

COMPLAINT NUMBER	19/394
COMPLAINANT	L Mayo
ADVERTISER	C&R Communities and Residents
ADVERTISEMENT	C&R Communities and Residents Out of Home
DATE OF MEETING	7 October 2019
OUTCOME	No Grounds to Proceed

Advertisement: The billboard advertisement for candidates standing in the election for the Waitemata Local Board showed a photo of seven candidates along with their names. In between the photo and the candidates’ names was a banner with the words “VOTE C&R = DELIVERED YOUR \$360 DIVIDEND”.

The Chair ruled there were no grounds for the complaint to proceed.

Complainant, L Mayo, said: Across many election hoardings in the Isthmus area for Ward Councillors and Local Board elections, including several in the Waitemata Local Board area (including the attached example), C&R have attached sashes over their political hoardings saying "Vote C&R = Delivered Your \$360 Dividend.

The 'dividend' the sash refers to is the Entrust Dividend which has recently been paid to eligible households across Auckland. Entrust is entirely separate from Auckland Council and is not up for election in these local elections. Local Boards and Ward Councillors have no control whatsoever over the dividend payment. This ad clearly implies that voting decisions will have a bearing on the future of the dividend payment, which is not at all correct. It is dishonest of C&R candidates to attempt to claim credit for this dividend.

It is submitted that these sashes breach Principle 2(b) and Principle 2(e) of the Advertising Standards Code. As voting is currently underway and this ad may be affecting Aucklanders’ voting decisions, a prompt resolution would be appreciated. If possible, an interim order to remove the sashes immediately should be considered.

The attached photo is just one example of the offending advertising. This photo was taken at the public hoarding site at Western Park, on the corner of Hopetoun Street and Ponsonby Road.

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e):

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2 (b) Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

Rule 2 (e) Advocacy advertising: Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

The Chair noted the Complainant's concerns the advertisement implies that voting decisions will have a bearing on the future of the Entrust Dividend payment.

The Chair referred to a precedent decision, 18/311, regarding another campaign billboard which said "\$350 = Vote C&R" and "C&R won't sell Vector". That decision says in part:

"The Chair confirmed the advertisement was an advocacy advertisement and Rule 11 and the Advocacy Principles applied. She also confirmed the identification requirements of Rule 11 had been met, as the Advertiser was clearly identified as C&R.

The Chair noted Rule 11 allowed for expression of opinion in advocacy advertising, provided that the expression of opinion is robust and clearly distinguishable from fact. Also applicable were the Advocacy Principles, developed by the Complaints Board in previous Decisions for the application of Rule 11. These said:

1. That section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people's rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the rights granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

The Chair observed that in a free and democratic society, differences of political opinion should be openly debated without undue hindrance or interference from authorities such as the Complaints Board, and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations.

The Chair said the advertisement articulated a position by C&R on a current issue of debate in Auckland relating to the Entrust majority ownership of Vector and the dividends paid to consumers that qualify for it. In the Chair's view, consumers likely to see the billboard would understand the context of the statements. Taking into account the Advocacy principles which allow for a liberal interpretation of the Code, the Chair said the claims in the advertisement did not meet the threshold to breach Rule 2 or

Rule 11 of the Code of Ethics and the advertisement had been prepared with the required standard of social responsibility.”

Turning to the complaint before her, the Chair said the precedent decision applied. Both advertisements refer to C&R’s position relating to the Entrust majority ownership of Vector and the dividends paid to consumers that qualify for it. In the context of advocacy advertising this position has been appropriately expressed and the identity of the advertiser is clear.

The Chair said the advertisement did not breach Principle 2 or Rules 2 (b) or 2(e) of the Advertising Standards Code.

The Chair ruled there were no grounds for the complaint to proceed.

Chair’s Ruling: Complaint **No Grounds to Proceed**

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.