

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 16/92

Dated the 15th day of April 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

DR NICK COOPER
of Auckland

Broadcaster
TV3 NETWORK SERVICES
LIMITED

I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L.M. Dawson

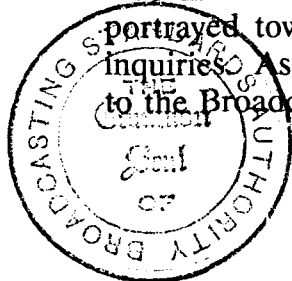
DECISION

Introduction

"Doctor Knows Best" was the title of an item broadcast by TV3 Network Services Ltd on its *60 Minutes* programme at 7.30pm on 13 October 1991. It focused on the experiences of a woman who, despite exhibiting symptoms for a number of years and reporting them to her doctor, had not received treatment for cervical cancer until the disease was well advanced.

Dr Cooper complained about a statement in the item which alleged that the medical profession began to take cervical cancer seriously only after the Cartwright inquiry. That statement, he said, breached the broadcasting standard requiring factual truth and accuracy. That statement together with the item's anti-doctor bias, he continued, breached the standards requiring the objective and impartial presentation of news, and the presentation of news in a way so as not to cause unnecessary alarm or distress.

TV3 maintained that the statement complained about was accurate and the attitudes portrayed towards the medical profession were a fair reflection of the programme's inquiries. As Dr Cooper was dissatisfied with that response, he referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Decision

The members of the Authority have viewed the programme to which the complaint relates and have read the correspondence (summarised in the Appendix). Following its usual practice, the Authority has determined this complaint without holding a hearing.

Dr Cooper complained that the *60 Minutes* item, "Doctor Knows Best", was factually incorrect when it claimed that the medical profession had not taken cervical cancer seriously until the Cartwright inquiry. He also complained that the programme had covered the medical disciplinary procedures inadequately and the comments made about screening for cervical cancer had caused alarm to a number of his patients. He added that the programme, by using the unfortunate medical history of two women patients, had attacked the entire medical profession and that *60 Minutes'* anti-doctor attitude, not a "closing of ranks" as the programme alleged, was the reason why some members of the profession had declined to talk to the programme makers. The item, he said, breached standards 1, 12 and 14 of the Television Code of Broadcasting Practice. Standard 1 requires broadcasters to be truthful and accurate on points of fact and standards 12 and 14 read:

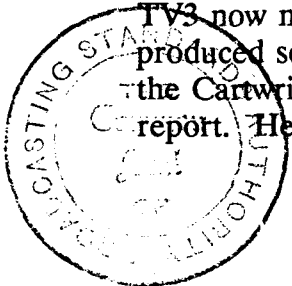
- 12 News must be presented accurately, objectively and impartially.
- 14 News should not be presented in such a way to cause unnecessary panic, alarm or distress.

TV3 assessed the complaint against these standards. As standards 12 and 14 refer specifically and are confined to news and as *60 Minutes* is a current affairs programme, the Authority does not accept that standards 12 and 14 are applicable. Nevertheless, because of TV3's response, the Authority is prepared on this occasion to assess the programme against standard 6 which incorporates Dr Cooper's concerns. It requires broadcasters:

- 6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

TV3 declined to uphold the complaint. *60 Minutes*, it said, had been told by the two senior doctors who appeared on the programme, Dr Teague and Dr Briant, that the profession had not taken national screening for cervical cancer seriously until the Cartwright inquiry. The bitterness towards the medical profession portrayed on the programme, it continued, reflected the views of the people interviewed. Moreover, it noted, eight gynaecologists approached for comment had refused and that justified the programme's comment about the closing of ranks by the profession.

Dr Cooper stressed to the Authority the difference between not taking cervical cancer seriously - as the item alleged - and not taking national screening for it seriously - as TV3 now maintained. Moreover, in view of TV3's attitude in the correspondence, he produced some statistics to indicate that screening for cervical cancer occurred before the Cartwright inquiry and that there had been no upsurge following the release of its report. He repeated that the refusal of the eight gynaecologists to talk to *60 Minutes*



could reflect the profession's wariness in dealing with the media rather than a closing of the ranks.

These two issues have been highlighted as the Authority believes that they are at the core of the complaint. Was the blurring of the distinction between cervical cancer and screening for it a matter which breached the truth and accuracy requirement and did the "closing ranks" comment breach the requirement for balance?

The Authority believed that the two specific questions noted had to be assessed within the context and tone of the programme. The item "Doctor Knows Best" was presented seemingly with the intention of affecting the viewers' emotions rather than their intellects. It was, to use a colloquial term, a "tear-jerker" calculated to evoke sympathy. The Authority agrees that the patient featured, Ms Keryn Kernohan, was entitled to considerable sympathy and was thoroughly justified in her caustic remark about the medical profession - both at a personal and institutional level. However, the Authority believes that *60 Minutes*, to use another colloquialism, "milked" her experiences to broadcast an item where emotional impact, rather than rigid logic, predominated.

