

Complaint: 16/021
Complainant: R. Thompson
Publisher: RNZ
Publication: RNZ website “How to Sidestep NZ tax Disclosure rules”. Thursday 23 June 2016
Link: <http://www.radionz.co.nz/news/panama-papers/307045/how-to-sidestep-nz-disclosure-rules>
Outcome: Upheld, in part

SUMMARY

An article published by Radio New Zealand (RNZ) on its 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 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. The Complaints Committee held the headline was 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 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 complaint was Upheld, in part.

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 that 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 that Publishers deal 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 complaint was about an article published by Radio New Zealand (RNZ) on its website which 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 each of the Complainant’s concerns.

Bill of Rights and the Freedom of Expression

The Complaints Committee noted that RNZ had said “...that under section 14 of the New Zealand Bill of Rights Act 1990 our right to impart information and our audience's right to receive information is protected. There is a strong public interest in the topic of this article and in a free and democratic society such as ours, it is imperative that the value of such freedom of speech is protected. The article complained of must fall in the category of ‘high-value’ speech as it addresses matters of confidence in New Zealand's taxation and legislation systems and it is noted that the government called for, and has received, a high-level review on the overall matters raised by the ‘Panama Papers’. To uphold any aspect of a complaint such as that put forward on this occasion would be an unwarranted limitation on the freedom of speech rights of a publisher such as RNZ to report the valid views of an expert, such as on this occasion Massey University's senior lecturer in taxation Deborah Russell, let alone report on the matters raised by the release of the ‘Panama Papers’.”

The Committee acknowledged the important place of the Bill of Rights Act in providing protection for freedom of expression however, it noted this freedom was not absolute. The Code of Standards fettered this to an extent and the Committee accepted the need for balance in assessing whether the limitations imposed by the Code were reasonable and demonstrably justified.

The Committee considered the statements of fact raised in the complaint against the Accuracy Standard.

STANDARD 1 ACCURACY

Headline: “How to sidestep NZ tax disclosure rules”

The Complainant said “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 Publisher, RNZ said “term ‘NZ disclosure rules’ in a headline is an acceptable 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. Likewise, it is meaningful to a lay audience to describe a ‘double tax agreement’ as an ‘information sharing agreement’. This does not breach any of the standards nominated.

RNZ argued that the story was written with the lay reader in mind, as should be the case... it is a perfectly legitimate journalistic tool to refer to such a regime as a set of ‘rules’. The complainant suggests that there is no specific ‘disclosure rule’ but this misses the point that the term is used in reference to describe the overall regime. RNZ submits that the audience would not have been misled by this term.”

The Committee noted previous ruling 16/020 which concerned a similar complaint about the reference to “disclosure rules” in the headline of the article. That Decision said, in part:

“while the headline was not ideal, it was not inaccurate and the reference was 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, the Committee said this would not be the case for most readers due to the context provided by the article.”

Consistent with the previous Decision, the Committee held the headline observed the requirements for accuracy and ruled it was not in breach of Standard 1 of the OMSA Code of Standards 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, RNZ said, in part: “this is contrary to comments contained in his earlier emails to RNZ and TVNZ... RNZ submits that the complainant cannot both refer to advice given in the above terms in that email to RNZ and then later in his submission to OMSA suggest that the advice was not given.” RNZ continued that a “near identical” power of attorney document was signed by the Complainant and “in light of the above it would appear difficult for the

complainant to deny knowledge of the power of attorney documents referred to in the article.”

The Committee noted Decision 16/020 which considered the same statement in the same context in an article published by TVNZ. That Decision said, in part:

“The Committee turned to consider the likely reader takeout of 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.”

In line with the previous Decision, the Committee held the statement, as presented in this article, was in breach of Standard 1 Accuracy and ruled that part of the complaint was Upheld.

STANDARD 2 BALANCE

The Complainant said the article was unbalanced as he was not invited to comment despite the authors attributing actions and purposes to him that were damaging to his reputation without any 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, RNZ, submitted that “over the period of current interest in this topic, Mr Thompson's views were put to our audience.” The Committee noted a news story provided which RNZ said was “an example of RNZ drawing the audience's attention to the fact that other significant points of view exist on this topic which is what the standard requires. There is the point too that our audience would also have been aware of Mr Thompson's position through coverage in other media during the period of current interest.”

