

**Complaint:** 16/020  
**Complainant:** R. Thompson  
**Publisher:** Television New Zealand  
**Publication:** ONE News Now “Nicky Hager: How to sidestep NZ tax disclosure rules”. Thursday 23 June 2016  
**Link:** <https://www.tvnz.co.nz/one-news/new-zealand/nicky-hager-sidestep-nz-tax-disclosure-rules>  
**Outcome:** Upheld, in part and Settled, in part

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## SUMMARY

An article published by Television New Zealand (TVNZ) on its ONE News Now website alleged Complainant R. Thompson, specifically advised his clients to avoid countries with “information sharing agreements” with New Zealand and instructed his clients to avoid any countries that might enter into double tax agreement with New Zealand.

The Complainant said the article contained factual inaccuracies and as he was not asked to comment, it was unbalanced and unfair.

The Complaints Committee found the content was not clearly identified as opinion and, therefore, Standard 1 Accuracy applied.

It considered the reference to the “disclosure rules” in the headline was not ideal but was a reasonable representation of the kinds of agreements referred to in the article. It found the reference to double tax agreements and the other types of agreements identified in the article as “information sharing agreements” was not misleading and was an accurate representation for the likely reader. The Complaints Committee held the headline and the statement above were not in breach of Standard 1 Accuracy and this part of the complaint was Not Upheld.

The Committee ruled the reference to “specifically advised” was misleading as it was not adequately substantiated and was in breach of Standard 1 Accuracy and was Upheld.

The Committee ruled the actions of the Publisher in altering the following statement “there are none of these agreements with the Latin American countries where Mr Thompson and his colleagues do business” had gone far enough to Settle this part of the complaint.

The Complaints Committee considered the Complainant should have been contacted prior to the article being published. It held as this had not occurred, the article lacked a reasonable range of viewpoints and the Complainant was not treated fairly, in breach of Standard 2 Balance and Standard 3 Fairness.

The Committee ruled the complaint was Upheld, in part and Settled, in part.

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## **COMPLAINTS COMMITTEE DECISION**

The Complaints Committee considered the content with reference to Standards 1 Accuracy and 2 Balance under Part A and Standard 3 Fairness under Part B of the OMSA Code of Standards.

Part A Standard 1 is concerned with whether publishers have made reasonable efforts to ensure news and current affairs content is accurate and/or does not mislead in relation to all material points of fact. Part A Standard 2 is concerned with ensuring reasonable efforts, where the content deals with controversial issues of public importance, are made to reference to a reasonable range of significant viewpoints on the issue.

Part B Standard 3 required Publishers dealt fairly with any person or organisation referred to in online news and current affairs publications and complaints under the Fairness Standard which may only be brought by those participating or referred to in the content.

The Complaints Committee identified the content subject to complaint was an article published by Television New Zealand (TVNZ) on its ONE News Now website. This alleged Complainant R. Thompson, “specifically advised” his clients to avoid countries with “information sharing agreements” with New Zealand and instructed his clients to avoid any countries that might enter into double tax agreement with New Zealand.

The Complainant said the article contained factual inaccuracies and as he was not asked to comment, it was unbalanced and unfair.

The Committee confirmed it had jurisdiction to deliberate on the content and considered the Complainant’s concerns in turn.

### **Opinion or application of Standard 1 Accuracy**

First the Complaints Committee assessed Television New Zealand’s (TVNZ) view the content was an opinion piece by investigative journalist Nicky Hager.

The Committee took into account whether it was clearly identifiable as opinion, including the context and placement, and the likely reader perception. The Committee noted the use of a name in the header, as used in the headline, was a convention that was common with opinion based articles. However, in its view, this did not go far enough to signal to readers the article was presented from a particular perspective.

The Committee said the article would likely be interpreted as a news story and contained a number of factual and absolute statements which required robust substantiation. It noted the article was posted under “news” on the website and read like a news article. It also took into account the statement relating to ‘Panama Papers’ investigations being the result of a collaboration of journalists at the end of the article and considered most readers would assume the article was news, not opinion.

The Committee concluded it was a news article for the purposes of the OMSA Code of Standards and therefore Standard 1 Accuracy applied.

The statements of fact raised in the complaint against the Accuracy Standard were therefore relevant.

## **STANDARD 1 ACCURACY**

### **Headline: “Nicky Hager: How to sidestep NZ tax disclosure rules”**

The Complaints Committee considered whether the headline of the article was misleading by implying the Complainant was “breaking the law” by avoiding “specific disclosure rules” as argued by the Complainant.

The Publisher said the headline was an abbreviated description of the complex regime of the various agreements referred to in the article and did not misrepresent the issues when taking into account the article in its entirety. TVNZ argued the point of the article was that New Zealand had some disclosure rules which only applied to particular countries and by avoiding connections to those countries you could sidestep ‘disclosure rules’.

The Committee found that while the headline was not ideal, it was not inaccurate and the reference to “disclosure rules” was a reasonable representation of the kinds of agreements referred to in the article. The Complainant’s interpretation that it signalled a specific law or rule had been broken was not accepted as this would not be the case for most readers in context provided by the article.

The Committee concluded the headline met the requirements for accuracy and ruled it was not in breach of Standard 1 and was Not Upheld.

### **“Specifically advised”**

The Complainant said the statement in the article that “documents show the Mossack Fonseca agent **specifically advised** his clients to avoid countries with information sharing agreements with New Zealand” was misleading. The Complainant said there was “no evidence of any such advice”.