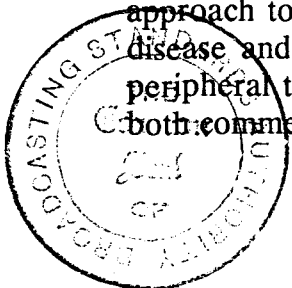
Although the programme was highly emotional, that does not reduce the programme maker's obligations to comply with the broadcasting standards. The Authority agreed with the complainant that the programme referred to the profession's attitude to cervical cancer, not to the screening for it. It concluded, nevertheless, that it was a relatively minor distinction which would not have been important to most viewers taking into account the lack of prominence given the distinction in the programme.

The Authority reached a similar conclusion about the "closing ranks" comment. Dr Cooper advanced one possible interpretation but the Authority believed that were others which could have been presented. However, given the comment's minor importance in the overall documentary, the Authority concluded that although the comment contained an element of unfairness, it did not amount to a breach of standard 6 of the Code.

The Authority also noted that the profession was represented by two practitioners. Dr Briant, the chair of the New Zealand Medical Council, spoke about medical disciplinary proceedings generally and the case of Ms Keryn Kernohan's doctor specifically. Dr Teague, a pathologist, spoke about the screening programme for cervical cancer and how the expectations on doctors had increased in recent years.

In regard to Dr Cooper's complaint that the item caused alarm to some patients, the Authority declined to determine the point because of standard 14's inapplicability to current affairs.

While the Authority accepted that a case had been advanced which, possibly, justified a conclusion that the comments made had in fact breached standards 1 and 6, it was of the view that to reach such a decision would involve an excessively purist or technical approach to the standards. Whereas one comment blurred the distinction between a disease and its control and the other contained an element of unfairness, both were peripheral to the item's highly emotive tone. On balance, the Authority decided that both comments, other than to viewers with a specialist knowledge, would have been lost

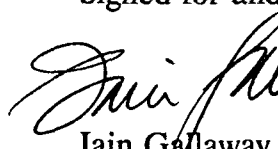


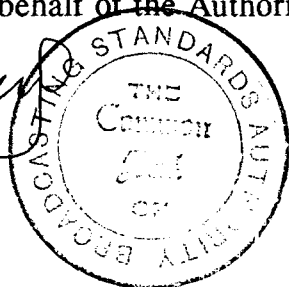
in the lingering and finally tearful portrayal of the events leading to Ms Kernohan's surgery.

For the reasons set forth above, the Authority declines to uphold the complaint that the broadcast by TV3 of the item on *60 Minutes* on 13 October 1991 breached standards 1 and 6 of the Television Code of Broadcasting Practice.

For the reasons set forth above, the Authority declines to determine the complaint that the same broadcast breached standards 12 and 14 of the Code.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



15 April 1992

Appendix

Dr Nick Cooper's Complaint to TV3 Network Services Limited

In a letter dated 25 October 1991, Dr Nick Cooper of Auckland complained to TV3 Network Services Ltd about the item "Dr Knows Best" broadcast by TV3 on its *60 Minutes* programme at 7.30pm on 13 October. He alleged that the item broadcast breached standard 1 of the Television Code of Broadcasting Practice which requires broadcasters to be truthful and accurate on points of fact. He added that it also breached standards 12 and 14 which respectively require the accurate, objective and impartial presentation of news and prohibit the presentation of news in an alarming way.

He referred to a statement made by the reporter in the item that the medical profession had not taken cervical cancer seriously until the Cartwright inquiry. Explaining that the Cartwright inquiry questioned one method for the treatment of cervical cancer, he said that it "came along decades after the medical profession was taking the disease seriously".

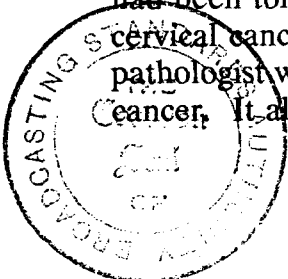
The programme dealt with the experiences of two women and focused on one who had suffered from cervical cancer and had formally accused her doctor of negligence. Dr Cooper said that the programme dealt inadequately with the legislative requirements for medical disciplinary procedures and omitted any reference to the probable forthcoming changes to the process. The programme also said that the medical profession had closed ranks and had refused to talk to *60 Minutes*. Dr Cooper said *60 Minutes'* anti-doctor attitude may be the reason why members of the profession declined to talk to the programme makers.

He said that following the screening of the programme, he and his wife (also a general practitioner) had received a number of telephone calls and visits from women who were very concerned about their smear tests. He concluded:

The programme purports to be an investigation of two women's inadequate treatment of cervical cancer by two doctors but in reality is being used as a vehicle from which to launch an attack on the whole medical profession. It sickens me that these two unfortunate women could be used so callously by the programme makers.

