captions "is the most relevant principle in Ms Hall's complaint and the question for the Council is simply whether the skybox text is an accurate reflection of the article inside".

In brief she argued that in accepting a commission from the Porirua Council's anti-graffiti team Ms Hall effectively joined the community's fight against graffiti, and that "given that the Press Council allows some license for headlines" she submitted "that the skybox text is an accurate reflection of the article it promotes".

Discussion

On the issue of misquoting Ms Hall in the article there is a clear conflict of views and the Council is not in a position to adjudicate.

In the interchanges which followed Ms Hall's initial complaint the Council believes the *Kapi-Mana* editor showed little sympathy to an artist whose work had been vandalised. One email from the editor to Ms Hall dated April 13 was in the Council's view entirely inappropriate from someone in his position. The Press Council expects complainants to be dealt with in a professional and courteous manner.

Communication would not appear to have been helped by the loose and somewhat emotive use of the term "graffiti" which, in recent years, has come to have a range of meanings as well as practitioners. The Press Council agrees that the article was entirely favourable to Ms Hall and her work, and believes that a local paper is acting admirably in supporting a campaign by its local government.

At the same time it shares Ms Courtney's view that the principal question for it raised by the complaint is "whether the skybox text is an accurate reflection of the article it promotes".

And on this the Press Council cannot agree with her argument. "XOE'S MISSION Porirua artist on graffiti warpath" indicates a personal campaign for which there is not one vestige of evidence in the article on page 7. To argue that some license can be given for a headline which is so fundamentally inaccurate is unsupportable, regardless of who commissioned Ms Hall's work.

The complaint on the wording of the skybox text is upheld.

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

CASE NO: 2435 – ROBERT MILLER AGAINST THE WAIRARAPA MIDWEEK

Robert Miller's complaint relates to a front page article head-

lined “Psycho Killer” that appeared in the weekly community newspaper *Wairarapa Midweek* on February 17, 2015.

The article, accompanied by a large picture of a caged and apparently angry cat, dealt with the predation of cats on native wildlife and followed a number of letters to the newspaper on the issue.

It included comments from an interview with two men with strong views on the impact of cats on wildlife.

One of the two, Alan Fielding, had helped eradicate cats on Little Barrier Island in the 1970s. Mr Fielding was quoted saying that cats were “psychopathic” because they killed for pleasure.

In his complaint Mr Miller lists breaches of Principle 1 (accuracy, fairness and balance), Principle 5 (headlines and captions) and Principle 6 (discrimination and diversity).

Mr Miller discussed his complaint in person with the newspaper’s editor and asked for an apology to be published in the newspaper. The editor did not agree and the complaint to the Press Council went ahead after the editor agreed no written complaint to the newspaper was necessary.

The complaint is not upheld.

The Complaint

Mr Miller argued that the headline was derogatory language that would commonly be understood to refer to humans with serious mental disorders and that the word “psycho” relates to “psychotic”.

In his rebuttal of the newspaper’s response he elaborated, saying it could refer to either psychotic or psychopathic or both and that derogatory vernacular is imprecise.

He also cited the two Psycho movies saying were about acts of violence by acutely mentally disturbed. He also referred to a murder, some days before the article was published, on the Kapiti Coast by someone under treatment for mental health problems, pointing out that was handled responsibly by the *Dominion Post*.

He argued that the headline complained about could easily be read without connection to the article below. He had seen the folded paper with only the headline visible, so it was not obvious the story was about cats.

He contended the headline “reinforces a ‘script’ already strong in the popular mind linking unpredictable violence with major mental disorder”.

That would tend to increase the sense of alienation felt by people with such serious disorders and deter them from seeking necessary treatment, so the headline was bad for public health aspects of mental health care. Put another way, it would contribute to an adverse social climate, rather than cause individual offence.

In regard to Principle 6, he argued the headline placed gratuitous emphasis on mental disability.

In terms of Principle 1 he argued a possible breach on the grounds of deliberately misleading or misinforming readers.

The Response

The newspaper’s response was provided by the *Wairarapa Times-Age* editor Andrew Bonallack supplemented by the views of *Wairarapa Midweek* Editor Gerald Ford.

They said the article was about cats and it was not reasonable to simply link the headline and article to mental health disorders and that was clearly not the context of the article.

The prominent picture of a cat in a trap, barring its teeth, and the sub-heading “Pair seek tighter controls on cats” reinforced that.

The headline was taken from a comment by one of the interviewees, who had helped with a cat eradication programme, who described cats as “psychopathic”.

As such the headline was a direct reflection of the article’s context and “neatly paraphrases a key quote from a person interviewed”.

Mr Bonallack rejected the contention the headline could be read without noticing the article below.

He said the article made no reference to mental health conditions and the suggestion of a harmful insinuation by association was “too big a stretch”.

The headline represented the angle of the story and the “anthropomorphism” involved in assigning cats human characteristics was not unreasonable.

He rebutted the complaint on Principle 1 grounds, saying the newspaper accurately recorded the interviewee’s description. He suggested if any balance and fairness was to be sought it could come from someone speaking up on behalf of cats.

Gerald Ford said “psycho” was a contraction of “psychopath” not “psychotic” and that was backed up by the quote in the article. Further, “psycho killer” was a cultural bogeyman and did not refer in any general way to humans with serious mental disorders. There was no intention to be derogatory towards people with mental disorders.

Both editors gave assurances there was no connection between the article and the Kapiti murder and Ford, who approved the headline, said he was not aware of the murder.

Discussion and Decision

The Council does not uphold the complaint on Principle 5. The headline accurately and fairly conveys the substance of the article and in context the contraction “psycho” is appropriate. Nor does the headline under Principle 1 mislead or misinform readers, especially given the sub-heading and the prominent picture underscore that it refers to cats.

In relation to Principle 6, the Council reiterates that publications should not gratuitously emphasise the categories including mental health, listed in the principle. In that regard, they should be careful when using “the vernacular” to refer to groups covered by Principle 6. For instance it is widely accepted in the media that the term “schizophrenic” should not be used colloquially and when it does not refer to that particular condition.

The Council accepts that Mr Miller has a genuine concern about the language used in the headline. However, in this case it believes the context, and the clear reference to cat behaviour, means use of the term “psycho” does not breach Principle 6.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Tim Beaglehole, Liz Brown, Chris Darlow, Peter Fa’afiu, Jenny Farrell, Sandy Gill, John Roughan, Vernon Small and Mark Stevens.

CASE NO: 2436 – GEORGE PREDDEY AGAINST THE DOMINION POST

This case challenged the tendency of newspapers to treat an-

thropogenic climate change as a subject of debate and asked the Press Council to declare contrary opinion to be a factual error.

Dr George Preddey, a retired upper atmospheric physicist, complained about an opinion piece published in *The Dominion Post*, headed ‘Hypothetical global warming: scepticism needed’. It was co-written by Professor Bob Carter, identified as an expert in geology and palaeoclimatology, and Bryan Leyland, an engineer specialising in renewable energy.

The complaint was not upheld with one member of the Press Council dissenting from this decision.

The Complaint

Dr Preddey complained that the item breached the Council’s principles of accuracy, fairness and balance and did not offer an opinion that was based on factual accuracy. He also objected to the use of ‘hypothetical’ in the headline and alleged breaches of the principles concerning subterfuge and conflicts of interest.

He accused the newspaper of subterfuge by misrepresenting the authors’ credentials. It ought to have noted they were longstanding critics of the science of anthropogenic (human caused) climate change. They had a conflict of interest, in Dr Preddey’s view, because Professor Carter was said to have received money from an American think-tank, the Heartland Institute, in a 2012 programme to “counter the alarmist message”, and Mr Leyland was associated with the New Zealand Climate Science Education Trust that had brought an unsuccessful court action against Niwa at a cost of \$80,000 to the New Zealand taxpayer.

As “propagandists” they were trying to promote doubt in the public mind so that large fossil energy interests could avoid carbon emission charges. Reputable, professional climate scientists had identified many errors and misrepresentations in *The Dominion Post* article. These were not reasonable constructions an independent commentator might make of the evidence, they were arguments deliberately selected to present a distorted picture and confuse the public on a future threat to human civilisation.

Five days after the article *The Dominion Post* had published a response co-written by David Wratt, an emeritus climate scientist for Niwa, Andy Reisinger of the New Zealand Agricultural Greenhouse Gas Research Centre and James Renwick, professor of physical geography at Victoria University of Wellington.

“While the newspaper might consider it was providing “balance”, said Dr Preddey, “its piece-for-piece exchange strategy continues to treat the scientific reality of anthropogenic climate change as a topic of debate when clearly it isn’t any longer — just as a flat earth is no longer debated.”

In giving prominence and credence to Leyland’s and Carter’s views, *The Dominion Post* was in effect discouraging urgent action to counter anthropogenic global warming and providing comfort to the New Zealand National Government whose policies ranked worst of 62 countries on a reputable international climate change protection index.

The Editor’s Response

The Editor in Chief, Bernadette Courtney, pointed out the article was published on a page clearly reserved for contribu-

tions of opinion and was intended to give readers an alternative view to the prevailing orthodoxy on climate change. *The Dominion Post* regarded its opinion pages as a marketplace of ideas and it was in no-one’s long-term interests to decide some views simply should not be heard.

The complainant had made a number of allegations about Mr Leyland and Dr Carter including alleged payments and links to what Dr Preddey calls “far right organisations”. The allegations seemed to rely on hearsay and in any event did not matter. Many people who contributed opinion pieces to *The Dominion Post* were activists and some were paid by their organisations. Readers of the piece would have understood Dr Carter and Mr Leyland were critics of theories of global warming.

In response to Dr Preddey’s specific grounds of complaint, the editor noted the principle of accuracy, fairness and balance allowed for differing views on climate change and the piece was followed by one taking an opposite view. The Carter-Leyland article was clearly distinguished as opinion, the headline accurately and fairly reflected the content, there was no subterfuge involved in obtaining the piece and no conflict of interest since *The Dominion Post* received no fee for the article and was under no obligation to publish it.

The Complainant’s Response

Dr Preddey considered it unreasonable to treat the subject as one of debate when 97 percent of climate scientists now accepted anthropogenic climate change unequivocally. Despite the editor’s assertion, he said, there were subjects on which there was a general acceptance that some views simply should not be heard. Holocaust denial was one. It was a denial of an historical fact. Climate change denial was a denial of scientific fact, putting countless millions of lives at risk.

He did not wish to stifle debate. *The Dominion Post* could usefully carry debate on the response to climate change but not on unequivocal climate science.

He retracted allegations the editor had called hearsay. They were based on Wikipedia references that had not been denied. However, he repeated the conflict of interest complaint, clarifying that he was referring to a writer of the article, not *The Dominion Post*.

Discussion

Editors are in an invidious position when scientists, or sciences, disagree on what constitutes fact. The best that non-scientists can do is to look for precision in matters that are claimed to be fact.

Upon receiving Dr Preddey’s complaint the Press Council invited him to specify the factual inaccuracies he found in the Carter-Leyland article. He cited 10 issues identified by Wratt, Reisinger and Renwick in their *Dominion Post* article, and 24 points in a critique of Leyland-Carter on a website, Hot Topic.

The Press Council has examined each conflicting statement carefully. In most instances the differences appeared to lie in interpretations of facts and those chosen for emphasis rather than stark factual errors. For example, Carter and Leyland said the world has not experienced any significant warming for the past 18 years even though atmospheric carbon dioxide has increased by 20 percent in that time. The accuracy of that statement depended on what degree of warm-

ing they considered “significant”, and whether 18 years was a significant length of time. Wratt, Reisinger and Renwick’s answer to that point was, “The long term warming trend shows intermittent ups and downs”, and “short-term wiggles don’t change the long term picture”. Hot Topic conceded “there has been some slowdown in the upwards trend of surface temperatures, the so called ‘hiatus’, but no reduction in the amount of heat accumulating in the system, mainly in the oceans”.

Carter and Leyland claimed that contrary to computer predictions global sea ice was well above the 1970-2013 average. Wratt, Reisinger and Renwick said arctic sea ice showed a long-term trend of retreat while Antarctic sea ice had behaved differently, some areas have decreased, others increased. Total sea ice, they “estimated to have decreased by around 1.5 percent per decade since 1979.”

Carter and Leyland said glaciers were retreating in some areas and advancing in others. Wratt, Reisinger and Renwick relied that “year to year fluctuations and local deviations from the decreasing trend exist but they don’t change the global picture”. Hot Topic called Carter and Leyland’s statement, “trivially true but hugely misleading”. The number of retreating glaciers, they said, far outweighs the few that are advancing.

Those examples were typical of the dispute. On most of the points at issue, Carter and Leyland cited anomalies and contradictions in the data while orthodox climate science focused on what it saw to be long-term global trends.

Decision

The Council cannot adjudicate on the scientific issues. It can rule only on whether the newspaper was entitled to publish the article as an item of opinion. It does seem to the Council that the article is highly selective and tendentious in its use of data but it is difficult to say on the counter-arguments provided, that the facts as worded are wrong. The complaint of inaccuracy was not upheld (Principle 1).

In accordance with Principle 5 there was no requirement for balance in an opinion piece such as this.

The Council found the article to be clearly presented as opinion on an issue of ongoing debate. It follows that there was no breach of the principle of distinguishing comment and fact (Principle 4).

The headline’s reference to “hypothetical” climate change was a fair reflection of the article (Principle 6) and the credentials of both writers were properly given (Principle 10). They were both well-known critics of climate change and the Council saw no “subterfuge” in the fact that this was not pointed out to readers. It did not need to be (Principle 9). On the question of conflict of interest, the complainant was unable to provide sufficient evidence that one of the writers receive grants from foundations opposed to climate change and withdrew this element of the complaint (Principle 10)

The NZ Bill of Rights Act (1990) accords to Messrs Carter and Leyland the right to hold and express these views; no Press Council Principles were breached in the editor’s publication of them.

The complaint is not upheld.

While it declined to uphold any grounds of the complaint, the Council observed that the subject of anthropogenic climate change is a declining topic of debate in newspapers, if

only because their editors judge, probably rightly, that readers are weary of the issue and have generally come to accept the scientific consensus.

Dissent by Tim Beaglehole

The article complained of appeared on the opinion page of the newspaper and was followed five days later by a critical response written by three New Zealand scientists. One would normally see this expression of diverse views as something to be supported in the interests of free speech, the principle to which the Council gives “primary consideration”. But while the Council, in considering opinion pieces, has been prepared to offer a little license in the application of its principles, such as accuracy, fairness and balance, this should not mean that they can be left out altogether. It is a matter of degree. The complainants [in my judgment] made a convincing case that the article showed a lack of accuracy and balance that meant that even for an opinion piece it did not meet the standards implied by the Council’s principles.

There is, in this case, a further consideration. Freedom of expression is linked as the Council’s primary consideration with “the public interest”. Anthropogenic climate change presents probably the greatest threat to our future well-being; possibly to humanity’s very survival. It is questionable at best whether the public interest is better served by further debate on the overwhelming consensus of qualified scientists, or whether the public interest would not be better served by discussion of how best to counter the effects of global warming and what is already being done in other parts of the world.

Press Council members considering the complaint were Sir John Hansen, Tim Beaglehole, Liz Brown, Chris Darlow, Peter Fa’afu, Jenny Farrell, Sandy Gill, John Roughan, Vernon Small and Mark Stevens.

CASE NO: 2437 – RUSSELL TREGONNING AGAINST THE DOMINION POST

This case challenged the tendency of newspapers to treat anthropogenic climate change as a subject of debate and asked the Press Council to declare contrary opinion to be a factual error.

Russell Tregonning complained about an opinion piece published in *The Dominion Post*, headed ‘Hypothetical global warming: scepticism needed’. It was co-written by Professor Bob Carter, identified as an expert in geology and palaeoclimatology, and Bryan Leyland, an engineer specialising in renewable energy. The complaint was not upheld with one member of the Council dissenting from this decision.

Mr Tregonning cited the same principles and evidence as Dr George Preddey, whose complaint he had seen and endorsed. The Press Council considered the complaints together and this decision largely duplicates the decision in Dr Preddey’s case.

The Complaint

Mr Tregonning considered the article contained numerous errors of fact and half-truths. It lacked balance and was neither fair nor accurate. For example, it stated, “We are constantly told that man-made carbon dioxide has caused global warming that will bring doom and disaster in a few years.” That was half-truth in Mr Tregonning’s view. Carbon di-

oxide had certainly caused global warming but the authors overstated the facts.

By publishing their opinion the editors of *The Dominion Post* treated global warming as a debate among scientists. It could no longer be regarded as such with 97 percent of climate experts agreeing on its existence and the leading role of human activity in its causation.

The Press Council's principles required a distinction to be drawn between opinion and fact and it had said, "material facts on which an opinion is based should be accurate".

The complainant asked the Council to give New Zealand newspaper editors clear guidance on publishing of articles on global warming. He would like to see editors required to check the credentials of authors and to submit information put forward as fact to reputable climate scientists for checking.

The Editor's Response

The Editor in Chief, Bernadette Courtney, responded jointly to the complaints from Mr Tregonning and Dr Preddey. She pointed out the article was published on a page clearly labelled as opinion and was intended to give readers an alternative view to the prevailing orthodoxy on climate change. *The Dominion Post* regarded its opinion pages as a marketplace of ideas and it was in no-one's long-term interests to decide some views simply should not be heard.

The Dominion Post was not a peer-reviewed publication. It did not necessarily endorse the opinions it published. It would be a retrograde step were newspapers to exclude views their editors did not agree with or were considered unpopular.

The editor noted the principle of accuracy, fairness and balance allowed for differing views on climate change and Carter-Leyland piece was followed by one taking an opposite view, co-written by David Wratt, an emeritus climate scientist for Niwa, Andy Reisinger of the New Zealand Agricultural Greenhouse Gas Research Centre and James Renwick, professor of physical geography at Victoria University of Wellington.

The Carter-Leyland article was clearly distinguished as opinion, the headline accurately and fairly reflected the content, there was no subterfuge involved in obtaining the piece and no conflict of interest since *The Dominion Post* received no fee for the article and was under no obligation to publish it.

Discussion

Editors are in an invidious position when scientists, or sciences, disagree on what constitutes fact. The best that non-scientists can do is to look for precision in matters that are claimed to be fact.

Upon receiving Dr Preddey's complaint the Press Council invited him to specify the factual inaccuracies he found in the Carter-Leyland article. Mr Tregonning has seen Dr Preddey's response citing 10 issues identified by Wratt, Reisinger and Renwick in their *Dominion Post* article, and 24 points in a critique of Leyland-Cater on a website, Hot Topic.

The Press Council examined each conflicting statement carefully. In most instances the differences appeared to lie in interpretations of facts rather than stark factual errors. For example, Carter and Leyland claimed the world had not ex-

perienced any significant warming for the past 18 years even though atmospheric carbon dioxide had increased by 20 percent in that time. The accuracy of that statement depended on what degree of warming they considered "significant", and whether 18 years was a significant length of time. Wratt, Reisinger and Renwick replied that, "The long term warming trend shows intermittent ups and downs", and that "short-term wiggles don't change the long term picture". Hot Topic conceded "there has been some slowdown in the upwards trend of surface temperatures, the so called 'hiatus', but no reduction in the amount of heat accumulating in the system, mainly in the oceans".

Carter and Leyland said that contrary to computer predictions global sea ice was well above the 1970-2013 average. Wratt, Reisinger and Renwick said arctic sea ice showed a long-term trend of retreat while Antarctic sea ice had behaved differently, some areas have decreased, others increased. Total sea ice, they said, was estimated to have decreased by around 1.5 percent per decade since 1979.

Carter and Leyland said glaciers were retreating in some areas and advancing in others. Wratt, Reisinger and Renwick said, "year to year fluctuations and local deviations from the decreasing trend exist but they don't change the global picture. Hot Topic called Carter and Leyland's statement, "trivially true but hugely misleading". The number of retreating glaciers, they said, far outweighed the few that were advancing.

Those examples were typical of the dispute. On most of the points at issue, Carter and Leyland cited anomalies and contradictions in the data while orthodox climate science focused on what it saw to be long-term global trends.

Decision

The Council cannot adjudicate on the scientific issues. It could rule only on whether the newspaper was entitled to publish the article as an item of opinion. It did seem to the Council that the article was highly selective and tendentious in its use of data but it was difficult to say on the counter-arguments provided, that the facts as worded were wrong. The complaint of inaccuracy was not upheld (Principle 1).

In accordance with Principle 5 there was no requirement for balance in an opinion piece such as this.

The Council found the article to be clearly presented as opinion on an issue of ongoing debate. It followed there was no breach of the principle that comment should be clearly distinguished from fact (Principle 4).

The headline's reference to "hypothetical" climate change was a fair reflection of the article (Principle 6) and the credentials of both writers were properly given (Principle 10). They are both well-known critics of climate change and the Council saw no "subterfuge" in the fact that this was not pointed out to readers. It did not need to be (Principle 9). On the question of conflict of interest, the Council was not provided with evidence that one of the writers receive grants from foundations opposed to climate change (Principle 10).

The NZ Bill of Rights Act (1990) accords to Messrs Carter and Leyland the right to hold and express these views; no Press Council Principles were breached in the editor's publication of them.

The complaint is not upheld.

While it declined to uphold any grounds of the complaint,

the Council observed that the subject of anthropogenic climate change is a declining topic of debate in newspapers, if only because their editors judge, probably rightly, that readers are weary of the issue and have generally come to accept the scientific consensus.

Dissent by Tim Beaglehole

The article complained of appeared on the opinion page of the newspaper and was followed five days later by a critical response written by three New Zealand scientists. One would normally see this expression of diverse views as something to be supported in the interests of free speech, the principle to which the Council gives “primary consideration”. But while the Council, in considering opinion pieces, has been prepared to offer a little license in the application of its principles, such as accuracy, fairness and balance, this should not mean that they can be left out altogether. It is a matter of degree. The complainants [in my judgment] made a convincing case that the article showed a lack of accuracy and balance that meant that even for an opinion piece it did not meet the standards implied by the Council’s principles.

There is, in this case, a further consideration. Freedom of expression is linked as the Council’s primary consideration with “the public interest”. Anthropogenic climate change presents probably the greatest threat to our future well-being; possibly to humanity’s very survival. It is questionable at best whether the public interest is better served by further debate on the overwhelming consensus of qualified scientists, or whether the public interest would not be better served by discussion of how best to counter the effects of global warming and what is already being done in other parts of the world.

Press Council members considering the complaint were Sir John Hansen, Tim Beaglehole, Liz Brown, Chris Darlow, Peter Fa’afiu, Jenny Farrell, Sandy Gill, John Roughan, Vernon Small and Mark Stevens.

CASE NO: 2438 – SKYCITY ENTERTAINMENT GROUP LTD AGAINST SUNDAY STAR-TIMES

SKYCITY Entertainment Group Ltd (SKYCITY) complains that an article published by the *Sunday Star-Times* on February 15, 2015 was inaccurate, unfair, unbalanced and in breach of Principle 1 of the Press Council principles.

The Press Council notes the *Sunday Star-Times’* concern that SKYCITY has brought its complaint to the Press Council at a time when it was still willing to attempt to resolve it directly with SKYCITY. While it is desirable that complaints be resolved directly between the parties if at all possible, it is clear that in this case SKYCITY does not consider it possible to reach such a resolution and is not prepared to participate in further discussions with the *Sunday Star-Times*. In the circumstances, the Press Council considers it appropriate to consider and determine the complaint.

The Press Council does not uphold the complaint.

Background

In February 2015 the *Sunday Star-Times* published two articles relating to SKYCITY, as part of a campaign against the payment of any further taxpayer money to SKYCITY’s proposed convention centre. They were on the same page and were intended to be read together.

The first article was headed “Govt puts SkyCity cards on table”. It began by reporting that the government was about to make an announcement about addressing the cost overrun on SKYCITY’s proposed convention centre, and went on to criticise SKYCITY’s programme of charitable donations through the SKYCITY community trusts.

The second article was headed “\$5000 grant denied yet SkyCity asks us for millions”. It reported on two unsuccessful applications for funding, from a theatre trust and a choir, and was accompanied by two pictures side by side. The first picture was of a young chorister, with the caption “NZ Secondary Students’ Choir asks for \$5000” while the second was of Nigel Morrison, Chief Executive of SKYCITY, with the caption “Nigel Morrison’s 2014 bonus was \$1.4m”. Underneath the two was a strip setting out the figures for Mr Morrison’s salary, his total annual compensation for 2014 and the value of his home.

Before publishing the articles, the reporter submitted a list of questions to SKYCITY and obtained answers to them. SKYCITY also sent him a statement from the chairman of its Auckland community trust and declined the offer of a chance for its chief executive to respond to the *Sunday Star-Times* campaign.

After the publication, SKYCITY complained to the *Sunday Star-Times* about the articles. In general, the editor, Jonathan Milne, rejected the complaint, but he agreed that there had been some lack of clarity about the distinction between SKYCITY Queenstown and the SKYCITY Queenstown Community Trust and offered to print a clarification. He also offered to correct a possible inaccuracy in the second article if relevant information could be supplied.

The Complaint

SKYCITY makes it clear that the complaint is about the entire coverage of the two articles. It says the coverage ignores the principle of accuracy, fairness and balance, fails to give a fair voice to the opposition view, and misleads and misinforms readers by omission. The overall presentation leaves readers with the impression that somehow the salary of SKYCITY’s chief executive is connected to the long-standing decision of the SKYCITY community trusts to invest in charity work outside the arts sector. It also conveys the inaccurate impression that SKYCITY has cut its charity funding.

While the *Sunday Star-Times* used a small part of SKYCITY’s response to its initial enquiries, it did not take it into account in “framing the package as a whole”. In addition, it used inaccurate figures as a base for its claim that the community trusts’ charitable donations have declined. It is completely false to say “SKYCITY Community Trusts have slashed donations”.

Specifically SKYCITY says:

- The headline to the second article is biased, inaccurate and misleading in its implication that SKYCITY, rather than its community trusts, makes decisions on individual charitable grants.
- SKYCITY has never asked for taxpayer funds to finance the shortfall in the cost of the convention centre. Rather it was working with the government towards a solution.
- The comment that SKYCITY Auckland Community

Trust grants have plummeted from 237 to 57 is misleading as it suggests a substantial decrease in funding. The numbers actually reflect a policy decision to fund fewer groups but for most rather than part of their funding request.

- A charities expert's quoted comments describing SKYCITY's charitable donations as a "drop in the ocean" are without foundation and misleading. SKYCITY was not given an opportunity to comment on these remarks.
- The article quotes Anna Bowron, a spokesperson for the NZ Secondary Schools Choir, as saying it was disappointing not to be given a reason for the decision to decline its application. The community trust always sends a letter explaining why an application has been declined.
- The statement that 300 groups had missed out on funding was made without balance or context. The number of successful applicants was mentioned, but not in the same article.
- The juxtaposition of the two pictures implied some sort of clash between the two for funding. This is misleading, inaccurate and inappropriate. Mr Morrison's financial position is totally irrelevant to the funding decisions of the SKYCITY community trusts.

In response to Mr Milne's offer to work with it to resolve the complaint, SKYCITY considered his response to date had been so inadequate that there was no point in taking up the offer.

The Sunday Star-Times Response

Mr Milne expressed disappointment that SKYCITY was not prepared to work with him to resolve the complaint.

