

COMPLAINT NUMBER	19/469
COMPLAINANTS	N Jones & 8 Others
ADVERTISER	New Zealand National Party
ADVERTISEMENT	New Zealand National Party, Digital Marketing
DATE OF MEETING	22 January 2020
OUTCOME	Not Upheld No Further Action Required

Description of Advertisement

The advertisement on the New Zealand National Party Facebook and Twitter platforms show a bar graph labelled “Rents up Under Labour.” The blue bar says, “National September 2017 \$400.” The red bar says, “Labour November 2019 \$455.” The advertisement text says “The average Kiwi renter is paying \$2800 a year more in rent under Labour. The Government claims to be kind and caring but its bad policies are hurting everyday Kiwis.” The advertisement contains a source for the data and an authorisation statement.

Summary of the Complaints

Nine Complainants said the advertisement is misleading by visually showing a bar graph which is not to scale.

Some Complainants also questioned the validity of the data given the relative starting points, wage growth and inflation.

Issues Raised:

- Truthful Presentation
- Use of Data in advertising

Summary of the Advertiser's Response

The Advertiser said the MBIE Rental Bond Data figures are displayed prominently on the graphic which meant that any hyperbole used in the visual representation of a bar graph would not be misleading.

The Advertiser said the source data for the graphic is displayed as a footnote and is publicly available information. The Advertiser confirmed it has clearly identified its identity as required for advocacy advertisements.

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a New Zealand National Party advertisement on its Facebook and Twitter platforms. The Complaints Board said that despite a level of hyperbole in the scale of the bar graph, the Advertiser had provided the actual data figures used and the source of this information. The Complaints Board said the advertisement, when viewed within a political advocacy landscape was unlikely to mislead or deceive most consumers viewing the advertisement on the National Party social media platforms.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

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 (c) Use of data: Advertisements must not use tests, surveys, research results or quotations from technical and scientific literature in a manner which is misleading or deceptive.

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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 08/201 which was Upheld and Decision 19/279 Appeal 19/011 which was Upheld by the Complaints Board but overturned on Appeal.

The full version of decision 19/279 Appeal 19/011 can be found on the ASA website
<https://www.asa.co.nz/decisions/>

Decision 08/201 concerned an advertisement for the National Bank which used actual figures together with an illustrative bar graph to compare the relative interest earned on a bank deposit versus a National Bank investment fund.

The Complaints Board was of the view that the high standard of social responsibility required by the Code for Financial Advertising meant that it was not appropriate to use a graph which did not accurately reflect the data points it was representing. The Complaints Board ruled there was no room for hyperbole within financial advertising.

Decision 19/279 Appeal 19/011 concerned an advertisement on the New Zealand National Party's Facebook page comparing budget funding allocation for Pharmac versus the Provincial Growth Fund.

The Appeal Board ruled that consideration context and placement of the advertisement was important given that the likely audience on a political party's social media platform would have an appreciation of the political landscape and advocacy advertising.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was that average rents have increased under a Labour Government compared to when National were in power.

Is the advertisement advocacy advertising?

The Complaints Board said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 2(e) of the Advertising Standards Code. This Rule required the identity of the advertiser to be clear; opinion to be distinguished from factual information and factual information must be able to be substantiated. The Advocacy Principles developed by the Complaints Board in previous decisions considered under Rule 11 of the Code of Ethics remain relevant. They state:

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 Complaints Board confirmed the advertisement posted on the National Party Facebook and Twitter accounts compared average rents during a period from each party's time in government.

The Complaints Board said that political advertisements were not only acceptable but encouraged, as they were an essential and desirable part of the functioning of a democratic society.

The Complaints Board also 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. Therefore, the Complaints Board considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

Is the identity of the Advertiser clear?

The Complaints Board agreed the Advertiser had met the identity requirements for advocacy advertising under Rule 2(e). The advertisement was posted on the New Zealand National Party Facebook page and Twitter platforms, the identity of the Advertiser was clear and an authorisation statement from Simon Bridges, Leader of the National Party, was included.

Is the graphic representation of the data misleading?

The Complaints Board said the execution of the infographic was mischievous but did not reach the threshold to mislead within an advocacy environment. This was because despite the selection of data points and the visual presentation, the actual figures are presented in the advertisement. The Board said the advertisement was saved from being misleading by providing the correct data and its source.

The Complaints Board said the infographic heading in the advertisement “Rents Up Under Labour” was a fairly general statement. The Board noted that by displaying the actual data alongside the coloured bars, viewers could easily see the Advertiser had employed a level of hyperbole in the infographic.

Who is the likely audience?

The Complaints Board noted the advertisement was posted on the New Zealand National Party’s Facebook and Twitter platforms. The advertisement was not a sponsored post, meaning the audience viewing the advertisement would only see the posts if it actively engaged with the Advertiser’s social media platforms or if an individual shared the content with them.