The Publisher said the information in the Power of Attorney document referred to in the article substantiated the statement that the Complainant “specifically advised” in his capacity as a director of the client in the Power of Attorney. TVNZ said, in part: “To imply that they weren't prepared on the Complainant’s advice is unconvincing and even in his complaint Mr Thompson goes on to state that the reason for the provisions was to preserve the look through company status which does suggest that he had a hand in forming the provisions.”

TVNZ also said the Complainant referred to the information provided as advice in correspondence and had signed an almost identical document which “in light of this it would appear difficult for Mr Thompson to deny knowledge of the power of attorney documents referred to in the article”.

The Committee considered how the likely reader would perceive the statement and noted the information provided by the Publisher to support the phrase “specifically advised”. The Complaints Committee said the statement “documents show the Mossack Fonseca agent **specifically advised** his clients to avoid countries with information sharing agreements with New Zealand” was misleading. It considered nothing in the information provided to it

adequately supported the strong allegation that the Complainant “specifically advised” clients to avoid countries with disclosure agreements. It said the statement drew strong conclusions which were not supported by the substantiation provided.

The Committee said the statement, as presented in the article, was in breach of Standard 1 Accuracy, that part of the complaint was Upheld.

#### **“Information sharing agreements”**

The Complainant said the statement “documents show the Mossack Fonseca agent specifically advised his clients to avoid countries **with information sharing agreements** with New Zealand” was misleading when the actual wording was “double tax agreements”. The Complainant argued “they are not interchangeable terms. It is correct that one of many purposes of a double tax agreement is ‘to facilitate the exchange of information’ but that doesn't justify referring to ‘double tax agreements’ as ‘information sharing agreements’”.

The Publisher, TVNZ, said term “information sharing agreements” was used properly in the context of the article as double tax agreements relate to the facilitation of information.

The Committee agreed and said the statement “documents show the Mossack Fonseca agent specifically advised his clients to avoid countries **with information sharing agreements** with New Zealand” was not misleading. It said the Complainant had taken a technical view of this aspect of the article and most readers would understand from the context of the article, that information sharing agreements referred to a range of agreements referred to in the article. The Committee said there was nothing inaccurate about referring to various agreements identified in the article by generalising them in their fundamental purpose of information sharing.

The Committee said the statement was not in breach of Standard 1 Accuracy and ruled that part of the complaint was Not Upheld.

#### **“There are none of these agreements with the Latin American countries where Mr Thompson and his colleagues get most of their business”**

The Complainant said the statement “there are none of these agreements [information sharing agreements, double tax agreements and Tax Information Exchange Agreements] with the **Latin American countries where Mr Thompson and his colleagues get most of their business**” was factually incorrect “and the publisher had no basis to state this as a fact”.

The Publisher, TVNZ, said it had intended to change the wording the day after the story was published, when notified by the Complainant, to: “there are none of these agreements with the Latin American countries where Mr Thompson and his colleagues do business.” The Committee took into account the admission from the Publisher but the amendment had not been implemented in a timely manner.

However, noting the self-regulatory actions of the Publisher in amending this part of the article to more accurately reflect the Complainant’s position, the Committee said the change went far enough in addressing the concerns of inaccuracy raised in the Complaint

The Committee ruled that part of the complaint was Settled.

## STANDARD 2 BALANCE

The Complainant said the article was unbalanced as he was not requested to comment despite the authors attributing actions and purposes to him that were damaging to his reputation without evidence. The Complainant said “given the technical nature of some of the issues and potential damage to my reputation and career, it was even more important to seek my comments before publishing”.

The Publisher said it was unaware comment had not been sought from Mr Thompson originally. TVNZ said “when this became known TVNZ approached Mr Thompson and an article representing his position on the issues has been published and the following wording [in bold] had been removed from the article: “However, documents show the Mossack Fonseca agent specifically advised his clients to avoid countries with information-sharing agreements with New Zealand **presumably to side-step the disclosure system.**”

The Committee considered whether comment should have been sought from the Complainant prior to publication and held there had been a lack of care to represent a range of viewpoints in a matter of public interest and controversy. The Committee found publishing a subsequent story which may have reflected the views of the individual did not relieve the Publisher from seeking comment prior to publication, nor did relying on information supplied in an interview for a different purpose.

The Committee acknowledged the Publisher had made some efforts to rectify the error in not obtaining comment from the Complainant and noted the particular circumstances in which the story was provided to it. However, the Committee held these factors did not absolve the Publisher of its responsibility to ensure where the content dealt with controversial issues of public importance it made due reference to a reasonable range of significant viewpoints and opportunities were provided for those with other points of view to contribute to the content.

The Committee said by not providing the above opportunities to the Complainant to comment, the content was in breach of Standard 2 Balance and ruled that part of the complaint was Upheld.

## STANDARD 3 FAIRNESS

The Complainant said the article was unfair as he had not been contacted for comment.

TVNZ said it “considers that earlier statements and this subsequent article provides Mr Thompson's viewpoint on the issues discussed, and the allegations made in the story complained about; and therefore that the requirements of Fairness have been met... Given the steps taken by TVNZ to subsequently amend the story (as requested by Mr Thompson) and provide Mr Thompson space to provide comment on the issues raised, TVNZ considers that the requirements of the Fairness standard have been met”.