He submitted that, particularly in the context of the public interest in the controversy over funding the SKYCITY convention centre, the management of the company's statutorily-mandated charitable givings and the remuneration and performance bonuses of its chief executive were matters of very legitimate public/media scrutiny.

There was adequate balance in the articles. The responses from SKYCITY and the chairman of its Auckland community trust were taken into account and quoted at appropriate length.

There were no inaccuracies in the figures given for the decline in SKYCITY's charitable donations. The figures were taken from the annual reports in the Charities Register, for 2013, 2013 and 2014, which were the only publicly available information. SKYCITY used a different timeframe for the figures cited in its complaint.

As regards the specific items in the complaint:

- For the most part, the distinction between SKYCITY and the community trusts is clear. There may have been some lack of clarity in the distinction between SKYCITY Queenstown and the Queenstown Community trust. This has been clarified online and there is an open offer to make a suitable clarification in the news item.
- The *Sunday Star-Times* stands by its report that SKYCITY asked the government to "stump up the cash", based on explicit public statements by Nigel Morri-

son, Steven Joyce and John Key. The figure of \$100m is taken from Mr Morrison's stated figures of \$70m to \$130m, using the mid-point.

- The report of the drop in the number of grants is accurate. There is no implication of an equivalent drop in the amount distributed: that amount was accurately reported in the preceding sentence. There had, however, been a lesser drop in the amount distributed. This was calculated using the publicly available information, had been put to SKYCITY for comment and SKYCITY had not disputed it.
- Michael Gousmett, the charities expert quoted in the article, has expertise that makes him a legitimate commentator. He is entitled to express his views on SKYCITY's charitable donation programme. The specific phrase "drop in the ocean" was not put to SKYCITY for comment – it is neither practical nor reasonable to put every comment to the other party for response. The *Sunday Star-Times* has reported several of SKYCITY's other charitable works.
- Ms Bowron cannot recall receiving any feedback on the reasons why her application was declined. If SKYCITY sends a copy of the feedback, the *Sunday Star-Times* will make a correction.
- The two articles accurately reported the numbers of successful and unsuccessful applicants. It may well be that charitable trusts are refocussing their criteria in the face of increasing numbers of registered charities, but this is a point that SKYCITY could have made, and did not make, in supplying comment before the article was published.
- The photographs were part of a robust report on some of the dollars in play in the relationship between grant applicants and SKYCITY and its community trusts. The points raised are legitimate at a time when Mr Morrison is being paid to seek public funding for SKYCITY's convention centre and when the casinos' declining profits have translated into declining community trust donations. While it is technically correct to say that Mr Morrison's performance bonus is not linked to SKYCITY revenue and the performance of the new convention centre, but to the company's share price performance, it is clear that there is a connection between the two.

Discussion

SKYCITY has taken issue with many of the statements in the two articles. Given the space available, it would have been impossible to include all the counterbalancing detail that it would have liked to see included. This, of course, does not release the *Sunday Star-Times* from its duty to provide a fair and balanced article, but the main questions the Press Council must consider are:

- Is the overall effect of the articles fair and balanced?
- Are there any material inaccuracies?

It is noted that the *Sunday Star-Times* quite properly sought comment from SKYCITY before publishing the articles, and that its reporters drew on that comment in writing the articles. In particular the material it cites to support its statement that SKYCITY Community Trusts have "slashed" donations consists of figures (a reduction from \$3.1m in

2012 to \$2.1m in 2014) that were put to SKYCITY for comment, and SKY CITY's explanation was included in an appropriate position in the first article.

There has been a good deal of debate about the extent to which SKYCITY's falling profit has reduced the amount paid to its community trusts and hence the amount available for charitable donations. Various figures have been obtained by making calculations over differing periods of time. However it is clear that the amount has reduced, and while it may be an exaggeration to say it has been "slashed", there is sufficient information in the article for a reader to understand the extent to which funding has reduced, and, importantly, SKYCITY's explanation of the reduction.

The problem presented by the cost overrun for SKYCITY's proposed convention centre, as well as the history of the project and the government's involvement in it, meant that it was a matter of substantial public interest on which strongly opposed views could legitimately be held. The *Sunday Star-Times* is entitled to hold and promote its own views, and to use strong language in doing so, provided it gives sufficient information to allow readers to form their own views about the basis for the campaign and provided it gives those with opposing views the chance to promote and explain them. The Press Council is satisfied that it has done so in this case.

There remains the question of inaccuracy. As to the specific items complained of:

- While the article did not spell out the relationship between SKYCITY and its community trusts, it made it clear that they were separate bodies. Given that SKYCITY is the sole source of funds for the donations made by the community trusts, it is not unreasonable to link the reduction in community trust funding to SKYCITY's own finances.
- There is some debate as to whether SKYCITY specifically asked the government for financial assistance for the convention centre once it became clear that it would be more costly than anticipated, but it undoubtedly asked for assistance, and there was a good deal of public speculation about the form any assistance might take. It was obvious that government funding would be required if the convention centre was to proceed as planned, and that the sum involved was of the order of \$100m. In context, it is simplistic to say that SKYCITY had not asked for taxpayer money, even if it was eventually prepared to accept another solution.
- The number of grants made and declined by the SKYCITY Auckland Community Trust is accurately reported, though not in the same article. While this has the potential to be misleading or to imply a major reduction in donations, there is sufficient information about the amount paid out in donations to make it clear that although fewer applications were accepted, the amount of each individual donation must have been greater.
- SKYCITY was not given an opportunity to comment on Mr Gousmett's remarks, which it considers inaccurate. However the remarks were not presented as fact but as Mr Gousmett's opinion and were balanced by the remarks in the immediately preceding para-

graph from the chairman of the SKYCITY Auckland Community Trust.

- As noted above, the nature of the financial relationship between SKYCITY and its community trusts is such as to justify an evaluation of the donations made by the trusts in the context of SKYCITY's overall finances, including the financial position of its chief executive. There is no suggestion of inaccuracy in the information printed in the caption to the photograph of Mr Morrison, and as it is publicly available information there is no question of a breach of privacy. The juxtaposition of the two photographs simply repeats in a graphic form the general tone of the two articles – comparing the large scale of SKYCITY's finances and operations with the decline in charitable funding and the small scale of the applications that make up many of the requests for funding.
- A copy of the standard letter declining a grant has been supplied. While it states that the application, along with many others that complied with the Trust's criteria, has been declined, and explains that there were insufficient funds to cover all applications, it does not give any opinion on the merits of the application or suggest ways in which the chances of success could be improved. In particular it does not say, as suggested elsewhere by SKYCITY, that there is a focus on sectors other than the arts sector. There is no reason to doubt that a letter was sent to the NZ Secondary Schools Choir, in accordance with the usual practice, but if it was the standard letter as supplied to the Press Council, then it is understandable that the recipient did not regard it as feedback.

The Principles applied by the Press Council recognise the right of a publication to adopt a forthright stance or to advocate on any issue. In general, the Press Council finds that the articles were part of a campaign of advocacy and while the *Sunday Star-Times* did adopt a forthright stance and used vigorous language in its advocacy, it did not overstep the boundary into unfairness or inaccuracy. The complaint is not upheld.

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

CASE NO: 2439 – SAM O'CONNOR/TRUNK PROPERTY LIMITED AGAINST SUNDAY STAR TIMES

1. Sam O'Connor either for or in conjunction with Trunk Property Ltd claims *Sunday Star Times* failed to comply with the Principles 1 (accuracy, fairness and balance), 2 (privacy) 4 (comment and fact), 6 (headlines and captions), 9 (subterfuge), 11 (photographs and graphics) and 12 (corrections) in relation to a story headed "Busted 'landlord' repays teens" published in *Sunday Star Times*' print edition and via the Stuff online site on January 18, 2015
2. The Press Council does not uphold the complaint.

Background

3. The stories, while not identical but which are substantially the same, detailed the experiences four

“teenagers” had when renting a house in Ponsonby, Auckland from Mr O’Connor. It transpired that Mr O’Connor did not own the property but rather had himself rented it from the true owner for \$550 pw. The property was in turn sublet to the teenagers on 20 August, 2014 for \$645 pw. The agreement with the property owner did not allow subletting. The matter had been referred to the Tenancy Tribunal and on September 25, 2014 the head tenancy was terminated. The Tribunal action in this report was brought by two of the teenagers who sought exemplary damages and refunding of expenses from Trunk Property totalling \$2165. The stories referred to Mr O’Connor having repaid a sum of money to the teenagers which was reported as “reparations”.

4. The stories referred in a general way to the Tribunal findings and to Mr O’Connor’s claims that the teenagers’ arrangements were with “Trunk Property”. He claimed he was merely Trunk Property’s employee. The story noted Mr O’Connor’s comment to the effect that he was unaware that subletting was “against the Tenancy Act”.

The Complaint

5. There are multiple complaints which on the face of it are wide ranging. Basically it is claimed that:
- the headline “Busted ‘landlord’ repays teens” was misleading because Trunk Property was a sub landlord, not a landlord. Further the use of the word “repays” suggested that Mr O’Connor or Trunk Property had a legal obligation to repay the teenagers when in fact the payment was entirely gratuitous. This aspect of the complaint is expanded upon in relation to the body of the story where there is continued reference to either Mr O’Connor or Trunk Property being the “landlord”. The complainants say that neither were ever the landlord. The stories should have referred to Trunk as being the “sub landlord”;
 - the reference in the story to the fact the teenagers had “found” Mr O’Connor was wrong. The complainants say that teenagers did not “find” Mr O’Connor. The teenagers in fact found Trunk. Mr O’Connor says he is just one of “multiple” Trunk employees;
 - the reference in the stories to the fact that the teenagers were to pay Mr O’Connor \$645.00 a week was inaccurate. The reference should have said that the teenagers had agreed to pay Trunk;
 - that the stories were inaccurate in referring to Mr O’Connor “losing” Tenancy Tribunal cases relating not only to the Ponsonby property occupied by teenagers but also to a second property where there was a similar subletting arrangement. Mr O’Connor says that he lost one, not two, Tribunal cases. The second case was settled;
 - the use of the word “reparations” in the stories

is wrong. The complainants say the payment of \$2,165 made to the teenagers was made out of “good faith as a gift for stress and other factors”. Nothing was found to be “legally” owed;

- the implication in the stories that the tenancy agreement with the teenagers was somehow unlawful. The complainants say that there is nothing illegal about a sub tenancy in the context of the Residential Tenancies Act.
- the stories wrongly referred to the difficulties the teenagers had in contacting Mr O’Connor. The complainants say they never tried to contact Mr O’Connor. All communications they had were with Trunk.
- the stories referred to Mr O’Connor allowing one of the teenagers to “sleep in a concrete wash house”. Mr O’Connor says he never made such a statement. He says that “any and all” communications would have come from one of Trunk’s staff.
- the reference that Mr O’Connor threatened flat mates in various ways including via emails. The complainants say that Mr O’Connor sent no such emails. Any such communications “would have come” from Trunk.
- the photograph of Mr O’Connor published in the *Sunday Star Times* edition was obtained without consent and as a result of subterfuge.

The Response

6. *Sunday Star Times* rejects all the claims. The newspaper says Mr O’Connor is Trunk’s sole shareholder and sole director. The newspaper refers to the attempts Mr O’Connor has made to distance himself from Trunk whereas in reality all communications with the company have been through him. The newspaper also refers to the various claims relating to provisions in the Residential Tenancy Act (particularly as to the issue whether subletting is permitted in terms under that Act or not). The newspaper points out however that the intricacies of the legislation is not the question. The short point is that the Tribunal had ruled against Mr O’Connor twice in relation to two separate sub-letting arrangements. The true nature of these had not been disclosed to the people Mr O’Connor had persuaded to occupy the properties.
7. The newspaper takes issue with the complainants’ claims around the use of the word “repays” in the headlines. The newspaper says that the money, which really related to improper charging, had been refunded.
8. The newspaper points to various particular corrections made to the online *Stuff* story to accommodate narrow points the complainants had made and in respect of which the newspaper had accepted.

The Decision

9. The Press Council has been provided with a great deal of material relating to this complaint particularly the extensive correspondence passing between

- the complainants and the newspaper and also, significantly, Tenancy Tribunal decisions upon which these stories are based.
10. The Council sees no need to canvass the many and varied points raised in this background material. Rather the Council sees the essential issues as being relatively stark.
 11. The Council does not accept the proposition that the complainants have been somehow wronged (in the context of the Council's principles) through having been described in the stories as a "landlord" when one or other of them was actually a "sub landlord". While the terms "landlord" and "sub landlord" have distinct legal meanings there is no question here that the teenagers unwittingly found themselves as sub tenants at the mercy of the property owner. They were unaware that as soon as they treated with Mr O'Connor and/or Trunk the conditions of the head tenancy were immediately breached. The short point is that as soon as the property owner discovered the subletting the head tenancy was terminated. The teenagers, as subtenants, thereby lost their right to occupy the property without any recourse. This is the mischief at which the Tribunal applications and findings were directed.
 12. Mr O'Connor and Trunk can have no complaint as a result.
 13. The Council does not agree with the complaints about the distinction between Mr O'Connor on the one hand and Trunk on the other. Despite what he says Mr O'Connor controlled the company. While Mr O'Connor refers to the company having other "employees" nothing has been provided substantiating this aspect. Indeed in one of the Tenancy Tribunal decisions forwarded by the newspaper the evidence of Sam O'Connor states "He set up a company called Trunk Property to avoid personal liability to potential flat-mates." Leaving aside the legal distinctions the Council finds Trunk was Mr O'Connor's alter ego. It was not unfair for the newspaper to refer to Mr O'Connor as the originator of the arrangement with the teenagers as the Tenancy Tribunal indeed found.
 14. Nor does the Council agree with the complainants on the reparations point. Whether or not Mr O'Connor or Trunk had been found by the Tribunal to be liable to refund money to the teenagers, the fact remains that the payment was only made following the Tribunal's adverse findings over Mr O'Connor's actions.
 15. Mr O'Connor/Trunk Property initially complained variously that the photo that accompanied the article was obtained from his Facebook page and/or taken illegally at the Tenancy Tribunal hearing.
 16. Mr O'Connor was advised that the Press Council did not deal with legal issues, but had previously ruled that photographs sourced from Facebook were generally considered to be in the public arena (cases 2173 and 2166)
 17. The Council notes that Fairfax, while not making any admissions or concessions, removed the photo from the online story on March 11.
 18. Mr O'Connor has requested anonymity and non-

publication of the Press Council ruling. The Press Council notes that a similar request was made to the Tenancy Tribunal and declined.

19. The Press Council process is open and transparent. Anonymity is granted only in exceptional circumstances and such circumstances do not exist in this case. Furthermore the media have a right to report court and tribunal proceedings and there is a public interest in this ruling, in favour of the newspaper, being publicised.
20. Although not part of the complaint the Press Council noted that the Tenancy Tribunal decisions in relation to Trunk Property and Sam O'Connor show a repeated failure to lodge tenancy bonds. This is a further reason for there being a public interest in publicizing this matter.
21. The complaints are not upheld.

Press Council members considering the complaint were Sir John Hansen, Tim Beaglehole, Liz Brown, Chris Darlow, Peter Fa'afiu, Jenny Farrell, Sandy Gill, John Roughan, Vernon Small. Mark Stevens took no part in the consideration of this complaint.

CASE NO: 2440 – PAUL CRONIN AGAINST HERALD ON SUNDAY

Paul Cronin complains that an article headed "Former Black Cap Mathew Sinclair Flees with Kids after Domestic Incident" published by the *Herald on Sunday* online and in its 19 April 2015 print edition breaches the Press Council's Principles two (Privacy), three (Children and young people) and eleven (Photographs and graphics).

The story related to an incident involving the former Black Cap cricketer Mathew Sinclair which was domestic related.

Mr Cronin complains as a third party. The Council does not always accept third party complaints. It has decided to accept the complaint in this instance given its importance.

The complaint is upheld.

Background

The Herald on Sunday story covered an incident involving Mr Sinclair having allegedly "vanished with his children" following a domestic incident. The story referred to Mr and Mrs Sinclair's two young children by name. The story referred to the police having found Mr Sinclair and the children at a fast food restaurant not long after his alleged disappearance. This story referred to Mr Sinclair speaking to the police. The story went on to comment upon the difficulties Mr Sinclair had faced following his international cricket career concluding.

The story, the same in the on line and print versions, was accompanied by photographs of the children. The image illustrating the online story was of the children accompanying their father upon leaving a Taradale restaurant presumably on the day of the incident. The print story was accompanied by a picture of Mr and Mrs Sinclair and their children. The online photograph had the children's faces "pixilated". Both versions included a photo of Mr Sinclair talking to a police officer.

The Complaint

Mr Cronin complains that the story breached the Council's principles referred to above by referring to the children in the story. Mr Cronin claims the story amounts to "gutter journalism at its worst" and that the children are likely to have been harmed by the reference to them. Mr Cronin says that the children could not give consent to their images being used. There is no legitimate public interest in the matter and nothing which justifies the exposing of the children to ridicule, bullying and stress.

The Response

The Herald on Sunday responds by denying that the story breaches the children's right to privacy or that there is no element of public interest. Mr Sinclair had left the home where he lived with his wife taking the children with him after police had been called to the property. There was concern about the wellbeing of the children and police were called to search for them.

The newspaper refers to the fact that Mr Sinclair had previously given several media interviews discussing his difficulties after his cricket career had ended. The newspaper says that given the circumstances the story was a legitimate one to report. The fact police were called and subsequently searched for a father and his missing children elevated the matter into the public domain.

The newspaper says that while the right to privacy is an important one it weighed the issue carefully. The decision was taken to obscure the children's faces in the photograph published with the online story "to reflect to their lack of responsibility for whatever had gone on in this instance". The newspaper says that Mr Sinclair had previously consented to publication of the photo used to illustrate the print story. In this photo the children were about two years younger.

The Decision

The Press Council agrees that this complaint is justified. While there is certainly a public interest in the issues faced by high profile sports people once they leave national and international arenas it was not necessary in this instance for the children to be identified by their names and images even though their faces, in the photo published online, were deliberately blurred. Mr Sinclair and the children lived in a provincial city where they were undoubtedly well known. The pixelating of the children's faces was an ineffective measure to prevent identification. The obscuring does not in the Council's view "reflect the children's lack of responsibility" for what had happened as the newspaper claims.

The incident reported upon by the newspaper was undoubtedly a most painful and one for members of this family. It was not right for the newspaper to have given the prominence it did to the children, who by the newspaper's own admission were entirely innocent.

The Council's Principles are clear. Principle two recognises that everyone is normally entitled to privacy, although the right to privacy should not interfere with publication of significant matters of public record or public interest. This complaint concerns only the children. The Press Council has not been asked to consider whether the publication of the incident breached the privacy of the adults involved and this issue is put to one side. There can be no doubt that the chil-

dren's privacy, in their being named and photographed, was breached. There was no public interest involved.

Principle three provides that in cases involving children, editors must demonstrate an exceptional degree of public interest which overrides the interests of the child or young person. The public interest in this story was far from being sufficient to override the interests of these children.

The Council finds that Principles two and three have been breached.

The Council notes some inconsistency in the newspaper's approach. The newspaper was concerned enough to pixelate the faces of the children in the photo taken on the day of the incident and yet they were named in the story, and identified in the published family photo (albeit an image taken some time before). In these circumstances it is difficult to see what the newspaper thought it was achieving just by the pixelation. These children did not deserve to be identified in this story.

The Council does not agree that the fact Mr Sinclair may have permitted the publication for the family photograph at an earlier time justifies the newspaper's approach. If such permission was given (and the Council has received nothing verifying this to be the case) the permission would have applied in an entirely different context, and not this one where this family was under stress.

While the Council does not find Principle eleven to have been breached this finding does not detract from the matters canvassed above.

The complaint is upheld.

Press Council members considering this complaint were Chris Darlow, Liz Brown, Jenny Farrell, Sandy Gill, Marie Shroff, Vernon Small and Stephen Stewart.

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

CASE NO: 2441 – MICHAEL DEE AGAINST NEW ZEALAND LISTENER

Michael Dee (the complainant) complained about an opinion piece published in the *NZ Listener* on May 16, 2015.

The complainant alleged that the article breached Principles 1 (Accuracy, Fairness and Balance) and 7 (Discrimination and Diversity) of the New Zealand Press Council Statement of Principles.

The complaint is not upheld, with two Council members dissenting.

Background

The opinion piece covered types of behaviour that the writer considered odd and annoying. It also included comments on "Ponytailgate", where a young waitress had her ponytail "pulled" by the Prime Minister.

It also outlined reported reasons why the young woman may have felt she was unable to stop her ponytail being touched.

It concluded with the comments that "Hopefully this whole sorry saga will give all women the courage to say "Stop!"."

Complaint

The complainant alleged that the opinion piece was a "deliberate misrepresentation of the facts in stating that the young

woman failed to protest loudly and repeatedly” and was a breach of Principle 1.

The complainant also felt that the opinion piece expressed a patronising, discredited and dangerous viewpoint that women are failing in a supposed responsibility for controlling the persistent and unwelcome attentions of men and that this was in breach of Principle 7.

The Magazine’s Response

In reply to the complaint, the editor said the article coverage of “Ponytailgate” was accurate, fair and balanced and represented the views of the young woman.

The fact that the young woman did eventually ask the Prime Minister to cease pulling her ponytail did not change the fact that she initially (and for some time) felt uncomfortable asking him to stop. Quotes from the young woman’s own blog were provided to the Press Council.

The statement in the opinion piece “The point is simple: if anyone does anything that annoys or discomfits you, then you should tell them to cease and desist. If necessary, tell them repeatedly and loudly. The saddest thing in this whole saga is that the woman concerned felt she couldn’t do that” is accurate and not misleading in any way.

The opinion piece clearly states that no person should have to put up with behaviour that discomfits them and they should be able to tell another person to immediately stop that behaviour.

She went on to state that the article was not a news report, it was an opinion piece and clearly labelled as such.

Discussion and Decision

The opinion piece covered a number of types of behaviour that the writer considered odd and annoying along with comments on “Ponytailgate”.

The content clearly expressed an opinion that people should not have to put up with behaviour from others that was discomfiting or annoying and everyone had the right to tell others to stop such behaviour.

It discussed some of the reasons why the young woman may have felt unable to immediately ask that her ponytail not be touched and expressed sympathy that she had felt that way.

It concluded with the statement that “Hopefully this whole sorry saga will give all women the courage to say “Stop!”.”

Reading the opinion piece in its totality, the Press Council could not find evidence that supported the complainant’s view that it breached either Principles 1 or 6.

The opinion piece supported the view that no person should have to put up with behaviour that discomfited or annoyed them, that they had the right to say stop and that the person perpetrating the behaviour should stop immediately.

As noted in Press Council decision 2380, in May 2014, opinions by their very nature may be arguable. They may be robustly expressed and even on occasion offensive or unacceptable to some readers without breaching the standards to be expected of a reputable media outlet.

The Press Council noted that it could have included the facts that the young woman did in fact request that the behaviour cease but was ignored by John Key, that she then attempted to avoid the behaviour by asking other staff to serve

him in her place but he still sought her out and also that she approached his security detail for assistance in stopping the behaviour.

By not including this detail, it was possible that readers might have made an assumption that the young woman had not made any attempt to get John Key to cease the inappropriate behaviour when in fact she had made several unsuccessful attempts from the time the inappropriate behaviour commenced.

But the opinion piece was very clear that no person should ever have to put up with offensive or unacceptable behaviour and had the right to tell a person to stop, therefore the majority of the Press Council did not uphold the complaint.

The complaint is not upheld.

Dissent: Stephen Stewart and John Roughan would have upheld the complaint on the question of the column’s factual accuracy in its contention that the waitress had not made her objection clear at an early stage.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Sandy Gill, John Roughan, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

CASE NO:2442 – STEPHAN FERRIS AGAINST GAY EXPRESS

Stephan Ferris complained that a story published in the *Gay Express*, “NZAF Denounce Visiting Bareback Porn Star” [New Zealand Aids Foundation], breached Press Council Principles 1 Accuracy Fairness and Balance, 4 Comment and Fact, 6 Headlines and Captions, 7 Discrimination and Diversity, 10 Conflicts of Interest, 11 Photographs and Graphics, 12 Corrections.

Background

On April 29, *Gay Express* ran a story on Stephan Ferris, a gay porn star who goes by the name of Blue Bailey, who was in New Zealand to film a documentary on a drug known as PrEp (Pre-Exposure Prophylaxis), taken by people who are HIV negative, but who have a higher than average risk of contracting an HIV infection. PrEp is not available in New Zealand.

The story was headlined “NZAF Denounce Visiting Bareback Porn Star”; the standfirst stated: “Controversial US bareback porn star Blue Bailey, who is currently in New Zealand shooting a documentary on PrEp, has drawn the ire of the NZAF”. The story was illustrated by two images, one of the complainant holding a “Love Your Condom” banner, the other posing for the *Gay Express* photographer.

The story covered the complainant’s reason for visiting New Zealand and detailed his appearance at an event where he was photographed with the banner. It described in graphic detail his role in the controversial 2014 porn movie *Viral Loads*, in which he “was a bareback bottom”. The article said the film had shocked many safe-sex advocates.

The complainant, who is HIV positive, dismissed criticism of the unsafe sex in his film, *Viral Loads*, saying he “doesn’t view porn as sex education”.

The story also quoted New Zealand Aids Foundation (NZAF) chief executive Shaun Robinson, who described the complainant’s *Viral Loads* film as “completely irresponsible”.

He said that for the complainant “to say the porn industry has no responsibility for promoting a safe-sex message is immoral”.

In a follow-up in the *Gay Express* a week later responding to the controversy that followed the NZAF’s comments in the April 29 story, Shaun Robinson confirmed that NZAF is actively lobbying for a PrEp trial in New Zealand, and was hopeful they would have it off the ground within 12 months.

The Complaint

The complainant said he was given to understand that he was being interviewed and photographed for an article concerning a documentary he was filming on a medical intervention for HIV transmission known as PrEp.

He said at no time was he contacted after the interview to respond to comments made by Shaun Robinson. He said, “In the interests of fair journalistic practice, a headline which denounces an individual warrants the opportunity to comment further or at the very least the right of reply in the same forum.”

He said the publication should have disclosed that NZAF is the fourth largest advertiser with *Gay Express*, suggested a “clear potential for bias based on the controversial nature of the topic”.

In his earlier correspondence with *Gay Express* he questioned the paper’s right to use the image showing him holding the “Love Your Condom” sign. He accused the *Express* of having used the image to obtain comment “and in particular ‘condemnation’” without having given him the opportunity to comment on its meaning or purpose.

The complainant said he did not solicit the article in *Gay Express*.

The Response

The director of *Gay Express* Richard Todd stated the complainant had approached *Gay Express* and another website to get publicity for his visit.

He said the “Love Your Condom” image had been sourced from the Facebook page of the organisation which held an event the complainant had attended, and was therefore in the public domain and not subject to copyright. The newspaper sourced the image after Shaun Robinson, CEO of NZAF, had questioned why a proponent of condom-less sex would hold up such a sign.

He said the complainant was asked in the interview how he responds to criticism of unsafe sex in the porn industry and the message it may send. His response, that he didn’t view porn as sex education, was countered by Robinson’s assertion that “for porn to be presenting the norm of condom-less sex being safe and ok is completely contradicting what the gay community around the world has spent 30 years trying to build up, which is a culture of safety”.