The Complaints Board said the placement of the advertisement on the National Party’s Facebook page and Twitter account meant the audience was likely to have a political interest in policy and performance comparisons between the major parties and an appreciation of the political stance a party’s own Facebook and Twitter platforms were likely to present.

The Complaints Board said advertisement did not reach the threshold to mislead or deceive consumers, taking into account context, medium, audience and product and when viewed within the lens of advocacy advertising.

The Complaints Board ruled the advertisement was not in breach of Principle 2 or Rules 2(b) and 2(c) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

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.

APPENDICES

- 1. Complaints**
 - 2. Response from Advertiser**
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Appendix 1

COMPLAINT FROM N JONES

My complaint relates to this digital advertisement from the New Zealand National Party, posted to the party's Twitter account on December 9, 2019: <https://twitter.com/NZNationalParty/status/1203870555742429185>

I contend that the advertisement is in breach of Principle 2 of the Advertising Standards Code. I draw your attention in particular to Rule 2(b) Truthful Presentation, Rule 2(c) Use of Data and Rule 2(d) Comparative Advertising.

The advertisement features a bar graph purporting to show median rents under both National and Labour. The presentation of this data is likely to mislead, deceive or confuse consumers. The bar graph is not to scale. It claims to show median rents of \$400 under National and \$455 under Labour. When you measure the two bars it is clear that the Labour bar has been elongated to show a significantly larger increase than the data would suggest.

This is highly dishonest and is a pattern with National, who are exploiting social media to mislead voters. I have laid a similar ASA complaint over the National Party's dishonest claims on the fuel tax.

I ask that the Advertising Standards Authority act to preserve the integrity of our democracy.

COMPLAINT FROM A BARNARD

I believe this political post contravenes Section 2(b) Truthful Presentation & 2(c) Use of Data. The graph published is obviously made disproportionate with a misleading scale so as to exaggerate or give a false representation of the National Party's claim in dollar (\$) value increase within the dates provided.

COMPLAINT FROM D KHAN

This graph misrepresents the truth. The difference in the bars is much greater proportionally than the difference in the actual figures. This is misleading advertising.

The Tweet was posted by the National Party's twitter account at 3.54 on 9th December 2019, as can be seen in the attached screenshot.

COMPLAINT FROM M BOWERING SCOTT

Please note that the below statement is not my own original wording, but Russell Brown so succinctly summed up how I felt that I feel it is appropriate to use here

The National Party has launched an advertising campaign using deliberately misleading graphs and figures.

They dropped this one today. Let's start with the graph. It visually exaggerates the increase by about 100%. This isn't an accident – they launched an even worse one last week.

Social commentator and journalist Russell Brown also looked up the figures – the rental bond stats that are regarded as the best way to gauge trends in the rental housing market. From November 2015 to December 2017, the median increase in weekly rents was exactly the same dollar figure: \$55. But the National government was coming from a lower initial figure, so the rate of increase was *higher*. It's complicated (seasonal figures and all), but Labour would appear to have actually slowed the rate of rent increases a bit.

Also, there has been wage growth in the past two years that didn't happen under the last government. People seem to be picking up some other anomalies too.

Ordinary people aren't going to think through this, of course. That seems to be what they're counting on. But the deliberately misleading practice here is really creepy. And the one they did last week on fuel prices was actually worse.

COMPLAINT FROM J LANGWORTHY

The scale on these two bars is not the same. For the figures given, the red bar should be approx 13.75% longer. It is actually 37.5% longer. This exaggerates the increase by almost a factor of 3 so it is grossly misleading.

In addition, it is not inflation adjusted and the lack of context also creates a distortion. As this data points out (<https://twitter.com/Thoughtfulnz/status/1203917709752205312>), rents have risen consistently under both parties so claiming any difference in outcome is dishonest.

COMPLAINT FROM N DUDLEY

The attached advertisement is misleading and does not meet the standard of truthful presentation (2b).

The advertisement shows a chart purporting to represent the increase in rent from when the National Party was in government and when the Labour party was in government.

A bar chart is a method of data visualisation which is commonly understood to accurately reflect the underlying data. In this case, the bars do not accurately reflect the underlying data.

The increase shown under Labour is a 3 times greater than the actual increase, making this chart (and therefore the advertisement) inaccurate and misleading as it suggests to the NZ Public that the increase under Labour has been significantly higher than it actually was.

For the chart National used to be accurate, the rent under Labour would need to be \$565 a week, rather than the \$455 a week National show next to the bar.

The complaint is not that the figures shown next to the bars are inaccurate. The complaint is that their representation as a bar chart misleads the public as to the proportionate size of the increase.

COMPLAINT FROM J MCGORAM

This post is misleading. It uses what appears to be a bar graph to compare two different amounts, but the amounts quoted and the relative sizes of the bars are deliberately not to scale. In essence, a 14% increase is made to look like a 50% increase. This is one of several recent similar examples of an ad by this party, so my concern is that this is a trend, with the intention to create deliberately misleading content.

