

# BROADCASTING STANDARDS AUTHORITY

## Practice Note: Section 11 powers to decline to determine a complaint

### Background

Section 11 of the Broadcasting Act 1989 authorises the BSA to decline to determine a complaint which has been referred to it if it considers:

- that the complaint is frivolous, vexatious, or trivial – section 11(a); or
- that, in all the circumstances of the complaint, it should not be determined by the Authority – section 11(b).

The purpose of this Practice Note is to provide guidance to complainants and broadcasters about the usual way section 11 is interpreted and applied by the BSA.

### Comment

In the BSA's view, the policy behind section 11 is that the time and resources of the Authority, which are, in the end, sustained by the people of New Zealand, should not be wasted in having to deal with matters which objectively have no importance.

The complaints system under the Broadcasting Act is an open door system. Broadcasters are required to receive and consider all complaints that meet the relevant criteria for being a valid formal complaint. The BSA usually expects broadcasters to deal with complaints they receive in a considered and appropriately comprehensive way. It does not expect a comprehensive analysis of a complaint when, on its face, it is frivolous or trivial. The BSA is conscious that there is an economic cost in dealing with complaints and it does not wish to see resources wasted on complaints that have no foundation whatsoever.

All complaints which are then referred by a complainant to the BSA need to be considered by the BSA board but with the qualification that if they are considered to come within section 11 they need not be determined.

### BSA Decisions

The following summaries and examples demonstrate the BSA's approach in decisions declining to determine a complaint, released between 2007 and 2013 (cited by name and decision number; all decisions are available on the BSA's website, [www.bsa.govt.nz](http://www.bsa.govt.nz)).

#### ***Section 11(a): Frivolous, vexatious or trivial***

The BSA will usually apply the ordinary meanings of the words *frivolous*, *vexatious* or *trivial*. Obviously, there is some overlap in the meanings of these expressions.

*Frivolous* means not serious or sensible, or even silly. A frivolous complaint is one which the BSA considers to be unworthy of being treated in the same way in which it would treat a complaint which is not frivolous or which has some merit.

A *trivial* complaint is one which is of little or no importance and is at such a level not to justify it being treated as a serious complaint.

Examples of complaints that the BSA has declined to determine on the basis they were frivolous or trivial include:

#### *Trivial accuracy complaints*

- A complaint that promos for upcoming programmes containing the word “next” were inaccurate, because there were advertisements between the programmes ([2007-095](#))
- A complaint that a reference to “government superannuation” was inaccurate as it should have referred to “New Zealand superannuation” ([2009-164](#))
- A complaint that the meaning of the phrase “50 times less power” was unclear and therefore inaccurate ([2009-150](#))
- A complaint that a reference to a “31 percent difference” in men’s and women’s pay was inaccurate ([2010-015](#))
- A complaint that a reference to “wind chill factor” did not indicate which temperature measurement was being used ([2010-033](#))
- A complaint that a reference to Prince William as “the next King of England” was inaccurate because he was also the next King of New Zealand ([2011-004](#))
- A complaint that a reference to a train “engine” was inaccurate ([2011-009](#))
- A complaint that a reference to a search area should have been in square nautical miles, not kilometres ([2010-055](#))
- A complaint that the phrase Police “force” was inaccurate because the police were not part of the Armed Forces ([2011-067](#))
- A complaint that a reference to “an area of around 15,000 rugby fields” was inaccurate because that was not a proper area measurement ([2012-100](#))
- A complaint that a reference to colony cages for hens being “4cm more than conventional cages” was inaccurate ([2012-100](#))

#### *Complaints about low-level language*

- A complaint about the word “bugger” in a factual travel programme ([2011-084](#))
- A complaint about the word “damn” in an election advertisement ([2011-143](#))
- A complaint about the use of the word “gay” in a news item, to mean “homosexual” ([2011-118](#))

#### *Other frivolous/trivial matters*

- A complaint that an election advertisement which used a voiceover by a child was inappropriate because children are not allowed to vote ([2011-158](#))
- A complaint that a news item containing footage of a reporter walking backwards was dangerous and breached standards of law and order ([2012-100](#))

A *vexatious* complaint is one which has been instituted without sufficient justifying grounds. In some cases a person putting forward a vexatious complaint may do so with the intention of causing annoyance, but such an intention may not be necessary in order for a complaint to be considered vexatious.

The BSA is usually reluctant to label a complainant vexatious, however examples of complaints that the BSA considered to be vexatious include:

- A complainant misheard the broadcast, received an adequate response from the broadcaster to that effect, but still proceeded with a referral to the Authority ([2008-035](#))
- Complainants repeatedly referred complaints about the same issue, even though their earlier complaints had been dismissed and comprehensive reasons given ([2012-104](#); [2011-087](#))

**Section 11(b): In all the circumstances, the complaint should not be determined**

Additionally, in terms of section 11, there may be other good reasons for the BSA to decline to determine a complaint. Examples include:

- the complaint is based merely on the complainant's personal preferences (see section 5(c) of the Broadcasting Act), or is a matter of editorial discretion, which broadcasters are entitled to exercise:
  - Complaints that programmes about the Treaty of Waitangi and New Zealand flags omitted certain facts ([2010-009](#); [2011-055](#); [2011-087](#); [2011-170](#))
  - Complaint that news programmes failed to report certain stories ([2010-086](#))
  - Complaint that an interview about Olympic drug cheating referred to Jamaica but did not discuss New Zealand's alleged cheating history ([2012-109](#))
  - Complaint that a news item reported differently on an event than a BBC item about the same topic ([2012-117](#))
- the complaint raises matters which are incapable of being addressed as issues of broadcasting standards, the grounds of the complaint are unclear, or the complainant misheard or misunderstood the broadcast ([2008-127](#); [2010-002](#); [2010-048](#))
- the complaint relates to material outside the Authority's jurisdiction, such as printed internet content or on-demand content ([2010-070](#))
- a recording of the broadcast is unavailable or incomplete, or cannot be located because the content of the complaint does not correspond with any broadcast at the time specified in the complaint ([2007-051](#); [2010-068](#); [2010-129](#); [2011-102](#); [2012-093](#); [2012-117](#))

**BSA Retains Ultimate Discretion**

This practice note is intended to provide a guide only, and does not bind the BSA in determining the outcome of any future complaint. We retain overall discretion and each complaint is determined on its particular facts.

**Issued by the Broadcasting Standards Authority pursuant to s21(d) of the Broadcasting Act 1989**

**P J Radich  
Chair  
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