Mr Todd denied editorial bias, arguing that as the only publication and a leading website geared to the gay community it was obvious that the NZAF would use it to promote their safe-sex message. All safe-sex promotion with *Gay Express* was in the form of paid display advertising, he said, not advertorial comment.

He believed the article was balanced, and said given the controversial nature of the content, it was important that it included a comment from the NZAF, which receives taxpayer

er funding to promote the safe-sex message in New Zealand.

Discussion

The issue of unprotected, or condom-less, gay sex, and the consequent risk of HIV infection, is highly controversial, as the number of comments on the *Gay Express* website following publication of the story indicates.

The complainant has accused *Gay Express* of breaching a total of seven Press Council principles, which we will deal with individually.

Principle 1, Accuracy Fairness and Balance. At the time he was interviewed, the complainant believed the article would focus on him and his reasons for being in New Zealand, but the journalist rightly sought comment from the NZAF to balance the extreme views he expressed on the subject of condom-less sex. Shaun Robinson’s response was highly critical of the porn star’s sexual practices; however given that the issues of safe sex and protection of the community from HIV infection are the NZAF’s primary concerns, we do not consider the strong language to be out of place as it was clearly his honestly held opinion. The newspaper was not under any obligation to offer the complainant the right of reply, as the NZAF comments provided context and balance to a story which would otherwise have delivered a very one-sided point of view on an important health issue.

Principle 4 Comment and Fact. The *Gay Express* story is largely made up of quotes from Ferris/Bailey and Robinson. There is no breach of principle 4.

Principle 6 Headlines and Captions. The headline to this story “NZAF Denounce Visiting Bareback Porn Star” does err on the side of sensationalism but it does accurately and fairly convey the substance of the report. To *denounce* is to “speak out against, accuse or condemn”. NZAF’s Shaun Robinson’s final quote, “To say the porn industry has no responsibility for promoting a safe sex message is immoral,” does all of that.

Principle 7 Discrimination and Diversity. The narrative at the beginning of the story sets the scene for the quotes that follow, and while the language is at times colourful, it deals with matters pertaining to gay sex, which is entirely appropriate in a publication whose target audience is the gay community.

Principle 10 Conflicts of Interest. *Gay Express* is the only New Zealand publication (it also has a website) that targets the gay community, and as such receives advertising revenue from the NZAF. All NZAF safe-sex advertising material is in the form of paid advertising, not advertorial. There is no reason however why the journalist should not go to the government-funded agency for a quote on safe-sex practices to balance a story where condom-less sex was espoused, particularly in light of the fact that PrEp is not currently available in New Zealand as an alternative measure to prevent HIV transmission.

Principle 11 Photographs and Graphics. The photograph in question was sourced from a public Facebook page, and was therefore in the public domain. There is no breach of principle 11.

Principle 12 Corrections. There was no complaint of factual inaccuracy, therefore no requirement for a correction.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Mark Stevens and Stephen Stewart.

CASE No: 2443 – ALICE FLETT AGAINST THE PRESS Introduction

Alice Flett complained on behalf of the Wizard of New Zealand, her partner, about an article published in *The Press* on 14 February 2015 headlined “Free car-parking for ‘arrogant’ Wizard”.

The complaint is upheld in part.

Background

The 82 year old Wizard is a well-known and colourful Christchurch character. For many years he has engaged in open-air oratory and debate in the Square (more recently in New Regent Street at the invitation of retailers), as well as through the letters column of *The Press* and on his own website. Wikipedia relates that in 1990 he was described as the “Wizard of New Zealand” by his old friend, then Prime Minister, Mike Moore; in 2009 he was awarded a Queen’s Service Medal in the Queen’s Birthday Honours list.

The *Press* article reported there were tensions in New Regent Street about the Wizard’s presence, behaviour and free city council car park for a few hours each day. It quoted comments both for and against the Wizard. Some saw him as “annoying” and “arrogant”; others viewed him as a colourful asset and a tourist-draw card for Regent Street. The anti-Wizard quotes were all anonymous, while those supporting him were identified.

The Complaint

The complainant cites a wide variety of issues and various Press Council principles. Under the principle of accuracy, fairness and balance, the complainant says that the article builds up a strongly negative impression of the Wizard, which does not accord with the positive views of most shopkeepers in New Regent Street. In support she has supplied the Council with an unpublished letter to the editor of *The Press* from the Chairman of the New Regent Business Association strongly supporting the Wizard. The letter says *The Press* article is misleading, by giving the impression that a significant number of businesses in the street do not like the Wizard. Ms Flett also complains, under the principle of comment and fact that the article gives an incorrect account of the Wizard’s driving of his “art” car (a double ended Volkswagen beetle) at speed in New Regent Street. She considers this implausible, given the nature of the car and the layout of the street. The headline is also complained about, as giving an unfairly negative impression of the Wizard. Under the photographs and graphics principle, Ms Flett complains that a photo of the Wizard in a typical declamatory pose is being used unfairly to support the impression of his alleged rudeness and arrogance.

Editor’s Response

The editor has provided a detailed response and has also apologised to Ms Flett for the delay in responding to her ini-

tial complaint to *The Press*.

The editor believes the article is fair and balanced, distinguishes between comment and fact, supports freedom of expression by accurately reporting people’s honestly held opinions and presents a broad range of views. She notes that an offer to publish a 500 word response was declined, that *The Press* continues to print letters from the Wizard and that, as a public figure, the Wizard has to expect to be the subject of public discussion.

In relation to the headline the Editor believes it is justified as it presents a key element of the article. The account of the car being driven at speed is explained as being a direct quote from an anonymous informant. On the anonymity which was accorded only to those informants who were critical of the Wizard, the editor says there were tensions between New Regent Street retailers for and against the Wizard. She asserts those not supporting him were afraid to cause arguments with their fellow retailers and of angering the Wizard. Although *The Press* does not normally support anonymity the editor was satisfied there was good reason in this case.

Discussion and Decision

The article about the Wizard is more in the nature of gossip, rather than one which raises issues of strong public interest. The newspaper treats it as a news story with a strong headline, accompanying large photograph and three columns of text. This gave it prominence and impact. The article led with quotes from anonymous sources which were all anti-Wizard, while pro-Wizard sources were all named.

On the issue of anonymity of sources, it is relevant that in Case 937 the Council reminded editors that “anonymous sources should ideally be used only when information of public interest cannot be gleaned any other way or, for example, when fronting up publicly will jeopardise the physical safety or continued employment of the source”. The public interest (as opposed to public curiosity) in this local story is not strong enough to justify anonymity of sources on only one side of the debate. If the negative comments were to be used the commentators should “demonstrate the courage of their convictions” as suggested by the Council in Case 2147. There is no suggestion that the physical safety or continued employment of the anonymous sources was relevant. On this aspect the Council considers there was unsatisfactory use of anonymous sources and the complaint is upheld.

On accuracy, fairness and balance, the headline, tone, order and selection of comments, and emphasis of the article are negative towards the Wizard. The end of the article contained counter-balancing comments as it quoted a number of people who were strongly positive about the Wizard. The issues of fact raised by the complainant are strongly contested by the editor, principally on the grounds that actual comments of informants were being reported. Whether the overall article itself is fair is more problematic. The story was in essence about a conflict of views on the Wizard’s presence in Regent Street, and there will always be difficulty with satisfying all sides in such an argument. But the overall impact of the article, headline and photograph amount, in the Council’s view, to unfair treatment of the Wizard. On the Principle of fairness the complaint is upheld.

The headline “Free car-parking for ‘arrogant’ Wizard” conveys a selective view of the overall content of the article. Readers have to go to the last column to discover the existence of strongly counterbalancing, substantial support for the Wizard in New Regent Street. However, the headline

contains a key element of the story. On balance, on this issue, the complaint is not upheld.

On the issue of photographs and captions, the photograph of the Wizard in full oratorical flight is not necessarily misleading in itself, as most people in Christchurch will be aware of his activities. The complaint on this aspect is therefore not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Vernon Small and Stephen Stewart.

CASE NO: 2444 – DEBORAH GREENE AGAINST THE HERALD ON SUNDAY

Deborah Greene has complained that an article and a related double page feature in the *Herald on Sunday* of May 17, 2015 headlined “The rise and rise of the baby whisperers” breached Press Council Principles 3 (children and young people) and (by implication) Principle 1 (fairness, accuracy and balance).

The complaint is not upheld.

Background

The feature, the news “write off” and an online version dealt with the growth and efficacy of techniques to deal with babies that did not sleep well or who woke during the night and how parents could get them back sleep.

It covered some methods including various ones used by Emma Purdue and her consultants that involved leaving children to cry for varying lengths of time partly to help parents starved of a good night’s sleep. They included “no cry”, controlled crying and the “extinction” method of leaving the child to cry till it falls asleep.

It also mentioned competing sleep consultant Karen Bidlecombe’s Karen’s Simple Sleep business and included the views of various experts who were not in the consultancy business, as well as warnings about the use of sleep consultants.

The Complaint

Ms Greene alleges the article only showed one side of the story and the information presented depicted the type of sleep training, advocated by Emma Purdue and her Baby Sleep Consultant business, as normal when it had been shown to be harmful to babies.

She further complained the stories did not represent the many parents who rejected the technique and would never recommend it.

Her complaint also asserted there was no registration or training required to teach the method and this was not given sufficient weight. She said Emma Purdue had no expertise other than that of any other mother, but the emphasis of the story was on her business rather than her credentials and that it “advertised” her services with young babies and was a “puff piece”.

The Response from the Newspaper

Herald on Sunday editor Miriyana Alexander responded saying the genesis of the article was the growing baby sleep consultancy sector and its unregulated nature. She said the focus was not on the techniques used or their rights and wrongs.

She rejected the claim the article was dangerous or one-

sided, pointing to the inclusion of views from Parents Centre (which warned members to be wary of sleep consultants), an academic with specialist knowledge of sleep disorders, Professor Barry Taylor, Plunket and two mothers.

Ms Alexander said nothing in the article referred to the method as “normal”.

She said the lack of registration in the sector was mentioned and there was criticism of that. She also rejected the claim the article was an advertisement for the techniques, noting the only contact details in it were for Plunket’s 0800 number.

Discussion and Decision

Ms Greene clearly has strong objections to the techniques used by Ms Purdue and believes sincerely that it is harmful to children.

However it seems to the Council a complaint under Principle 3 is misdirected and cannot be upheld. That principle should not be applied to matters where all children or a category of children are affected but rather its thrust is to deal with situations where individual children and young people are depicted and to protect the interests of the child or young person - and often that will include issues of privacy. Ms Greene makes no case against the article in that regard - rather it is a call not to use a sleep technique that could harm children generally.

In relation to Principle 1 the article included a range of views both supportive and critical of various sleep techniques. Balance can’t be measured by word count or column inches devoted to the various viewpoints, although Ms Greene implies that in her final response.

The articles canvassed a range of opinions and experiences and demonstrated an exemplary approach to seeking balance. In an area where there is controversy and disagreement it gives a fair voice to the opposition view.

They may not draw the conclusion Ms Greene would wish, or come down on her side of the debate, but that is not the same as being unbalanced. Indeed the only follow up included was the Plunket Hotline.

It was overtly stated that in the view of some experts the techniques tried to fix perceived problems that are normal sleep patterns. The warnings from opponents that the technique may be damaging to children were given prominence.

The Council does not accept completely the editor’s argument the articles did not focus on the techniques. She is correct that there was a heavy emphasis on the growing “business” of sleep consultancy but some methods and their success were described at length through individual experiences, both good and bad. Also, as Ms Alexander points out, there was a sidebar on the techniques though that did not pass judgement on them.

However the Council believes that the coverage of the techniques was not unbalanced or one sided.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Jenny Farrell, Sandy Gill, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

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

CASE NO: 2445 – BROOKE PHILPOTT AGAINST NORTHERN OUTLOOK/THE PRESS

A complaint about a print and online article featuring a children's book depicting Penguins in bondage gear has been partially upheld by the Press Council, with one Council member dissenting. However, its decision also finds that several Press Council principles cited were not breached.

The reports featured a book "Gus and Waldo's Book of Love" which a parent, Lana McLean, found at the Sovereign Star Preschool and Nursery in Kaiapoi in April. The book is intended as an adult picture book. The reports were published in a local newspaper, the *Northern Outlook*, and *The Press*, as well as appearing on the Stuff website on May 16.

The complaint was lodged by preschool manager Brooke Philpott. She has been supported by the woman quoted in the reports, Lana McLean, who has not, however, complained to the Council.

Background

Ms McLean, a mother of three, found the book on visiting the preschool while assessing the facility for her child. Other children brought the book to her and asked her to read it to them. She thought it inappropriate, and photographed some of it to show her husband. On the next day she complained to Ms Philpott. The reports said she left the preschool feeling her complaint wasn't being dealt with, and that this had prompted her to speak out about it.

Ms Philpott was quoted as saying Ms McLean had initially left without talking the issue over and had taken photographs without permission. It was a humorous book which was ordered wrongly on the assumption it was suitable for children given its brightly cartooned penguins. "We now appreciate that it contains some adult themes that parents would naturally object to and have decided to immediately withdraw it but stress that young children reading it would be completely unaware of the significance of the clothing worn by the penguins."

The story also quoted the Ministry of Education, which said early childhood education centres bought their own resources, including books. Picture books for adults might not be appropriate. The last paragraph said the ministry would be contacting the preschool "to remind them of their obligations."

The Complaint

Ms Philpott says the story made selective references to how she handled the complaint. Despite saying she had immediately removed the book, a story was run "sensationalising the issue with a prurient heading 'Bondage book found in Kaiapoi preschool'." It had damaged her business and caused her personal distress. It was inaccurate and tended to portray her in the worst light possible, by implying that the ministry had investigated her after a parental complaint.

The preschool had not realised the book contained adult themes and, once this was known, had withdrawn it immediately. However, young children would have been completely unaware of the significance of the penguins' clothing.

Ms McLean was not even a client of the preschool.

The story had also appeared two months after the incident, although Ms McLean had previously appeared satisfied

with the action taken in withdrawing the book. However, the story did not mention that.

The first paragraph's claim that the ministry was prompted to contact the preschool "after the book was discovered" implied that this had resulted from the complaint -not because the newspaper had itself approached the ministry

Ms McLean complained to Ms Philpott's lawyer about how she had been reported. She believed "the honest mistake" with the book had been dealt with at the time. "I am horrified that my funny story around the office at work has resulted in us both being publicly named and shamed. I did not report this to the newspaper, simply had a laugh about it with my now ex-work the *Northern Outlook*. I was so gutted with their immoral tactics to get a story I resigned yesterday (May 17), effective immediately."

In a later email she also said she had not been formally interviewed, had tried to stop the story when she became aware of it, and had not identified the preschool. In that email, and in a previous posting on the Stuff website about the story, she said the preschool had acted on her complaint as soon as she raised it.

Newspaper's Response

Greg Ford, weekend editor for *The Press* and acting editor for Canterbury communities, dismissed concerns about the story, the facts in it, and the conduct of the journalists concerned. It did not breach any of the principles identified by the complainant.

Ms Philpott was given the chance to respond to facts presented to the reporter. Those facts, and her response, were published in a fair, accurate and balanced manner. Three staff members, including two journalists, were present during the newsgathering activities and formal interview with Ms McLean. All had confirmed that the published report accurately and fairly reflected the facts that Ms McLean presented and that she gave permission for the photos to be published.

Ms McLean, previously employed as an advertising representative, had left Fairfax Media. Fairfax could not amplify on this, "nor to seek an understanding from her as to why she now believes she did not willingly participate in the interview and supply of the photographs she emailed to our reporter as outlined in the witness statements."

The reporter had clearly told Ms McLean the Northern Outlook would like to pursue and publish details she gave. She consented to have her name published, was shown parts of the story before publication and supplied photos for publication willingly. She had previously given news tips for the news team to pursue. "There was no room for ambiguity in regard to what we were doing and intended to do. We are at a loss as to explain why she now feels the story was gained by anything other than ethical means."

Fairfax Media, not Ms McLean, had contacted the ministry for comment.

Press Council Decision

On first reading the published reports, "bondage" headings and accompanying pictures could be seen as a humorous, straightforward account. However, a number of issues arise: The complainant disagrees with the facts as reported, and also says the reports damaged her preschool and caused her

personal distress. Ms McLean also objects to the way it was reported.

The *Northern Outlook* found out about the book because Ms McLean had talked about it while working there. The newspaper followed up on her comments and is not at fault in this.

The newspaper and Ms McLean differ on whether a formal interview took place. The Press Council cannot determine which is the more accurate version. Ms McLean said she later tried to stop the story being published after she realised it followed her unguarded comments. However, she had supplied the pictures to the newspaper by email, and also saw the story in its production phase.

Ms Philpott also says the reports implied the Ministry of Education would be taking action as a result of a parental complaint. However, the ministry only got involved because the newspaper sought its comment on the story it had already obtained. The story was inaccurate in that respect.

There is also doubt about the statement that Ms McLean left the pre-school feeling as if her complaint wasn't being dealt with, whereas the pre-school says it acted immediately to withdraw the book. The newspaper reports also appeared six – eight weeks after the incident, by which time the book had long since been withdrawn.

The main issue comes down to fairness: the story created the impression that the preschool did not act on the complaint when it was raised, it also implied that the ministry was acting on a parental complaint whereas it was responding to the newspaper's inquiry, and the account was published a considerable time after an incident which was apparently resolved at the time.

Part of the complaint, relating to the fairness aspect of the Press Council's Principle 1, is upheld.

However, the Press Council does not uphold other aspects of the complaint, citing Press Council Principles about children and young people, comment and fact, headlines and captions, subterfuge, conflicts of interest, and photographs and graphics.

Mark Stevens dissented from this decision and would not have upheld the complaint.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Mark Stevens and Stephen Stewart.

CASE NO: 2446 – JOHN SHONE AGAINST NEW ZEALAND HERALD

Introduction

John Shone claims a Rod Emmerson cartoon published by *The Weekend Herald* on April 4, 2015, is blasphemous and denigrates Jesus Christ and Christian beliefs. No specific Press Council principles are cited.

The complaint is not upheld.

Background

The cartoon is headlined Jeremy Clarkson's Last Supper and reflects da Vinci's famous painting of Jesus' last supper with his 12 disciples.

Clarkson is quoted in the cartoon as saying, "... the food is cold, the wine's not from NZ, and one of you is about to get a fat lip from me". Others are quoted as saying, "... you'll

be crucified for this..." and "he'll be back".

The cartoon ran about a month after Clarkson was sacked from BBC show *Top Gear*, reportedly for punching one of the show's producers. Clarkson has had a chequered broadcasting career that has included several widely publicised incidents.

Complaint

The complainant says the cartoon is "blasphemous in the extreme" and both visually and textually denigrating to Jesus and Christian sentiment.

The Weekend Herald is guilty of deliberately treating Christians and Christianity with contempt, ridicule and disregard during the most Holy time (Easter).

Response

The editor-in-chief of the *NZ Herald*, which publishes *The Weekend Herald*, counters the claims of blasphemy and contempt, saying that although the image borrowed from the Last Supper, it was a mild attempt which made no attempt to portray Christ or Christians or make comment on their belief.

The cartoon was timed to coincide with Easter.

Senior editorial staff at the *Herald* didn't set out to injure people's beliefs and, in fact, considered such matters with great care.

Emmerson's cartoon did not hurt or insult anyone other than the "puffed-up" Clarkson.

Discussion and Decision

There is no more important principle in a democracy than freedom of expression. The Press Council's own principles state that such freedom is inextricably bound to the freedom of the media and, in fact, one of the functions of the Council is to lobby on such matters.

The Council has strongly supported the right of cartoonists to express their views. (See for example: Case Number 2421 *Jack Ruben v The Dominion Post*; 2261 *Hall v The Dominion Post*; 2067 *Kiwis for Balanced Reporting on the Middle East v Sunday Star-Times*; 2269 *Bolot v The Press*; 2243 *The Canterbury Refugee Council v The Press*).

Publications should not place gratuitous emphasis on religion in reporting. However, *The Weekend Herald's* cartoon is an expression of the cartoonist's opinion.

Although it has clearly offended the complainant, the complainant does not have the right not to be offended.

The cartoon does not breach any Press Council principles and, as such, is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Jenny Farrell, Sandy Gill, Marie Shroff, Vernon Small, Mark Stevens and Stephen Stewart.

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

CASE NUMBERS: 2447 – 2455**LISA FINLAY, BRONWYN HAYWARD, LEANNE HERMOSILLA, JOSH HETHERINGTON, ROB STOWELL, JASMINE TAYLOR, GIOVANNI TISO, DANIEL WEBSTER AND JULIA WOODHALL AGAINST THE NEW ZEALAND HERALD (Part 1)**

1. Lisa Finlay, Bronwyn Hayward, Leanne Hermosilla, Josh Hetherington, Rob Stowell, Jasmine Taylor, Giovanni Tiso, Daniel Webster and Julia Woodhall have complained that an article published by the *New Zealand Herald* on April 23, 2015 was in breach of several of the Press Council principles. All the nine complainants have complained of a breach of Principle 9 (subterfuge) with related breaches of Principles 2 (privacy) and 8 (confidentiality), and most of them have also complained of a breach of Principle 1 (accuracy, fairness and balance). This determination addresses those complaints, although it addresses Principle 1 only in respect of the interaction between the *New Zealand Herald* and Amanda Bailey and not in respect of the content of the article.
2. In addition, there are complaints of breaches of principles 4 (comment and fact), 7 (discrimination and diversity), 10 (conflicts of interest) and 11 (photographs and graphics). These complaints are the subject of a separate determination, as are the remaining complaints about a breach of Principle 1.
3. The Press Council upholds the complaints in general although it finds the complaints about a breach of Principle 8 to be based on a misunderstanding of the effect of that principle and largely based on the evidence that has led the Council to uphold the other complaints.
4. The Press Council is concerned with promoting media freedom and maintaining the press in accordance with the highest professional standards. In its view, the *NZ Herald* has fallen sadly short of those standards in this case.

Background

5. On April 23, 2015 the *NZ Herald* published, both in print and online, an article about Amanda Bailey and the controversy over her reaction to the Prime Minister, John Key, when he persistently pulled her ponytail at the café where she worked as a waitress.
6. The article was based on an interview made by conference call the previous day by a *NZ Herald* columnist, Rachel Glucina, with Ms Bailey and her employers. It included photographs of Ms Bailey and her employers, taken by a *NZ Herald* photographer shortly after the interview. It followed on from an anonymous posting by Ms Bailey on *The Daily Blog*, a public blog site operated by Martyn Bradbury.
7. Ms Glucina was already acquainted with the café owners, Ms Bailey's employers, and had contacted them earlier the same day to arrange the interview.
8. During the afternoon or early evening of the day of the

interview, there was contact between one or both of the café owners and the *NZ Herald* over an apparent misunderstanding about the basis on which the article was to be published. There was no direct contact between Ms Bailey and the *NZ Herald*.

9. *The Daily Blog* owner contacted the *NZ Herald* late on April 22 to confirm that any permission from Ms Bailey was withdrawn. *NZ Herald* advised his call came after the paper had begun printing. Ms Bailey subsequently made a further post on *The Daily Blog*, saying that she had discovered that she had had been misled about the nature of the *NZ Herald* interview and withdrawing any permission she may have given for publication.
10. At the time of the contact from the blog owner, the article had already gone to the printers and it was subsequently published unaltered. However a statement from the editor of the *NZ Herald*, Shayne Currie, was added early on April 23 to the online version of the article and subsequently altered several times.

The Complaints

11. All complainants expressed concern that Ms Glucina may have used subterfuge in dealing with Ms Bailey and her employers both in setting up the interview and in subsequent dealings with them. They say any consent by Ms Bailey to publication was given under a misapprehension caused by the subterfuge and was in any event later withdrawn. Because of the number and the similarity of the complaints, only an outline description of each is given below. To the extent that the complaints relate to Press Council principles other than 1 (in part), 2, 8 and 9, there is more detail in the determination addressing those principles.

Lisa Finlay's complaint

12. Ms Finlay refers to a breach of Ms Bailey's right of consent, right to privacy and the possibility that the interview was obtained by fraudulent misrepresentation. She says
 - Ms Glucina is known to have a close working relationship with John Key and to use her column to support him.
 - In the second *Daily Blog* post Ms Bailey said she was not made aware that Ms Glucina was a *NZ Herald* journalist but was given to understand that she was a public relations consultant.
 - even if consent to publication was given, it was likely to have been given under pressure.
 - Ms Glucina has admitted to subterfuge in the past, in obtaining a story about Mick Jagger.
13. Commenting on editor-in-chief Tim Murphy's initial response to her complaint, Ms Finlay says there has been insufficient explanation of the "initial confusion" about the status of the proposed article or of the nature of the "public statements" that the parties apparently agreed to make. She notes that Mr Murphy did not respond to the question of Ms Glucina's history of subterfuge, that Ms Glucina's current "Linked-in" profile states that she is

director of a PR company, and that events of 22 April after the interview demonstrate that there was no clear consent from Ms Bailey to the publication of the article in the *NZ Herald*. On the contrary, if Shayne Currie had contacted Ms Bailey direct, she would have revoked any consent, as it appears she had already done to her employers.

14. In her further comments, Ms Finlay again makes the point that while the café owners were Ms Bailey's employers and had arranged the interview, they were not entitled to act as her representatives.

Bronwyn Hayward's complaint

15. The main thrust of Ms Hayward's complaint is about conflict of interest (Principle 10) and is covered in a separate determination. However she also expresses concern about the conditions under which the interview was conducted and queries the conditions under which Ms Glucina obtained access to Ms Bailey.

Leanne Hermosilla's complaint

16. Ms Hermosilla asked for an investigation of claims that Ms Glucina misrepresented herself to Ms Bailey in order to obtain her identity and image for publication and that once Ms Bailey became aware of the deception she withdrew her consent to any publication.
17. She also expresses concern that the "five edits with misleading amendments to the time-stamp information" of the editorial statement made by Mr Currie amounts to manipulation of the story. She is of the view that the final wording of the statement makes it very likely that Ms Bailey's version of events is the truth.

Rob Stowell's complaint

18. Mr Stowell complains primarily about the conduct of the interview. He submits that there was at least a misunderstanding about the nature of the proposed publication but that the *NZ Herald* made no attempt to clear it up with the principal interviewee, Ms Bailey. It then published the story after she had withdrawn her consent and both Ms Glucina and Mr Currie made public comments that her account was inaccurate and untrue.
19. In summary Mr Stowell says the *NZ Herald*:
- Failed to act transparently and in good faith in the conduct of the interview
 - Failed to make any real attempt to correct matters
 - Published the article after consent had been withdrawn
 - Invaded Ms Bailey's privacy by publishing her name
 - Engaged in political spin on behalf of the Prime Minister
 - Impugned Ms Bailey's integrity in subsequent public comments.

Jasmine Taylor's complaint

20. Ms Taylor complains generally of breaches of Principles 8 and 9 and specifically of the *NZ Herald's* responsibility for Ms Bailey's lack of awareness that Ms Glucina

was a *NZ Herald* reporter and for giving her the impression that her remarks were to be used for a general press release. She complains also that the *NZ Herald* proceeded with publication after Ms Bailey's consent had been withdrawn. Ms Bailey was neither well informed nor consenting.

