

**Complaint:** OMSA 16/004  
**Complainant:** G. Lawrence and Others  
**Media:** Radio New Zealand  
**Publication:** Checkpoint with John Campbell Facebook Page  
**Publication date:** 18 February 2016  
**Link:** <https://www.facebook.com/CheckpointRNZ/videos/169771639713-7456/>  
**Ruling Date:** 11 March 2016  
**Outcome:** Upheld

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## SUMMARY

The material subject to complaint was offensive user generated comments about the Prime Minister and his mother on RNZ's *Checkpoint with John Campbell* Facebook page.

The Complainants said the user generated comments were seriously offensive and expressed concern at the amount of time taken to remove the posts.

The Complaints Committee confirmed it had jurisdiction to consider the complaints about user generated content. It acknowledged RNZ had taken a number of steps to address the matter, however, taking into account the extreme nature of the user generated content, the Committee said the steps taken by RNZ were not timely enough.

Accordingly, the Complaints Committee ruled the complaints were Upheld.

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## COMPLAINTS COMMITTEE DECISION

### Jurisdiction

The Complaints Committee ruled the complaints before it about user generated comments on the RNZ *Checkpoint with John Campbell* Facebook page fell within its jurisdiction.

The Complaints Committee noted the complaints from G. Lawrence and three others were about offensive user generated content posted on a news item shared on the *Checkpoint with John Campbell* Facebook page between 19 – 21 February 2016. The item was a video interview with the Rt Hon John Key and included the question: “Is it appropriate for John Key to wear the challenger flag when representing the country?”

The Complaints Committee noted the Publisher's view that user generated comments were not the responsibility of the Publisher. The Publisher argued “the ability to comment on online services such as Facebook, YouTube, Twitter, and so on, is beyond the control of the Publisher who establishes a page on such a service. Facebook and other operators provide the ability

for the page owner to delete comments once they are published, but there is no ability on the page owner's part to moderate comments before they are published."

The Committee considered the constitution of the Online Media Standards Authority which said jurisdiction applied to "complaints about news and current affairs content published online by our members that is not subject to a complaint to any other regulator".

The Committee concluded comments posted to any page or platform controlled by an OMSA Member were the responsibility of the Publisher when published. It said where news and current affairs material "published online" by any of its Members using the clear identifiable branding of the Publisher and providing a vehicle for user generated comments, particularly when inviting users to interact, was the responsibility of the Publisher and fell within OMSA's jurisdiction.

As it had jurisdiction, the Complaints Committee considered the substance of the complaints.

### **Deliberation**

The Complaints Committee considered the content with reference to Standards 5 and 6 under Part C of the OMSA Code of Standards.

Standard 5 is concerned with whether the content is responsible; is not presented in such a way as to cause panic, or unwarranted alarm or undue distress; and does not deceive.

Standard 6 is concerned with whether the content encourages discrimination against, or denigration of, any section of the New Zealand community on account of gender, sexual orientation, race, age, disability, occupational status, or as a consequence of legitimate expression of religion, culture or political belief.

The Complainants raised two critical issues. First, were the user generated comments seriously offensive and extreme, and secondly, the time taken to remove those posts.

The Complainants said the user generated comments included offensive and racist content directed at the Prime Minister John Key and his mother. The Complainants said the content was irresponsible, may cause distress and condoned violent and criminal activity. M. Lubbock also said the comments were obscene and racist and "go far beyond any legitimate criticism of John Key and into territory inciting his murder and comments about wishing his mother had died in the gas chamber".

The Complaints Committee noted the Complainants provided links to images on Whale Oil and Kiwiblog pages where screen shots of the content from the Checkpoint Facebook page appeared as illustrations of the comments they were complaining about.

The Committee accepted these links to third party sites provided evidence of the nature of the comments which had been posted on the *Checkpoint with John Campbell Facebook* page as there were no comprehensive records held by RNZ of what had been present at all times.

RNZ provided a timeline of the actions it took in relation to the content but this was at a high level of generality.

The Publisher removed several offensive comments on Friday, 19 February. However, further comments were made on Saturday and Sunday. RNZ said once they were made aware of the new comments they were removed, several people were banned from the Facebook page and some comments were reported to Facebook. RNZ also confirmed that as a result of comments made on Saturday, 20 February and Sunday, 21 February, it raised the Facebook “profanity filter” to help in automatically moderating the user generated content.

