

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 25/91

Dated the 17th day of June 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

R. MANSELL

of Auckland

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

J.B. Fish Acting Chairperson

J.L. Hardie

J.R. Morris

DECISION

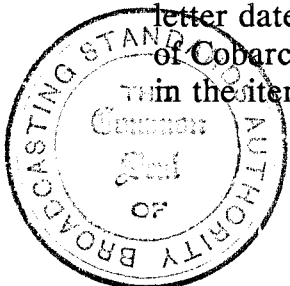
Introduction

The *Fair Go* programme broadcast on TV1 on 15 May 1990 included an item which questioned whether the personal liability of company directors whose businesses have gone into liquidation should be limited to the extent that it is. It used as an example of the difficulties caused to clients of failed businesses the situation of a young couple, Mr and Mrs Miura, who were building a new home when the builder, Barr Cook Enterprises Ltd, went into liquidation.

The programme stated that a former director of Barr Cook Enterprises, a Mr Graeme Cook, was the director of a number of companies. This included being the director and a major shareholder of Cobarco Homes Ltd. The programme displayed a sign listing five companies in which Mr Cook was said to be involved, but Cobarco Homes was the only one mentioned at that point.

Mr Mansell's Complaint to Television New Zealand Limited

Mr Mansell, writing as a director of Libre Holdings Ltd, complained to TVNZ Ltd in a letter dated 23 May 1990. He described himself as a director and a major shareholder of Cobarco Homes Ltd and expressed his concern about the naming of Cobarco Homes in the item, adding:



Cobarco Homes Ltd has been in operation for approximately three years (previously under the name of Dysart Homes Ltd) and the insinuation of the reporter and the programme is that we started when Barr Cook Enterprises went into receivership. This is totally incorrect as we have nothing whatsoever to do with the failed company.

As a result of the programme, he stated, the actions of suppliers and financial institutions were causing the company "acute embarrassment and extreme financial difficulties".

In a letter to TVNZ dated 11 June 1990, he listed the following nine specific complaints about the *Fair Go* item.

- 1) Cobarco Homes Ltd had been operating for three years prior to the liquidation of Barr Cook Enterprises Ltd. It had not started operation immediately after the collapse of Barr Cook Enterprises as the programme implied. Thus, the programme was factually incorrect.
- 2) The programme had not explained that the liquidation of Barr Cook Enterprises had been caused by the collapse of two major companies.
- 3) The Miuras' neighbour interviewed on the *Fair Go* programme, a Mrs Russell, had told deliberate lies in stating that Barr Cook Enterprises had not offered to help. The company, Mr Mansell wrote, had offered to help in any way possible other than with financial assistance.
- 4) The programme mentioned only one of the directors of Barr Cook Enterprises. This was unfair to the one mentioned, Mr Cook.
- 5) The programme was not correct in stating that the Miuras' house had had to be moved. Only the soffits encroached over the building line and cheaper remedial options had not been mentioned.
- 6) Cobarco Homes Ltd was not given a right of reply.
- 7) The programme was incorrect in describing Mr Cook as the major shareholder of Cobarco Homes Ltd. Mr Cook and Libre Holdings Ltd each had less than 40% of the shares.
- 8) Cobarco Homes Ltd had no contractual arrangements with the couple who had contracted with Barr Cook Enterprises to have the home built, the Miuras, and the programme was "totally unfair" to suggest the company was in some way involved.
- 9) Barr Cook Enterprises had been treated unfairly on the programme as the directors would have incurred criminal liability had the company carried on trading at the time it went into liquidation.



TVNZ's Response to the Formal Complaint

Mr Mansell's complaint was dealt with by TVNZ's Complaints Committee at its meeting of 3 August 1990 and Mr Mansell advised of its conclusions in a letter dated 14 August 1990.

The complaint was considered in the context of standards 1 and 6 of the Television Code of Broadcasting Practice which require (i) factual truth and accuracy and (ii) balance, impartiality and fairness in dealing with controversial issues.

The Complaints Committee recorded that, initially, Mr Mansell had focused on the implication that Cobarco Homes had not been incorporated until after the voluntary liquidation of Barr Cook Enterprises. Expressing doubt about the relevance of this point to the broadcast, TVNZ quoted the introduction of the item and said that the complainant's interpretation could not be substantiated. The programme's sole reference to Cobarco was also quoted:

He is now a director and a major shareholder of Cobarco, a building firm with glossy premises in Auckland.