Giovanni Tiso's complaint

21. Mr Tiso complains that the interview was obtained by subterfuge. Ms Glucina had not presented herself as a *NZ Herald* reporter. The newspaper was aware that Ms Glucina had not fulfilled her basic obligations to the principal interviewee, Ms Bailey but made no attempt to contact her. There was no reason to disbelieve Ms Bailey's account of events, but good reason to disbelieve Ms Glucina, given her history of subterfuge.
22. Mr Tiso says the explanation given by Tim Murphy is not compatible with the editorial statement made by Shayne Currie and he remains unsatisfied that the *NZ Herald* did enough to ensure they had Ms Bailey's consent to publication.

Daniel Webster's complaint

23. Mr Webster complains that Ms Glucina obtained material from Ms Bailey by the false pretence of being a PR consultant for her employer. When Ms Bailey became aware of the deception she withdrew her consent to publication, but the *NZ Herald* still went ahead with publication. There is also a question of conflict of interest.

Julia Woodhall's complaint

24. Ms Woodhall's main focus is a complaint of unfair and unbalanced reporting (covered in the accompanying determination), but she also asserts that Ms Glucina used subterfuge to obtain consent to the interview.

Josh Hetherington's complaint

25. Mr Hetherington requests an investigation of concerns that Ms Glucina may have obtained information by fraudulent misrepresentation and that Ms Bailey was not aware that there was to be publication of the interview and photographs in a *NZ Herald* article. In addition to a complaint of conflict of interest, he notes the numerous changes to Shayne Currie's editorial statement, and in particular the deletion of the original assertion that Ms Glucina had not misrepresented herself or misled anybody.

The NZ Herald response

26. The Editor-in-Chief *Herald* titles, Tim Murphy, issued a general response to the complaints relating to Press Council principles 2, 8 and 9. He said it resulted from the *Herald's* own inquiry and was based on interviews with the writer, photographer and editor concerned, a consideration of email and text messages with the café owners, information from a third party who was with Ms Glucina during the interview and consideration of the two blog posts along with a letter from Ms Bailey's representative.
27. Mr Murphy agrees Ms Glucina approached the café owners seeking an interview with them and their staff

member, but denies any misrepresentation or subterfuge.

28. He says:

- Ms Glucina does not work in PR nor does she have any PR clients.
- She told them the best way to deal with media interest was to speak out, through her and sought an exclusive interview, telling them this would “front-foot” the gathering media demands.
- The café owners already had a PR firm and would not have engaged another. They already knew Ms Glucina works for the *Herald*.
- If Ms Bailey was told Ms Glucina worked for a PR company, she was not told that by Ms Glucina.
- All parties agreed they wanted to make public comments and agreed to photographs. There was mention of the *Herald*, of a story being written for the *Herald* and a photo being taken for the *Herald*. Ms Glucina says she told the parties that it could take some time for the photographer to arrive as he had to come from the *Herald* office in the city.
- There may have been initial confusion with the café owners as to how widely the public statements were to be distributed, but this was cleared up with them during the afternoon.
- The photographer states that the photographs were posed voluntarily and willingly, and clearly for public issue. There was no photograph of Ms Bailey alone or without her consent. When asked if he was a freelancer, he replied that he was on staff for the *NZ Herald* and that one of the café owners confirmed he knew the photographs were for the *Herald*. He did not say his work was for a PR business, and did not know Ms Glucina had conducted the telephone interview or that she had once operated a PR firm.
- Shayne Currie spoke to the café owners in the early evening and while they said they had thought the article was for all media, they “were comfortable with the fact that they would appear in the paper the following day.” They were and remained the *Herald’s* intermediary with Ms Bailey, and were supplied with their (and her) quotes so that all could see what would be published the following day. All quotes were correct and in context.
- At no stage before publication was any consent to publication withdrawn. Ms Bailey requested (through one of the café owners) that the piece not appear in Ms Glucina’s “gossip column”. An assurance was given that it would not, as it was a news story. The blog owner called many hours later when the paper was already being printed.
- Throughout the gathering and preparation for the story, there was no reason to believe that Ms Bailey continued to expect her identity to remain secret.
- In general, the *NZ Herald* acted in good faith and in accordance with its obligations under the Press Council principles. There was no intention to appear insensitive to Ms Bailey’s situation.

Discussion

29. The determination of this complaint has been difficult because of the incomplete information before the Press Council. Several complainants did not initially complain of breaches of the Press Council principles, but expressed concern that there could have been breaches (based largely on Ms Bailey’s statements in the second *Daily Blog* post) and asked for an investigation. There has been some investigation by the *NZ Herald*, but the Press Council does not have powers of investigation and must determine complaints on the information supplied to it by the media and complainants, supplemented by any relevant information that may be in the public domain. In this case, it has not had any information directly from Ms Bailey or her employers but has had to rely on the published material along with submissions from the complainants and the *NZ Herald*.

30. There are a few facts which appear to be clear:

- Ms Bailey had made her story public through *The Daily Blog* without revealing her identity. It is reasonable to assume that at that stage she wished to remain anonymous and that at all times she had concerns about being identified.
- there was no direct contact between Ms Glucina and Ms Bailey before or after the interview. It appears that all contact was through Ms Bailey’s employers. Nor was there any direct contact between Ms Bailey and any representative of the *NZ Herald* between the conclusion of the interview and the publication of the article.
- there was at the very least some initial confusion over the basis on which Ms Glucina approached Ms Bailey and her employers. While *NZ Herald* has stated that she is a *Herald* reporter, does not work in PR and has no PR clients, her Linked-in profile refers to her as director of a PR company and specifies PR work as one of its functions. Linked-in is generally regarded as a platform for the advertising of services.
- It seems very likely that Ms Bailey’s employers, who were already acquainted with Ms Glucina, knew of her PR skills and were comfortable with the idea that she would help produce a media statement that would help counter any possible damage to the reputation of their business. There seems to have been no clear distinction between the journalistic and the PR aspects of the proposed article.
- There was also confusion over the nature of the article Ms Glucina proposed to write. Both Ms Bailey, and her employers, understood that she would prepare a general statement that would be released to all media. Certainly in relaying the content of his conversation with the café owners, Mr Currie acknowledges that they “said they had thought their and the waitress’ words would be issued to all me-

dia”.

31. On the basis of these facts, the Press Council cannot rule out the possibility of a genuine misunderstanding in the first instance about the nature of Ms Glucina’s approach and of the article she proposed to write. However once the interview was taking place, the onus was on Ms Glucina as a professional media person to make the position completely clear to all parties, particularly to Ms Bailey, with whom she had had no previous contact, who was in a vulnerable position, and whose interests could well have been in conflict with those of the café owners.
32. Even if Ms Bailey’s employers were aware that she proposed to write an article exclusively for the *NZ Herald* (and it seems likely they were not) Ms Glucina could not delegate to them her obligation to be sure that she had Ms Bailey’s fully informed consent to the proposed publication, especially in view of the earlier anonymous publication. On the contrary, her obligation was all the greater because she had not been privy to the conversations between Ms Bailey and her employers in setting up the interview.
33. By the time the interview had been concluded, all parties should have been quite clear about the nature of the article that was to be written. They certainly had concerns about the likely content, resulting in a departure from usual journalistic practice in the agreement to submit quotes to them for checking for accuracy. There is an element of subterfuge in Ms Glucina’s failure to ensure that they all knew she proposed to write an exclusive article for the *NZ Herald*.
34. While Ms Bailey was apparently willing to allow her employers to arrange the interview, there is no evidence that she either agreed or accepted that they should represent her in all dealings with Ms Glucina, the *NZ Herald*, or the media generally. It is significant that the only time she took the initiative and made an approach to the *NZ Herald*, it was through Mr Bradbury and not through her employers.
35. It is irrelevant that the photographer was introduced, or introduced himself as a *NZ Herald* photographer – in the light of the confusion about Ms Glucina’s status it was quite likely that the parties assumed that, as they probably believed to be the case with Ms Glucina, he did work for the *NZ Herald* but not exclusively. It is accepted that he said he worked for the *NZ Herald* as a staff photographer, but to a person unfamiliar with media practice, this would not rule out the possibility that he did other work as well.
36. It seems that by early evening Mr Currie had spoken to the café owners (or one of them) and had explained the situation. However he did not speak to Ms Bailey, nor is there any evidence that he attempted to obtain contact details for her. Once again, clarification of the basis on which the story was to be published was not a task that could be delegated, or at least not without direct authority from Ms Bailey. While the Press Council does

not consider Ms Glucina’s history as a journalist to be particularly relevant to this case, it was known to the *NZ Herald* and should have resulted in special care to ensure that the highest ethical standards were maintained.

37. Finally, at some point in the late evening, the owner of *The Daily Blog* contacted the *NZ Herald* on behalf of Ms Bailey and seems to have made it plain that Ms Bailey did not want the story published and that she withdrew any consent she might have given. It may have been too late to stop publication of the print story, but may not have been too late to add an appropriate comment and certainly not too late for the online version.
38. The Press Council does not see any great significance in the various alterations to Mr Currie’s statement published with the online version of the story except that it may reflect the spread of confusion beyond the parties to the interview. It does, however, note that the changes give the impression of a shift of emphasis away from assertion of Ms Glucina’s professional integrity.

Decision

39. The Press Council upholds the complaints. It finds there were elements of subterfuge in the *NZ Herald*’s dealings with Ms Bailey along with a failure to act fairly towards her, but more importantly it notes that it is not exclusively concerned with determining whether there has been a breach of specific principles. It may consider other ethical grounds for complaint, especially in the context of its objective of maintaining the press in accordance with the highest professional standards. In this case, it is of the view that the *NZ Herald* has generally fallen far short of those standards in its handling of a sensitive issue and its failure to respect the interests of a vulnerable person.
40. For the sake of completeness, it should be said that the Press Council does not find that there was a sufficient public interest in Ms Bailey’s story to justify the use of subterfuge, or to override any right to privacy.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Jenny Farrell, Sandy Gill, Marie Shroff, Vernon Small, Stephen Stewart and Mark Stevens.

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

CASE NUMBERS: 2447 - 2455

LISA FINLAY, BRONWYN HAYWARD, LEANNE HERMOSILLA, JOSH HETHERINGTON, ROB STOWELL, JASMINE TAYLOR, GIOVANNI TISO, DANIEL WEBSTER AND JULIA WOODHALL AGAINST THE NEW ZEALAND HERALD (Part 2)

1. Lisa Finlay, Bronwyn Hayward, Leanne Hermosilla, Josh Hetherington, Rob Stowell, Jasmine Taylor, Giovanni Tiso, Daniel Webster and Julia Woodhall have complained that an article published by the *New Zealand Herald* on April 23, 2015 was in breach of several of the Press Council principles. All the nine complain-

ants have complained of a breach of Principle 9 (subterfuge) with related breaches of Principles 2 (privacy) and 8 (confidentiality). These complaints are addressed in a separate determination. See Part 1.

2. In addition, there are complaints of breaches of Principles 1 (accuracy, fairness and balance), 4 (comment and fact), 7 (discrimination and diversity), 10 (conflicts of interest) and 11 (photographs and graphics). These complaints are the subject of this determination.
3. The Press Council upholds a complaint about a breach of principle 10 but does not uphold the remaining complaints.

Background

4. On April 23, 2015 the *NZ Herald* published, both in print and online, an article about Amanda Bailey and the controversy over her reaction to the Prime Minister, John Key, when he persistently pulled her ponytail at the café where she worked as a waitress.
5. The article was based on an interview made by conference call the previous day by a *NZ Herald* columnist, Rachel Glucina, with Ms Bailey and her employers. It included photographs of Ms Bailey and her employers, taken by a *NZ Herald* photographer shortly after the interview. It followed on from an anonymous posting by Ms Bailey on *The Daily Blog*, a public blog site operated by Martyn Bradbury.
6. Ms Glucina is purported to have a friendship with Mr Key. In particular an article in the *Waikato Independent* published on July 22, 2014 refers to that friendship and says that Ms Glucina uses her column in the *NZ Herald* to give support to Mr Key and to “scorn some of National’s enemies”.
7. Ms Glucina was already acquainted with the café owners, Ms Bailey’s employers, and had contacted them earlier the same day to arrange the interview. The café is one of a number of establishments run by the Hip Group, a company managed by Ms Glucina’s brother.
8. During the afternoon or early evening of the day of the interview, there was contact between one or both of the café owners and the *NZ Herald* over an apparent misunderstanding about the basis on which the article was to be published. There was no direct contact between Ms Bailey and the *NZ Herald*.
9. *The Daily Blog* owner contacted the *NZ Herald* late on April 22 to confirm that any permission from Ms Bailey was withdrawn. *NZ Herald* advised his call came after the paper had begun printing. Ms Bailey subsequently made a further post on *The Daily Blog*, saying that she had discovered that she had had been misled about the nature of the *NZ Herald* interview and withdrawing any permission she may have given for publication.
10. At the time of the contact from the blog owner, the article had already gone to the printers and it was subsequently published unaltered. However a statement from

the editor of the *NZ Herald*, Shayne Currie, was added early on April 23 to the online version of the article and subsequently altered several times.

The complaints

Lisa Finlay’s complaint

11. Ms Finlay’s complaint is largely of breaches of principles 2, 8 and 9, but she also has concerns about Principle 1 (accuracy, fairness and balance) and 10 (conflicts of interests). She says that Ms Glucina’s personal friendship with John Key and reputation for attacking opponents of the National Party should have precluded her from writing the article. She also cites Ms Glucina’s personal connection to the story through her brother as creating a potential conflict of interest.

Bronwyn Hayward’s complaint

12. Ms Hayward says she is concerned that the *NZ Herald* omitted to disclose to readers Ms Glucina’s interest in the case, given that her brother works for the Hip Group. It is irrelevant that Ms Glucina may have known the café owners independently of her brother.

Leanne Hermosilla’s complaint

13. Ms Hermosilla directs her complaint mainly at questions of subterfuge, privacy and confidentiality, but she also has concerns about conflict of interest. She says that it is likely that Ms Glucina identified the café in question through her personal connections with the Prime Minister and the business and used these to manipulate the situation.

Rob Stowell’s complaint

14. Mr Stowell raises a question of bias, saying that the *NZ Herald* has engaged in political spin on behalf of the Prime Minister. He says it is known that Ms Glucina is not politically impartial. He asserts that the article does not include favourable comments made about Ms Bailey by the café owners but implies that she acted out of a desire to damage the Prime Minister and bypassed appropriate channels to do so. Essentially the article is PR in favour of the Prime Minister and sets out to maintain his image while undermining the credibility and motivation of his opponents.

Giovanni Tiso’s complaint

15. Mr Tiso asks the Press Council to consider a breach of the conflict of interest rules, given Ms Glucina’s role as a public relations consultant and her brother’s interests in the Hip Group. He says he does not think the editors have shown sufficient judgement or given the public sufficient reassurances “that other interests weren’t being pursued other than those of its readers and the public”.

Daniel Webster’s complaint

16. Mr Webster says that the close relationship between Ms Glucina and the Hip Group, through her brother, as well as her relationship with Mr Key suggest a conflict of interest of the highest order.

Josh Hetherington’s complaint

17. Mr Hetherington comments on Ms Glucina’s brother’s

involvement with the Hip Group. He says “One would think that the *NZ Herald* would pursue the sensible option of using another journalist in an instance as potentially inflammatory as this. Surely Ms Glucina’s role as interviewer in this instance must be considered a conflict of interest at the very least?”

The NZ Herald response

18. Tim Murphy, Editor-in-chief, responded initially to complainants that the association between Rachel Glucina’s brother and the Hip Group played no direct part in the interview and did not influence the content of the article. Ms Glucina knew the café owners independently of their association with her brother. He did not address questions of bias, or of the possibility of a conflict of interest arising out of Ms Glucina’s relationship with the Prime Minister, or of any other possible breaches of the Press Council principles. Nor did he address any of these questions in his generic response to the Press Council after notification of the complaints.

Discussion

Conflict of interest

19. These complaints have identified two potential conflicts of interest on the part of Ms Glucina – her friendship with the Prime Minister and her relationship to her brother, who has an interest in the Hip Group.
20. Principle 10 makes it clear that publications must be independent and free of obligations to their news sources. They should avoid situations that might compromise such independence. As appropriate, authors of published items should declare any links to the subjects of the items.
21. In this context, it seems clear that Ms Glucina’s reported friendship with the Prime Minister did not give rise to a conflict of interest. There is no question of any compromise of her independence or that of the *NZ Herald*. In addition, the relationship was already in the public domain – Ms Bailey testifies that as soon as she learnt Ms Glucina’s surname and began to search online, she found material on her friendship with Mr Key.
22. There is more substance to the argument that Ms Glucina and/or the *NZ Herald* should have declared her relationship with her brother, manager of the Hip Group. In its general handling of this affair, the *NZ Herald* seems to have ignored the fact that Ms Bailey and her employers (and ultimately the whole Hip Group as owners of the group of establishments) were likely to have had differing and conflicting interests in the context of Ms Bailey’s employment. The facts of the case raised a question about the employers’ fulfilment of their obligations under the employment agreement and under general employment law and the employers would naturally be anxious to establish that they had met their obligations.
23. The Press Council accepts that Ms Glucina knew the café owners independently of her brother and that she could easily have established the identity of the café without his assistance. However it remains concerned

that in dealing with Ms Bailey she did not disclose a relationship that could be seen as influencing her approach to the issues. Mr Murphy may be right to say that the relationship did not influence the content of the article, but that is irrelevant. The point is that there was an absence of transparency about a potential influence.

Accuracy, fairness and balance

24. In the accompanying determination the Press Council addresses the question of fairness in the *NZ Herald*’s dealings with Ms Bailey prior to publication of the article. The following paragraphs are concerned with fairness in the article itself.
25. There are no apparent inaccuracies in the article, nor have there been complaints of inaccuracy. There also appears to be a reasonable balance in the relative space given to Ms Bailey, her employers and Mr Key. The question raised, particularly by Mr Stowell’s complaint is whether the article was fair to all parties and put forward a balanced account of the matters reported. The Press Council notes that although Ms Glucina has a reputation as a columnist, the article in question was undoubtedly a news article. It was not an expression of her opinion, and accordingly the requirement for fairness and balance applies.
26. While the Press Council has some concerns about the amount of comment that is at least implicitly critical of Ms Bailey as against the six short paragraphs setting out her views, it recognises that those views have a prominent place at the beginning of the article and that the article concludes with supportive comment from the Human Rights Commission and the National Council of Women.
27. Mr Stowell has pointed out that Ms Glucina chose to report only some of the negative remarks made by Ms Bailey’s employers. However the Press Council has no way of ascertaining precisely what was said in the interview, and cannot comment on this assertion.
28. Mr Stowell is also concerned about a perception of political bias in the article, though he accepts that Ms Glucina did not “slant the story strongly”. The Press Council has given careful consideration to this issue, particularly in the context of Ms Glucina’s purported friendship with the Prime Minister. It has concluded that although for this reason it was unwise of the *NZ Herald* to accept her article for publication, there was no breach of the Press Council principles.

Other Principles

29. Complainants have mentioned principles 4, 7 and 11 in connection with their complaints. The Press Council is of the view that in these cases the complainants are largely mistaken about the application of the principles and that their concerns have been addressed in its consideration of other principles.

Decision

30. The Press Council finds a breach of principle 10 in the *NZ Herald*’s failure to declare Ms Glucina’s relation-

ship with a party that was potentially in dispute with the person who was the main subject of the article. The remaining complaints are not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Jenny Farrell, Sandy Gill, Marie Shroff, Vernon Small, Stephen Stewart and Mark Stevens

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

CASE NO: 2456 – RICHARD GEE AGAINST THE NEW ZEALAND HERALD

[1] Richard Gee complains about an article that appeared in the *New Zealand Herald* on 16 June 2015. His complaint alleges breaches of virtually every Press Council principle.

Background

[2] Mr Gee is a motivational trainer. Following litigation in the Auckland High Court, he filed a debtor’s petition for bankruptcy and was adjudicated bankrupt in August 2014. The article complained against dealt with a company, of which Mr Gee was a director and shareholder, along with his wife, that was placed into liquidation. The article covered the Court proceedings, the bankruptcy and the fact that Mr Gee was carrying out motivational work in Tonga which was funded as part of an aid package from MFAT.

The Complaint

[3] Mr Gee complains that the principles of accuracy, fairness and balance, comment and fact, confidentiality, corrections, headlines, photographs and graphics, and privacy have been breached. He maintains that neither he nor his wife were ever interviewed. He further states that the article failed to mention that the 2014 Court case related to litigation from 2005 which he maintained he had “won”. He said matters were taken out of context, and claimed the insolvency was only \$17. He said the photograph had him wearing a Rotary chain, which inferred Rotary was supporting his personal status. He said his bankruptcy was voluntary as a result of the adverse Court judgment and he was not adjudged bankrupt as reported. He said the Insolvency Department were aware of, and consented to, his travel and work, and the actual contract with Tonga was with a third party called Geewiz Group Limited. He says the running of the Geewiz Group has no relevance to him and that he provides the skills for earning funds for the company as approved and was not involved in running the company or its management.

The New Zealand Herald Response

[4] The editor, Shayne Currie, first stated that Mr Gee spoke to the reporter for around 13 minutes, during which time the reporter asked a number of questions about the bankruptcy and business insolvency. The editor maintains that the reporter accurately reported what was said. He further stated that Mr Gee told the reporter his wife was unavailable, and that she did not

have anything to add. The editor said that the reporter asked Mr Gee to pass on a message asking her to speak to the reporter. He also asked if he could suggest ways the reporter could get in touch with her.

[5] The editor stated that the article referred to a 2014 High Court case, and stated “an appeal which, as you note, you lost”. He noted the reasons why Mr Gee maintained no further action was taken. The editor said he had looked at the High Court judgment, and was satisfied that the relevant points had been covered.

[6] The editor stated the photograph in no way inferred Rotary was supporting Mr Gee’s personal status. The editor further stated that while Mr Gee may have decided to become bankrupt voluntarily, it still required a High Court adjudication to make it so. He pointed out that this occurred after the company liquidator successfully argued that Mr Gee had received payments he should not have received from the liquidated company and as a result was liable to repay money to the company.

[7] The editor concluded that he considered the article was fair, accurate and balanced, but said they would like to speak to Mrs Gee to get the company’s perspective.

Decision

[8] There is a dispute between what was said and what took place between the reporter and Mr Gee. Normally this makes it difficult for the Council. However, in this case we can readily determine the matter based on public documents, being the decisions of the High Court.

[9] First, Mr Gee did not “win” a summary judgment in 2005 as he stated. That fact is repeated by Brown J in his decision of June 2014. What occurred was that the Court determined that Mr Gee had an arguable defence to the claims brought against him by the company and the liquidators and the matter should proceed to trial to determine disputed facts.

[10] The decision of Brown J delivered on 30 June 2014 is instructive. It is a lengthy judgment, and we will deal only with the matters that are pertinent to this complaint.

[11] It was, firstly, a claim that Mr Gee pay to Richard Geewiz Gee Consultants Limited (in liquidation) a sum overdrawn from the shareholders’ current account in the sum of \$52,998; and, secondly, a claim Mr Gee return to the company a payment of \$34,591, made to him by way of salary in the year ended 31 March 2007.

[12] The company was incorporated on 23 October 2001 and called PSM Holdings Limited, which was changed on 14 June 2005 to the name we have just set out. From July 2005 the company began accumulating debt to Inland Revenue, initially in respect of PAYE, but subsequently in respect of both GST and Kiwisaver Employer Deductions. Penalties and interest were incurred.

- [13] A Mr Livingstone, of the firm UHY Haines Norton (Auckland) Limited, was Mr Gee's accountant for some 25 years. He was also the company's tax agent. He was first approached by the Inland Revenue expressing concerns in November 2006. Those concerns recorded disappointment that Mr Gee had again fallen into an arrears situation with regard to his personal tax "and now, the newly formed company tax". An IRD file note in December 2006 indicated the company had agreed to clear the amounts owing by the end of February 2007. Despite this, arrears continued to accrue. Mr Livingstone wrote to Mr Gee, warning him of the seriousness of the situation and stating that it was essential contact be made with the IRD to arrange repayment. Despite that advice, from October 2007 the company failed to pay PAYE assessments and failed to pay Kiwisaver Employer Deductions. The Judge, in the decision, noted that more significantly in dollar terms was the company's failure to account for GST.
- [14] Mr Livingstone also wrote to the company's solicitors in June 2009 (the Judge noting the letter was probably written in June 2010), informing them the company was insolvent the entire time it was in operation, and that he had written to Mr Gee each year advising him of that status. Mr Livingstone confirmed that in his evidence.
- [15] It was against that background that the liquidated company and the liquidators brought proceedings to recover the sums mentioned above. It is unnecessary for us to go into the numerous complex causes of action, and we will refer only to those that were successful as listed at [11].
- [16] Section 161 of the Companies Act 1993 allows a company to authorise payment of remuneration or other benefits to a director for services. But it requires the board to enter the payment or benefit into a register, and directors must sign a certificate stating the making of the payment or the provision of the benefit was fair to the company, and they also need to state the grounds for that opinion.
- [17] In this case, such a certificate was signed. However, if reasonable grounds did not exist for the opinions set out in the certificate, the director may be personally liable to the company for the amount. In this case the Judge was satisfied that at the date the certificate was signed by Mr Gee authorising the payment of salary, there were not reasonable grounds for his opinion, expressed in the certificate, that the sum was fair to the company as at the date of the certificate. He held Mr Gee personally liable to repay the company the sum of \$34,591.
- [18] In relation to the claim by the liquidators, the Judge was satisfied that Mr Gee had breached the provisions of s 135 that prohibit reckless trading on the basis of a conclusion that from 31 March 2007 onwards Mr Gee permitted the company to continue to trade absent a definite arrangement with Inland Revenue. He found that such an arrangement was never a realistic proposition, given Mr Gee's, and the company's, track record. He also found that Mr Gee had breached his duty of care under s 137, and was negligent in permitting the company to trade after 1 October 2007. In the circumstances, the Judge found it appropriate to order compensation payable by Mr Gee under the Companies Act to the liquidators for indebtedness from 1 October 2007 of \$16,452.29, plus liquidators' fees and disbursements of \$36,308.83, from which he deducted an allowance of \$3000, leaving a final liability of \$49,761.12 due by Mr Gee to the liquidators.
- [19] It is clear from the Insolvency Act 2006 that a debtor who files an application with the assignee for adjudication of bankruptcy (known as a debtor's petition) is adjudicated bankrupt as a consequence of such filing. It perhaps would have been better if the reporter had used the technical term "adjudication", rather than the term "made" that he did use, but we consider nothing turns on that.
- [20] Unless one was familiar with Rotary regalia, a viewer of the photograph would be unaware that it was a Rotary chain. In any event, the use of the photograph in no way implies that Rotary supported Mr Gee's activities.
- [21] The article makes it plain that Mr Gee had the permission of the Official Assignee to work in Tonga. It also reported that the company contracted, Geewiz Group Professional Speakers Limited, was owned by Mr Gee and his wife, but that Mr Gee resigned as a director on the day he was made bankrupt. One of Mr Gee's complaints is that he has nothing to do with the running of that company, which could be implied. However, for the sake of completeness we note that the business website provided to us by Mr Gee shows the Skype address for the company as being one of 'richard.gee2', and the email contact for the company was 'richard@geewiz.co.nz'.
- [22] This was accurate reporting of what was currently occurring and what had occurred in Court proceedings through to the subsequent bankruptcy. It was also a matter of public interest, particularly when New Zealand foreign aid money was involved. We are satisfied none of the Press Council's principles have been breached as alleged. The complaint is not upheld.
- [23] Mr Gee lodged a late complaint that his conversation had been recorded. We accept that, as long as the journalist is a party to that conversation, recording is standard and acceptable practice.