TV3's Response to the Formal Complaint

In its reply dated 16 December 1991, TV3 advised Dr Cooper that its Complaints Committee declined to uphold the complaint about factual inaccuracy. *60 Minutes* had been told by Dr Teague that the profession did not take national screening for cervical cancer seriously until the 1980s. Dr Teague, it added, was a Wellington pathologist who was a member of the an advisory panel for screening for cervical cancer. It also recorded that the Chair of the Medical Council, Dr Briant, concurred



with Dr Teague. She had told *60 Minutes* that the Cartwright inquiry focused the attention of doctors on the need for cervical screening. TV3 stated:

Both Dr Teague and Dr Briant are senior medical professionals and *60 Minutes* thoroughly checked with both individuals before making the statement it did. As a G.P. and a viewer, you are entitled to your opinion but the programme stands by the statement as broadcast.

The woman featured, TV3 continued, had accused both the doctor specifically and the profession generally of negligence. TV3 had accurately portrayed her bitterness.

Eight gynaecologists had been approached by *60 Minutes* to talk generally about the profession's attitude to cervical cancer. They were not asked to comment about the specific case featured but none "was prepared to be quoted by *60 Minutes* and some were aggressive towards the fact that they were approached on the matter". TV3 concluded:

It is a reasonable assessment, in the wake of the Cartwright inquiry, that the medical profession is very sensitive indeed about cervical cancer and media scrutiny of their performance.

Dr Cooper's Complaint to the Broadcasting Standards Authority

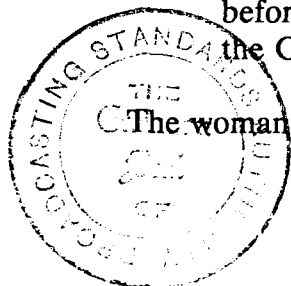
As Dr Cooper was dissatisfied with TV3's response, he referred the complaint to the Broadcasting Standards Authority in a letter dated 19 December 1991.

With regard to the assertion that the medical profession did not take cervical cancer seriously until the Cartwright inquiry, he described Dr Teague's contribution as irrelevant. He pointed out that Dr Teague referred to the profession's attitude to the screening programme while the item referred to the profession's attitude to the disease. Nevertheless, he cited figures to show that cervical smears processed by diagnostic laboratories (about half of all smears nationwide) had increased by about 8% a year between 1971 and 1990 (18,000 to 101,000) and that there had been no sudden upsurge since the Cartwright inquiry.

In view of her medical speciality, he said that Dr Briant was not particularly well qualified to talk authoritatively about cervical cancer or screening for it. He summed up on the point:

In summary to this part of TV3's reply to my complaint, they are talking about a cervical screening programme in their letter however the programme reporter was talking about the disease cervical cancer. Once again I would like to say that the medical profession was taking the disease seriously decades before the enquiry, and the programme was wrong in its statement that it took the Cartwright enquiry to jolt the profession into taking the illness seriously.

The woman featured had accused her general practitioner of negligence but the



reporter's comment, Dr Cooper said, that she was accusing the profession of negligence was misleading. Further, TV3 had reported inaccurately that the medical profession closed ranks when a member was accused of negligence. Another interpretation, Dr Cooper said, was that doctors were wary about talking to journalists.

Finally, he wrote, TV3 had not responded to his complaint about the needless distress caused by the programme.

TV3's Response to the Authority

As is its practice, the Authority asked for the broadcaster's comment on the complaint. Its request is dated 13 January 1992 and TV3's first reply is dated 20 January. In that letter TV3 referred to the comments from Dr Teague and Dr Briant and argued that these two statements, in view of the holders' positions, were sufficient verification for the comment that the profession did not take cervical cancer seriously until the Cartwright inquiry.

TV3's full reply is dated 27 February. It argued, first, that the issues of cervical cancer screening and the medical profession's attitude to cervical cancer were intertwined in the item and could not be separated as Dr Cooper maintained. Secondly, the detailed changes to the medical disciplinary system were still the subject of conjecture and, because of the uncertainties, were not a major factor in the story which was broadcast. TV3 argued, thirdly, that the number of doctors who declined to be interviewed was evidence for the comment about the medical profession closing ranks.

TV3 persisted in its stance that the item was truthful, accurate, objective and impartial and added that Dr Cooper's claim about panic was melodramatic. Maintaining that the public's right to know was the overriding issue, it said that the comments from Drs Teague and Briant gave the programme credibility.

Dr Cooper's Final Comment to the Authority

When asked for his response to TV3's comment, in a letter dated 5 March 1992 Dr Cooper stated that the programme's title "Doctor Knows Best", reflected the items partiality and lack of truth. He maintained his complaint that the item had unjustifiably combined cervical cancer and the cervical cancer screening programme into an attack on the medical profession.

He stated that, in view of the item's emphasis on medical discipline, the proposed changes to the process were relevant. He also denied the programme's implication that the profession was not taking cervical cancer seriously. He also objected to the implication that doctors were closing ranks to protect their own profession.