COMPLAINT FROM C MITCHELL

Inaccurate depiction of data and the scale is misleading due to this. This is in violation of the Electoral Act

COMPLAINT FROM C VON BATENBURG

The current ad on Twitter for the National Party is misleading, the graph has been made not to scale to show a disparity between rents from previous terms.

While the actual numbers are under debate, my issue lies with the graph as it is what the average person will see.

Clearly this is not to scale - the extra \$55 shown in the red graph makes up 20% of the size of the bar (almost twice the size it should be).

Appendix 2

RESPONSE FROM ADVERTISER, NEW ZEALAND NATIONAL PARTY

Thank you for your email received on 12 December 2019 regarding our “Rents Up Under Labour” advocacy advertisement.

In regards to advocacy advertising, and particularly regarding political matters, it has been the previous view and practice of the Advertising Standards Authority that the spirit of the Code is more important than any minor technical breaches. People have a right to express their views and this right should not be unduly or unreasonably restricted by Rules.

In regard to the complaint at hand, I note the relevant sections you mention are:

- Principle 2 - Rule 2(b), Rule 2(c), and Rule 2(e).

In response to the complaint I would like to note the following in regard to each section:

Rule 2 (b) states that hyperbole may be acceptable if it is unlikely to mislead. Given the MBIE Rental Bond Data figures, which are extrapolated to show average rent figures, are displayed prominently on the graphic, it is unreasonable to suggest viewers of the graphic could be misled.

Furthermore, evidence of the figures used in the graphic has been displayed as a footnote on the graphic. This information is also publicly available.

Rule 2 (c) is not relevant to this instance. MBIE Rental Bond Data from the corresponding quarters show average rent was \$400 in the September 2017 release and \$455 in the November 2019 release.

Rents - median

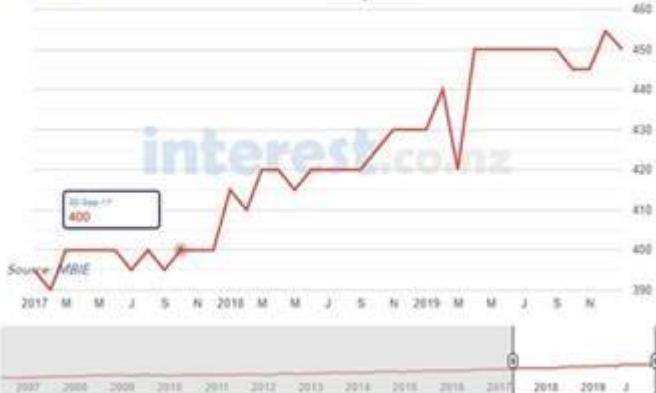


Select chart tabs »

National median

Rents

weekly median



This data is from the Tenancy Bond Service of the Department of Building and Housing, and as such it is very comprehensive.

Rents - median

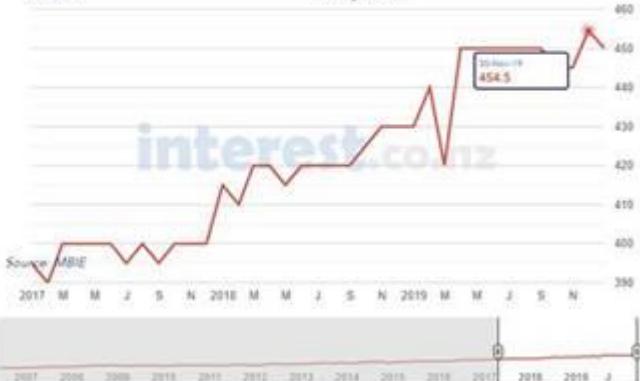


Select chart tabs »

National median

Rents

weekly median



This data is from the Tenancy Bond Service of the Department of Building and Housing, and as such it is very comprehensive.

Source: MBIE Rental Bond Data, median rent, published on interest.co.nz - <https://www.interest.co.nz/charts/real-estate/rents-median>

Median rent in September 2017: \$400. Median rent in November 2017: \$454.5 or \$455 rounded.

The bars displayed on the advocacy advertisements are simply a visual tool to show that there are two separate figures and one is more than the other. It is not misleading as the figures are displayed prominently on the graphic. The dictionary definition of a bar graph is "a graph or chart that uses narrow columns of different heights to show and compare different amounts."

Rule 2(e) is not relevant in this case as the complainant has sought to address the concern to the National Party. As such it is clear who the advertiser is, and the advert contains our correct authorisation and was displayed on our publicly available Facebook page.

I note many of the complainants are prefacing their complaints by questioning the data shown on the graphics. Data the same people would have been happy to use when the party they support was in opposition and campaigning to reduce rent increases. The figures shown on the graphic are accurate and appropriately sourced. Many active Labour supporters are upset by the Government's total failure to address rent increases as it said it would and so are trying to shout down parties who draw attention to the issue. They are using this process to do exactly that.

I thank you again for your email and trust the above settles the matter in question.

Should you need more information I would be happy to provide it.