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

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

CASE NO: 2457 – JERRY PHILIP AGAINST NORTHERN OUTLOOK

Background

Jerry Philip has complained that an article in the *Northern Outlook* of July 1, 2015 headlined “Rangioria High ‘poorly run’ – parent” breached Press Council Principles 1 (Accuracy, Fairness and Balance); 4 (Comment and Fact); and 5 (Confidentiality). Note that in his first correspondence with the Council on July 4 Mr Philip had raised Principle 8 (Discrimination and Diversity) however Mr Philip notes in his last correspondence on 19 July, he meant Principle 5.

The article was one of a number of articles dealing with the replacement of the Board of Trustees of Rangioria High School with an Education Commissioner in February 2015, the possible background issues surrounding the replacement and sacking of the Board of Trustees and the views of parents. This particular article focused on the opinion of one parent at the school, the principal’s leave of absence and some of principal Peggy Burrow’s spending of school funding.

The Complaint

Mr Philip complains that the article breached Press Council Principles 1, 4 and 5.

Mr Philip alleges that the article is unbalanced and “very one sided”. Moreover, there was a lack of understanding of the context. That is, given the employment case, Ms Burrows, her lawyer and the commissioner would be unable to comment so more effort should have been made to maybe obtain a view from another parent. There was no attempt by the *Northern Outlook* to provide balance.

Mr Philip further alleges the article did not distinguish between opinion and fact. The vindictive and outspoken views did not add anything of value to the debate and therefore the parent did not need anonymity.

In addition, the publication did not take reasonable steps to satisfy itself that the confidential source was well informed or the information provided was reliable.

The Response from the Newspaper

Northern Outlook editor Shannon Beynon asserts that the article was a piece of reporting which contained an opinion of a parent and so Principle 4 was not breached.

Principle 8 was not breached given no gratuitous emphasis is placed on a gender, race, colour, age etc. However following the correction by Mr Philip that he meant Principle 5 rather than Principle 8, the editor advised she had nothing more to add.

In terms of Principle 1, the editor did acknowledge that the parent’s own opinion may have been coloured by the parent’s unsatisfactory interaction with Ms Burrows. The editor reaffirms that the reporter attempted to provide balance by contacting Ms Burrows, her lawyer and the commissioner with all declining the opportunity to comment.

The editor asserts that the balance can be found with the strong letters to the editor in defense of Ms Burrows in the publication the following week. It is important that the broader view of the situation, which has sparked a great deal of discussion in the district, is adopted rather than the single article as a standalone example of the overall coverage.

Discussion and Decision

The article does make clear that the view put forward from one parent was an opinion which sat within an article. Principle 4 is not upheld.

On Principle 5, the parent’s view of the school’s leadership is taken from her “multiple run-ins” with the school. Those experiences have created a well-informed view from a parent’s perspective. The article’s use of the parent’s quotes makes it clear to the reader that it is her own opinion. The headline also makes it clear that the view is that of one parent. The Council notes the decision made by the publication to allow the parent’s anonymity because of the possible impact on her children who attended the school. Anonymity of sources is generally an exception, although we accept it is appropriate in the circumstances of this case where the source has children attending the school. The complaint is not upheld on this Principle.

The Council agrees with both parties that the issue has sparked a great deal of interest in the district particularly given it is the local high school. Reasonable care must therefore be made to ensure that there is fairness and balance in the reporting of a sensitive issue for the district. Whilst the Council does note the overuse of the opinions of one parent, it accepts the editor’s point that the publication did run three opposing (and equally strong) letters to the editor including one from another parent.

Notwithstanding that, the Council agrees with Mr Philip that the reporter should have tried other avenues to obtain a balancing view given the issues at play. Best practice usually requires more than one source. In this case it appears that it would have been relatively straightforward to speak to other parents. On balance however given the level of local interest in the issue, readers are likely to have taken a broader view based on a number of stories and on the letters to the editor that were published.

The complaint is not upheld.

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

CASE NO: 2458 – HINEMOA ELDER AGAINST THE DOMINION POST AND STUFF

The complainant, Dr Hinemoa Elder, complains that an article published in print by *The Dominion Post* and online by *stuff.co.nz* was unfair, insensitive, inaccurate and in breach of several of the Press Council principles.

The Press Council does not uphold the complaint.

Background

On August 20, 2015 *The Dominion Post* published an article by Rosemary McLeod, who is a regular columnist for that publication. The article also appeared on the Stuff website.

The article followed on from news reports of the trial of Michael Murray for the murder of Connor Morris, the partner of Millie Elder-Holmes, who is the complainant’s daughter and who was present at the fight in which Mr Morris died.

The article was headed “Millie Elder-Holmes deserves to be out of the spotlight now” and was accompanied by a pho-

tograph of Ms Elder-Holmes with the father of Mr Morris. It is written in an informal and forthright style, expressing the view that there has been too much publicity about Ms Elder-Holmes, that her life is unexceptional (examples are given), and that it is time she moved on.

The Complaint

Dr Elder immediately complained to the editor of *The Dominion Post*, summarising her view of the article as “determined in its superficiality, distressing, hurtful and derogatory. Its intention seemed to be to present a caricature, a parody of my daughter, which perpetuates the very spotlight that the title supposedly rejects.” She likens it to cyber-bullying and says it is bullying of a type that is seriously corrosive to a person’s mental well-being.

She refers specifically to the author’s patronising, belittling and disdainful tone, to her mention of Ms Elder-Holmes’ tattoos, and to her sarcastic comments that Ms Elder-Holmes should “get an education, get a job and have a contented life”. She says it is widely known that Ms Elder-Holmes was successfully studying nursing at the time of the murder and that she is now struggling to resume her studies as well as running her blog. She is of the view that the accompanying photograph “supports the negative caricature of [her daughter] in the article.”

Dr Elder asked for the story to be removed from the internet and for a written apology from the author.

Commenting on Ms Courtney’s response, Dr Elder says the reference to Ms Elder-Holmes’ published views as justification for the article amounts to victim blaming and confirms her view that the article is not about the “hazards of growing up in the glare of publicity” but is a specific attack on Ms Elder-Holmes.

The Dominion Post Response

Bernadette Courtney, editor in chief Central Region, responded to the complaint, saying that the complainant had not provided detail in support of her complaints of breaches of specific principles, nor had she identified factual inaccuracies but rather had disagreed with the opinions expressed by Ms McLeod.

The article was clearly an opinion and was identified as such. Opinion pieces do not need to be balanced, nor do the opinions need to be acceptable to all readers. Ms Elder-Holmes publicly expressed her own opinion in response to the article and that opinion was reported by Stuff. She was offered a separate opportunity to comment on the opinion but declined to accept it.

Ms Courtney also notes that in June Ms Elder-Holmes gave an extensive interview to the *New Zealand Herald’s* Canvas magazine in which, among other things, she discussed her relationship with fame and the media. It would be an undesirable precedent if Ms Elder-Holmes were to be able to give her views of the media and her changing relationship in forthright terms while others who wish to comment on the same issue were denied the opportunity.

Ms Courtney does not agree with the complainant’s view that the photograph of Ms Elder-Holmes showed an angry facial expression. She sees it as an appropriately serious picture for the subject matter of the piece.

Discussion

The article in question was an opinion piece written by an established columnist and was very clearly an expression of opinion. It was not a news report and accordingly is not required to meet the standards of accuracy, fairness and balance required of news reports. By its very nature, opinion is often unbalanced and can be unfair in the minds of others. The Press Council’s principle 5 recognises that while there must be a foundation of fact – that is, opinion must not be based on untruths or inaccuracies – balance is not essential. The remaining principles apply to opinion pieces in the same way as they apply to news reports.

The Press Council has considered this complaint under Principles 1, 4 and 5 and has concluded that while the opinion expressed by Ms McLeod was unkind and may well have been felt as insensitive and hurtful it was nonetheless a legitimate and not entirely unsympathetic expression of opinion about a person who had been very much in the public eye in recent weeks.

The Press Council has also considered the application of Principle 2 (privacy), especially in view of its requirement that those suffering from trauma or grief call for special consideration. It recognises that Ms Elder-Holmes is undoubtedly suffering from trauma or grief and is accordingly in a vulnerable position. However the special consideration is called for in the context of privacy of person, space and personal information, and it is difficult to find any breach of such privacy in this case. There does not appear to be any information in Ms McLeod’s article that is not already publicly known. There has been a great deal of publicity about Ms Elder-Holmes and she herself has commented publicly on the matters that form the background to the article and on her reaction to them and to the consequent publicity.

Finally, the requirement of principle 11 concerning photographs is that editors should take care in their selection and treatment, avoid misleading manipulation and give special consideration to photographs showing distressing or shocking situations. In the view of the Press Council, the photograph of Ms Elder-Holmes shows a serious young woman, as is appropriate for the subject matter of the article, and there is no breach of Principle 11.

The Press Council does not uphold the complaint.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Peter Fa’afiu, Sandy Gill, John Roughan, Marie Shroff, Mark Stevens and Tim Watkin.

Jenny Farrell took no part in the consideration of this complaint.

CASE NO: 2459 and 2460 – JANE SCHAVERIEN AND DAVID GRACE AGAINST DOMINION POST

Background

Jane Schaverien and David Grace have complained about *The Dominion Post’s* front page article of July 3 (covering the entire front page, “goodie boxes” excepted) ‘What DOC worker told a detective’. Ms Schaverien’s complaint specifies 1. Accuracy, fairness and balance and 11. Photographs and Graphics. Mr Grace’s refers to both 1. Accuracy, fairness and balance and 4. Comment and Fact.

The article relates to the disappearance of Wellington

physiotherapist Kaye Stewart, who hasn't been seen since she disappeared on a walk in Rimutaka Forest Park in June, 2005. The story followed renewed coverage of the case in May, when a runner was lost and then found in the same park, and June, the 10th anniversary of Mrs Stewart's disappearance.

The angle of this story is that an OIA request has produced a transcript of a police interview with DOC worker Gary Bak in 2009, the last person to see Mrs Stewart, in which police suggested Mr Bak had accidentally hit Mrs Stewart with his quad bike. It reports that Mr Bak denied the theory then, and still does so. Police and Mr Bak refuse to comment on the theory, but police say they are investigating new leads.

Complaints

Ms Schaverien complains that the presentation of the story suggests (a) the story contains new information; (b) that Mr Bak is in some way connected with Mrs Stewart's disappearance; and (c) "police are investigating Mr Bak anew". The front page display, notably "the juxtaposition of a large image of Mr Bak against the image of the missing woman implies" that Mr Bak hit Mrs Stewart with his quad bike. This, she says, is poor and cruel journalism. In two follow-up comments, she stresses that people often only glance at headlines and pictures and in this case the layout is "misleading" and doesn't tell the same story as the full article.

Mr Grace is concerned that the article "points the finger" at Mr Bak, with the suggestion that he is culpable for the death or disappearance of Kaye Stewart in 2005. "An incident in which he was cleared of blame has been resurrected and lavishly publicised". He takes issue specifically with the size of the photograph and says "no provision" was made for Mr Bak to respond. In his final comment he adds the point that newspapers are often read quickly and superficially and it's "the general impression that counts", hence his objection to the "location, type size, illustrations etc".

Mr Grace is less clear about why he thinks the story fails under Principle 4, but describes the photo of Mr Bak on his bike as "unspoken comment" and in his reply to the newspaper's response, insists the story "is not news".

Editor's Response

Dominion Post Editor-in-Chief, Bernadette Courtney, denies the article is misleading in anyway. The police theory revealed by the transcript is significant and new. She explains that police are investigating new leads as a result of the paper's recent coverage and that "the article could not be clearer that none of this fresh information relates to Mr Bak".

However she argues it is significant that the police "rightly or wrongly" still suspected Mr Bak more than three years after Mrs Stewart's disappearance and tested his DNA and the bach where he lived for blood.

On balance and fairness the editor-in-chief stressed that the article was based on Mr Bak's answers to police and he was contacted by the paper for comment. His continued denial was reported, as was the fact he refused further comment. The story also noted the coroner's verdict that while police suspected foul play, all the "persons of interest" were alibied or eliminated from suspicion by the police.

The story also says that while police plan to re-interview some people from their earlier enquiries, the fresh leads do

not relate to Mr Bak. The editor-in-chief says she finds it "irksome" that while Ms Schaverien and Mr Grace both read the article and concluded Mr Bak had nothing to do with Mrs Stewart's disappearance, "they do not credit other readers with the intelligence to form exactly the same opinion".

On photographs and graphics the editor argues they must be viewed in conjunction with the story. The photograph of Mr Bak on his quad bike is relevant as he used it that day and it played a part in the police's theory. It was not meant to infer guilt.

On Comment and Fact, the editor says this is clearly a news story and does not understand what Mr Grace means by "unspoken comment". Regardless, she disputes his inference that this is anything other than news.

The editor also notes that neither Mr Bak nor anyone acting on his behalf have complained. Rather than vilifying Mr Bak, the story suggests police may have wasted time and effort on a fruitless line of inquiry, and this could be why the case remains unresolved.

Discussion and Decision

While the article relates to a ten year-old case, the previously unreported police theory that Mr Bak accidentally hit Mrs Stewart with his bike is undoubtedly news and of public interest. Indeed, the Council notes that Mrs Stewart's family took part in at least two stories in the previous months in the hope that the public would be reminded of Mrs Stewart's disappearance and would come forward with more information. The story is clearly presented as news, the reporter offers no opinion on the facts reported and those are reported accurately. The photo of Mr Bak on his quad bike is directly related to the story angle.

The complaint against Principle 4 is not upheld.

Much of the disagreement stems not from the content of the article, but the way it is presented and told. In particular its prominent use of the photo and the impression a reader would get from a glance at the front page. That touches on Principle 11's call for editors to take care in the selection and treatment of photographs. The editor-in-chief, unfortunately, does not address the size issue.

The size of the photo is remarkable and disproportionate, especially given it's of a man who the story reports has been eliminated from police inquiries. This caused some disquiet amongst the Council. The layout could lead to misunderstanding from people who did not read the story carefully and risked implying something the story did not say. It came close to, as Mr Grace said, pointing the finger at Mr Bak.

Both of the complainants fear that anyone glancing at the page or not reading the full story would get a misleading impression of the story. While that argument earned some sympathy, on balance the Council agreed newspapers cannot be held responsible, as the complainants suggest, for the inferences readers draw.

The complaint against Principle 11 is not upheld.

On the issue of fairness and balance (accuracy is not in question), Mr Grace is in error when he says "no provision" was made for Mr Bak to reply. He was contacted and quoted. It's notable too that this was one of several stories the paper produced on this cold case in cooperation with Mrs Stewart's family and police.

It's also important to appreciate that the paper reports in

just the second paragraph that Mr Bak “strongly denied” the quad bike accident theory.

Having said that, it’s not ideal that the crucial information that the coroner had reported that all “persons of interest” either had alibis or had been eliminated from police inquiries and the previously unreported news that the police’s fresh information, as the editor says, “does not relate to Mr Bak” is withheld until the final paragraphs of the story.

Publications need to be aware that the Press Council will view an article in context which will include accompanying photographs. This is necessary to reflect the overall tenor of what is being communicated. In this case the photograph was very large and bordered on breaching the need for fairness and balance. In this instance the Council accepts that the size of the photograph only just fails to breach our principles

The complaint against Principle 1 is not upheld.

Dissent: One member disagreed with the decision on Principle 1, Accuracy, fairness and balance. John Roughan believed the presentation of the story was so far out of proportion to the news value of its facts that it was grossly unfair to Mr Bak.

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

CASE NO: 2461 – DANIEL HANKS AGAINST STUFF

Daniel Hanks complained that a story and video headlined “Woman throws a 90-minute tantrum after being dumped by text” on Stuff NZ’s website breached Principle 4, Comment and Fact, and Principle 8, Discrimination and Diversity. The complaint is not upheld.

Background

On August 20, Stuff NZ ran a story on its website headlined ‘Woman throws 90-minute tantrum after being dumped by text’, which featured a video clip of a woman having an “epic meltdown” on a busy street in Hong Kong. The 150-word story, which quoted the *MailOnline*, briefly described the video, saying the woman “rolled around, kicked, stomped and shouted as bystanders tried to go about their day”. It showed people’s offers of help being rejected by the woman, who was eventually restrained by paramedics and taken away on a stretcher.

The article contained three links to other stories about relationship break-ups by text, and invited readers to share their worst break-up stories, photos and videos.

The article received a considerable number of comments from readers, mostly derogatory about the woman’s bizarre behaviour in a public place.

The Complaint

Mr Hanks complained that the framing of the article and use of the video risked stigmatising people suffering from mental illness, or those having a mental health episode.

He believed the value of the story was minimal, served no public purpose, and was manifestly out of proportion to the plight of the young woman.

He complained that the focus of the story seemed to be about little more than ridiculing a person having a distressing

episode and objected to the use of the words “epic breakdown” and “threw a tantrum in the street”.

In the bigger picture, he said, the Stuff article had done harm to the issue of mental illness; it had put those who suffer from mental illness on notice that a public episode may result in their distress being broadcast publicly, further adding to their feelings of isolation and vulnerability and of being rejected by society.

He urged Stuff and other publications to play a more valuable role in developing the public’s understanding of mental illness.

In his response to the editor’s point that there was no evidence that the person was suffering from a mental health problem, Mr Hanks asserted that it was the duty of media organisations to ascertain with certainty that a person does not have a mental illness before deciding to publish.

He claimed the fact that the woman was not identified by Stuff was irrelevant as the issue was the perception of her mental condition, which he believed is what can perpetuate stereotypes and stigma.

The Response

The editor of Stuff.co.nz, Patrick Crewdson, denied that the story was framed as a mental health breakdown in action, and said it was “simply one person’s outsized reaction to a relationship breakdown”.

“It is not for us to speculate on the mental health of the woman,” he said.

He submitted that the story did not breach Principle 4, Comment and Fact, as there was no muddling of comment or opinion and factual information.

On principle 8, Discrimination and Diversity, the editor argued that it was not possible for Mr Hanks to allege that the article and video constituted discrimination against someone with a mental illness without any evidence that the subject of the story was actually suffering from a mental illness. The story did not place “gratuitous emphasis” on the woman’s mental health because it was not established that she has a mental health problem.

The woman was not identified in the story or in the video in which her face was blurred out.

There could not be any reasonable expectation of privacy for a 90-minute tantrum in one of the world’s largest and most densely populated cities, he said. The video, which from Stuff’s point of view came from a local Hong Kong TV network, not YouTube as the complainant believed, had been widely covered by international media.

He said the fact that the woman was dumped by text message fed in to ongoing discussion on Stuff about modern dating etiquette.

Discussion and Decision

The bizarre “90-minute tantrum” which took place on a busy street in the Kowloon downtown district of Tsim Sha Tsui was picked up by several international media organisations, including Stuff.

The purpose in running it on Stuff was supposedly to feed in to an ongoing discussion about modern dating etiquette. The video’s actual newsworthiness and the somewhat voyeuristic nature of its content may be questionable, but no Press Council principles were breached: there was no evi-

dence to suggest that she was suffering from a mental health problem, and she was not identified.

The use of sensationalist stories to sell newspapers and magazines is hardly new, and “click bait” whose sole purpose is to drive traffic to a website is now commonplace on the internet; this story is just one of many.

The complaint is not upheld.

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

CASE NO: 2462 – TOM HUNSDALE AGAINST NEW ZEALAND HERALD

Tom Hunsdale’s complaint concerns the headline to an article published in the *New Zealand Herald* on September 2, 2015 which related to the issue of a potential new flag for New Zealand. The headline, which read “Revealed: Plots to gerrymander flag referendum” is said to be misleading, incorrect, with the potential to influence the outcome of a democratic process because the whole tone portrays opponents of the flag change as underhand and/or evil.

The Complainant’s Position

The complainant considers the headline has a sinister connotation. He submits the dictionary definition defines ‘plot’ as “a secret plan or scheme to accomplish some purpose, especially a hostile, unlawful or evil purpose.” He also states that the use of the prefix ‘revealed’ implies that the author has got information that was somehow being kept hidden or secret. He considers this to be totally misleading.

He considers that politicians and others saying they are going to vote for the worst option, to derail the process, is neither secretive, evil, illegal nor harmful. He said this is simply a campaign, which is no different from those supporting change. In a further complaint, he objects to the use of the word ‘gerrymander’ in the title.

The New Zealand Herald’s Response

The editor responded to the complainant and accepted that, strictly speaking, there was nothing secret to be revealed. He went on to say that ‘plots’ could also have been called ‘ploys’. He said, adopting the definition of the complainant, supporters of a particular flag would probably consider it harmful if opponents were urged to vote for their least preferred option in the hope of retaining the current national flag, which would face a weaker contender in the run-off. He pointed out that the chairman of the Flag Consideration Panel called such an approach “unpalatable and unattractive”. He rejected the complaint, and he offered the complainant the opportunity to submit a letter to the editor for possible publication, which was refused.

Decision

Principle 9 of the Press Council principles reads:

9. 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.

The question of flag change and its cost is a subject that has generated significant public debate. We consider nothing

wrong in the use of the term ‘revealed’, as the article clearly reveals for the first time to the general public, many of whom would be unaware, the intentions of others to vote strategically at the referendum. Nor do we consider there is any issue with the use of the term ‘gerrymander’, which was a term used in the article by the Flag Consideration Panel Chairman, Prof John Burrows QC who stated:

I hope there won’t be much gerrymandering because I think people have got to see what an important occasion this is.

He went on to say:

It’s the one chance people have in their lifetimes to do it. So to actually waste a vote for political or other reasons I think will appear to most people as unpalatable and unattractive.

While we accept the dictionary definition of ‘plot’ put forward by the complainant, we consider in contemporary colloquial usage it has a wider meaning. It seems to us the word is often used in colloquial usage to mean a group of people agreeing a course of action for a pre-determined outcome. (A simple example will suffice. If it was reported, “the All Black coaches plot a strategy to beat Australia”, no reasonable reader would imply this was “hostile, unlawful or evil”.) In this case a number of people spoken to indicated that they would vote for the weakest of the four candidates at the referendum, which means, quite clearly, that if they were successful, what they perceived to be the weakest candidate could well go forward to compete in the second referendum against our current national flag. This is a plot, but it does not carry with it the pejorative terminology that the complainant applies.

In those circumstances, we do not consider the use of the word to carry the meaning attributed to it by the complainant.

We are also satisfied that the definition relied on by the complainant does not go as far as he suggests, as can be seen by the wording “especially a hostile, unlawful or evil purpose”. This shows the last three terms do not always apply.

In our view, it is overwhelmingly clear that the headline in this instance accurately and fairly conveys the substance of the story and key elements of it. There is no breach of the principle. The complaint is not upheld.

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

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

CASE NO: 2463 – DAVID MACK AGAINST THE WANGANUI CHRONICLE

David Mack complained that a report in the *Wanganui Chronicle* headed, ‘Mack strikes again, in US’ contained inaccuracies and the newspaper had made no effort to contact him. The complaint was upheld.

The *Chronicle* reported that Mr Mack, a bankrupted marketing executive who had left a trail of debts in Wanganui, had “resurfaced” in the Texas city of Plano as a director of a company called Propaganda Methodology. The newspaper had received an email from one of his business associates in

Plano, Hobie Thompson, who sought more information on Mr Mack saying, “it looks like I am the latest victim of his shenanigans”, and “he’s up to his old tricks”.

In addition to reporting Mr Thompson’s comments, the story referred to reports in the *Houston Chronicle* that suggested Mr Mack was involved in legal disputes with debt collection agencies there in 2013 and 2014.

Mr Mack denied that he filed the law suits reported in the *Houston Chronicle*. He said there were 52 David Macks in Texas. The *Wanganui Chronicle*’s story was inaccurate also in describing him as “Kiwi-born” and in stating Hobie Thompson had been his “50-50” partner.

Mr Mack told the Press Council he had no knowledge of being adjudged bankrupt in New Zealand in 2010, when he had left the country. He denied other facts in the *Chronicle*’s report, including that he owed \$5000 to the musical director of a Wanganui production of the musical Chicago, and he could not remember others who claimed he owed them money. He considered it inaccurate to say his failed company owed \$144,000 since one of the creditors, owed \$380,000, was Mr Mack himself.

He complained that the *Wanganui Chronicle*’s reporter did not contact him to seek comment or clarification of the matters raised. Since Hobie Thompson’s message had told the newspaper where Mr Mack was, and the reporter had “liked” his company’s Facebook page, there was no excuse not to seek both sides of the story.

The Newspaper’s Response

The editor, Mark Dawson, denied that the newspaper or its reporter on this story had any bias or agenda against David Mack. Nor did the fact that the *Chronicle* was still owed money by Mr Mack have any influence on its reporting. The newspaper’s previous story of Mr Mack was more than four years earlier. During his time in Wanganui the *Chronicle* had printed favourable stories on him.

Mr Dawson said the newspaper had no means of contacting Mr Mack for its latest story.

He conceded Mr Mack was not “Kiwi-born” and apologised to him for that error. He had found that a factbox accompanying the story also contained an error. It said Mr Mack had been declared bankrupt in 2008. In fact he was declared bankrupt twice by New Zealand courts, in 2004 and 2010.

The editor said Hobie Thompson had been described as a “50/50 partner” in the sense that he and Mr Mack were equal partners, not that each held 50 percent. Mr Dawson supplied the Council with previous reports from the *Chronicle* and the *National Business Review* quoting Wanganui business owners and others who said Mr Mack owed them money and had left the town without settling their accounts. The complainant was adjudged bankrupt in New Zealand in 2010, in his absence. It was true that when Mr Mack was made bankrupt in 2004 his company had outstanding debts of \$440,000, and Inland Revenue was listed as a preferential creditor. Mr Dawson supplied the liquidator’s report.

The Decision

It is clear that Mr Mack left a many debts in Wanganui and the news of his subsequent exploits in the United States would be of interest to the *Chronicle*’s readers. The two er-

rors the editor has acknowledged were minor and not serious enough to uphold a complaint. Of the remaining factual issues the most serious was Mr Mack’s denial that he had brought civil actions against debt collection agencies in the US. The editor was not able to verify that the complainant was the David Mack named in *Houston Chronicle*’s reports.

It is difficult to accept Mr Dawson’s contention that his newspaper had no means of contacting Mr Mack before publishing the story. It was in touch with Mr Thompson who could surely have told it how to contact Mr Mack if it had asked. It ought to have given Mr Mack an opportunity to comment on Mr Thompson’s allegations that he was up to his old “shenanigans” in the US. Its failure to do so is the sole ground on which the complaint was upheld.

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

CASE NO: 2464 – NZ FEDERATION OF FAMILY BUDGETING SERVICES AGAINST STUFF

Introduction

Mike Curry, Service Support Manager for the NZ Federation of Family Budgeting Services, claims a story about the Responsible Lending Code, published by the Fairfax Media news website Stuff.co.nz, is fundamentally inaccurate.

The complaint is not upheld.

Background

Stuff.co.nz published a story on June 18 from a meeting of Parliament’s Commerce Select Committee.

