

12 October 2018

327 Willis St
Te Aro
Wellington 6011

By email: elcalebo@gmail.com

Dear Caleb

Re: Wellington Mornings with Heather du Plessis-Allan, 4 and 11 September 2018

I handle formal complaints for NZME Radio and yours has been forwarded to me for deliberation.

You have complained under Standard 1 (Good Taste and Decency), Standard 3 (Children's Interests), Standard 5 (Law and Order), Standard 6 (Discrimination and Denigration), Standard 8 (Balance), Standard 9 (Accuracy), and Standard 11 (Fairness) of the Radio Code of Broadcasting Practice.

We are unable to consider your complaint in respect of Standards 8 and 9. This is because these standards apply only to news and current events programmes. The comment was made by the host during her talkback show, and, as the Broadcasting Standards Authority has previously stated, "was analogous to 'programmes which are wholly based on opinions or ideas', which are generally not considered news or current affairs. While the host and callers discussed topical issues, listeners would not have expected a balanced or authoritative examination of these issues, in the context of the talkback environment."¹

We note that you did not hear the original broadcast. All Broadcasting Standards Authority formal complaints require the complainant to have heard the initial broadcast, so that the relevant audio is considered in its original context. While we do not consider this to be a formal complaint, we have analysed it as such for prudence.

In the broadcast complained of, the host gave extremely robust opinions as to why the Prime Minister should not have commissioned a return trip for her flight in a private plane to Nauru for a one-day trip to the Pacific Islands Forum. As part of this discussion, the host stated the following:

¹ Haines and NZME Radio Ltd - 2017-039 (17 July 2017) at [27] (footnotes omitted).

... and that is costing us \$80,000. So, I don't like to get worked up about small spends, but \$80,000 for one person's flight return to Nauru is extremely expensive. If commercial flights ever bothered to fly to that hellhole, it would probably only cost about \$8,000.

She then spoke to a caller about Jacinda Ardern's trip:

Caller: As the figurehead for NZ, she should probably go.

HDP: Why do we want her there, Roger?

Caller: Well, as the figurehead of NZ. Winston Peters could probably step up, but it's like a show of respect.

HDP: It's the Pacific Islands. They don't matter

Caller: [Laughs] Well you go round saying they don't matter, there are a lot of things that don't matter, but you have to do it...

HDP: ... Roger last year, guess who we sent?...

Caller: Probably some back bencher, I don't know.

HDP: It was Gerry Brownlee. It wasn't the Prime Minister ...

The host then continued:

I don't know that we need to send the Prime Minister. I mean, it's the Pacific Islands. What are we going to get out of them? They are nothing but leeches on us. I mean, the Pacific Islands wants money from us. We don't need money from them. The best case scenario is that we go over there and basically continue to press the case for the US with the Pacific Islands in the constant struggle between China and the US in the Pacific region, and New Zealand goes there and reminds them that hey, hey, stick with us, we're on your team, that's about the best that we could possibly expect. Other than that, I don't see the point in sending the Prime Minister. It is completely unnecessary. What a token effort to turn up on the last day.

On 11 September, after a portion of her broadcast was cut and played on Radio New Zealand (without the above context), the host referred to this coverage:

I still don't know why people are so blimbling angry about it. And so I want to fill you in and get your views. What happened was... we were discussing the PM's VIP solo flight "Air Ardern" on Tuesday, and during the course of that, I said ... one of the only reasons to take this trip was in order to court the Pacific Island vote. And of course, you know this government has been quite generous with its money to Pacific Island countries, which has ramifications back home... anyway, getting boring. So anyway, what I said was "Narau was a hellhole". Factually correct. And I also set the Pacific Islands are leeches because they want our money. Well, Twitter has blown up... They are furious.... Some chap called John Hart from the Green Party said I "casually dehumanised our Pacific peoples". Oh my gosh. Did I? Or did I say the Pacific Islands? I don't know, confusing people with islands?

She also referred to a comment by John Edwards on Twitter warning her to be careful in calling people leeches, or cockroaches, which referred to the dehumanisation practices in the Rwandan Genocide of the Tutsi people, thus suggesting that the host was "like some sort of genocide perpetrator."

She then stated:

I do not regret what I said, because I was not talking about people living in this country or talking about the people themselves. I was talking about the Pacific Islands and the people that run it [them]. And the fact of the matter is, look at the people that run Niue. New Zealand is funding Niue. But like, not a little bit of Niue, all of Niue. From what I can tell, the GDP of Niue... is sitting around \$15,000,000 annually.... Do you know how much we give Niue in aid

every year? \$14,500,000. So, we are literally funding the country.... What is that if it is not acting like a welfare sponge? ... that is exactly what it is. Do we exist in New Zealand to fund Pacific Islands, how much is too much to be giving to Pacific Islands, do we not need to be careful with our money? ...