TVNZ continued:

The point, as outlined in the studio introduction, was seen as being designed to show that, despite the plight of the Miuras, who had been severely affected by the liquidation of Barr Cook, Graeme Cook was legally entitled to continue to work in the building industry and still appeared to be relatively well off.

It was not stated, nor implied, that he had ever acted illegally, that he was likely to repeat his previous actions, nor that Cobarco was likely to leave anyone in the lurch.

TVNZ returned to this point when it discussed Mr Mansell's nine specific points.

- 1) The use of the word "now" in the reference to Cobarco Homes, it was said, referred to the time of the broadcast, not to the formation of the company.
- 2) The reasons for the liquidation of Barr Cook Enterprises were peripheral to the theme of the programme about directors' responsibilities. Further, the possible reasons for the liquidation were not advanced in the item as this would involve conjecture.
- 3) TVNZ rejected the complaint that the neighbour, Mrs Russell, had told lies about Mr Cook's lack of practical assistance. The only offer from Mr Cook, TVNZ recorded, would have involved the payment of a substantial sum of money by the Miuras. The neighbour's statement, TVNZ added, was supported on the item by Mrs Miura.

Any reference to the second director of Barr Cook Enterprises would have been irrelevant as Mr Cook dealt with the Miuras on behalf of the company at



all times.

- 5) Although cheaper options than moving the whole house might have been available, the one investigated by the Miuras would have entailed unacceptable aesthetic alterations to the design of the house. The programme assumed, because the financially stretched Miuras were paying for the house to be moved, that an acceptable alternative would have been accepted if offered.
- 6) Besides questioning whether Cobarco Homes should have been given a right of reply, TVNZ said that in effect Cobarco, through Mr Cook, was given this right.
- 7) The programme said Mr Cook was a major shareholder in Cobarco Homes (not the major shareholder) which was true as he owned 38.75% of the shares - a shareholding equal to that of Libre Holdings Ltd.
- 8) TVNZ maintained that the programme did not suggest that Cobarco Homes had any contractual arrangement with the Miuras. It continued:

If Mr Cook was not currently a key director of Cobarco it is probable that the company's name would never have been mentioned.

- 9) Questioning the relevance of the substance of the point raised by this complaint, TVNZ stated that the consequences of the liquidation of Barr Cook Enterprises, not the reasons for it, were central to the theme of the programme.

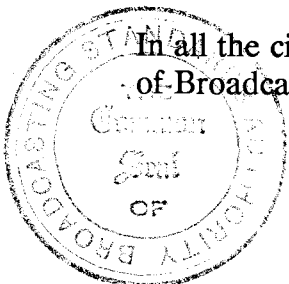
In conclusion, TVNZ made two points. First:

In summary the Committee believed the programme clearly indicated that the Miuras were worse off because of the liquidation of Barr Cook Enterprises and the mistakes it had made. It was questioned whether the law should be changed to prevent this sort of thing happening.

Secondly:

As for the assertion that Cobarco Homes has "nothing whatsoever to do with " Barr Cook Enterprises, it was not challenged that, in a corporate sense, this would not be correct. Besides the programme did not say otherwise. The reason for mentioning Cobarco was purely because Graeme Cook, of Barr Cook Enterprises, was now the manager, one of two directors, and a major shareholder of another building firm. The fact that Cobarco existed under the name of Dysart Homes Ltd, with Mr Cook playing a much lesser role, prior to the demise of Barr Cook Enterprises, was not considered relevant. What was relevant was that Mr Cook was continuing in the same line of business after the voluntary liquidation.

In all the circumstances, TVNZ concluded, the item did not breach the Television Code of-Broadcasting Practice.



Mr Mansell's Complaint to the Broadcasting Standards Authority

As he was dissatisfied with TVNZ's decision, Mr Mansell referred his complaint to the Broadcasting Standards Authority under s8(a) of the Broadcasting Act 1989 in a letter dated 12 September 1990. He wrote:

My general complaint is that TVNZ can sling mud at my complaint by only stating those parts of the truth that suits them and their programme, they can then be judge, jury and executor, and finally wash their hands of the whole matter by pardoning themselves with some pathetic excuse that an inconspicuous word in the script makes the whole script acceptable.