A minority said while the content lacked adequate balance and contained inaccuracies, it was a matter of significant Public Interest where the views of the individual referred to in the content were subsequently publicised. It said the Publisher did not reach the threshold for unfair treatment of the Complainant, when considered against the context and subject of the story. It was justified in the Public Interest not to seek comment from the Complainant on the

actual article taking into account his public profile in relation to the matters traversed in the article.

The majority found the Complainant was not treated fairly by not being given the opportunity to comment on the article prior to its publication. The Committee again acknowledged the Publisher had subsequently contacted the Complainant and had made amendments to the story, as well as publishing a further article clarifying the Complainant's view. However, the Committee considered those subsequent actions did not absolve the Publisher of its responsibility to ensure people taking part or referred to in the content were treated fairly. The majority said as the Complainant was never asked for comment, he was not treated fairly and the subject matter being of significant Public Interest did not save the Publisher from breaching the Fairness Standard.

This part of complaint was Upheld.

## **REMEDY**

The Complaints Committee noted the Complainant's request for full retraction of the article and apology from the Publishers.

The Complaints Committee confirmed that where a complaint had been upheld, publishers would publish OMSA's decision, or a fair summary of it, on its website with similar prominence to the original publication. All OMSA decisions will be published on its website.

In the complaint before it, the Complaints Committee acknowledged the Publisher had made changes to the content and an attempt to address the lack of comment through the publication of a subsequent article.

The Committee did not consider a full retraction and apology from the Publisher was required in this instance.

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### **Content Subject to complaint:**

**ONE News Now "Nicky Hager: How to sidestep NZ tax disclosure rules", Thursday 23 June 2016**

<https://www.tvnz.co.nz/one-news/new-zealand/nicky-hager-sidestep-nz-tax-disclosure-rules>

Mossack Fonseca's main New Zealand agent, Roger Thompson, drafted legal documents for his foreign clients instructing them to avoid countries that have information sharing agreements with New Zealand, the Panama Papers show.

When Panama Paper stories first appeared, Prime Minister John Key denied New Zealand was a tax haven, saying the country "has full disclosure of information".

"A tax haven is where you don't declare information, you can't get information, a locked box... We have information sharing agreements or double tax agreements with over 100 countries," he said.

However, documents show the Mossack Fonseca agent specifically advised his clients to avoid countries with information sharing agreements with New Zealand.

The documents include a power of attorney form dated 14 March 2014 that Mr Thompson prepared for an Ecuadorian client.

It said the client was "absolutely prohibited from managing the Company in the following countries which have a DTA [double tax agreement] signed and enforced with New Zealand." Mr Thompson then listed "Australia, Austria, Belgium, Canada" and 34 other countries the client must avoid because they have double tax agreements with New Zealand.

The power of attorney documents authorise the client to use the bank account of a foreign company or trust that has been set up without any mention of the client's name and address. Another document prepared for an Ecuadorian investment broker in September 2014 had similar wording. It said the power of attorney could be used in the client's home country "or in any other country provided that such country does not have a double tax agreement signed and enforced with New Zealand".

Mr Thompson also instructed his clients to avoid any countries that might subsequently enter into double tax agreement (DTA) with New Zealand.

Massey University senior lecturer in taxation, Deborah Russell, who was shown the document, said the structures "seem to have been set up to avoid information sharing with overseas jurisdictions".

She said the document appeared to be making sure that the information about the company stayed in New Zealand and couldn't get out to tax authorities elsewhere.

A complex structure of companies and trusts had been established by Mr Thompson and Mossack Fonseca for each client, with "nominee" shareholders and directors but no mention of the real owners in Ecuador.

The power of attorney documents then gave the Ecuadorian owners use of offshore bank accounts set up in the name of the companies and trusts.

"There's double insulation going on there," Ms Russell said. "It's not just all the proxies [nominee shareholders and directors], it's making sure the [company owners] are shielded from the double tax agreements."

In addition to double tax agreements, New Zealand also has Tax Information Exchange Agreements with various tax haven nations, to help IRD seek information about New Zealanders using the tax havens.

There are none of these agreements with the Latin American countries where Roger Thompson and his colleagues get most of their business.

*The investigation into the Panama Papers New Zealand is a journalistic collaboration by reporters from ONE News, RNZ News and investigative journalist Nicky Hager. It has been carried out with the assistance of the International Consortium of Investigative Journalists (ICIJ) and the German newspaper Süddeutsche Zeitung.*

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### **Complaint from R. Thompson**

Breach of standards of accuracy, balance and fairness.

The title of the article is how to sidestep NZ disclosure rules. This is inaccurate as firstly there is no such NZ disclosure rule and secondly there was no attempt to sidestep any rule.

The article states that I have instructed clients to avoid countries that have information sharing agreements with New Zealand. This is inaccurate I have never given such an instruction.

The article states that I have advised clients to avoid countries that have information sharing agreements with New Zealand, with the implied purpose of avoiding disclosure requirements.

This is inaccurate I have never given such advice.

Clients would have been advised that a NZ look through company cannot be controlled or managed in a country with which NZ has a double tax agreement. The reason for such advice is that this is what NZ tax law requires. It has nothing to do with avoiding disclosure.

Granting of a power of attorney limiting its use in certain countries is not an instruction or advice it is simply a power of attorney that can be used in some countries but not others.