RNZ said, in part, that “it has now set in place procedures for better communication of our moderation standards, more frequent moderation, and to remind people they can themselves report comments to Facebook. Page managers are responsible for the moderation of comments, but cannot realistically check the comments 24/7. Since this incident, we have reminded managers to raise profanity filters and to frequently add words to automatic page moderation – especially misspellings of common profanity. People have been asked to refer particular posts which may be contentious to a manager to coordinate moderation at times when the programme news desk is not staffed”.

The Complaints Committee next considered whether the Publisher had acted responsibly. It acknowledged RNZ had taken steps to address the matter, including removing the initial offensive comments, and later, raising its profanity filters, removing further offensive content once alerted to it and increasing moderation.

However, taking into account the extreme nature of the user generated content, the Committee found the steps taken by RNZ were not sufficiently timely. It held that RNZ must have been alerted by the tenor of comments posted on Friday, 19 February and, therefore, should have alerted staff to actively monitor the page from that time.

The Committee acknowledged moderation of user generated content on various platforms could be time-consuming. However, it held, if media companies engaged with readers and viewers in that environment, particularly considering polarising subject matters, such as the flag referendum, Publishers had a responsibility to ensure the content was adequately moderated. While the Committee accepted that real-time moderation was not practical, RNZ could have acted in a timely manner in removing the content referred to in the matter before it.

Accordingly, the Committee upheld the complaints under Standard 5 of the OMSA Code of Practice as the Publisher, RNZ, had failed to ensure this content was responsible. RNZ’s obligation was not dependant on any complaint being made to it.

The Committee did not consider the complaints further under Standard 6 of the Code of Standards as it was not clear which comments had been removed and in what timeframe. The Committee accepted the type of comments posted could breach Standard 6 but concluded

the matters before it were better considered with regard to social responsibility on behalf of the Publisher.

Accordingly, the Committee ruled the Publisher had not acted responsibly when it failed to moderate promptly the user generated comments, in breach of Standards 5 of the OMSA Code of Standards and the complaint was Upheld.

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**The Content subject to complaint appeared on RNZ's *Checkpoint with John Campbell* Facebook page.**

<https://www.facebook.com/CheckpointRNZ/videos/1697716397137456/>.

It was a video of John Campbell interviewing the Prime Minister about his views on the Flag Referendum, including whether it was appropriate for him to wear the proposed flag as a pin on his lapel. Under the video it asked the question:

“Is it appropriate for John Key to wear the challenger flag when representing the country? John Campbell went to the sod turning ceremony for Sky City's National Convention Centre to find out.”

**Complaint from G. Lawrence:**

Standard 5

The facebook comments found on the Radio NZ on their Checkpoint facebook page are irresponsible and may cause distress. They encourage and condone criminal activity and may be seen as violent content.

Standard 6

The facebook comments found on the Radio NZ on their Checkpoint facebook page discriminate against both the person and the office of the Prime Minister of New Zealand and against Jews.

**Remedy:** A public apology to the Prime Minister by both Radio New Zealand and John Campbell

An undertaking not to allow offensive material to remain on the Radio NZ website in future and to block persons making any offensive posts in future. Procedures for monitoring this may need to be introduced and upheld

Removal of the offensive content

An undertaking to incorporate the above procedures in the Radio NZ code of conduct for staff  
A warning to those persons posting the objectionable comments.

**Three other Complainant's shared similar views.**

**THE RELEVANT PROVISIONS WERE:**

**PART C – SOCIAL RESPONSIBILITIES**

**Standard 5 Responsible content**

Publishers should ensure news and current affairs content:

- is responsible;
- is not presented in such a way as to cause panic, or unwarranted alarm or undue distress;  
and
- does not deceive.

**Standard 6 Discrimination and Denigration**

Publishers of news and current affairs content should not encourage discrimination against, or denigration of, any section of the New Zealand community on account of gender, sexual orientation, race, age, disability, occupational status, or as a consequence of legitimate expression of religion, culture or political belief.

Guideline

6a. This standard is not intended to prevent the publication of material that is:

- factual, or
- the expression of genuinely held opinion, or
- the reporting of legitimate humour, drama or satire.

**Preliminary response from the Publisher Radio New Zealand:**

I think it is a stretch to accept a complaint as a complaint against RNZ about what is on the Whaleoil site (albeit about RNZ's Facebook page).