I think, personally, we need to crack down on the Pacific Islands and say, come on, what do you need this money for? Because we're spending a lot of money that I'm not sure is being spent wisely over there.

Standard 1 – Good Taste and Decency

Standard 1 states:

Current norms of good taste and decency should be maintained, consistent with the context of the programme and the wider context of the broadcast.

The purpose of the standard is to ensure the maintenance of good taste and decency, consistent with the context of the programme and the wider context of the broadcast. A number of contextual factors need to be considered, including the nature of the programme, the time of the broadcast, and audience expectations.

Firstly, Newstalk ZB is an adult targeted radio station for 30-64 year olds. Secondly, the show in question is a talkback show, which has been recognised as a special category of radio by the Authority:

It has long been recognised that talkback radio is an environment where robust challenging statements and opinions are to be expected and are to be tolerated. The genre of talkback radio requires activity to be generated. The interactions required by talkback need to be stimulated and sometimes this stimulus has to be through the use of sharp points. Talkback radio fills an important place in our liberal democratic society and while what sometimes happens there may cause discomfort, the value of the venue is such that this discomfort caused from time to time has to be carried. That is not to say that there are no limits but rather to say that the thresholds in this venue are higher than in most other broadcasting environments...

In another decision by the BSA, a host made comments that communities in the Far North of New Zealand were an “underclass” whose children would be “feral” and that welfare benefits should be given to stop them having children:

...I don't think you can help those people. I think they are beyond help and beyond redemption. ...They do not have sufficient initiative, intelligence or insight to be able to turn their lives around or the lives of their children. And you can provide as many programmes and policies for them as you like, but because of that fundamental lack of insight they will never be able to change their lives or the lives of their children. I would look at some of those communities in the Far North and I would say the difference between them and the Aboriginal cesspits of North Queensland is what? And the answer is, bugger all.

...

[In response to a caller's comment that some female school pupils who wanted to get pregnant to get welfare benefits do not have “the thought process to really think things through and make better decisions”] ...and my contention is they never will for as long as you have those sorts of underclass breeding. For as long as that underclass breeds kids you will let – with few palpable exceptions – they

will produce children who think like them and become well frankly even slightly more feral. And don't we already have enough of the feral underclass in this country? I'm sorry to harp on a theme of 2009, but if we're going to provide welfare let's provide welfare for these people not to have kids, shall we?

Considering the talkback nature of the show in which the above statements were made, the target audience, and the expectation of regular audiences, the BSA determined that the above comments did not stray beyond current norms of good taste and decency in breach of Standard 1.²

We consider that this is a similar case. The host here is known as an ex political journalist, and we are confident that audiences understand that she can have a forthright manner when it comes to her opinion - particularly regarding political matters. Considering precedent decisions, and the context in which the statements were made (context which, we note, was absent in replays in other media) we do not consider that the host's opinion of Nauru, and the financial dependency of nations on New Zealand, or whether the relationships with Pacific nations justified the expense of sending Jacinda Arden to Nauru for a day, is such that they undermined widely shared community standards.

We are of course aware of how, in isolation, these words can be construed as offensive. However, we must consider the host's right to freedom of speech as a constitutional right in New Zealand, which should not be unnecessarily fettered except as absolutely necessary (as provided under the Human Rights Act).

We have not upheld Standard 1.

Standard 3 – Children's Interests

Standard 3 states:

Broadcasters should ensure children can be protected from broadcasts which might adversely affect them.

In the guidelines to the standard, material that is likely to be considered under this standard includes:

- sexual material or themes
- violent content or themes
- offensive language
- social or domestic friction
- dangerous, antisocial or illegal behaviour
- material in which children or animals are humiliated or badly treated
- graphic descriptions of people in extreme pain or distress

which are outside audience expectations of the station or programme.

² See *Lochead and RadioWorks Ltd* - 2010-031 (27 April 2010).

As above, Newstalk ZB is an adult targeted radio station. Given the nature of content discussed in talk shows (including, for example, crime, domestic and international politics, race and gender politics, and so on) we consider that children would only be listening with parental guidance. Further, both broadcasts occurred while children are likely to have been at school. As such, we would anticipate that it is open to parents to discuss with their children that they do not share that opinion. We also do not consider that the host's opinion is out of step with the robust opinions usually offered in a talkback show, or this host.

We do not uphold your complaint under Standard 3.

Standard 5 – Law and Order

Standard 5 provides:

Broadcasters should observe standards consistent with the maintenance of law and order, taking into account the context of the programme and the wider context of the broadcast.

The Broadcasting Standards Authority has previously stated that “to find a breach of the standard, the BSA will need to be convinced that a broadcast not only implicitly condemns a particular law, but also actively promotes disrespect for it.” Guidance for the standard states “[t]he purpose of this standard is to prevent broadcasts that encourage audiences to break the law, or otherwise promote criminal or serious antisocial activity.”

