

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 52/92

Dated the 13th day of August 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

CRAIG CREEVEY

of Auckland

Broadcaster

INDEPENDENT BROADCASTING
COMPANY (1990) LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

Introduction

"Guess the Personality" was the name of a contest broadcast by Auckland's 91 FM on the breakfast show on 18 February 1992. The clue involved the sound of the "personality" urinating into water followed by the sound of a flushing toilet.

Mr Creevey delivered a formal complaint to the broadcaster on 18 February on the ground that the item broadcast that morning breached the broadcasting standard requiring good taste and decency.

As Mr Creevey did not receive a formal response to his complaint within 60 working days, he complained to the Broadcasting Standards Authority under s.8(b) of the Broadcasting Act 1989. In response to the Authority's inquiries, the broadcaster stated that the complaint had been overlooked and apologised for not replying to Mr Creevey but said the complaint had been dealt with as a complaint for not winning the contest rather than as a complaint about broadcasting standards. As Mr Creevey was dissatisfied with that reply, he then referred the substance of his complaint to the Authority under s.8(a) of the Act.



Decision

The members of the Authority have read the correspondence which is summarised in the Appendix. As a tape of the one-off item has not been retained, the members have not listened to it. However, it is not disputed by the parties that the broadcast involved the sound of a person urinating into water. As is its practice, the Authority has determined the complaint without a formal hearing.

Mr Creevey's formal complaint to 91FM about the item's good taste, made on the day of its broadcast (18 February), was apparently mislaid by the broadcaster. After 60 working days had elapsed (the appropriate statutory time), Mr Creevey referred his complaint to the Authority and expanded on the grounds of his complaint. The Authority's task is to review the broadcaster's decision or to ascertain why the broadcaster has not responded. The Broadcasting Act 1989 does not provide for new grounds to be raised when a complaint is referred to the Authority and thus, in the case of Mr Creevey's complaint, the Authority has assessed the complaint solely against standard 1.1(b) of the Radio Code of Broadcasting Practice which requires broadcasters:

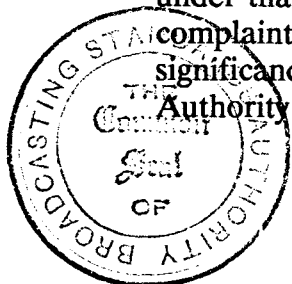
- (b) To take into consideration currently accepted norms of decency and good taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs:

When approached by the Authority, the Group Programme Director (Mr Jeremy Millar) for Independent Broadcasting Co (the operator of Auckland's 91FM) apologised to Mr Creevey for not responding to his complaint. It added that, as Mr Creevey was regarded as a "professional winner", it was possible that his complaint was thought to refer to not winning rather than to a programme feature. As the staff involved had since left, Mr Millar was unable to take the complaint any further. In a later letter, he acknowledged that the programme about a "celebrity tinkle" was part of a popular on-going promotion which included such sounds as "celebrity sneeze" and "celebrity zipper".

Mr Creevey regarded the broadcaster's acknowledgement of the item as an admission that it had breached the standards.

At this point, the Authority records that it did not regard the broadcaster's admission of the broadcast as an acknowledgement that the item was in bad taste. It also notes that it did not accept as sufficient the broadcaster's explanation that Mr Creevey's complaint was somehow of less validity because it was made by what it described as a "professional winner". In the Authority's view, that is a totally unrelated issue and the Authority trusts that Independent Broadcasting, along with all other broadcasters, will in future treat all formal complaints according to the processes laid down in the Broadcasting Act.

In regard to the complaint about the "celebrity tinkle", the Authority first considered, as required by the standard, the broadcast's "context" and decided that there was nothing under that criterion which exacerbated or alleviated the item. It next decided that the complaint, although it dealt with a minor aspect of a promotion, was not of such little significance that it could be dismissed as trivial. Considering the item further, the Authority concluded that it was tasteless, gratuitous and, unlike some other matters



involving questions of taste and decency, contained nothing which could be regarded as being of social utility.

When considering complaints which allege a breach of the good taste and decency standard, the Authority assesses the item against the generally accepted attitudes, values and expectations of New Zealanders. Taking into account the matters referred to in the previous paragraph, on balance a majority of the Authority decided that the "celebrity tinkle" promotion breached the requirements in the standard.