In a letter dated 2 October accompanying the Authority's Complaint Referral Form, he added:

The programme caused considerable "panic and alarm" amongst our suppliers and bank and also caused considerable "distress" upon myself and my company.

Mr Mansell expanded upon the nine specific points first raised in his original complaint.

- 1) With regard to the establishment of Cobarco Homes, he stated that TVNZ's use of the word "now" implied that Mr Cook had become a director of Cobarco since the collapse of Barr Cook Enterprises. Further, the programme implied that Cobarco had been established since the collapse of the former company. These points, he acknowledged, were a matter of interpretation and he stood by his interpretation as, unlike TVNZ's interpretation, it was balanced, impartial and fair.
- 2) The reference to Barr Cook's creditors but not to its debtors, was also unbalanced.
- 3) TVNZ had confined its examination, unjustly, to the "practical" assistance Mr Cook made to the Miuras. Mrs Russell had been inaccurate, and TVNZ had accepted her inaccurate statement, in not stating that some other help had been offered.
- 4) As the programme's theme was the responsibility of directors of companies which go into liquidation, ignoring the other director of Barr Cook Enterprises indicated superficial investigation and again breached the standard requiring balance, impartiality and fairness. The item's references to Mr Cook's personal assets also breached this standard.
- 5) The same standard was breached when the item did not acknowledge that there were cheaper options available than moving the house.

- 6) Cobarco Homes had not been given a right of reply as the programme had edited out part of Mr Cook's written response. As a result, a distorted version had been broadcast contrary to standard 15 of the Television Code of



Broadcasting Practice.

- 7) No further comment was added.
- 8) The reference to Cobarco Homes was followed closely by a question about the costs of moving the house which implied Cobarco's responsibility for the Miuras' costs.
- 9) No further comment was added.

TVNZ's Response to the Authority

As is the Authority's practice, TVNZ was asked for its comments on Mr Mansell's complaint, in a letter dated 18 September 1990.

TVNZ's response dated 11 March 1991 objected to two of Mr Mansell's comments, one from his letter of 12 September noted at the top of page 5 above, which it described as "intemperate" and "unhelpful" in the cause of a dispassionate assessment of his complaint.

Although TVNZ considered that the comments justified a submission that the complaint be dismissed as vexatious, it declined to do so in order to demonstrate that the *Fair Go* item took account of all significant aspects of a matter of considerable public interest. Moreover, as it was not relevant to the item, it had not examined the interlocking of the eight companies involved or of their directors. TVNZ had not mentioned Mr Mansell, nor Libre Holdings Ltd, the company under which letterhead he wrote. The programme had linked Mr Cook with Cobarco Homes Ltd.

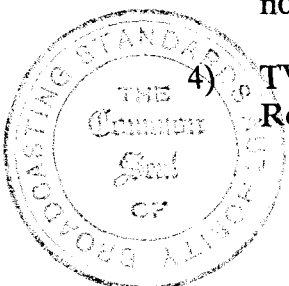
TVNZ referred to the nine specific complaints.

- 1) TVNZ stood by its use of the word "now", in the phrase about Mr Cook, "He is now a director of Cobarco ...". "Now" referred to the time of the programme and did not imply that it was a new position since the collapse of Barr Cook Enterprises.

Quoting the script further, TVNZ maintained that only an "extraordinarily narrow" interpretation would conclude that Cobarco had been formed since Barr Cook's liquidation.

- 2) The reference to Barr Cook Enterprises' creditors, an incidental point to the story, was designed to indicate why Barr Cook chose to wind up voluntarily.
- 3) Wondering why the complainant focused on the word "practical", TVNZ maintained Mrs Russell had said, on the Miuras' behalf, that they had received no "tangible" assistance.

- 4) TVNZ had nothing further to say about Mr K. Barr, Barr Cook's other director. References by the complainant to Mr Cook's home and car in his 2 October



letter were new material and, it was submitted, not relevant to the Authority's review of the complaint.

- 5) Exploration of cheaper options to moving the house, TVNZ stated, in view of issues about structural and building integrity, might have resulted in further criticism of Mr Cook. Fairness was achieved by stopping the investigation at the point it had stopped.
- 6) TVNZ raised objections to the Authority considering a new ground for the complaint (distortion by editing - standard 15), adding that Mr Cook had not complained on this ground.
- 7) Objection was also taken to another new ground raised by Mr Mansell (deceptive programming - standard 7) when relating the reference to Cobarco Homes to another question in the programme. The implication alleged in the original complaint that Cobarco should pay for the Miuras' expenses, as explained by TVNZ at the time, "is simply not tenable". There was also a 14 second gap between the items which the complainant regarded as directly related.