It involved discussion around the implementation of consumer credit law reforms, including the Responsible Lending Code.

Labour MP and consumer affairs spokesman David Shearer raised concerns about lenders not being required to disclose total costs, i.e. the amount paid after interest rates had been added to purchase prices.

Shearer used the example of ‘mobile truck shops’ selling food goods to vulnerable people at exorbitant prices. The huge prices came not in the amount initially charged, but in the amount ultimately paid in the ‘lay-by’ schemes.

Shearer said it was a ‘huge omission’ of the recent Responsible Lending Code not to require lenders to tell buyers the total price they would ultimately pay.

According to the Stuff.co.nz report, Consumer Affairs Minister Paul Goldsmith acknowledged the issue of disclosing full costs should be looked at.

Complaint

The complainant said the story made several errors, one of which was key: That the Code did not require lenders to tell people the total price they would ultimately pay once interest rates were added.

Links to relevant clauses in the Code and the Credit Contracts and Consumer Finance Act were provided. They included one which said that, where lenders “referring to the amount of regular repayments for a particular term loan, include an indication of the total costs of borrowing...”

The complainant said the Stuff.co.nz story gave the im-

pression the Code was not worthwhile. But this was based on ‘omissions’ which were in fact included in the legislation.

A follow-up article, correcting the inaccuracy and linked to the original, was suggested by the complainant.

Response

The complaint was dealt with by Tracy Watkin, as Fairfax Media’s Political Editor.

The editor said the story was straight reporting of the Commerce Committee meeting.

Although the editor noted that the reporter had checked Shearer’s comments against the Code, she said the complainant’s actual issue seemed to be the accuracy of comments made by some MPs.

The accuracy of the MPs’ comments was separate to the accuracy of the meeting report.

The meeting was reported in a fair, accurate and balanced way. The balancing comment from Goldsmith did not dispute Shearer’s interpretation of the law.

Although not relevant to a claim of breach of Press Council principles, the editor pointed out the select committee meeting was covered by qualified privilege.

Discussion

The editor is right in that qualified privilege is not relevant to a claim of breaching Press Council principles.

However, the editor is also correct that the story was an accurate report of the select committee meeting. Because of this, the complaint is not upheld.

It is worth noting, however, that the editor should have addressed the issue of accuracy with the complainant.

Had it been determined that the information provided by the MPs during the course of the hearing was wrong, then it would have been preferable for the website to update the story or provide an accurate follow-up.

It is important editors remember their responsibility is to their audience, and to provide them with accurate and relevant information. The Council notes that it is not too late for the online version of the story to be annotated with a reference to the provisions of the Code.

Press Council members considering the complaint were Sir John Hansen, Chris Darlow, Peter Fa’afiu, Jenny Farrell, Sandy Gill, John Roughan, Marie Shroff, Mark Stevens and Tim Watkin.

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

CASE NO: 2465 – TITAHI BAY RESIDENTS ASSOCIATION AGAINST KAPI-MANA NEWS

Introduction

Titahi Bay Residents Association alleged that an article in the *Kapi-Mana News* on 16 December 2014 breached Principle 1 Accuracy, Fairness and Balance and Principle 12 Corrections of the New Zealand Press Council Statement of Principles.

The complaint was not upheld.

Background

The article was about a long running dispute between the Porirua City Council (Council) who want to demolish the Marines Hall (the hall) and groups who oppose demolition,

and covered a Council meeting where the recommendation for demolition was discussed. The groups opposed to demolition include the Titahi Bay Residents Association (TBRA). The article headline read “*Hall costs up to \$165,000*”.

The Council had provided *Kapi-Mana News* with information on costs already incurred in assessing whether the hall should be demolished or repaired and noted Committee recommendations to Council to demolish the hall. The report also noted supporters of repairing the hall filled the public gallery at the Council meeting and made their views known.

This complaint was accepted “out of time” as the complainant had difficulty in obtaining information from the Council resulting in a request for information under the Local Government Official Information and Meetings Act, and the time taken for TBRA to put the information together and obtain organisational approval to proceed.

Complaint

TBRA, through their Chairman Graeme Ebbett, stated that the newspaper knowingly misled readers by including information from a Council press release as though it was an authentic report of a Council meeting witnessed by the reporter when the reporter was not in attendance.

They believed that the article was loaded with biased information about excessive rate-payer costs to date and justification for demolition and included an incorrect comment attributed to TBRA that it was likely to appeal to the Environmental Court which would add to Council costs.

When TBRA sent a letter of complaint to the newspaper, the letter was published in the letters to the editor section and was edited in such a way that “destroyed the impact and relevance of the letter”. They also felt that the removal of Cr before Ken Douglas, a Council member, was a lack of respect towards Cr Douglas.

TBRA want *Kapi-Mana News* to publish an admission, apology and correction of facts.

The Newspaper’s Response

Newspaper editor Joseph Romanos replied that there is a long running dispute, or series of disputes, between Council and TBRA. *Kapi-Mana News* has reported on these issues over the years where they have been seen as newsworthy. *Kapi-Mana News* itself has no editorial position on TBRA. *Kapi-Mana News* simply reports matters as they arise.

Kapi-Mana News acknowledges that the reporter was not at the Council meeting, but stated that it is not unusual to report on events despite not attending. When this happens, newspapers follow normal journalistic practices. Relevant people are contacted and follow up calls are made where necessary. The complainant has also been contacted previously for comment on issues relating to Titahi Bay.

The reporter wanted to write a story about the funding surrounding the hall and asked the Council for information regarding financial details relating to the hall as he wanted accurate figures.

Kapi-Mana News received an email from Council with the costing details and following the Council meeting the reporter made calls to councillors and officials present at the meeting to check for accuracy before writing his report.

The Council meeting on 10 December was evidently heat-

ed and the hall was the major discussion point with this information coming from multiple sources.

In regard to the letter sent by TBRA being edited in such a way that destroyed the impact and relevance of it, this is incorrect. All letters received are treated fairly and equally. Some letters are edited for length, to avoid defamation or repetition, or simply because there is limited space. Also, the newspaper does not use honorifics and this was the reason for “Cr” not being used.

The letter writer has had many letters published over the years and to say that the criticism of *Kapi-Mana News* was removed is disproved when the first paragraph of the published letter criticised *Kapi-Mana News* and its coverage of the Council meeting.

The editor stated that when the complaint was received the reporter, on behalf of the newspaper, wrote to the complainant and followed this up with a telephone call. The reason being that the reporter had a long standing relationship with the complainant.

The editor stated that the newspaper deals with all complainants fairly, impartially and courteously.

Discussion

The article covered a long running dispute between the Council who want to demolish the Marines Hall and groups who oppose demolition, and covered a Council meeting where the recommendation for demolition was discussed.

The article contained information from the Council concerning costs to date and noted that supporters of fully repairing the hall, including Porirua Little Theatre, filled the public gallery and made their feelings known during the public speaking time.

The article was balanced and contained views from both sides of the debate and Principle 1 is not breached in this regard.

The reporter advises he made contact with relevant people to check information used was accurate and at no stage in the article does it state that the reporter was present at the meeting.

Newspapers do publish articles on issues where a reporter has not been present. The important aspect of this is that any information used is checked for accuracy. As this report shows there are risks involved in this approach.

In relation to accuracy the article quoted Mr Ebbett as saying TBRA was likely to appeal to the Environment Court. Mr Ebbett strongly contests this saying that no one could decide on an appeal to the Environment Court until the Council had actually granted itself a resource consent for demolition and any such consent would be against the heritage protection of its own District Plan.

The other inaccuracy related to the stated position of one of the councillors present.

Mr Ebbett sought to address these issues “in the interim” by publication of a letter to the editor. This the newspaper did.

The inaccuracies could have been dealt with in this way, or by correction or clarification. It was at Mr Ebbett’s request that a published letter to the editor was used and the Press Council finds this was sufficient to remedy the inaccuracies in the story. Principle 12 Corrections has not been breached.

Letters to the editor are published at the discretion of the newspaper concerned. The reasons given for editing of some letters received are standard for all newspapers. The style used by a newspaper regarding honorifics is the prerogative of a newspaper and not the domain of the Press Council.

Editing and style used by the newspaper in letters to the editor do not fall under Principle 12 which deals with a newspaper publishing a correction where facts have been proven wrong.

The complaint was not upheld.

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

CASE NO: 2466 – WOMEN’S HEALTH ACTION AGAINST WAIKATO TIMES

Women’s Health Action complained about an article published as front-page lead in the *Waikato Times* on July 22, 2015 headlined “Mum says rape charges (words in smaller blue font) BULLS*** AND JELLYBEANS (words in larger black font)”. The article was also posted on Stuff under the headline “Top Waikato cricket player ‘set up’ on rape charges – mum”. The article arises from proceedings in the Hamilton District Court, where charges of indecent assault and sexual violation by rape in respect of two victims were laid by the Police against Scott Kuggeleijn, a Northern Districts cricketer.

The article, and in particular the headline, gave prominence to the views of the cricketer’s family, who assert his innocence of the charges and their belief that he has been “set up”. The report covers various other matters dealt with in court such as bail conditions; and the cricketer’s sporting history.

The complaint is, on balance, not upheld.

The Complaint

The complainant cites a number of specific principles and general grounds including: breach of Press Council Principle 1 Accuracy, fairness and balance; breach of Principle 8 care to ensure that sources are well informed and reliable; breaches of general standards and expectations on the media to maintain “high standards ...and public faith”; and alleges that the report “amounts to litigating this case in the media before the facts are known”.

The complainant believes the report “does not simply report the news, in this case a young sportsman accused of rape and sexual assault, but promotes a certain view of the accusation and deals with the story in a way that is damaging both to the alleged victims and other victims of violence”.

The complainant says the decision of the *Waikato Times*, to headline the story with the opinion of the mother of the defendant that her son is innocent, was not fair, accurate or balanced and appears to blame the victims. In response to the editor’s comments, the complainant noted that the identity and details of victims are rightly unavailable; and that on the first appearance of a defendant to answer charges there is no opportunity to report the victims’ side of the story.

The Response

The editor says the job of the newspaper is to tell stories

and provide context. This story “reports fairly and accurately court proceedings in which Mr Kuggeleijn was the sole protagonist”. The report was of great interest to the public. The mother’s view adds to the story.

The editor notes victims of sexual offences are automatically granted permanent name suppression and there is no opportunity to report the other side at this stage of proceedings. The victims’ side of the story, as well as that of the defendant, will be reported and balance achieved when the case is heard in full.

Discussion and Decision

Given that the story was a report of charges being laid against a named defendant, with names and identities of victims suppressed, it was of its nature one sided. As the editor points out it is hard to give coverage to victims at this stage of proceedings.

Some coverage was given to the cricketer’s sporting successes; but it must be noted that the prominence given to the story by the *Waikato Times* and Stuff, along with the publication of a large, clearly recognisable photograph of the defendant (several more photographs of him were on Stuff) gave wide public circulation to the charges and to the identity of the defendant.

The young defendant now has these charges permanently on readily accessible public record through the medium of the internet, whatever the outcome of the court case.

The subsequent reporting of the court case and of both sides of the story should provide the opportunity over time to ensure that the paper fulfils its responsibilities to be fair, accurate and balanced.

The requirement for sources to be reliable is not relevant in this case. The identity of the mother and her unsurprisingly strong views about her son’s innocence were clear and reported as her opinion, and readers are able to reach their own conclusions.

The complainant also raises more general points about standards, public faith in the media and the tendency of the story to reflect badly on victims of violence.

In the Council’s view these general points cannot be sustained as grounds for upholding this particular complaint. The report was largely about charges laid against a locally well-known defendant, statements made in court on his behalf by his lawyer, his family’s reaction to the situation and some context. The story was of public interest.

The Council has generally regarded court reporting as a special category requiring high ethical standards, in the interests of justice to the individuals involved and the court system itself. In support of open justice, reporters are given special rights and privileges. The editor describes it as “a court story”.

In this case the report was presented in the *Waikato Times* as a front-page lead, with a large photograph of the defendant and a tabloid style headline “Bulls*** and jellybeans”. The source of this quote was the defendant’s mother. The headline was a conscious editorial decision to give colourful, tabloid treatment to a report of court proceedings which could have been presented and headlined more factually. (e.g.: “Local sports star charged with rape”.)

The Council’s principle requires that a headline “should accurately and fairly convey the substance or a key element”

of the story. The fact that a mother believes her son to be innocent of a charge is hardly a surprise, and does not convey the substance of the story.

However, it is relevant to the Council’s consideration of the headline that the *Waikato Times* story of July 22 was essentially a follow up to reports of the charges already covered by TV1 News and other national and international media on July 21. The mother’s comment was therefore a new angle on the story. The Council gave careful consideration to the points made by Women’s Health Action, but on balance has concluded the complaints cannot be upheld as breaches of the Council’s principles.

Complaints about the story and the headline are therefore, on balance, not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Peter Fa’afiu, Jenny Farrell, Sandy Gill, John Roughan, Hank Scoutens, Marie Shroff, Mark Stevens and Tim Watkin.

CASE NO: 2467 – COMPLAINT AGAINST ROTORUA DAILY POST

A woman who was the subject of a story on prostitution published in the *Rotorua Daily Post* on August 15, 2015 complained that the newspaper breached Press Council Principles 2 Privacy, and 11 Photographs and Graphics.

The complaint is upheld.

Background

On August 15, the *Rotorua Daily Post* published an article entitled “Oldest profession alive and well”, in which three women were interviewed about prostitution. The article was accompanied by a photograph of the complainant. Her face was obscured by her hair, but tattoos on her arms were clearly visible.

The Complaint

The complainant took issue with both the lack of copy approval and the image which accompanied the story; however the Press Council principles she cited relate specifically to the photograph.

With regard to copy approval, the complainant said that no attempt was made by the reporter to confirm her quotes. She said she had clearly indicated to the reporter in their initial off-the-record conversation that she wished to review a draft copy of the interview before it was published.

She complained that had she been afforded the opportunity to review her comments she may have requested that certain comments be excluded or modified.

She conceded that the published quotes were an accurate reflection of her comments.

On the matter of the photograph, the complainant said the reporter had assured her that the photograph would show her only in silhouette and that no distinguishing features would be revealed.

She said that assurance was a vital factor in her decision to proceed with the interview and photograph.

She complained that the photo which appeared clearly showed her “tattooed arms and dyed, styled hair”.

She had agreed that the photos she was shown by the photographer were of good technical quality; she disagreed that this could have been construed as her agreeing to their

publication in such a form (ie, minus silhouette or possible cropping).

She complained that the photograph that appeared had compromised her privacy which was an essential element of her trade.

The Response

The editor of the *Rotorua Daily Post*, Scott Inglis, said the woman approached the newspaper on June 24 after being referred by another sex worker for a story it was planning on the city's sex industry.

In an initial-off-the-record conversation the reporter said she would be happy to show the woman her comments before publication, but at no time did the complainant indicate during that conversation that this was what she wanted.

The article was subsequently delayed until August. When the reporter contacted the complainant again, she asked if she would be willing to be photographed, and mentioned a silhouette photo that would not show any identifying features.

On the day of the interview, the photographer explained what sort of photo he was after; the complainant raised no objection. He showed her versions of the photo on his camera and she indicated she was fine with them.

The reporter and photographer maintained they were both satisfied at the time that the woman understood the photos she had been shown could be published, and they had her blessing. They were under the clear impression that when the complainant saw the photo on the back of the camera, this superseded any earlier discussion regarding a silhouette.

On the day of the interview the complainant did not ask to see her comments before publication.

The editor pointed out that the complainant had said the article was accurate.

He said the reporter and photographer were adamant they dealt with the complainant in good faith

Discussion and Decision

The matter of copy approval is vexed one for editors because giving interview subjects the opportunity to check their quotes for factual accuracy is often misconstrued as an invitation for them to change their minds about comments made, even if they have been reported correctly. That said, however, many subjects will only agree to be interviewed and/or photographed if they can have that approval, as appears to have been the case here.

The complainant is adamant that in the setting up of the interview and photoshoot, she was offered the opportunity to check her comments, and was assured that the photograph would be a silhouette which did not reveal her identity.

The newspaper argues that she did not mention seeing her quotes on the day of the interview, that she conceded the interview was accurately reported, and that her viewing the image on the camera was believed to have superseded the agreement to publish only a silhouette.

It is easy to see how the reporter and photographer could have believed they had dealt with the woman in good faith, and that she could have and probably should have made her feelings clear on the day of the interview. This presupposes however, that she had an understanding of editorial processes and deadlines. She clearly assumed she would be given

time to reflect on her comments and have the opportunity to change them if she so desired. It is also reasonable to infer that while the complainant did not object to the photographs she was shown, she may have expected the image to have been processed in such a way as to show her only in silhouette, as she had been promised.

The newspaper does not dispute the fact that in initial conversations, the complainant was offered copy approval, and was promised that the image would not reveal her identity. No matter what happened or was said on the day of the interview and photoshoot, it was its responsibility to follow through on both of those assurances and clarify the situation for the complainant. It did not.

The complaint is upheld.

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

CASE NO: 2468 – JACKIE ELLIOTT AGAINST KAPITI OBSERVER, THE DOMINION POST AND STUFF

Jackie Elliott, a member of the Kapiti District Council, complained about a report in the *Kapiti Observer*, also carried in *The Dominion Post* and on the *Stuff* website, headlined, "Bid to dump leader of public arts panel". Ms Elliott was chairwoman of the council's public art panel and the mayor proposed to replace her because the \$54,000 the council had budgeted to buy art was unspent. The complaint is not upheld.

The Complaint

Ms Elliott considered the newspaper's account unbalanced, harmful to her reputation and an attempt to discredit her. The mayor had made false statements, she said, and it was the newspaper's duty to check the facts. This was the latest in a series of articles concerning her that she considered lazy reporting. The reporter appeared to have no knowledge of how the public art panel worked and ignored the fact that senior staff had confirmed the budget for purchasing could be carried over to the next financial year.

Headlines such as, "Kapiti Mayor Seeks To Dump Councillor Over Growing Mountain of Cash" [the *Stuff* headline] were deeply offensive to her and had caused much distress to her extended family. When the reporter had contacted her about the mayor's proposal in the council agenda she had given him the email response she had sent to all elected members refuting the mayor's allegations. She had also urged the reporter to read the council's public art policy on its website.

The published story was factually inaccurate, she believed, because the council's art budget was required to be held over to enable purchases every two years. Her panel had met twice and would meet again when a senior manager returned from three months sickness leave. The panel had updated the council more than it was required to. While the story had devoted four paragraphs to her explanation, it also carried solicited comments from panel members without stating the questions put to them.

She had suggested another story to the reporter, about her concern that the council's proposed Code of Conduct for members was in breach of principles of natural justice. But

the reporter had angled that story on a 14-month-old Code of Conduct complaint against her. This was the third time he had written about that complaint and this time quoted the mayor making a factually inaccurate statement, which the reporter would have known if he had read the Code of Conduct policy.

The Kapiti Observer had failed to print more than 20 press releases she had issued and did not print her letters without seeking a rebuttal from the council. Yet it published letters critical of the complainant and did not print her replies.

The Editor's Response

The Editor in Chief for Fairfax Media, Central Region, Bernadette Courtney, said she had been assured the *Kapiti Observer's* reporter had read the council's public art policy though he was under no obligation to tell the complainant so. Ms Courtney, from her reading of the policy, noted that it required prior approval for the panel to carry over its budget for purchases to the following year, and this did not appear to have happened.

Other details mentioned in the complaint were covered in the story. The panel had not reported back to the council for months, as reported. The headlines were not misleading and the complainant had quoted them inaccurately. The website heading was, "Kapiti mayor seeks to dump councillor over growing cash mountain for art". *The Dominion Post's*: "Bid to dump leader of public art panel".

Regarding the Code of Conduct story, the Editor in Chief said its angle was not the complaint against Ms Elliott, it was that code of conduct complaints were mounting up against elected members, the council was refusing to release information about them, and was working out a process for dealing with them.

As for printing the complainant's press releases, the *Kapiti Observer* rarely, if ever, ran councillors' press releases. Those worthy of a story were followed up by a reporter. The complainant's views had been well aired in the newspaper. In the past year it had received three letters from her and run two of them. No response was sought from the council to either. A response from the complainant to a letter about her appeared in August last year. The only other letter from her, received in March, was a response to a letter in which she was not named. Her letter accused another councillor of bullying and suggested the police lay a charge of verbal assault. The editor had decided not to run it.

The newspaper had published letters in support of the complainant over the years and had shown no bias against her.

The Decision

The story and the headings are accurate. As an account of the mayor's concerns about the leadership of the public art panel, the story was balanced and fair. It gave four paragraphs to the explanation from the complainant. In response to the Editor in Chief, Ms Elliott elaborated on a number of facets of the art panel's work, or lack of it, that she believed should have been in the story. None of those details were serious omissions in the Press Council's view.

It was not the reporter's job to interpret the council's art purchasing policy or to declare whether she or the mayor

was correct.

The additional story about the complaints accumulating under the Code of Conduct was not "angled" on the 14-month old complaint against her. It reported that four complaints were awaiting attention while the council discussed how to deal with them. It mentioned the complaint against Councillor Elliott as an example and did not dwell on it unduly.

The newspaper was under no obligation to print press releases. The complainant's allegations about the treatment of her letters were categorically refuted by the Editor in Chief who stated how many letters have been received and how they were handled. The complainant did not dispute the Editor in Chief's response on these points. Her argument was with the mayor of Kapiti District, not the newspaper that reported his concerns.

The complaint was not upheld.

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

CASE NO: 2469 – FALUN DAFA ASSOCIATION OF NEW ZEALAND Inc AGAINST CHINESE TIMES

Background

The Falun Dafa Association, through Kerryn Webster of Auckland law firm Wilson Harle, has complained about an article in *Chinese Times*. Members are practitioners of a spiritual practice often called Falun Gong. The article, according to the translation, is headlined 'Falun Gong practitioners congregate in front of the consulate on a long-term basis' and sub-headed 'Chinese community groups join forces to remonstrate with them'. It was published on B4 of the *Chinese Times* on Saturday July 18.

The *Chinese Times* has no formal association with the Press Council, but agreed the Council should determine the complaint and provided a response. They also confirmed that the translation provided was an accurate account of the published material.

The article itself is a single paragraph about a protest outside the Chinese Consulate by Falun Dafa members and the efforts of others to convince them to move on.

The story is accompanied by a longer 'Joint Declaration' by five Chinese community groups from around New Zealand, which argue a "group of remonstrators" made two visits to the protest. It describes Falun Gong as a cult that is "slandering the Chinese government", "damaging the image of the Chinese people", and blocking the footpath to pedestrians. The groups have complained to the Auckland Council about Falun Dafa's "long-term occupation of the footpath outside the Consulate General entrance".

The article and joint declaration are separated by several photographs of placard-bearing protesters and remonstrators.

Complaint

The Falun Dafa Association argues the article (including the Joint Declaration) breaches the principles of accuracy, fairness and balance, comment and fact, and conflicts of interest.

On **Principle 1 Accuracy, fairness and balance**, Webster writes the report gives an inaccurate and misleading version of events. The Falun Dafa members present say it was the 30-40 protesters blocking the footpath, not the 10-12

practitioners. Further, police arrived and told the remonstrators, not the practitioners, to leave and said the practitioners were within their rights to protest.

In regard to the declaration, Falun Dafa argues it is not a cult, nor does its criticism of Chinese government policy discredit the Chinese people or government. Webster writes that the declaration is “essentially an extended quote or vehicle for the publication of the views of those associations”.

Falun Dafa was offered no right of reply, Webster adds, and despite repeated requests has still not published a response. Finally on this principle, the Association says it has been in contact with Auckland Council; the footpath complaint has been investigated and dismissed.

On **Principle 4 Comment and fact principle**, Webster writes this page was in the Community News section, yet argues the facts of the article, including the declaration, are inaccurate. “The placement of the ‘joint declaration’ within the article tries to mask the controversial opinion piece as an objective, factual report of events”, she argues.

On **Principle 10 Conflicts of interest**, Webster relies on comments made by one of the *Times*’ editors – Ms Wu – who told Falun Dafa members at a July 23 meeting to discuss their complaint that the newspaper would not print their side of the story as content had to be approved by the Chinese consulate and such approval would not be forthcoming. “The publication appears to be a mouthpiece of the Chinese Consulate... This is at odds with the fundamental principle that the press should be free and independent,” she writes. She wants at least for the Council to find that the *Times* should disclose its allegiances.

Editor’s Response

The *Chinese Times* editor informs us that the Joint Declaration was a paid advertisement, so it is therefore outside the jurisdiction of the Council.

On the matter of the conflict of interest, the editor denies the claims that the material published in her newspaper is approved by the Chinese consulate. She says Ms Wu did not say what the Falun Dafa members claim and that the *Times* is an independent publication.

The editor insists that the report published is “not unbalanced” and Falun Dafa members were not interviewed because their exercises outside the consulate have been going on a long time and are not news. Moreover, she writes, the comments by the practitioners were “subjective emotion” and therefore not “pertinent and objective”.

Discussion and Decision

The Council notes that our ruling is on the reportage only; we make no comment on the rights and wrongs of the argument between the parties.

It is not disputed that the article covers events that took place on the day and at the place reported. But beyond that the report falls short in its obligations to be an accurate and balanced news story. It gives voice to the remonstrators and even describes the weather, but fails to balance the story with the views of the Falun Dafa members. It generalises by claiming the remonstrators spoke “on behalf of the Chinese community” as a whole, when we can assume a diversity of opinion.

The editor’s view that the practitioners’ actions were emotive, and neither pertinent nor news does not excuse

reporting on the event without balance. It is unfair to criticise the practitioners without giving them a right of reply either in the story or in a follow-up piece or letter to the editor. By doing so, the *Chinese Times* has failed to ensure the accuracy of the article as well; the article claims the “protest was peaceful and reasoned throughout”, yet Falun Dafa says police were called and the remonstrators asked to leave. The editor does not dispute this, so we can only go on the practitioners’ version of events. The complaint against Principle 1 is upheld.

The Joint Declaration is an advertisement and beyond our mandate to rule on the content. The complaint against Principle 4 is not upheld.

However the Council is concerned that it was not clearly labelled as an ad, but rather was made to look part of the article. The editor is responsible for all a newspaper’s content and it is her/his obligation to make it clear to readers what is paid advertising and what is journalism. The *Chinese Times* failed to do this.

The practitioners make the serious claim that the *Chinese Times* has a conflict of interest – and indeed is answerable to – the Chinese Consulate. The editor, however, strongly rejects that allegation and as those facts are disputed, we are unable to rule on that point.

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

CASE NO: 2470 – NEIL HENDERSON AGAINST THE GISBORNE HERALD

Neil Henderson has complained under Principle 1 (accuracy fairness and balance) and Principle 4 (comment and fact) about the publication of an article on August 21, 2015 in *The Gisborne Herald*, which covered an official US report that July 2015 was the hottest month on record due to climate change and El Niño, after the newspaper’s refused to print his letter that took issue with the temperature data referred to in the article.

The complaint is not upheld

Background

The Gisborne Herald published an article on August 21, 2015 sourced from the BBC under a Washington dateline headed “July was Earth’s hottest month on record: NOAA”. It explained how scientists at the US National Oceanic and Atmospheric Administration in a report said July was the hottest month since records began by a margin it described as significant in weather records. The record was put down to climate change and the impacts of the El Niño weather pattern.