The article is unbalanced and unfair in that it assumes that the purpose of the restriction in the power of attorney was to avoid disclosure when in fact it was to comply with NZ law. The journalist made no attempt to seek my views on this and has attributed this incorrect purpose to me. Even after I have advised the publisher that the assumption made is incorrect the publisher has refused to remove the article.

The article is unbalanced and unfair in that it uses the terminology "information sharing agreement" thereby implying the purposes of the alleged instruction and advice was to avoid information sharing. In fact the actual term used was double tax agreement. Although double tax agreements typically include information sharing provisions, calling them information sharing agreements is deliberately misleading.

The article states that there are [not information sharing agreements] with the Latin American countries where Mr Thompson and his colleagues get most of their business. This is factually incorrect, firstly there are information sharing agreements with most Latin American countries under the Convention on Mutual Administration Assistance in Tax Matters



see [http://www.oecd.org/tax/exchange-of-tax-information/Status\\_of\\_convention.pdf](http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf) and secondly the majority of my business does not come from Latin American clients. The writer of the article had no basis for stating that and must have simply invented that "fact"  
Remedy: removal of the article and a public apology.

## **The relevant provisions of the Code of Standards:**

### **PART A – STANDARDS THAT RELATE TO THE INFORMATION PUBLISHED**

#### **Standard 1 Accuracy**

Publishers should make reasonable efforts to ensure that news and current affairs content is accurate and/or does not mislead in relation to all material points of fact.

#### Guidelines

1a. Comment or opinion (to which this standard does not apply) must be clearly distinguished from factual content.

1b. If the content is edited publishers should take care to ensure that the extracts and abridgments used are not a distortion of the original event or the overall views expressed.

#### **Standard 2 Balance on Controversial Issues**

Taking account of the Context in which the content is published publishers should make reasonable efforts to ensure that where the content deals with controversial issues of public importance it makes due reference to a reasonable range of significant viewpoints on the issue.

#### Guidelines

2a. In determining whether there has been due reference to a reasonable range of significant viewpoints the publisher will consider:

- the opportunities provided for those with significant viewpoints to contribute to the content;
- whether the issue or topic is clearly presented from a particular perspective

### **PART B–STANDARDS THAT RELATE TO THOSE PARTICIPATING OR REFERRED TO IN THE CONTENT**

Complaints under Part B may only be brought by the person or organisation taking part or referred to in the publication, or their representative/caregiver.

#### **Standard 3 Fairness**

Publishers should deal fairly with any person or organisation taking part or referred to in online news and current affairs publications.

#### Guidelines

3a. A consideration of what is fair will depend upon the Context and the Public Interest and will recognise the right of individuals to express their opinion.

3b. Except as justified in the Public Interest:

- Contributors and participants should be informed of the nature of their participation in the material to be published;
- Publishers should not obtain information or gather pictures through misrepresentation or deception.

3c. Individuals and particularly children and young people, taking part or referred to in the content, should not be exploited, humiliated or unfairly identified.

3d. Where the content deals with distressing circumstances (e.g. grief and bereavement) discretion and sensitivity are expected taking account of the Public Interest and the interests of those affected by the content.

### **Preliminary response from TVNZ**

Mr Thompson complains: the title of the article is how to sidestep NZ disclosure rules. This is inaccurate as firstly there is no such NZ disclosure rule and secondly there was no attempt to sidestep any rule.

TVNZ response: This was a headline on both the RNZ and the *ONE News* Nowstories. The headline is a shorthand term for, or an abbreviated description of, the complex regime of international information sharing agreements, double taxation arrangements and disclosure regimes that are currently in place and referred to in the item. It is written in a way which is designed to grab attention. It is acceptable in news publications to use this device for news-story headlines. The title does not misrepresent the issues being discussed so that the consumer would be materially misled on the issues, especially when considering the body of the story.

Mr Thompson complains: The article states that I have instructed clients to avoid countries that have information sharing agreements with New Zealand. This is inaccurate I have never given such an instruction.

TVNZ response: Please see Paragraphs 4 and 5 of Power of Attorney for Global Agri Fund Limited (supplied).

*The power of attorney herein granted maybe used and exercised by the Attorney-in-fact to act in his home country, or in any other country provided that such country does not have a double tax agreement ("DTA'9 signed and enforced with New Zealand*

*The place of effective management of the Company is New Zealand, so the Attorney-in fact is absolutely prohibited from managing the Company in the following countries which have a DTA signed and enforced with New Zealand, to wit: (countries then listed)*

The Merriam-Webster dictionary defines instruct as:

2 : to provide with authoritative information or advice

<http://mvw.inerriarn-webstenc.com/dictionary/instruct>

Mr Thompson complains: The article states that I have advised clients to avoid countries that have information sharing agreements with New Zealand, with the implied purpose of avoiding disclosure requirements. This is inaccurate I have never given such advice.

TVNZ response: Please see Paragraphs 4 and 5 of Power of Attorney for Global Agri Fund Limited (supplied).

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*The place of effective management of the Company is New Zealand, so the Attorney-in fact is absolutely prohibited from managing the Company in the following countries which have a DTA signed and enforced with NewZealand, to wit: (countries then listed)...*

Full Definition of *advise* transitive verb

1a : to give (someone) a recommendation about what should be done : to give advice to  
<advise her to try a drier climate>

b : caution, warn <advise them of the consequences>

c : recommend <advise prudence>

intransitive verb

: to give a recommendation about what should be done <advise on legal matters>

<http://mvw.merriam-webstenc.com/dictionarviadvise>

Mr Thompson complains: The article is unbalanced and unfair in that it assumes that the purpose of the restriction in the power of attorney was to avoid disclosure when in fact it was to comply with NZ law. The journalist made no attempt to seek my views on this and has attributed this incorrect purpose to me. Even after I have advised the publisher that the assumption made is incorrect the publisher has refused to remove the article.