TVNZ concluded that the *Fair Go* programme in question had not breached any of the broadcasting standards relevant to Mr Mansell's original complaint.

Mr Mansell's Final Comment to the Authority

Asked for a comment on TVNZ's letter of 11 March 1991, Mr Mansell remarked in a letter received on 7 May:

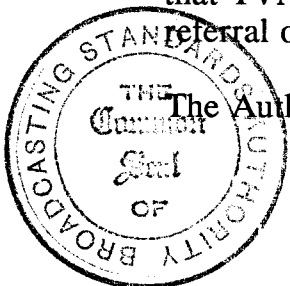
Initially I decided not to reply to your letter of 12 March, however as far as I am concerned TVNZ can stand behind their interpretation of the programme as much as they wish to.

The fact still remains that my company has suffered irreparable damage and as a direct result of the programme had credit facilities cancelled, arrangements with financial institutions severely cut back and clients pulling out of deals. In short, TVNZ has forced my company into near bankruptcy - all in the sake of "public interest" - and they really couldn't give a stuff.

Decision

The Authority has expressed its displeasure in some recent decisions about the time TVNZ has taken to respond to some referrals. On this occasion, the Authority records that TVNZ took 25 weeks to respond to the Authority's request for comments on the referral of Mr Mansell's complaint.

The Authority has studied the correspondence and carefully considered the arguments



put forward by Mr Mansell in support of his complaint and by TVNZ in response. All the members have viewed the *Fair Go* item which gave rise to the complaint.

The Authority wishes to emphasise from the outset that the focus of this complaint seemed to be the reference in the programme to Cobarco Homes Ltd. Although some of the complaints made by Mr Mansell referred to the programme's treatment of Barr Cook Enterprises, the Authority, as will become apparent, regarded these matters as subsidiary to the core issue. Further, the Authority decided that the theme of the programme, the personal liability of directors of companies which go into liquidation, is a matter of valid public interest. However, it is of the view that the public interest is not well served by the item's implication that malpractice is inherent in all cases of liquidation. It is possible that a company may be adversely affected by matters beyond its control, just as the Miuras were, and the Authority considers that this should have been acknowledged in the item.

The Authority also wishes to record that it received a complaint from Mr Graeme Cook, the director of Barr Cook Enterprises featured on the programme, that the *Fair Go* item invaded his privacy in breach of s4(1)(c) of the Broadcasting Act 1989. As the information about Mr Cook disclosed in the programme fell into the category of public facts, the Authority declined to uphold his complaint (Decision No: 1/91).

TVNZ considered Mr Mansell's complaint under standards 1 and 6 of the Television Code of Broadcasting Practice. They require programmes:

1. To be truthful and accurate on points of fact.
6. To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

Both standards were implied in the first point of Mr Mansell's letter of complaint of 11 June when he complained about:

1. The fairness and accuracy in which Cobarco Homes Ltd was presented. No mention of the fact was made that Cobarco Homes Ltd had been operating for three years before Barr Cook Enterprises went into liquidation. It was implied that Cobarco Homes Ltd had started operation immediately Barr Cook Enterprises Ltd had collapsed. This is totally incorrect.

TVNZ wrote to Mr Mansell in response (14 August 1990):

1. In summary on this point, *Fair Go* was seen by the Committee to have been fully aware that Cobarco had been operating prior to Barr Cook's liquidation. It did not imply that Cobarco had started operation immediately Barr Cook collapsed. It stated that Graeme Cook "is now a director and major shareholder of Cobarco" which you acknowledged as being absolutely correct. The "now" referred to the time at which the programme was broadcast.

These factors aside the Committee considered that the relevance of the time



of the formation of Cobarco, in the context of the story, was minimal if not nil.

The later correspondence explored in more detail the language used and the parties insisted that their respective interpretations were correct.

The Authority, after a careful viewing of the item, considered that to comply with the truth and accuracy requirement of standard 1, the programme should have either stressed the independence of the two named companies (Barr Cook Enterprises Ltd and Cobarco Homes Ltd) or not mentioned Cobarco Homes at all. By presenting only the bare facts that it did about Cobarco Homes, the item implied, the Authority decided, that Cobarco Homes rose, Phoenix-like, from the ashes of Barr Cook Enterprises. As a result the Authority concluded that the item implied that Cobarco Homes, as the reincarnated form of Barr Cook Enterprises, possessed questionable financial, if not moral, characteristics.