Mr Henderson wrote a letter to the editor taking issue with what he called “the latest propaganda” from the NOAA and citing satellite data which he said told a different story. Publication of attempted redraft by Mr Henderson, following an offer from the editor to run part of the letter, was refused after an exchange of emails.

The editor had, in November 2013, adopted a policy of “rejecting more climate change denial letters”... after what he believed was a long time airing the various views including rebuttals. But he said the paper would not close off av-

enues to questioning elements of climate change entirely, especially the latest scientific findings, political responses and the actions needed to mitigate and adapt to climate change.

The Complaint

Mr Henderson conceded that the article accurately and fairly represents the NOAA findings, but argued it did not report an “alternative more or less equally valid” satellite temperature series so did not accurately portray global temperatures in July. The satellite data showed, he said, that July was in fact cooler than July 2014, not as the report claimed from its data the hottest on record. He also argued that because the interpretation of such data is in part subjective the article should not have represented them as fact - hence his contention it breached Principle 4 (comment and fact).

He later conceded he should not have called the NOAA announcement propaganda, but said the publication of the article would be more correctly labelled in that way. He also raised in comparison the regular publication of contributions by Bob Hughes, a writer supporting man-made climate change. He contended in his letter he was not debating the science, but the differing sets of global temperature data, and was not trying to mislead anyone. “People need to be aware that alternative view points exist”

The Response

The editor Jeremy Muir replied that the NOAA claim was widely reported and he had no reason to doubt it “unlike your correspondence over the years” which he also described as “exhaustive”. He said Mr Henderson’s statements and claims “seemed designed to mislead and confuse the public” on the issue. He also said he did not want to restart the process of going to scientists James Renwick or Jim Salinger and taking up their time on a response to Mr Henderson’s letter (although he did seek Mr Renwick’s view). He said it was up to the editor whether someone’s opinions were published or not. Mr Hughes views would be considered extreme by many, but he did base them on scientific findings.

He also noted - and Mr Henderson referred to this too - that the paper had run much debate on the topic including the views of Mr Henderson prior to 2013.

In summary he said it was not a question of reflecting different view points, but of “science versus attempts to rubbish the science” and what he saw as an attempt to purposely mislead the public. “It’s not healthy debate, it is corrosive.”

Mr Muir said the issue was not one of balance and fairness but about “inaccuracy and unbalance” from climate change sceptics.

There was scope, though, to question policy responses, including from the stand point of those who believed the climate was not changing dangerously or that humans were the main cause.

He opined it would be useful for the Press Council to label complaints like this “vexatious” and even consider adopting a policy along the lines of many news organisations “to discourage the often obsessive human-induced climate change denialists”.

Discussion.

The Council accepts Mr Muir’s argument that it is the right of editors to decide which opinion pieces, including letters, to run. Moreover, his policy set in November 2013 is in line

with the stance taken by several major overseas newspapers such as the *Guardian*, the *Los Angeles Times* and the *Sydney Morning Herald*. An online search also shows that as well as the BBC other major outlets, including CNN, also ran the NOAA conclusion without comment from anyone taking issue with it. The same search also shows a raft of views expressed, especially in the US, from what could broadly be called climate change sceptics making much the same point as Mr Henderson and also pointing to what they saw as contradictory data in satellite records.

First Mr Henderson argues that the article breaches Principle 1 on fairness accuracy and balance because while he concedes the article accurately reflects the NOAA’s findings it does not report the alternative “more or less equally valid” temperature series he says is affirmed by the IPCC which portrays a different view.

However, the article does accurately and fairly covers the detail of that report. It does not have to weigh all the possibly available data and provide the definitive global temperature for July in order to provide an accurate article.

The Council has previously discussed (in a complaint by Bryan Leyland against the *NZ Herald*, case number 2308) the right of newspapers to consider the science “settled” on climate change and not cover every dissenting opinion on such a broad subject to achieve balance.

The Council’s principles also allow an exception from the requirement for balance for long running issues where the various views have been well canvassed. Climate change has now become such an issue.

Mr Henderson argues, somewhat disingenuously given his views expressed elsewhere in the exchanges with the newspaper, that he is not debating the science of climate change in his letter, but pointing out the validity of the other data. We do not accept that takes the matter outside the general exemption.

The complaint on Principle 1 grounds is not upheld.

Secondly, Mr Henderson argued that because the temperature data analysis involves a measure of subjectivity it breaches the Council’s principle on Comment and Fact (Principle 4).

The principle states that a clear distinction should be drawn between factual information and opinion or commentary and that articles that are clearly opinion or comment are clearly presented as such.

In the Council’s opinion it would be drawing too long a bow to say that the principle would be breached by articles which accurately report the analysis and conclusions of experts or groups just because other conclusions could be drawn.

The complaint on Principle 4 is not upheld.

However Mr Henderson’s complaint does raise issues on which the view of the Council may be helpful. So too do Mr Muir’s call for such complaints to be declared “vexatious” and the newspaper’s 2013 decision to severely limit the publication of the views of climate change sceptics. The Council would be reluctant to label any complaint as “vexatious” and has a policy of treating all complaints with respect and due consideration. However, it would be fair to say that unless the scientific consensus on climate change shifts markedly, or important new information comes to light, it is unlikely complaints alleging lack of balance, because the climate

change sceptic viewpoint is not included, will be successful.

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 *Gisborne Herald's* 2013 policy on climate change scepticism goes further, by curtailing one aspect of one side of the debate.

As noted above, it is in line with the views taken by other outlets; that the debate has been long, free speech has been allowed its voice and now, with the science well established, the arguments on one side have little merit and will by and large not be published.

As the editor of the *Los Angeles Times* put it in 2013: "Simply put, I do my best to keep errors of fact off the letters page; when one does run, a correction is published. Saying 'there's no sign humans have caused climate change' is not stating an opinion, it's asserting a factual inaccuracy." Letters claiming there is no evidence humans cause climate change will not be published.

In 2013 the *Sydney Morning Herald* stated, a letter which claimed "there is no sign humans cause climate change" would not make the grade.

The policy of the *Guardian* letter editor in Britain seems the most balanced approach and one the Council believes is in tune with the needs of free speech, an editor's role, and the recognition that science can reach a consensus but certainty is more elusive - or to put it another way all scientific truths are potentially "provisional".

In the *Guardian's* view "you should never absolutely rule out views heretical to the scientific orthodoxy, even if cautious to give them space. So I would be unhappy about an absolute ban on those who might be grouped together as climate change deniers, but would need to see a strong case to run anything from them (and know something about what commercial interests they might be linked to)."

The Council does not believe Mr Muir has breached Principle 5 that states letters for publication are the prerogative of editors who are to be guided by fairness, balance and public interest.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Peter Fa'afiu, Jenny Farrell, Sandy Gill, John Roughtan, Vernon Small, and Tim Watkin.

CASE NO: 2471 – KEITH JEFFERIES AGAINST STUFF AND DOMINION POST

Keith Jefferies has complained that an article in *The Dominion Post* (Page 3) of 15 August and Stuff.co.nz online articles of 14 and 15 August breached Press Council Principle 1 (Accuracy, Fairness and Balance). *The Dominion Post* headline was "Lawyer convicted on drugs charges" whilst the online article was "Wellington lawyer pleads guilty to drugs charges and gains convictions."

Both the printed and online articles focused on a lawyer in private practice, Keith Jefferies, who was fined \$1,300 after pleading guilty to possession of methamphetamine (meth) and other drugs.

The articles also covered Mr Jefferies views on the conviction and his plans to appeal against the conviction.

The Complaint

Mr Jefferies complains that both articles breached Press Council Principle 1.

He contends that the articles are unbalanced and aspects of it "entirely misleading and inaccurate". He believes that an apology from the publication was required.

Mr Jefferies also believed that the Stuff article has "a nasty out of context statement in the last paragraph" which was not mentioned by the Judge or Counsel at his hearing. He contends that the journalist should not have inserted it in an isolated way as it had the intention of denigrating him in addition to the whole article lacking balance.

In his final comment to the Press Council Mr Jefferies sought to raise a further inaccuracy. As this was raised more than two months after the complaint was lodged and had not been raised with the editor at any stage, the Press Council has not considered that point.

The Response

The Dominion Post Editor in Chief (Central Region) responded that the paper and Stuff.co.nz did not breach the principles cited. In regards to the Stuff article, the editor acknowledged that the judge in his consideration had indicated that Mr Jefferies 'might' expect further consequences for his conviction rather than 'should'. Stuff amended the article in a timely manner in accordance with Press Council Principle 7. Stuff also did not accept Mr Jefferies' claim that the online article had wrongly included previous media coverage of controversy he had attracted in relation to comments made in a previous case.

The editor also rejected the claims made against the published article. The story was balanced. A second reporter had conducted an interview with Mr Jefferies via cellphone. The discussion as asserted by the editor was about the potential for further issues to arise for Mr Jefferies from the conviction including the prospect of a Law Society investigation. Mr Jefferies stated during the cellphone interview that he planned to appeal the sentence and offered his opinion that the convictions were not serious enough to merit being struck off as a lawyer. The editor said that this was all covered in the article.

The Decision

Mr Jefferies said that the defense counsel should have been interviewed in order to provide balance however the editor stated that interviewing Mr Jefferies by phone following the hearing provided the required balanced. The Press Council agrees with the editor.

Mr Jefferies complained that the article should not have carried reference to a previous statement that was out of context to this hearing. The majority of the Council thought it was appropriate to mention this. Mr Jefferies is an extremely high profile criminal barrister and interest in his earlier cases, including infamous comments, is inevitable. We see no breach of the relevant Principle and the complaint is not upheld.

The Council acknowledges that the convictions and the subsequent media coverage could have an impact on Mr Jefferies' career. However the Council can only adjudicate on the media coverage before it.

The online article did have an inaccurate statement, how-

ever this was acknowledged and swiftly amended by Stuff.

The published article did have an inaccurate description of Mr Jefferies' title and again the Council agrees that the amendment in the following Monday's edition had also satisfied Principle 7.

On Principle 1, the complaint is not upheld.

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

CASE NO: 2472 – EAMON KING AGAINST THE STAR

Eamon King complains that a photograph published in *The Star* newspaper on 16 September 2015 breached the Press Council's Principles 2 (privacy), 9 (subterfuge) and 11 (photographs and graphics).

The story related to a fire in a house at Opawa, Christchurch. The property is owned by the complainant and his wife. As part of the story the newspaper published two photographs, the first being an image of the house taken from the street and the second being a shot of a bedroom in the house which had been extensively damaged by the fire.

The complaint is not upheld.

Background

The Star's story covered the fire which had broken out during the day. The complainant's wife was at home asleep at the time. The house was fitted with a smoke alarm. The alarm woke the complainant's wife. She narrowly escaped the blaze with the family dog. The story reported a senior fire officer as describing the woman as being "very lucky". The incident demonstrated the need for houses to be fitted with smoke alarms.

The Complaint

The complainant says that the story breached the Council's principles referred to above through publication of the image of the damaged bedroom. The complainant acknowledged that no objection could be taken over the photograph of the damaged house taken from the street.

The complainant says the photograph of the house interior:

- (1) "was obtained illegally by way of trespassing by the photographer"; and
- (2) showed the main bedroom (which is subject to a reasonable expectation of privacy)".

The Response

The Star responds by denying that the story breaches the parties' right to privacy or that the photographer somehow acted wrongly by entering the property. The newspaper says the property was entered with the permission of the fire officer in charge at the scene, the officer allowing the photograph of the interior to be taken. The newspaper says that it believes its staff acted responsibly. The newspaper points to the story's thrust, namely, its emphasis on the importance of smoke alarms together with the complainant's wife's responsible actions immediately she woke. The newspaper points to the fact that there had been a number of house fires which have included "deaths and near misses" in Christchurch in recent times.

The Decision

The Press Council finds that there has been no breach of the principles relating to subterfuge and photographs in this case. The photographer did not enter the property surreptitiously or without indicating who he was. The photograph taken of the bedroom was not manipulated or published out of context.

The photographer entered the property with the authorization of the officer in charge of the scene. The officer derives his authority from the Fire Services Act 1975 and the Council is of the opinion that the photographer's actions were entirely legitimate, at the time.

However, in publishing the photograph the newspaper must take the Press Council Principles into account.

The question as to whether the principle relating to privacy has been breached is finely balanced. The relevant principle provides that "everyone is normally entitled to privacy of person, space and personal information". There is a qualifier. The principle further provides that "nevertheless, the right of privacy should not interfere with publication of significant matters of public record or public interest".

The complainant has, at first glance, made out a breach of the privacy principle. The photograph showed the interior of a bedroom albeit badly damaged.

Against this however is the question of public interest. It would appear in this case that had a smoke alarm not been installed the outcome could have been tragic. It was appropriate for the newspaper to draw its readers' attention to the risk of residential fires and the need for precautionary devices to be installed. The Council notes that the photograph of the interior was not revealing as to any items of a personal nature. Rather the image graphically illustrated the damage fire can quickly cause. The room was so gutted as to, in the Council's view, make it virtually indistinguishable from any other fire damaged interior. On this basis the Council takes the view that in this instance the public interest overrode the complainant's right to privacy.

The complaint is not upheld.

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

CASE NO: 2473 – MICHELLE ROGERS AGAINST THE NEW ZEALAND HERALD

Introduction

Michelle Rogers says the *New Zealand Herald's* use of photographs of a dead Syrian boy on the news site nzherald.co.nz was distressing and breached Press Council Principles 3 (Children and Young people) and 11 (Photographs and Graphics).

The complaint is not upheld.

Background

The Herald published photographs of Aylan Kurdi both in stories and on the homepage of nzherald.co.nz on different occasions.

Aylan was a three-year-old Syrian boy who drowned when the boat he was in, with his family and other refugees, capsized off the Turkish coast en route to Greece.

Images of Aylan's body washed up on the beach and being

carried away by a Turkish police officer were used widely by media internationally. The boy effectively became the face of the Syrian refugee crisis.

Complaint

The complainant said photographs of Aylan on the homepage of nzherald.co.nz on different occasions in early September were upsetting, distressing and shocking and not something she would have chosen to view.

While she was upset, the situation would have been even more distressing for children who might have seen it. Some may have been worried that, should they die, their own photographs may be ‘splashed around the world’.

Further to this, Aylan’s own interests were not looked after by the *Herald* and the boy was not treated with respect and dignity.

Although the images should not have been used at all, *Herald* editors should have at least preceded them with a warning about their disturbing nature.

Response

The complaint was dealt with by Chris Reed, the editor of NZME’s news service, and the *Herald*’s morning editor.

Once the images first landed at the *Herald* via its Associated Press feed, there was discussion among editors about their use.

Initially, it was decided to use only one image, which showed Aylan being carried from the beach by the Turkish policeman. This choice was made because the boy’s face was not visible and it wasn’t obvious he was dead.

The editor notes that other images, of the boy’s body on the shore, were used by many other media outlets, including those in New Zealand. They showed his face and made it more evident Aylan was dead. They weren’t used by the *Herald* at that time because of the distress they may have caused.

Although the complainant would not have chosen to view the image, she did choose to visit nzherald.co.nz, which almost always carried significant hard news stories and images in prominent positions.

The photo was not shared on social networks to limit its spread beyond the *Herald* website.

The editor cited freedom of expression and argued there was an exceptional degree of public interest in the case.

Using the photos of Aylan was justified to stimulate debate and encourage action.

In regards to the lack of a warning, the editor agreed with the complainant after the issue was first raised. The photo was re-cropped on the homepage and the audience was warned about the distressing content they’d face going through to the article page.

A subsequent use of one of the images did not carry a warning because of the time that had lapsed. And, in that case, the image was published by staff at the *Herald*’s sister publication, *The Wairarapa Times-Age*, which was hosted on the nzherald.co.nz site, and was removed because it was a tight crop of the body on the beach.

A third incident complained of also didn’t carry a warning, but care was taken on image selection and cropping in regards to the homepage positioning.

Only one complaint about the particular image of Aylan being carried by the policeman was received by the *Herald*.

New Zealand media are duty bound to report on significant domestic and international events. Using the images was part of the *Herald*’s responsible reporting of the Syrian refugee crisis.

Discussion

The photograph, albeit a distressing depiction of an extremely tragic event, is a valid news picture.

Its use by the *NZ Herald*, in all forms, is justified considering the magnitude of the international story it portrayed. In fact, the *Herald* was duty bound to cover what was a significant story and illustrate it in the way it did.

Use of the image as a historical record of the tragic events unfolding during the refugee crisis could, as the editor suggests, be considered an obligation of a responsible news organisation.

It is difficult to predict but one must wonder whether this image will forever be linked to the refugee crisis in the same way, for example, the dramatic Associated Press photograph of a napalm-burned Kim Phuc will continue to be the defining news picture of the Vietnam war.

Suggestions by the *Herald* editor that the picture’s impact was somehow minimised by the large number of other media organisations which also used it are irrelevant. A safety-in-numbers defence doesn’t stack up when an editor can’t assume readers have been exposed to the image elsewhere. Yes, it is likely users had seen it elsewhere, but the decision to publish on the *Herald* site sits solely with the editor of the *Herald*.

The wide circulation of the image internationally does, however, point to its news value.

Press Council Principle 11 (Photographs and Graphics) says images showing distressing or shocking situations should be handled with special consideration for those affected.

It would be difficult to argue that those affected by this tragedy could be any harder hit by the photo being published on a NZ-based news site. In fact, it has been reported that Aylan’s family were grateful the image was used so widely because it shone a light on the plight of Syrian refugees.

Principle 11 also requires editors ‘take care’ when selecting images.

There is some merit in the complainant’s suggestion that readers could have been forewarned about the graphic image, effectively giving them the opportunity not to click on the homepage link through to the story.

The editor’s toing and froing on this point - not carrying a warning until a complaint was received, and then not again on a subsequent use because time had passed - is inconsistent and doesn’t help.

However, use of such graphic images prominently on a homepage - a news site’s shop window, so to speak - with or without a warning, will always be at the discretion of the editor. And, with a story of this significance, it could be argued that using it uncut on the website’s most prominent position was warranted.

In regards to Principle 3 (Children and Young People), exceptional public interest applies.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Peter Fa’afu,

Jenny Farrell, Sandy Gill, Vernon Small, Mark Stevens, and Tim Watkin.

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

CASE NO: 2474 – JAMES RUSSELL AGAINST STUFF

James Russell (the complainant) complained about an article published on the Stuff news website September 11, 2015.

He said that the article breached Principles 1 (Accuracy, Fairness and Balance) and 6 (Discrimination and Diversity) of the New Zealand Press Council Statement of Principles.

The complaint is not upheld.

Background

The article was headed “Religious tolerance concert banned from Nelson Cathedral due to Islamic content.”. A lead in to the article in the headlines on the Stuff home page, was “Church doesn’t tolerate Islam” along with an explanation sentence stating that “A concert for religious tolerance has been banned from Nelson Cathedral because it includes an Islamic call to prayer”.

The report covered a proposed concert by the Nelson Civic Choir (the Choir) of The Armed Man. The choir had applied to perform the concert in Christ Church Cathedral where it had previously been performed in 2007 but their application was declined by the current Dean as he felt it did not reflect the Cathedral’s values under his leadership.

The article provided a number of views of the ensuing debate from both sides.

Complaint

The complainant said that the article was unbalanced and inaccurate in stating that the Church was intolerant of Islam and criticised Christians who affirm biblical beliefs. He went on to state that in his view both the lead-in headline and the article itself imply that the Church does not allow Islam to be practiced which is incorrect.

He states that the article paints Christians as intolerant bigots when in fact the Dean had a right to his belief that allowing the concert to take place in the Cathedral would be compromising biblical beliefs. The Cathedral is a private place of Christian worship and Islam, which is not a Christian religion, does not fit with the biblical beliefs of the Cathedral and those who worship there.

He believed that in publishing the article with that headline, the “journalist (and editors who approve it) were themselves being intolerant of Christian beliefs”.

He requested that Stuff publish an apology to the Dean and a more accurate article based on his submissions to them which they declined to do.

The Editor’s Response

In reply to the complaint, the editor said the article was clear coverage of the fact that the Dean had declined an application to hold the concert, The Armed Man, at the Cathedral and covered a wide range of views.

The article did not label the Dean personally as intolerant, but says “Church doesn’t tolerate Islam” which reflected the fact that the application to perform the play at the Cathedral had been declined because it contained Islamic content.

Based on the facts of the story, that the performance

would not be hosted at the Church because it contained Islamic content, both the headline and the story are accurate.

Balance was achieved within the article by providing diverse views canvassed in some depth and also by allowing the Dean a substantial right of reply.

Discussion and Decision

The article outlined the fact that the Dean of Nelson Christ Church Cathedral had declined permission for the Choir to perform The Armed Man, at the Cathedral, and that he declined the application specifically because the play contained Islamic content which the Dean felt did not fit with the Cathedral’s religious beliefs.

The article contained diverse points of view and extensive comment from the Dean which created fairness and balance. Accuracy was provided by allowing the Dean right of reply and the use of direct quotes from all those interviewed.

Had the initial home-page headline “Church does not tolerate Islam” appeared in isolation, the Council may have had some concern. However it was immediately followed by the sentence “A concert for religious tolerance has been banned from Nelson Cathedral because it includes an Islam call to prayer” which gave context to the statement. The headline to the main article “Religious tolerance concert banned from Nelson Cathedral due to Islamic content” related directly to information contained in the article.

The article did not in any way promote nor call for discrimination against Christians. It covered events that unfolded and comments from those involved.

The complaint is not upheld.

Press Council members considering the complaint were Sir John Hansen, Liz Brown, Chris Darlow, Peter Fa’afiu, Jenny Farrell, Sandy Gill, John Roughan, Mark Stevens, and Tim Watkin.

CASE NO: 2475 – GEOFF SMITH AGAINST STUFF.CO.NZ

Geoff Smith complains that the title of an article published on the Stuff website on September 3, 2015 was misleading and in breach of Press Council Principle 6. He also complains that Stuff should not have published the accompanying photographs and is in breach of Principle 11.

The Press Council does not uphold the complaint.

Background

On September 3, 2015 the Stuff website published a news article headed “Refugee crisis: Prime Minister John Key stands firm on NZA refugee quota.” About half way through the article were two paragraphs describing the world-wide impact of photographs of the body of a two-year-old Syrian refugee. Towards the end of the article were two of the photographs, one showing a Turkish official carrying the body of the dead boy, and one showing the boy’s body lying on the beach. There was a warning “WARNING: THIS STORY CONTAINS GRAPHIC IMAGES BELOW” near the beginning of the article.

The Complaint

Mr Smith originally complained that the photographs were disturbing and should not have been published. He said “we are well aware of the issues of the current refugee crisis and

think that New Zealand should do more. However, we don't need a graphic photo of a dead child to help us form this opinion." He regarded the warning as insufficient and said it was not at the beginning of the article and could easily be missed if the reader was skim-reading the story. It was not possible to avoid seeing the photographs if a reader wanted to read to the end of the article.

On further consideration, Mr Smith also complained that the headline only reflected John Key's views on the refugee quota and not the content of the second part of the article. He said Mr Key's views were a separate, though related issue and "a link to the "boy on the beach" story would have been more appropriate." He repeated his concern that there was no warning at the start of the article about the nature of the graphic content in the second half of it.

The Stuff Response

Patrick Crewdson, editor of Stuff, responded to Mr Smith's complaint. He explained that the decision to publish the images had been taken only after lengthy deliberation. By the time he and senior staff reached the decision to publish, it was clear that the photographs had been widely reprinted internationally and that they would have an impact on refugee policy formation in New Zealand.

He said "The images were confronting, horrifying, and heart-breaking – but sometimes reality is harsh and media outlets do their audiences a disservice if they shirk from portraying that. Readers don't have the right not to be displeased by the real-life events the news depicts." Photographs have a power and impact that words cannot always match, and these photographs were a catalyst for greater discussion and action. The photographs and the story behind them were inextricably linked to the questions Mr Key was answering about New Zealand's refugee quota.

The headline was accurate based on the content of the article. Mr Crewdson says that Mr Key's position on the refugee quota was now softening and the public outcry fuelled by the publication of the photographs was a major contributing factor.

Mr Crewdson considers there was adequate warning about the graphic content of the photographs. They were well signposted at the top of the story (in the second paragraph). Steps had been taken to ensure that the images would not be visible at home page or section level, so that readers had to open the story, with its prominent warning, before seeing the images. In addition, they were not visible on first opening the story – a reader would have to scroll down a considerable way before they became visible.

Mr Crewdson summarised his submission by saying that "with these images we had a duty to depict the reality of the world, even if that meant readers could not "unsee" it". The images were relevant to the story with which they were included, and they were adequately signposted for readers who chose to avoid them.

Discussion

There is no doubt that the photographs in question are disturbing and powerful images that depict very clearly the pathos and horror of the refugee crisis. They bear comparison with the images of the naked nine-year-old Phan Thi Kim Phoc fleeing a napalm attack in the Vietnam War and are all

the more poignant for the absence of any overt signs of violence. Like the Vietnam War images, they have had an effect on the policies of nations across the world.

The Press Council is of the view that the photographs are important images and that their publication was entirely justified. The fact that they have been circulated worldwide is relevant only as an indicator of their significance and has not otherwise been taken into account. It is now clear, and was becoming clear at the time of their publication, that they affected New Zealanders' attitudes towards the refugee crisis and contributed to a change in policy.

The only question under Principle 11, therefore, is whether Stuff complied with its obligation to take care in photographic image selection and treatment.

It is clear that Mr Crewdson and his senior staff gave considerable thought to the impact of the photographs and the decision to publish was based on a sense of their responsibilities as journalists and not on any desire for sensation. The photographs were positioned where they could not easily be seen by accident, and a warning about them was prominently placed near the beginning of the article, in a position from which the images themselves could not be seen. The warning is in capital letters and is well separated from the surrounding text. It is difficult to see how any reader could miss it, even if skim-reading.

Mr Smith also complains that the headline does not reflect the content of the article. Under Principle 6, headlines must accurately and fairly convey the substance or a key element of the report they are designed to cover. Only two paragraphs of the article in question relate to the photographs, and all the rest of it concerns New Zealand's policy on accepting refugees. Moreover the photographs and the written material about them are relevant to refugee quota policy and the pressure on politicians to adjust policies in response to the number and condition of refugees.

The Press Council considers there was no breach of either Principle 6 or Principle 11 and the complaint is not upheld.

John Roughan dissented from this decision,

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

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

CASE NO: 2476 – LIZ CLAYTON AGAINST NEW ZEALAND HERALD

Liz Clayton complains about the headline to a New Zealand Herald online article dated 18 November 2015. The headline and the article related to a contretemps that occurred in Parliament when a number of women MPs for the first time revealed a history of sexual abuse against them, and said they were personally offended by the Prime Minister's comments about rapists. Ms Clayton complains that the headline breaches Principle 6.

Background

The article arose from the Parliamentary debate surrounding the policy of the Australian Government to deport New Zealanders, who were not Australian citizens despite having lived in Australia for some time, if they committed criminal

offending. Prior to deportation, a number were held in custody. Of this group those detained at the Christmas Island detention centre attracted the most debate.

The opposition parties were critical of the Government, and the Prime Minister, for their failure to support these New Zealanders. The Prime Minister's response in Parliament was to point to "newly released offence statistics" to back an accusation he made that the Labour Party was supporting rapists, murderers and other criminals from the Christmas Island detention centre.