TVNZ response: Because of the way that the article was supplied to TVNZ we were unaware that comment had not been sought from Mr Thompson originally. When this became known TVNZ approached Mr Thompson and an article representing his position on the issues has been published.

Please see <https://www.tvnz.co.nz/one-news/new-zealand/foreign-trust-rule-changes-may-trigger-some-closures-mossack-fonseca-agent>.

TVNZ considers that this article provides Mr Thompson's viewpoint on the issues discussed, and the allegations made in the story complained about; and therefore that the requirements of Balance and Fairness have now been met.

Mr Thompson complains: The article is unbalanced and unfair in that it uses the terminology "information sharing agreement" thereby implying the purposes of the alleged instruction and advice was to avoid information sharing. In fact the actual term used was double tax agreement. Although double tax agreements typically include information sharing provisions, calling then information sharing agreements is deliberately misleading.

'Information-sharing agreements' include double-tax agreements or any other accords between countries which control the exchange of information between them. TVNZ therefore disagrees that the use of these terms in the item is inaccurate or controversial; as the term "information sharing agreement" is used properly the item complies with the expectations of the Fairness and Balance standards.

The Tax Act 2007 (as at 2 June 2016) defines double tax agreements as:

### **Double tax agreements**

#### *Meaning*

(1)

**Double tax agreement** means an agreement that—

- (a) has been negotiated for 1 or more of the purposes set out in subsection (2); and
- (b) has been agreed between—
  - (i) the government of any territory outside New Zealand and the government of New Zealand; or
  - (ii) the Taipei Economic and Cultural Office in New Zealand and the New Zealand Commerce and Industry Office; and
- (c) has entered into force as a result of a declaration by the Governor-General by Order in Council under subsection (3).

#### *Purposes*

(2) The following are the purposes for which a double tax agreement may be negotiated:

- (a) to provide relief from double taxation:
- (b) to provide relief from tax:
- (c) to tax the income derived by non-residents from any source in New Zealand:
- (d) to determine the income to be attributed to non-residents or their agencies, branches, or establishments in New Zealand:
- (e) to determine the income to be attributed to New Zealand residents who have special relationships with non-residents:
- (f) to prevent fiscal evasion:
- (g) to facilitate the exchange of information:
- (h) to assist in recovering unpaid tax. [TVNZ highlight]

[http://www.legislation.govt.nz/act/public/2007/0097/latest/DLMii2n85.1\)thil#DLM1512:185](http://www.legislation.govt.nz/act/public/2007/0097/latest/DLMii2n85.1)thil#DLM1512:185)

And a taxation briefing note prepared for the Finance and Expenditure Committee has said on the issue of information sharing agreements in relation to Foreign account information-sharing agreements for the United States' Foreign Account Tax Compliance Act (FATCA) that:

21. *In addition, as any foreign account information-sharing agreement entered into with the United States in relation of FATCA will be a "double tax agreement" for the purposes of the Income Tax Act 2007, these agreements explicitly override the Privacy Act 1993 and the Official Information Act 1982. This treatment is consistent with other double tax agreements under the Income Tax Act 2007.*

[https://www.parliament.nz/resource/en-](https://www.parliament.nz/resource/en-nz/oSCFE ADV ooDBHOH B1LL12926 1 An78o2/aocioc8ea568fdo6b6q421.91ubs2b9;8q79a4)

[nz/oSCFE ADV ooDBHOH B1LL12926 1 An78o2/aocioc8ea568fdo6b6q421.91ubs2b9;8q79a4](https://www.parliament.nz/resource/en-nz/oSCFE ADV ooDBHOH B1LL12926 1 An78o2/aocioc8ea568fdo6b6q421.91ubs2b9;8q79a4)

Mr Thompson states: The article states that there are [not information sharing agreements] with the Latin American countries where Mr Thompson and his colleagues get most of their business. This is factually incorrect, firstly there are information sharing agreements with most Latin American countries under the Convention on Mutual Administration Assistance in Tax Matters see [http://www.oecd.org/tax/exchange-of-tax-information/Status\\_of\\_convention.pdf](http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf) and secondly the majority of my business does not come from Latin American clients. The writer of the article had no basis for stating that and must have simply invented that "fact"

TVNZ response: The Latin American countries are:

Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, Uruguay, Venezuela.

We have highlighted the countries subject to the Convention on Mutual Administration Assistance in Tax Matters. It is incorrect to say "most" countries are party to the Convention. Ecuador, which is the country mentioned in the two cases discussed in this article, and the country referred to in the POA, is not included.

The *ONE News Now* article states: *There are none of these agreements with the Latin American countries where Roger Thompson and his colleagues get most of their business.* This was changed on 24 June after Mr Thompson contacted Radio NZ with his complaint. The story went up 23 June.