Beyond that, however, with regard to factual truth and accuracy (standard 1), the Authority considered that it had insufficient information about the past relationship which might have existed between Cobarco (formerly Dysart Homes) and Barr Cook, or between Mr Mansell and Mr Cook, to reach a decision on the accuracy of the item's comments and implications about Cobarco Homes.

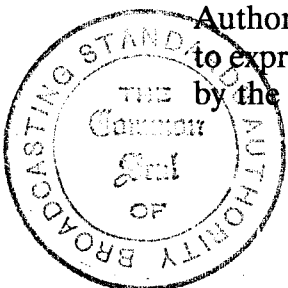
On the fairness issue on the other hand (standard 6), the Authority considered that the item, by implying that Cobarco Homes' structure and operations were of questionable merit but without producing evidence to substantiate this implication, had treated Cobarco Homes unfairly. For these reasons, the Authority upheld this aspect of the complaint.

For the reasons outlined above, the Authority upholds in part the complaint that by associating Cobarco Homes Ltd with Barr Cook Enterprises Ltd, the programme breached the truth and accuracy requirement of standard 1. Further, it upholds the complaint that by associating Cobarco Homes Ltd and Barr Cook Enterprises Ltd, the programme breached the fairness requirements of standard 6 of the Television Code of Broadcasting Practice.

Having reached this decision on the substantial issue raised by the complaint, the Authority proceeded to the eight other specific complaints made by Mr Mansell.

2. The Authority disagreed with TVNZ that the reasons for the liquidation of Barr Cook Enterprises were peripheral to the item's themes. It considered that the phrasing in which the liquidation was described carried an implication which questioned Mr Cook's behaviour. A comment that the item had not established reasons for the liquidation or that these were beyond the item's scope would have minimised this implication.

3. With regard to the broadcast of the neighbour's (Mrs Russell's) complaints, the Authority accepted the format of the item in that Mrs Russell had the opportunity to express her points forcibly and that Mr Cook's reply provided the balance required by the standards.



4. In the Authority's opinion TVNZ was entitled to choose as the item's theme the criticism of a director of a failed company carrying on in the same line of business. Mr Barr fell outside that focus.
5. Mr Mansell's complaint that the programme only mentioned moving the house as the solution to the Miuras' complaint was rejected, as the item did not state that the home had to be moved.
6. The Authority did not consider the complaint that Cobarco Homes should have been given a right of reply or at least any opportunity to explain its relationship with Barr Cook under standard 15 because, as TVNZ correctly pointed out, standard 15 was not raised in Mr Mansell's letters of complaint dated 23 May and 11 June 1990. As a complaint under standard 6, the Authority decided that its conclusion on this matter was incorporated in its finding about point one noted above.
7. TVNZ was correct in describing Mr Cook as a major shareholder of Cobarco Homes.
8. As the item did not suggest there was a contractual arrangement between Cobarco Homes and the Miuras, it was not unfair. However, to the extent that the complaint focused on the association between Mr Cook and Cobarco Homes, the issue has been dealt with in the Authority's finding on point one above.
9. While accepting Mr Mansell's complaint to the extent that more could have been said about the consequences of Barr Cook's financial liabilities in view of its liquidation, the Authority considered that this was also an issue covered by its finding about the item's unfairness.

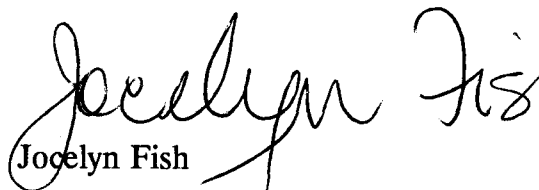

With regard to complaints 2 - 9, for the reasons outlined above, the Authority declines to uphold the complaint that the programme breached the truth and accuracy requirement of standard 1 of the Television Code of Broadcasting Practice or that the programme breached the balance, impartiality and fairness requirements of standard 6.

Order

The Authority orders TVNZ to broadcast on the first programme of the forthcoming series of *Fair Go* a brief summary, approved by the Authority, of this decision.

Signed for and on behalf of the Authority

Jocelyn Fish

17 June 1991