Consistent with Decision 16/020, the Committee held there had been a breach of Standard 2 Balance. It said publishing a subsequent story with comment from the Complainant did not absolve the Publisher of its responsibility to ensure it makes due reference to a reasonable range of significant viewpoints and opportunities are provided for those with other points of view on controversial issues.

The Committee held that relying on an audience being aware of alternative viewpoints did not equate to a reasonable effort to ensure balanced reporting on a controversial matter.

The Committee held that by not providing an opportunity to the Complainant, to comment prior to Publication, it was in breach of Standard 2 Balance and 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.

RNZ submitted that it “rejects the notion that the complainant has been unfairly treated... There has been contact between Mr Thompson and reporters prior to this article being published in relation to another article and it was open to RNZ to rely on the content of those exchanges, as well as having formed a view of Mr Thompson’s position in regard to the “Panama Papers” when preparing subsequent articles. As a precaution, external legal advice was also sought before the article in question was published. As well, RNZ had at its disposal documents revealed in the “Panama Papers” and there is no question of the authenticity of those papers.”

The Publisher argued “the article was critical of Mr Thompson, but that does not mean it was unfair. From time to time, people named in articles can expect criticism, even trenchant criticism, but unless some significant harm accrues from the article the matter can be taken no further under the standards.”

The Complaints Committee noted the Publisher removed the phrase “presumably to side-step the disclosure system” in response to contact from the Complainant. It noted where it said “the timely response on RNZ’s part would suggest that if indeed it was a matter to be considered under the fairness standard, it is now settled by that action on our part.”

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 however, found the Complainant was not treated fairly by not being given the opportunity to comment prior to publication. The Committee again acknowledged the Publisher had subsequently contacted the Complainant and had made some 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 held as the Complainant was never asked for comment, they were 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 the complaint was Upheld.

REMEDY

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

Where a complaint has been upheld, publishers must publish OMSA's decision, or a fair summary of it, on its website with similar prominence to the original publication. All OMSA decisions are also published on its website.

The Complaints Committee acknowledged the Publisher had made changes to the content and an attempt to address the lack of comment though the publication of a subsequent article.

In all the circumstances, the Committee did not consider a full retraction and apology was required.

Content Subject to complaint:

RNZ "How to sidestep NZ tax disclosure rules", Thursday 23 June 2016

<http://www.radionz.co.nz/news/panama-papers/307045/how-to-sidestep-nz-disclosure-rules>

RNZ's Gyles Beckford, Patrick O'Meara, Jane Patterson, One News' Lee Taylor, Jessica Mutch, Andrea Vance, & Nicky Hager*

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".

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, she said.

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.*

Complaint from R. Thompson

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.

Remedy: Removal of the article and 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 RNZ

Thank you for the opportunity to provide preliminary comment. RNZ submits that the term “NZ disclosure rules” in a headline is an acceptable 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. This does not breach any of the standards nominated nor does the complainant suggest how it breaches any of the standards. While the complainant suggests that “...secondly there was no attempt to sidestep any rule” no details are provided in that regard or again how the statement may have breached any of the standards nominated.

The complainant also notes “...[t]he article states that I have instructed clients to avoid countries that have information sharing agreements with New Zealand” but provides no detail as to how this statement breaches any of that standards nominated.

We submit, primarily because of a lack of detail, there are no grounds for the complaint to proceed.

We trust the above is of assistance.

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 Ecuadorian 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 RNZ

Thank you for the opportunity to provide further comment on Mr Thompson's submission to his complaint. RNZ stands by the published story and our initial comments provided in response to Mr Thompson's complaint.

RNZ observes that under section 14 of the New Zealand Bill of Rights Act 1990 our right to impart information and our audience's right to receive information is protected. There is a strong public interest in the topic of this article and in a free and democratic society such as ours, it is imperative that the value of such freedom of speech is protected. The article complained of must fall in the category of "high-value" speech as it addresses matters of confidence in New Zealand's taxation and legislation systems and it is noted that the government called for, and has received, a high-level review on the overall matters raised by the "Panama Papers". To uphold any aspect of a complaint such as that put forward on this occasion would be an unwarranted limitation on the freedom of speech rights of a publisher such as RNZ to report the valid views of an expert, such as on this occasion Massey University's senior lecturer in taxation Deborah Russell, let alone report on the matters raised by the release of the "Panama Papers".

Accuracy

RNZ again submits that the term "NZ disclosure rules" in a headline is an acceptable 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. Likewise, it is meaningful to a lay audience to describe a "double tax agreement" as an "information sharing agreement". This does not breach any of the standards nominated.