### **Response from Complainant R. Thompson**

In essence the article was about non-existent advice to avoid a non-existent disclosure rule, in other words no factual substance at all. The original article seemed to have alternative different headlines including "NZ agent advised how to sidestep rules" and "How to sidestep NZ disclosure rules." As there is in fact no disclosure rule how could it be sidestepped? It is not acceptable to say even in an attention grabbing title that a rule is being sidestepped when in fact there is no rule. To state that I gave advice to sidestep or avoid a law is a very serious allegation and damaging to my reputation as a chartered accountant. I find it incredible that both RNZ and TVNZ consider it is acceptable to state (whether in the title or in the main body of the article) that I gave advice or instructions to sidestep a law when in fact there is no such law. TVNZ's response that the headline is "an abbreviated subscription of a complex regime of international information sharing agreements, double taxation arrangements and disclosure regimes that are currently in place and referred to in the item" appears to be an attempt to confuse the issue. Either there is a law being sidestepped or there isn't. It turns out that there isn't.

The original article as attached stated: *However, documents show the Mossack Fonseca agent specifically advised his clients to avoid countries with information-sharing agreements with New Zealand presumably to side-step the disclosure system.* The highlighted words were subsequently removed but this is no justification or remedy for their original publication. The use of the words "specifically" combined with "information sharing agreements" is misleading when the document provided by TVNZ specifically referred to "double tax agreements", it never referred to "information sharing agreements." They are not interchangeable terms. It

is correct that one of many purposes of a double tax agreement is “to facilitate the exchange of information” but that doesn’t justify referring to “double tax agreements” as “information sharing agreements.” When the word “specifically” is used then the words that follow should be 100% accurate not some interpretation or words with arguably equivalent meaning.

Clearly there is no excuse for the journalists who wrote the article not contacting me for comment before the article was published. The journalists were listed as “RNZ’s Gyles Beckford, Patrick O’Meara, Jane Patterson, One News’ Lee Taylor, Jessica Mutch, Andrea Vance, & Nicky Hager.” Surely one of them would have thought to contact me given that I was the main subject of the article and the purpose of the alleged advice was attributed to me. The journalists had had the relevant documents for more than 2 months before the article was published. There was no urgency as the original story was already very old by this time with little ongoing public interest and no reason why the journalists could not contact me other than incompetence. It is impossible to say that even minimum standards of fairness and balance were met without offering the main subject of the article an opportunity to present a different view than the misplaced view expressed by the authors on a highly technical issue. The only other view presented was that of Deborah Russell who appears to have been closely aligned with the journalists throughout this Panama Papers saga, hardly balanced.

Further it is no excuse for the publisher to say that they didn’t know that I hadn’t been contacted particularly when both publishers listed their own journalists as authors of the article. Obviously the publishers should have asked the journalists whether I had been contacted before publishing such a defamatory article. It is the publisher’s responsibility to ensure fairness and balance. It is irrelevant as to how the article came to TVNZ they still had an obligation to ensure standards were met.

It is not enough to publish an amended or follow up article. If the original article is incorrect, unfair or unbalanced, the publisher should say so together with a public apology. The reputational damage is done when the article is originally published. People who read the original article are unlikely to re-read an amended version subsequently and may not see or make the connection to a follow up article. The follow up article actually compounded the error by stating *The Panama Papers show Mr Thompson, who is Mossack Fonseca’s main New Zealand agent, told an Ecuatorian client to avoid any countries that might subsequently enter into a double-tax agreement (DTA) with New Zealand.* Again, I did not tell the client anything, the power of attorney is simply limited to ensure that the company complied with the NZ legal requirements to be a look through company.

I note that the power of attorney document provided by TVNZ does not show my signature and they have not produced any document that shows that I prepared it or even knew about it such as an accompanying email or other correspondence. If at the time of publication they did not have any such other document to establish that I actually signed the power of attorney or to indicate that I prepared it, it is totally unreasonable to assert that I prepared it and that it was my advice or instructions. It is common for documents prepared by third parties to be submitted to me which I may either sign or decline. Just because my name appears on a document it doesn’t follow that I prepared the document. The document provided by TVNZ could at best be described as a draft document and could not be regarded as advice or an instruction by me in any way. The draft document states that the power of attorney could not be used in a country with which NZ had a double tax agreement. The reason for this was

to ensure that the subject company continued to meet the NZ legal requirements to be a look through company, it had nothing to do with avoiding any disclosure requirements. The document provided by TVNZ does not refer to an information sharing agreement and there is nothing to suggest that the restriction set out in the document was for any purpose of avoiding disclosure requirements other than the journalists' imagination. As set out by TVNZ in their response there is no double tax agreement between NZ and Ecuador so what possible disclosure requirements could be avoided in that particular case.

The draft power of attorney document simply restricts the use of the power of attorney to countries with which NZ does not have a double tax agreement. It is not an instruction or advice it is a simple limitation. An analogy could be made with a driver's licence authorising the holder to drive a motor car but not a motor cycle or truck. The driver's licence is not an advice or instruction not to drive a motor cycle or truck it is simply authorisation to drive a motor car. The draft document does not come within any of the definitions of instruction or advice referred to by TVNZ in italics below:

*The Merriam-Webster dictionary defines instruct as:*

*2 : to provide with authoritative information or advice to provide with authoritative information or advice*

*Full Definition of advise*

*transitive verb*

*1a : to give (someone) a recommendation about what should be done : to give advice to <advise her to try a drier climate>*

*b : caution, warn <advise them of the consequences>*

*c : recommend <advise prudence>*

*intransitive verb*

*: to give a recommendation about what should be done <advise on legal matters>*

The draft document provided by TVNZ cannot in any way be described as authoritative information, advice, recommendation, caution, warning or instruction provided by me at all. It certainly cannot be described as "specifically advised" as stated in the article.