Again, in the context of an environment when statements are made to stimulate debate, we consider that the host's statements did not encourage breaking the law, or antisocial behaviour.

We do not uphold your complaint in regard to Standard 5.

Standard 6 – Discrimination and Denigration

Standard 6 provides:

Broadcasters should not encourage discrimination against, or denigration of, any section of the community on account of sex, sexual orientation, race, age, disability, occupational status or as a consequence of legitimate expression of religion, culture or political belief.

‘Discrimination’ is defined as encouraging the different treatment of the members of a particular section of the community, to their detriment. ‘Denigration’ is defined as devaluing the reputation of a particular section of the community.

The Broadcasting Standards Authority has previously stated that “the purpose of the discrimination and denigration standard is to protect sections of the community from verbal and other attacks. The standard protects against broadcasts which encourage the denigration of, or discrimination against, any section of the community on account of sex, sexual orientation, race, age, disability, occupational status, or as a consequence of legitimate

expression of religion, culture or political belief.”³ However, Guideline 6c to the standard states that the standard is not intended to prevent the broadcast of material that is “a genuine expression of serious comment, analysis or opinion”.

The term “denigration” has consistently been defined by the BSA as meaning blackening the reputation of a class of people. The BSA has also consistently ruled a high level of invective is required to breach Standard 6, often with an element of malice or nastiness, will be necessary to conclude that a broadcast encouraged discrimination or denigration in contravention of the standard, due to the freedom of speech provided under the Bill of Rights Act 1990. The Broadcasting Standards Authority has also noted that speech which offends, or which is rude, is not determinative of a breach of the standard. The BSA has previously found that “we recognise that allowing the free and frank expression of a wide range of views is a necessary part of living in a democracy. It is only where the expression of these views goes too far that Standard 7 will be found to have been breached.”

In this case, we consider that the host referred to Nauru as an island (not the people of Nauru), as a hellhole. She also was querying the importance of Pacific relationships as against the very high cost of sending the Prime Minister to a conference for a day (rather than another member of the party), and various Pacific governments reliance on, and use of, New Zealand foreign aid. None of these matters are those protected sections of the community under the Human Rights Act.

While expressed in provocative terms, the remarks related to whether it was appropriate for Jacinda Ardern to commission a flight for one day at a conference in Nauru. Talkback hosts often play on the views of an audience to provoke a response. While many may not share Heather’s opinions, as they did not cross the line into vitriol or hate speech, the genuine opinions expressed by her are protected by the right to freedom of expression in the Bill of Rights Act.

We therefore have not upheld your complaint in respect of Standard 6.

Standard 11 - Fairness

Standard 11 states:

Broadcasters should deal fairly with any person or organisation taking part or referred to in any broadcast.

11d of the guidelines to the standard states that “[i]f a person or organisation referred to or portrayed in a broadcast might be adversely affected, that person or organisation should usually be given a fair and reasonable opportunity to comment for the programme, before the broadcast. What is ‘fair and reasonable’ will depend on the circumstances.”

³ *Jamieson and MediaWorks Radio Ltd* - 2016-057 (14 October 2016) at [9].

The Authority has recognised that this Standard is not intended to prevent criticism of public figures: “it is an essential element of free speech that even the most trenchant criticism of public figures be allowed...”

As stated above, the host’s comments were not about specific individuals, or organisations. Her first comment was about her view of Nauru as an island, and her other statements referred to the importance of Pacific governments as against the New Zealand taxpayer expense to have the Prime Minister attend a conference for a day, and Pacific government reliance on, and use of, New Zealand foreign aid.

To the extent that the Pacific governments referred to above would be considered “organisations”, it is unlikely that each would have been able to make an immediate response to the host’s comments. Government bodies should also be open to free and public criticism, as public bodies.

In our view, the right to freedom of expression in this case means that we do not uphold your complaint under Standard 11.

Heather has clearly touched upon a subject which many found to be controversial and upsetting, and we are aware that many do not share her views. The benefit of free speech in our society is that Heather can have an opinion. Conversely, as you have identified, Heather’s opinions may be considered by some to be divisive, unnecessary, and hurtful. Freedom of speech, the right to hold differing opinion, is a cornerstone to democratic society.

However, we are always conscious of how the views broadcast by our hosts affect our audience. We apologise that you think Heather missed the mark, and that you were offended. You will be aware that Heather has been the subject of considerable widespread and public criticism for her views. We have discussed this, as well as the complaints that we have received, with Heather. We are extremely aware of the power of the platform that broadcasters have, particularly in their wide audience reach. Thank you for taking the time to provide your feedback, which is very valuable to us.

Should you be dissatisfied with this decision you have the right to take the matter to the Broadcasting Standards Authority within 20 working days.

Yours sincerely



Ashleigh Cropp
Experience Manager
NZME

Cc: Jason Winstanley

Nadia Tolich