The following day the Speaker ruled that the Prime Minister did not need to apologise for his remarks. He started by reviewing the events of the day before. Said he had not heard the Prime Minister's remarks but had he done so he would have ruled them unparliamentary, required their withdrawal and an apology. However, he said the delay meant he could no longer address the matter. This prompted a mass protest by women MPs in the Labour and Green parties, four of whom revealed they had personally been abused. (Members Poto Williams, Metria Turei, Jan Logie and Catherine Delahunty). This was the first time that they had made public such information.

Hansard for 11 November last reveals that the Speaker heard the two women MPs (Mmes Turei and Logie) and explained his ruling again. He interrupted the next three (Mmes Williams, Delahunty and Mahuta) and told them to sit down when they started a similar line of questioning. He warned other MPs that if anyone started a point of order with the same words, they would be asked to leave the house. Mmes Davidson, Curran and Woods did so, and were told to leave the house. Two of these (Mmes Davidson and Curran appeared to be on the point of making a similar revelation to the other four but we cannot be sure because it was not completed).

On one view of the matter the exchanges on this day were related to the points of order raised, the Speaker's early ruling and not the sexual abuse. However, for present purposes we are prepared to accept that the MP's involved were effectively "cut off".

The headline to this report reads: "Silenced and ejected from Parliament: The female MPs who revealed they had been victims of sexual violence".

The Complaint

The complaint received by the Press Council alleges the article's headline was misleading and factually incorrect. Ms Clayton did not enlarge on that, but rather referred to email correspondence between her and the New Zealand Herald. However, it is clear the complaint is only against the headline. In the emails to the responsible person at the Herald, Ms Clayton complains that the entire article suggested that female MPs were silenced and ejected because they told their abuse stories, and this was factually incorrect. She states many chose to walk out, many were called to order for ignoring the speaker, and some were ejected for ignoring house rules. They were not ejected because they told stories of abuse.

Ms Clayton also complains that because of the Herald article, the matter was picked up by overseas news organisations, and she referred us to a number of headlines from various overseas news organisations. She states those resulting

stories were from the first, inaccurate, New Zealand Herald report. She provided no evidence to show that these headlines appeared as a consequence of what was published by the Herald.

The Herald Response

Ms Clayton emailed further, saying that the Herald accepted the headlines were "very misleading". The editor responded that he did not acknowledge that the headlines were misleading, but said the synopsis that ran on the home page (which Ms Clayton had supplied as a screenshot in the initial complaint) was technically incorrect, but pointed out the ejections were a direct result of MPs raising their personal stories.

Decision

Principle 6 reads:

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.

We are concerned only with the headline. The story records that a number of female MPs, for the first time, publicly acknowledged that they had suffered sexual abuse. They were Mmes Turei, Logie, Delahunty and Williams. The story revealed the comments by those MPs briefly outlining the abuse they had suffered. The story states that the Labour MP, Ms Williams, was thrown out of the debating chamber, which by reference to Hansard is incorrect. The MPs asked to leave were not amongst those who revealed the abuse, although they were involved in various points of order in an attempt to have the Prime Minister apologise.

The difficulty is that the complainant refers to one headline in her complaint to us but supplies two.

The first headline reads: "Silenced and ejected: The female MPs who revealed they had been victims of sexual violence". Even allowing for the colon the reasonable reader would take the headline to mean that those who revealed they had been victims of sexual violence were silenced and ejected by the Speaker. It is true that the four of the female MPs interrupted by the Speaker where those who revealed sexual abuse. We think it not unreasonable to say such interruption could be said to have silenced those MPs. But the headline clearly implies that the MPs who complained of sexual abuse were ejected. On the Hansard record that is not correct. As such the headline is inaccurate. This inaccuracy no doubt led to the editor's comment that the homepage synopsis was inaccurate. If this headline were the subject of the complaint we would have upheld the complaint.

The headline complained of is in fact a caption under a photograph that reads "The MPs who stood up to their abusers...but were then silenced and ejected from Parliament". There is a necessary link between the revealing of abuse, the silencing and ejection. It can be seen the second part of the headline contains some elements of the previous headline. However, in our view the headline remains inaccurate for the same reasons. As we have noted at [12] the MPs who revealed sexual abuse could be said to have been silenced but, critically, not one of those four MPs were ejected. The speaker ejected Mmes Wood, Davidson and Curran who did not reveal any abuse. (Although as we have noted it is pos-

sible Mmes Curran and Davidson may have been about to do so). As well, as the complainant states, some of the MPs elected to walk out and the Speaker ejected the three above for breach of his ruling. If they had been among the abused MPs we may well have considered this matter differently. A basic check of the facts would have revealed the inaccuracy.

The complaint is upheld.

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

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

CASE NO: 2477 – GRANT HANNIS AGAINST WOMAN'S DAY

Grant Hannis complained about an article published in the *Woman's Day* October 5, 2015.

He said that the article breached Principle 1 (Accuracy, Fairness and Balance) of the New Zealand Press Council Statement of Principles.

The complaint is upheld by a majority 6:3.

Background

The article was headed *Reinventing Rachel. My secrets to staying in shape* and was about Rachel Hunter, a New Zealand model. It was also a headline item on the cover of the magazine with the headline *Rachel reveals all – How I got my body back*.

The article outlined changes that Ms Hunter had made in her life and included comments Ms Hunter had supposedly made along with an overview of a television programme that Ms Hunter had been involved in called “Rachel Hunter’s Tour of Beauty”.

The article was attributed to Fleur Fitzpatrick/FEATS with pictures by Richard McLaren/Australscope.

Complaint

Dr Hannis alleged that in his opinion the text on the front cover and the article itself purported to be an interview the magazine had conducted with Ms Hunter. The article included comments attributed to Ms Hunter which strengthened the impression that the magazine had itself interviewed Ms Hunter when it had not.

He included information published on Stuff where Ms Hunter stated that she had not been interviewed by *Woman's Day*.

The complainant did not accept the magazine’s assertion that the writer and Agency were clearly credited in the magazine and he believed that regardless of where the article was sourced from, the magazine was responsible for what it published and should have published an apology and correction when parts of the article were disproven by comments from Ms Hunter.

The Magazine’s Response

Sido Kitchin, the editor, maintained that Principle 1 (accuracy, fairness and balance) had not been breached. While the article was subsequently found to have used outdated quotes, *Woman's Day* was not aware of this when it purchased and published the story.

The rights to publish the article had been purchased from

a reputable freelance agency, FEAT, and the magazine had relied on FEAT’s reputation and standard practices that the story was written from official interviews and sources. The magazine was also assured by FEAT that the story was written from official interviews and sources and the magazine had no reason to doubt such assurances.

Both the writer and FEAT were credited in the magazine and the magazine did not make any claim in the publication that the story was an official nor exclusive interview.

The editor stated that readers of *Woman's Day* are attuned to the fact that articles in the magazine are often speculative and conditional

Ms Hunter herself has not made any complaint regarding the article but the broadcaster of the television show, “Rachel Hunter’s Tour of Beauty”, did inform the magazine that they were pleased with the article.

Discussion and Decision

While the magazine did not label the article as an interview and the writer and photographer are cited beside the article, the test is, would a reasonable reader think this was an actual interview and the answer is yes. The cover photo and headline, *Rachel reveals all. How I got my body back*, also led readers to believe it was a genuine interview and the information in it was current.

The article was clearly written in a way that led readers to believe that the writer had conducted an interview with Rachel Hunter by the use of speech marks and direct quotes when in fact the material was likely to have been pieced together from a variety of sources, including previously published interviews etc.

In earlier decisions the Council has extended a degree of latitude to “woman’s magazines” because of the genre. However, the majority of the Council considered in this instance the article went too far. It was deliberately written and presented in a way that would lead even readers of this genre to believe it was an actual interview with Rachel Hunter. The majority considered that even in the context of such magazines that is a breach of our principles. Further, it was a unanimous view of the Council that a publication could not avoid responsibility because it had accessed the article from a reputable and attributed source. The responsibility remains with the editor.

The complaint is upheld.

Dissent

This was a majority decision as three members of the Press Council felt that given the genre of the publication, a habitual reader of that type of magazine would have understood that the article was not necessarily an actual interview, came from multiple sources and that the magazine was a publication based on gossip and speculation including the use of sensational and exaggerated headlines.

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

Sandy Gill, Vernon Small and Tim Watkin dissented from the decision.

CASE NO: 2478 – BRENDAN MORIARTY AGAINST HOROWHENUA CHRONICLE

Background

Brendan Moriarty has complained about a story on page 20 of the *Horowhenua Chronicle* on September 18 titled ‘New phase for lake clean-up’, the latest in a long-running series of stories in many media about the quality of the water in what others have called the “lake of shame”.

This story, appearing without a by-line, updates readers on the “second phase” of restoration work being undertaken under the Lake Horowhenua Accord of 2014 and quotes three sources – the Accord chair, district mayor and a council official.

Complaint

The complaint names numerous principles: 1) Accuracy, fairness and balance, 4) Comment and fact, 5) Columns etc, 6) Headlines and captions, 7) Discrimination and diversity, 8) Confidentiality, 10) Conflicts of interest, and 12) Corrections. But in essence, Mr Moriarty’s concern is that the article is almost entirely a press release from the Horowhenua District Council and is not labelled as such.

Mr Moriarty says the article is a press release from the Horowhenua District Council issued the day prior and stresses that the complaint does not target the newspaper but rather the principle that readers should be told if the item they are reading is a press release. “We believe the *Chronicle* and all other newspapers should be directed to indicate such items... so that any reasonable person reading it can identify that it presents one side,” he writes.

Further, Mr Moriarty says running a press release from one side in this long-running environmental dispute without offering a counter view makes this “a biased account” and fears the paper is vulnerable to threats by the council to withdraw advertising if it does not report favourably on it. He claims editor Cherie Taylor said as much when she visited his home to discuss the complaint, worrying for the livelihoods of her six staff if she were to be in dispute with the district council.

Editor’s Response

The Chronicle’s initial response to the complainant, from Taylor, was to investigate and reply the next day. NZME Senior Editor Craig Cooper then took over correspondence, acknowledging “the story consisted largely of content from a Horowhenua District Council press release”. The paper relied on the council for the accuracy of the information “in good faith”, but offered to correct any inaccuracies Mr Moriarty could identify, “listen” to dissenting arguments “with a view to potentially publishing these opinions”, and publish a letter to the editor. He concluded saying that Mr Moriarty raised “a good point re ‘what is a press release v what is a news story’” and admitted “we can do better”.

Writing to the Council, Cooper says he is unable to find any breach of the principles and the editor ran the press release confident its content was accurate and did not require balance.

He continues, saying Mr Moriarty neither made any specific claims of inaccuracy nor took up the offer to balance the story with a letter to the editor or by taking part in a follow-

up story. He notes that long-running issues such as these are balanced over time via multiple stories.

Finally, Cooper notes that the complaint is partly based on the allegation the council has threatened to withdraw its advertising from the paper, which he says is untrue.

Discussion and Decision

The article is in very large part – but not verbatim – the words of a press release by the district council. Some sentences are run together, a few are cut, and several words have been added, but no other sources or information are included. The press release is unusually thorough, running to 20 paragraphs and quoting three sources.

Press releases are a useful way for newspapers to receive information and comment from interested parties. However, as the senior editor concedes, using a release almost verbatim falls well below best practice. Newspapers risk losing the trust of their readership if they print material that is not independent and objective (or otherwise clearly labelled as comment).

We note the newspaper promptly offered the complainant a right of reply and a chance to balance the story – an opportunity Mr Moriarty says he refused because “that is the job of a suitably skilled journalist.” There was clearly some misunderstanding here as the newspaper argues this is precisely what they were offering and the Council acknowledges the paper did well to offer Mr Moriarty those avenues of redress. However, it is the responsibility of the publication to provide balance regardless and without relying on a complainant.

Most of the principles claimed by the complainant are not relevant in this case, so we have narrowed the focus to Principle 1, Accuracy, Fairness and Balance.

We accept that Mr Moriarty has not provided any evidence of any inaccuracies. So balance is the crucial point here. Does a press release that has not been independently verified amount to a balanced news article? The Press Council does not think so. While we acknowledge this is a long-running issue and balance can be provided over time, to simply print a release from a political organisation including three sources from the same side of the argument does not make for a balanced piece of journalism.

In Cooper’s own words, the three people quoted in the story were given the chance to “opine” in favour of the actions taken to clean up the lake. Yet no effort was made to report a dissenting view or offer a right of reply to critics of the Accord’s plan. The complaint against Principle 1 is upheld.

Finally, there are opposing claims as to any commercial pressure being brought to bear by the district council, so we cannot comment on that issue.

Press Council members considering the complaint were Sir John Hansen, Sandy Gill, Peter Fa’afiu, Marie Shroff, Vernon Small, Mark Stevens and Tim Watkin.

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

CASE NO: 2479 – RIGHT TO LIFE NEW ZEALAND INC AGAINST THE PRESS

Ken Orr, Secretary of Right to Life NZ Inc, complains about an article on the “right to die” which appeared in *The Press* on October 15, 2015. He alleges the article breaches Press Council Principle 1, Accuracy, Fairness and Balance; and

Principle 6, Headlines and Captions.

The complaint is not upheld.

Background

The debate about euthanasia, the right to die and assisted suicide is long-standing and takes centre stage from time to time. This often occurs, as in the case of this complaint, when a terminally ill person is featured in the media seeking the right to choose when to end their life. David Stephens, a sufferer of motor neurone disease, approached *The Press* to express his views about his wish to end his life when he can no longer walk or talk. The issue has recently been prominent, following extensive media coverage of a court case brought by Lecretia Seales, who was terminally ill. Ms Seales sought to allow her doctor lawfully to assist her to die, at a time of Ms Seales' own choosing. The case was unsuccessful.

The complaint turns on whether *The Press* coverage of the story and the general issue was unbalanced in favour of the right to die movement and whether the headline was misleading in suggesting the existence of a "right" to die.

The Complaint

The complainant believes the front-page article in *The Press* lacks balance and promotes "right to die" views, rather than simply informing the public. Mr Orr believes the media is "at the service of the community" and has a duty to promote the common good by upholding the law (which currently prohibits assisted suicide) and by making room for views in opposition to the right to die from the medical profession, palliative care specialists and the pro-life movement. He examined 29 articles mentioning euthanasia printed in *The Press* in the preceding 12 months. He says that 16 of those were supportive of euthanasia and contends *The Press* is "campaigning" for the right to die.

Mr Orr also complains the headline "Man's Plea: Give Me the Right To Die" is misleading. His ground for this complaint is that there is no formally recognised human right to assisted suicide in the New Zealand Bill of Rights Act or United Nations convention.

The Editor's Response

The Press, in a comprehensive response, does not accept it has breached either principle. The editor points out that Mr Stephens, the subject of the article and headline, was prompted by the Seales' case to contact *The Press* and was interviewed for the story. The article is also placed in the context of the issues raised by Ms Seales and quotes a number of political sources who were considering parliamentary action, as well as a senior government Minister who would not support a proposed End of Life Choice Bill.

The editor considers the article complained of to be fair both in isolation and in the context of other stories on the topic. According to *Press* archives, in the preceding 12 months the paper has published 84 pieces of content with the keyword euthanasia. These covered a range of views about the euthanasia debate and were a mixture of news, commentary and letters to the editor, including three on the topic from Mr Orr. The editor says that Mr Orr has misrepresented their editorial stance. She cites an editorial published on October 16, the day following the story about Mr Stephens, stating that *The Press* considers "it is a tremendously difficult and hugely confronting issue. It challenges our deepest

moral and ethical beliefs". *The Press* has taken an editorial position that the time is right for "a robust nationwide discussion on euthanasia. But it needs to be managed with great sensitivity".

In relation to the headline the editor concludes that it meets the requirements of principle 6 as it accurately and fairly conveys the substance or a key element of the story.

Decision

The Press has provided persuasive information to support the contention that its overall coverage of the right to die issue has been balanced. In its October 16 editorial it clearly recognises and respects the strong opinions held on both sides of the debate and the importance and sensitivity of the issues.

The headline accurately reflects the views of the main interviewee of the story.

The complaint is not upheld.

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

CASE NO: 2480 – FRANK ZWITSER AGAINST NEW ZEALAND HERALD

Frank Zwitser claims a *New Zealand Herald* court report about the alleged abuse of a boy breaches Press Council principles 1, 2, 3, 4 and 7.

The complaint is not upheld.

Background

The Herald reported, over several days, a Manukau District Court case where a 30-year-old female social worker was charged with unlawful sexual connection with a 15-year-old boy she was mentoring.

Complaint

The complainant claimed sexual discrimination and insensitivity in the reporting, going as far as saying the *Herald* 'slut shamed' the teen by quoting evidence of the length of time his sexual encounter lasted.

A headline on an October 21 report of the proceedings - *Teen 'lied' about sex with mentor* - was a concern to the complainant, as was reporting of evidence the teen told a friend he'd lied. This was considered victim blaming.

Sexual abuse of men was as serious an issue as it was for women, yet the *Herald*'s coverage of the case was contributing to a "culture of misandry" which was directly linked to a higher male suicide rates.

Fundamentally, the complainant felt the story was handled differently because the teenager was a boy.

Response

The complaint was dealt with by Matthew Backhouse, a filing editor for NZME's news service.

The editor stood by the story, which was a report of court proceedings.

Fairness, accuracy and balance in court reporting was achieved across the totality of proceedings.

Everything reported was said in open court and it was important to cover the defence evidence that the teen had lied.

The editor rejected any suggestion of insensitivity or gender discrimination.

Discussion

There is nothing to suggest the *Herald* covered this particular case any differently than it would have had the alleged victim been female.

The Herald would be remiss not to report defence arguments, having already reported the prosecution's.

The headline accurately represented the angle of the story, which on that day was based on defence evidence. Although it could have, perhaps, referenced the fact the statement was a claim made in court by defence, it is not a requirement and nor is it enough in itself to breach any of the Press Council's principles cited.

The complaint is not upheld.

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

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

CASE NO: 2481 – ANGELA MABEY AGAINST RIP IT UP

This complaint concerned the use of a well-known racial slur on African Americans, a word so offensive that any reference to it in mainstream media is normally written as "n*****" or "the n-word". However in this case the word has been used in a new and positive cultural context. The complaint was not upheld with two members dissenting.

Rip It Up is a magazine devoted to rock music and its diverse culture. On September 28 its website carried a short review of a film entitled "Dope", described as a hip hop movie featuring music videos and stylistic elements of the hip hop, or rap, genre. The term that offended the complainant is said to be liberally used in the film by young black actors to describe themselves. The review reflected the film's relaxed and confident use of the word, which appeared in the headline, twice in the first paragraph, twice in the second and again in the third, of a four-paragraph review.

The Complaint

Angela Mabey, a journalist, complained that the use of the word was offensive and inappropriate, "no matter how it relates to the movie". She considered it a breach of the Press Council's Principle 7, covering discrimination and diversity. She was advised of the Council's procedures, requiring that she first complain to the editor, and her attention was drawn to an item on *Rip It Up*'s Facebook page on October 4, six days after the film review. It was a response from the publisher to the press coverage and criticism the review had attracted.

Ms Mabey wrote to the publisher, Grant Hislop, registering her disgust at the review and at his response on Facebook which she found "inadequate and flippant". She received no reply and proceeded with her complaint.

The Response

The Press Council received no response from the editor, who was also the writer of the review, nor did the publisher respond. The Council could only note Mr Hislop's admission on Facebook that the review did not go through the magazine's usual sub-editing process and had appeared "in its raw form missing some key references."

"Ironically," he said, "it was the excitement for the movie and the subject matter that prompted hasty publication. The writer is not bigoted and is in fact an avid promoter of equality in all areas of our community...".

Discussion and Decision

The Council did not agree with the complainant that the response on Facebook was inadequate and flippant. It seemed to be an honest admission that the review was written in a flush of enthusiasm for the film and was published too quickly. Mr Hislop conceded the review did not "portray our intended context". He concluded, "The intention of the reviewer was to raise the issues that the film explores as well as exploring the taboos that surround the word "nigger" which is used throughout the film. We recognise that the intentions of the article have been misconstrued and taken out of context and apologise for any offence caused."

An admission and apology such as that was more than the Press Council could achieve by upholding the complaint. It may be that Ms Mabey was hoping for a ruling that the use of the word "nigger" is unacceptable in any context. That is a position that could be difficult to sustain. "Dope" is not the first production in which the targets of an offensive word defuse it by reclaiming it for themselves for use among themselves. At least one drama shown on subscription television in recent years, "The Wire", also portrayed black Americans referring to each other as "nigger", both sympathetically and aggressively. In the same way, some gays have recently adopted the word "Queer" for themselves, but strictly among themselves. It is one thing for victims of discrimination to adopt these terms in order to draw their sting, as it were. It is another thing entirely for others to refer to them with a word that remains deeply offensive to them when used any other way.

In this case the word was used to reflect the writer's delight in hearing it used for a confident, self-affirming purpose. There is always a risk that its use in the right context will be wrongly taken to mean anyone can use it in any context but a majority of the Council was of the view that the risk does not warrant the total prohibition of the word under Principle 7. It is, they hoped, enough to say that a word such as this should never be used without extreme care.

Two members of the Press Council Mark Stevens and Tim Watkin disagreed with the decision and would have upheld the complaint because the word remains hugely offensive and its use was not justified in that context or manner.

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

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.
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.

Other requirements

NZ Press Council
Financial Reports
For the Year Ended 31st December 2015

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The Tax Lady

Accountant's Statement

For the Year ended 31st December 2015

The attached statements have been compiled from information and instructions furnished to us.

A compilation is limited primarily to the collection, classification and summarisation of financial information supplied by NZ PRESS COUNCIL and does not involve the verification of that information. We have not performed an audit or review on the financial statements and therefore neither we nor any of our employees accept any responsibility for the accuracy of the material from which the financial statements have been prepared.

Further, the statements have been prepared at the request of and for the purpose of NZ PRESS COUNCIL and neither we nor any of our employees accept any responsibility on any ground whatsoever, including liability in negligence, to any other person.

The Tax Lady
Tax Agents
Wellington
27th May 2016

NZ Press Council
Trading Account
For the Year ended 31st December 2015

	<i>2015</i>	<i>2014</i>
	<i>\$</i>	<i>\$</i>
REVENUE		
Union	2,700	2,700
NPA Contribution	220,000	240,000
Community Newspapers	14,798	7,599
Magazines Contribution	21,375	12,647
Digital Membership	250	87
Associate Membership	<u>600</u>	<u>-</u>
Total Sales	<u>259,723</u>	<u>263,033</u>
GROSS SURPLUS FROM TRADING	<u><u>\$259,723</u></u>	<u><u>\$263,033</u></u>

NZ Press Council
Statement of Financial Performance
For the Year ended 31st December 2015

	<i>2015</i> \$	<i>2014</i> \$
Gross Surplus from Trading	259,723	263,033
SUNDRY INCOME		
Interest Received	1,997	2,871
Total Income	<u>261,720</u>	<u>265,904</u>
Less Expenses		
Accident Compensation Levy	407	734
Accountancy Fees	1,140	1,140
Advertising & Promotion	1,527	1,377
Audit Fees	1,000	1,000
Bank Charges	5	56
Cleaning & Laundry	567	498
Computer Expenses	2,541	1,225
Postage & Courier	1,521	2,012
General Expenses	5,764	5,864
Insurance	2,870	3,305
Legal Expenses	-	11,437
Office Relocation Expenses	87	1,272
Printing & Stationery	2,113	991
Rent	8,096	9,799
Rent - Carparking	1,920	1,920
Power & Telephone	1,373	1,620
Travel & Accommodation	20,991	21,608
Annual Leave owing	1,425	5,433
Board Fees	27,531	28,730
Wages & Salaries	154,718	147,392
Total Expenses	<u>235,596</u>	<u>247,413</u>
Net Surplus Before Depreciation	26,124	18,491
Less Depreciation Adjustments		
Depreciation as per Schedule	5,622	1,132
Depreciation - Loss on Sale	-	214
Net Depreciation Adjustment	<u>5,622</u>	<u>1,346</u>
NET OPERATING SURPLUS BEFORE TAX	20,502	17,145
Less Taxation Provision	105	196
SURPLUS AFTER TAX	20,397	16,949
NET SURPLUS/(DEFICIT)	<u>\$20,397</u>	<u>\$16,949</u>

NZ Press Council
Statement of Financial Position
As at 31st December 2015

	<i>2015</i> \$	<i>2014</i> \$
CURRENT ASSETS		
Bank - Cheque Account	17,123	18,829
Bank - Savings account	42,627	85,926
Bank - Term Deposit	50,000	-
Accounts Receivable	<u>18,485</u>	<u>14,519</u>
Total Current Assets	128,235	119,274
NON-CURRENT ASSETS		
Fixed Assets as per Schedule	<u>28,161</u>	<u>11,778</u>
TOTAL ASSETS	156,396	131,052
CURRENT LIABILITIES		
GST Due for payment	6,189	8,657
Taxation	590	640
Accounts Payable	<u>19,557</u>	<u>12,092</u>
Total Current Liabilities	<u>26,336</u>	<u>21,389</u>
TOTAL LIABILITIES	<u>26,336</u>	<u>21,389</u>
NET ASSETS	<u>\$130,060</u>	<u>\$109,663</u>
Represented by;		
EQUITY		
Share Capital	-	-
Retained Earnings	<u>130,060</u>	<u>109,663</u>
TOTAL EQUITY	<u>\$130,060</u>	<u>\$109,663</u>

The accompanying notes form part of these Financial Statements and should be read in conjunction with the reports contained herein.

For and on behalf of the Board ;

Director _____ Director _____

Date

NZ Press Council
Schedule of Fixed Assets and Depreciation
For the Year ended 31st December 2015

Asset	Private Use	Cost Price	Book Value 01/01/2015	Additions Disposals	Gain/Loss on Disposal	Capital Profit	Mth Rate	----- Depreciation ----- \$	Accum Deprec 31/12/2015	Book Value 31/12/2015
BUILDINGS										
Fitout		22,397	2,797				12.11.4% DV	319	19,919	2,478
Sub-Total		22,397	2,797					319	19,919	2,478
FURNITURE & FITTINGS										
Side Chairs x 2		878	30				12.18.0% DV	5	853	25
Crestline Desk		1,598	1,563				12.13.0% DV	203	238	1,360
Boardroom Furniture (share of)		2,482	2,416				12.16.0% DV	387	453	2,029
Dexion Storage Unit		4,455	4,381				12.10.0% DV	438	512	3,943
Sub-Total		9,413	8,390					1,033	2,056	7,357
OFFICE EQUIPMENT										
Printer		876	1				12.48.0% DV	0	875	1
Computer		2,467	591				12.50.0% DV	296	2,172	295
Website				14,670			6.50.0% DV	3,668	3,668	11,002
Website				7,335			1.50.0% DV	306	306	7,029
Sub-Total		3,343	592	22,005				4,270	7,021	18,327
TOTAL		35,153	11,779	22,005				5,622	28,996	28,162

cornish
and associates ltd

accountants and business advisers

29 March 2016

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 2015 (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 2015 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 2015 and financial performance and cashflows for the year ended on this date of the organisation.

Our review was completed on 29th March 2016 and our unqualified opinion is expressed at this date.

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