To summarise

1. The article says I "specifically advised" when there is no evidence of any such advice and apparently the only document available that has now been provided by TVNZ is the power of attorney which is possibly only a draft document. A stretched interpretation of "advise" cannot justify the use of the words "specifically advised".
2. No evidence has been provided to show that the purpose of any alleged advice was to avoid any disclosure rule. In fact no disclosure rule exists. Even the title should have some element of accuracy. To date neither TVNZ nor RNZ has been able to detail any disclosure rule that has been sidestepped. To say in the title that I advised how to sidestep disclosure rules when no advice was given and there is no disclosure rule in any case is unfair and unbalanced.
3. The use of the words "information sharing agreements" (especially following the word "specifically") is misleading when the actual wording in the document is "double tax agreements"
4. The article is unfair and unbalanced in that I was not requested to comment despite the authors attributing actions and purposes to me that are damaging to my reputation without

any evidence of such. Given the technical nature of some of the issues and potential damage to my reputation and career, it was even more important to seek my comments before publishing.

5. The article is unfair and unbalanced in that it states that I get most of my business from Latin American clients. This is factually incorrect and the publisher had no basis to state this as a fact.

6. The authors/publishers clearly got the wrong end of the stick on this article but still refuse to acknowledge this.

7. As previously stated I request a full retraction of the article and apology from the publishers.

### **Response from TVNZ**

Thank you for the opportunity to respond to this complaint. The issues which came out of the Panama Papers, including the issues discussed by Mr Hager in the story complained about, were of significant public interest and indeed a Government-ordered inquiry found that "New Zealand's foreign trust rules, as highlighted in the article, must change for the sake of New Zealand's reputation". <https://www.tvnz.co.nz/one-news/zealand/foreign-trust-rules-must-change-sake-nzs-reputation-official-inquiry-finds>

It is important for New Zealand that such discussion is held within media and the item in question is an important part of the Panama Papers discussion as a whole. We are aware of RNZ's response and endorse its contents.

Further to the complaint made by Mr Thompson TVNZ would like to add the following.

#### Standard 1 Accuracy

The TVNZ story is titled "Nicky Hager: How to sidestep NZ tax disclosure rules" TVNZ considers that this makes it clear that story was an opinion piece. Nicky Hager is a well-known investigative journalist, specialising in covering hard to document topics and his particular perspective would be well-understood by news consumers. We note that the standards allow that the Accuracy standard does not apply to commentary or opinion.

Notwithstanding this, in regard to Thompson's comments TVNZ would like to advise the following:

- 1. Mr Thompson states: As there is in fact no disclosure rule how could it be sidestepped? It is not acceptable to say even in an attention grabbing title that a rule is being sidestepped when in fact there is no rule.*

One of the major themes of discussion throughout our reporting on the Panama Papers was whether New Zealand's legislative framework makes it a tax haven. And as the Prime Minister is quoted in the article this comes down to whether there is "full disclosure of information".

There are two elements to this:

- I. who is identified in the New Zealand records (and whether that person/entity is the beneficial owner or a nominee), and
- II. which countries get access to New Zealand records.



By attempting to force TVNZ to identify a particular disclosure rule that he is alleged to have side-stepped, Mr Thompson is effectively "side-stepping" the issue at the heart of the article. Mr Hager is arguing that although New Zealand has some disclosure rules, because they only apply with particular countries where there are information sharing agreements and/or double tax regimes, you can avoid, or side-step, the rules if you avoid any connection to those countries; and he's pointing out that the effect of the POA was to ensure that any disclosure rules which may have otherwise applied were side-stepped.

2. *Mr Thompson states: To state that I gave advice to sidestep or avoid a law is a very serious allegation and damaging to my reputation as a chartered accountant. I find it incredible that both RNZ and TVNZ consider it is acceptable to state (whether in the title or in the main body of the article) that I gave advice or instructions to sidestep a law when in fact there is no such law. And ... Just because my name appears on a document it doesn't follow that I prepared the document. The document provided by TVNZ could at best be described as a draft document and could not be regarded as advice or an instruction by me in any way. The draft document states that the power of attorney could not be used in a country with which NZ had a double tax agreement. The reason for this was to ensure that the subject company continued to meet the NZ legal requirements to be a look through company, it had nothing to do with avoiding any disclosure requirements.*

Mr Thompson's arguments around whether he "advised" clients do not stand up to scrutiny. There are two specific provisions in the POA that prohibit connection with countries that have a double tax agreement with New Zealand. The document sets out that Mr Thompson is acting in his capacity as a director of the client in the power of attorney. To imply that they weren't prepared on his advice is unconvincing and even in his complaint Mr Thompson goes on to state that the reason for the provisions was to preserve the look through company status which does suggest that he had a hand in forming the provisions.

TVNZ also notes that Mr Thompson's complaint in this regard is contrary to comments contained in his earlier emails to RNZ and TVNZ in particular an email of June 23, 2016 at 12:16 PM where he states in part that "*Firstly the advice never referred to*" and again "*The purpose the advice was given should have been evident from the documents*" and as per RNZ's response to this complaint, TVNZ can also provide to the Authority, if required, a near identical power of attorney document with almost identical wording that is signed by Mr Thompson. In light of this it would appear difficult for Mr Thompson to deny knowledge of the power of attorney documents referred to in the article.