RNZ notes that the story was written with the lay reader in mind, as should be the case, rather than a more painstaking analysis which might be expected in a chartered accountants' or lawyers' industry journal for example. As is the case with other regimes, for example Copyright, where there is a complex arrangement of international treaties, domestic legislation, and other agreements, it is a perfectly legitimate journalistic tool to refer to such a regime as a set of "rules". The complainant suggests that there is no specific "disclosure rule" but this misses the point that the term is used in reference to describe the overall regime. RNZ submits that the audience would not have been misled by this term.

There is the point too that the phrase "presumably to side-step the disclosure system", which was subsequently removed from the story, cannot be considered under the accuracy standard as it is clearly a statement of opinion.

Separately, the complainant has used terms in his submissions such as "alleged advice" and states quite clearly that "no advice was given" (point 2 of the summary refers). This is contrary to comments contained in his earlier emails to RNZ and TVNZ which we would be happy to disclose to the Authority if required, however in the meantime we refer the complainant to his email of June 23, 2016 at 12.16pm 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.....". RNZ submits that the complainant cannot both refer to advice given in the above terms in that email to RNZ and then later in his submission to OMSA suggest that the advice was not given.

The complainant points out that the power of attorney document referred to was not signed by him and claims further that we were not able to produce "any document that shows that I prepared it or even knew about it...". RNZ can provide to the Authority, if requested, a near

identical power of attorney document with almost identical wording that is signed by the complainant and other power of attorney drafts that contain similar wording. In light of the above it would appear difficult for the complainant to deny knowledge of the power of attorney documents referred to in the article.

Nothing in the above suggests that anything published in the article was inaccurate.

Fairness

RNZ rejects the notion that the complainant has been unfairly treated. At point 4 of his summary the complainant claims that he was not requested to comment however this is not the case. There has been contact between Mr Thompson and reporters prior to this article being published in relation to another article and it was open to RNZ to rely on the content of those exchanges, as well as having formed a view of Mr Thompson's position in regard to the "Panama Papers" when preparing subsequent articles. As a precaution, external legal advice was also sought before the article in question was published. As well, RNZ had at its disposal documents revealed in the "Panama Papers" and there is no question of the authenticity of those papers. Again, if necessary, RNZ would be happy to disclose to the Authority the correspondence referred to.

The article was critical of Mr Thompson, but that does not mean it was unfair. From time to time, people named in articles can expect criticism, even trenchant criticism, but unless some significant harm accrues from the article the matter can be taken no further under the standards. Arising from the publicity around the "Panama Papers" due in part to the article complained of, the changes to the regime to be adopted by the government were by the complainant's own admission "...unlikely to have much effect on his business because foreign trusts were only a very minor part it". It is difficult therefore to see what harm if any has accrued to the complainant so a complaint under fairness must fail.

Shortly after the article was published and Mr Thompson's correspondence was received by RNZ, we did remove the phrase "presumably to side-step the disclosure system" in response to his inquiry. The timely response on RNZ's part would suggest that if indeed it was a matter to be considered under the fairness standard, it is now settled by that action on our part. For the Authority's information, Mr Thompson's inquiry was treated seriously by RNZ, and the wider consortium of journalists, with a joint meeting being held for the duration of approximately one hour in which each of the points he raised was carefully considered.

In the end, if the complainant is still aggrieved, RNZ would be happy to arrange a further interview to explore these matters further. In that regard, he is welcome to get in touch with our Digital News Editor, Alex van Wel at Alex.VanWel@radionz.co.nz to make the necessary arrangements. In view of the release of the "Shewan" report since this article was published, and the government's adoption of all but one of that report's recommendations, it may be timely for such an interview to take place.

Balance

With regards to "balance", RNZ submits that over the period of current interest in this topic, Mr Thompson's views were put to our audience. We refer the Authority to:

<http://www.radionz.co.nz/news/business/307471/mossack-fonseca-agent-reacts-to-review>

as an example of RNZ drawing the audience's attention to the fact that other significant points of view exist on this topic which is what the standard requires. There is the point too that our audience would also have been aware of Mr Thompson's position through coverage in other media during the period of current interest.

In summary then RNZ stands by the story and for the reasons outlined rejects the notion that any of the matters raised go to a point to suggest that a threshold has been met for any of the standards to be breached.

We trust the above is of assistance to the Authority.