For the reasons set forth above, a majority of the Authority upholds the complaint that the broadcast on 18 February 1992 of the "celebrity tinkle" on 91FM, operated by Independent Broadcasting Company (1990) Ltd, breached standard 1.1(b) of the Radio Code of Broadcasting Practice.

Having upheld a complaint, the Authority may make an order under s.13(1) of the Broadcasting Act 1989. It does not intend to do so on this occasion as it regards the breach as a relatively minor one and, further, the broadcaster has advised the Authority that the item was only on air for a few days and there are no plans to repeat it.

Signed for and on behalf of the Authority

Iain Gallaway
Iain Gallaway
Chairperson



13 August 1992

Appendix

Mr Craig Creevey's Complaint to Auckland's 91FM

In a letter to the Broadcasting Standards Authority dated 2 May 1992, Mr Creevey said he had not received a response from 91FM to a complaint made on 18 February. Although he had not kept a copy of that letter, he recalled that it concerned an item on that morning's breakfast show which, Mr Creevey said, breached the good taste and decency requirement in standard 1.1(b) of the Radio Code of Broadcasting Practice.

The station had broadcast a contest called "Guess the Personality" and the clue involved the sound of the "personality" urinating into water followed by the sound of a toilet flushing. The following morning, apparently as a result of receiving his complaint, Mr Creevey said, the clue involved the sound of someone urinating in a urinal followed by the sound of a flushing urinal.

Mr Creevey's Complaint to the Broadcasting Standards Authority

As he did not receive a reply from the broadcaster after 60 working days, in a letter dated 27 May 1992 Mr Creevey referred his complaint to the Broadcasting Standards Authority under s.8(b) of the Broadcasting Act 1989.

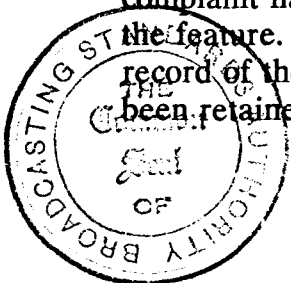
In addition to the reference to 1.1(b) above (referring to the requirement for good taste and decency), he said that the broadcast breached standards 1.1(c), (f), (j) and (m) and 9.1 of the Radio Code for Broadcasting Practice.

Independent Broadcasting Company (1990) Ltd's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the referral. Its letter is dated 29 May and Independent Broadcasting Co (1990) Ltd's reply, 3 June. That company is the operator of Auckland's 91FM.

The Group Programme Director for Independent Broadcasting (Mr Jeremy Millar) advised that the two staff members who would have dealt with the complaint had recently left the station. If the complaint had been overlooked because of their departure, Mr Millar apologised.

Mr Millar reported that he had established that Mr Creevey's complaint had been drawn to the attention of the programme producer but, as Mr Creevey was a frequent participant in competitions and was considered to be a "professional winner", the complaint had been considered as one for not winning rather than a complaint about the feature. Although the broadcaster maintained detailed files on complaints, no record of the correspondence was found and, as it was a one-off item, no tape had been retained.



Mr Creevey's Response to the Authority

When asked to comment on the broadcaster's response, in a letter dated 8 June 1992 Mr Creevey described the broadcaster's response as "inappropriate, vindictive, insulting and damning". He argued that what he described as the broadcaster's diversionary tactics should be ignored and that the broadcast breached generally accepted community standards.

Independent Broadcasting's Response to the Authority

In a letter dated 15 June, Mr Millar on the broadcaster's behalf disagreed with Mr Creevey's description of his remarks. He repeated the point that Mr Creevey was a "professional winner".

In regard to the complaint, Mr Millar said that the "celebrity tinkle" was part of an ongoing promotion and that the high response from listeners suggested that it was popular. The letter noted that the competition included sounds like "celebrity sneeze" and "celebrity zipper" and concluded:

The actual broadcast that Mr Creevey was referring to was only on air for a few days and as there were no plans to repeat it the matter was considered closed.

Mr Creevey's Final Comment to the Authority

When asked to comment on the broadcaster's response, in a letter dated 18 June 1992 Mr Creevey argued that the broadcaster, by describing the competition as a "celebrity tinkle", acknowledged the complaint.

Disputing both the accuracy and relevance of the term "professional winner", Mr Creevey maintained that his complaint concerned an issue of public decency. As his original complaint was proven, he said, it was now the Authority's task to decide on the appropriate action.