FYI we received a separate complaint from another individual quoting the broadcasting standards.

You are correct, we removed the offensive feedback, (which appears to be at least in part an orchestrated set of postings) see screenshot of our Facebook page below:



...RNZ confirms that in this case we did NOT receive notice from any party, let alone the complainant, that offensive comments had been lodged on our Facebook page. Our own personnel detected some offensive material on the Friday and removed it, and further offensive material was seen in the weekend and removed as well.

### **Further response from the Publisher Radio New Zealand**

Thank you for the opportunity to comment on whether or not user-generated content on posts from publishers are within the OMSA's jurisdiction.

...RNZ's submission is that such user-generated content is not within OMSA's jurisdiction.

While at face value it might appear that such comments are the publisher's responsibility, they are not. This is driven by the fact that the ability to comment on online services such as Facebook, YouTube, Twitter, and so on, is beyond the control of the publisher who establishes a page on such a service. Facebook and other operators provide the ability for the page owner to delete comments **once they are published**, but there is no ability on the page owner's part to moderate comments before they are published.

There is now clear legal precedent established that publisher's responsibility for comments published on their page(s) arises only after receipt of notification of material on their page(s) which require some action on the publisher's part e.g. defamatory or objectionable material.

If OMSA was to take a carte blanche approach and consider all complaints about all user generated content, then the conclusion of that approach would be to say that OMSA has jurisdiction over foreign entities such as Facebook, YouTube, Twitter, and so on re the terms and conditions imposed by them on the use of their online services, a situation which is clearly impractical as they are not themselves members of OMSA and any ruling would be unenforceable at law.

If OMSA was to consider the possibility of exercising jurisdiction over all user generated content, RNZ submits it could only do so in the very limited circumstances where a complainant indicates that they have put the publisher on notice of material that may be in breach of OMSA Standards, and that the publisher has taken no action following receipt of that notification. In line with OMSA's current policies regarding privacy and fairness complaints, RNZ further submits that complaints should only be received from a party directly affected by the content published.

### **Further response from the Publisher Radio New Zealand**

Please find below our response to the questions put to RNZ:

1. A timeline from when the material was first published to the Facebook page, including when the comments were made, when and how you were alerted to them, and when they were subsequently removed from the page.

The comments first started appearing on Friday, February 19, and several were removed that day. The bulk of the comments were left on Saturday and early Sunday. RNZ's Community Engagement Editor removed the worst of comments on Sunday afternoon, February 21, when she became aware of Twitter commentary referring to the material. RNZ banned several people from the page, reported a number of comments to Facebook and removed a number of other comments which included more low-level "trolling". On Sunday, February 21, RNZ also raised the "profanity filter", and subsequently added a number of words to the Checkpoint page's automatic moderation. This means that comments containing identified profanities are "held" until the Community Engagement Editor, or page manager, reviews them.

2. Information on what your post moderation policy was at the time the comments were made, and where that could be found by users.

RNZ frequently refers people to [RNZ's community guidelines](#) – which are available on the Facebook page, under the "about" section – including on the particular post complained. RNZ page managers are responsible for moderation, and remove comments that are offensive or illegal. RNZ has now set in place procedures for better communication of our moderation standards, more frequent moderation, and to remind people they can themselves report comments to Facebook.

3. Any relevant information on Radio New Zealand's internal system or process in moderating user generated comments.

Page managers are responsible for the moderation of comments, but cannot realistically check the comments 24/7. Since this incident, we have reminded managers to raise profanity filters and to frequently add words to automatic page moderation – especially misspellings of common profanity. People have been asked to refer particular posts which may be

contentious to a manager to coordinate moderation at times when the programme news desk is not staffed.

Finally, RNZ would also like OMSA to note that :

1. None of the contentious material was drawn to our attention directly, i.e. we were not placed on notice by either any of the parties referred to in the comments, or, from other online users of our Facebook page.
2. Our Community Engagement Editor removed the material as soon as she found it on the Checkpoint Facebook page.
3. RNZ apologised on Facebook and Twitter at the time the material was removed.
4. It would appear that no Facebook page users reported the offensive material to Facebook itself. It would be usual practice in these circumstances for Facebook, once advised, to remove offensive material but that did not occur on this occasion.

**Members who considered this complaint**

Sir Bruce Robertson, Sue Chetwin, Michelle Wanwimolruk, Andrew Simpson, and Nigel Horrocks