3. *Mr Thompson states: The original article as attached stated: However, documents show the Mossack Fonseca agent specifically advised his clients to avoid countries with information-sharing agreements with New Zealand presumably to side-step the disclosure system. The highlighted words were subsequently removed but this is no justification or remedy for their original publication. The use of the words "specifically" combined with "information sharing agreements" is misleading when the document provided by TVNZ specifically referred to "double tax agreements", it never referred to "information sharing agreements." They are not interchangeable terms. It is correct that one of many purposes of a double tax agreement is "to facilitate the exchange of information" but that doesn't justify*

*referring to "double tax agreements" as "information sharing agreements." When the word "specifically" is used then the words that follow should be wo% accurate not some interpretation or words with arguably equivalent meaning.*

As Mr Thompson acknowledges the words "presumably to side-step the disclosure system" were removed from the story as soon as TVNZ became aware of Mr Thompson's complaint on this point. In recognition that Mr Thompson had not been asked for comment on these specific points he was given an opportunity by TVNZ to discuss the issues raised in Mr Hager's opinion piece here: <https://www.tvra.co.nz/one-news/new-zealand/foreign-trust-rule-changes-rnay-trigger-some-closures-mossack-fonseca-agent>.

In terms of standard 1 TVNZ considers that the comment is Mr Hager's opinion and therefore not subject to the expectations of this standard, however if the Committee is minded otherwise, TVNZ submits that this aspect has been settled by the fast amendment.

4. Mr Thompson states: *The article is unfair and unbalanced in that it states that get most of my business from Latin American clients. This is factually incorrect and the publisher had no basis to state this as a fact.*

The ONE News Now article stated: *There are none of these agreements with the Latin American countries where Roger Thompson and his colleagues get most of their business.* It was TVNZ's intention to change this sentence to: *there are none of these agreements with the Latin American countries where Mr Thompson and his colleagues do business* when Mr Thompson made his complaint, which is what TVNZ advised in our correspondence of 29 June. Unfortunately, we have found that this change did not occur in the timely manner we had expected. We apologise to Mr Thompson for the delay in making this change; however TVNZ does not consider that this point concerns a material fact in the item as whether "most" or "some" of Mr Thompson's business comes from Latin American countries the material points in the article concerning his advice to these clients remains the same.

TVNZ therefore does not agree that a breach of the accuracy standard has occurred.

#### In regard to standard 2 Balance

The article complained about appeared in the context of TVNZ's wider reporting on the Panama Papers, which produced over 40 stories in the period from April 4 to July 13 - <https://www.tvnz.co.nz/one-news/panama-papers>.

While it's unfortunate that Mr Thompson wasn't provided with an opportunity to comment prior to this particular article being published, as discussed TVNZ was not aware of this; and it certainly isn't our standard practice. As also discussed TVNZ addressed Mr Thompson's concern on this point by incorporating his response into the later story.

Please see <https://www.tvnz.co.nz/one-news/new-zealand/foreign-trust-rule-changes-mav-trigger-some-closures-mossack-fonseca-a-ent>

In a wider context Mr Thompson was provided with plenty of earlier opportunities to comment on articles that had a similar focus on New Zealand's disclosure regime and his/his firm's connection with the Panama Papers. Of particular relevance TVNZ sought and published his views on the wider issues at a much earlier stage (8 May)

<https://www.tvnz.co.nz/one-news/new-zealandhanama-papers-nz-roger-thompsons-full-response>

and as you'll see, that article includes his full response to the question of whether people used his services to limit their tax liabilities or to deliberately keep their identities secret.

TVNZ therefore considers that significant viewpoints were included within the period of current interest and does not agree that a breach of the balance standard has occurred.

#### In regard to standard 3 Fairness

5. *Mr Thompson states: Clearly there is no excuse for the journalists who wrote the article not contacting me for comment before the article was published... And Obviously the publishers should have asked the journalists whether I had been contacted before publishing such a defamatory article. It is the publisher's responsibility to ensure fairness and balance. It is irrelevant as to how the article came to TVNZ they still had an obligation to ensure standards were met.*

As discussed because of the way that the article was supplied to TVNZ we were unaware that comment had not been sought from Mr Thompson originally. When this became known TVNZ approached Mr Thompson and an article representing his position on the issues has been published. Please see: <https://www.tvnz.co.nz/one-news/new-zealand/foreign-trust-nale-changes-may-trigger-some-closures-mossack-fonseca-agent>

TVNZ considers that earlier statements and this subsequent article provides Mr Thompson's viewpoint on the issues discussed, and the allegations made in the story complained about; and therefore that the requirements of Fairness have been met.

Mr Thompson states: *No evidence has been provided to show that the purpose of any alleged advice was to avoid any disclosure rule. In fact no disclosure rule exists. Even the title should have some element of accuracy. To date neither TVNZ nor RNZ has been able to detail any disclosure rule that has been sidestepped. To say in the title that I advised how to sidestep disclosure rules when no advice was given and there is no disclosure rule in any case is unfair and unbalanced.*

Please see TVNZ's response under 2 & 3 above.

Given the steps taken by TVNZ to subsequently amend the story (as requested by Mr Thompson) and provide Mr Thompson space to provide comment on the issues raised, TVNZ considers that the requirements of the Fairness standard have been met.

As discussed, TVNZ also endorses the arguments on the standards as laid out in the RNZ response on this complaint.

If the Complaints Committee has any further questions about this complaint please let me know.

