

<b>COMPLAINT NUMBER</b>	20/042
<b>COMPLAINT</b>	C Smith
<b>ADVERTISER</b>	NZ National Party
<b>ADVERTISEMENT</b>	NZ National Party, Twitter
<b>DATE OF MEETING</b>	10 March 2020
<b>OUTCOME</b>	Not Upheld No Further Action Required

### **Summary of the Complaints Board Decision**

The Complaints Board did not uphold a complaint about a post on the NZ National Party Twitter feed. The Complaints Board agreed the Advertiser had provided adequate substantiation for the claims made in the advertisement about Government action on child poverty. The Board said the advocacy advertisement did not meet the threshold to mislead consumers.

### **Description of Advertisement**

The NZ National Party Twitter post from January 2020 is headed “Labour Misinformation” shows images of the Prime Minister Rt Hon Jacinda Ardern with a 2020 quote saying, “I will deliver a factual campaign” and a 2017 quote saying “This will be a government of transformation. It will lift up those who have been forgotten or neglected, it will take action on child poverty and homelessness.”

The accompanying text says “Despite her promises, seven out of nine child poverty indicators have worsened under Labour. That’s a fact.” The post includes the source of the speech containing the 2017 quote, an image credit and an authorisation statement.

### **Summary of the Complaint**

The Complainant said the advertisement is misleading to claim it is a fact that seven out of nine poverty indicators have worsened under Labour. The Child Poverty Statistics do show an increase in 7 indicators, but this is between 2016/17 and 2017/18, only part of which was with a Labour Government and prior to the policies promised by the Prime Minister were due to be implemented. The Complainant said there was no data source provided by the Advertiser.

### **Issues Raised:**

- Truthful Presentation

### **Summary of the Advertiser’s Response**

The Advertiser said there is no ASA principle requiring all sources to be provided, but it must be able to substantiate claims.

The Advertiser highlights the 7 poverty indicators which have worsened between 2017 and 2018 and says Labour were in office for eight months. The Advertiser confirmed the 2017 quote on the advertisement came from the Speech from the Throne as reference. The Advertiser believes an advocacy advertisement should be able to highlight the Government’s own data and if it is not to be used it should not be released.

## 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 (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 precedent Decision 19/465 which was Not Upheld.

The full version of this decision can be found on the ASA website

<https://www.asa.co.nz/decisions/>

**Decision 19/465** concerned a NZ National Party Twitter and Facebook advertisement regarding fuel tax advertisement which used average fuel price comparisons between National and Labour and an illustrative bar graph which exaggerated the difference between the two figures. The majority said

The majority of the Complaints Board was of the view that the data displayed was correct which saved the hyperbolic graphic from being misleading, given the political medium used and the principles of advocacy advertising.

### Complaints Board Discussion

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was the Labour Party had promised to take action on child poverty and yet seven out of nine child poverty indicators have worsened under the Labour Government, according to the National Party.

#### *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 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.

*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) of the Code. The advertisement was posted on the NZ National Party Twitter feed, the identity of the Advertiser was clear and an authorisation statement from Hon Simon Bridges, Leader of the Opposition, was included.

*Is the advertisement presenting fact or opinion?*

The Complaints Board agreed the statement made in the advertisement that seven out of nine child poverty indicators have worsened under Labour was a factual claim which required substantiation.

*Has the factual claim made in the advertisement been substantiated?*

The Complaints Board said the Advertiser provided sufficient substantiation to support the claim that seven out of nine child poverty indicators have worsened under the Labour Government. The Advertiser had confirmed the quote used in the graphic about taking action on child poverty was part of the Prime Minister's Speech from the Throne. The Advertiser also confirmed the child poverty indicators were sourced from Statistics NZ's Child Poverty Statistics and demonstrated the increase in poverty levels for seven of the nine indicators.

*Sourcing the information used in the advertisement*

The Complaints Board confirmed it was best practice for Advertisers to include a reference to the source data in advertisements when quoting facts. The Complaints Board noted that

while the source of the poverty indicators was not directly quoted in the advertisement, the figures were from a well-known and publicly available data source.

The Complaints Board distinguished this advertisement from that considered in precedent Decision 19/465. In that Decision with pricing information for two different periods, the Complaints Board ruled the inclusion of the source data alongside the hyperbolic graphic image was essential to offset the risk of it being misleading. The Complaints Board agreed the source data for the advertisement before it was explicitly referred to in the text – that is the child poverty indicators.

#### *The context of the advertisement*

The Complaints Board noted the advertisement was posted on the National Party Twitter feed in January 2020 and it needed to be considered within the context of that timeframe. The Board noted child poverty indicators had been the subject of wider public debate at that time. In addition, the Board noted the advertisement was a post on the National Party Twitter feed, meaning the target audience were people connected with the National Party.

The Complaints Board said that the advocacy nature of the advertisement and the context of its placement on the NZ National Party Twitter feed meant the Advertiser could present factually correct statements with a bias in its favour.

The Complaints Board noted the Complainant's concern the negative data comparisons being attributed to the Labour Government were misleading given that Labour were only in Government for 8 months of the reporting period. The Complaints Board said it was not unusual for a Government to be held accountable for outcome from the point it takes power, especially by an Opposition party.

The Board said that while the stated facts must be truthful, a selection of facts, or in this case not stating the percentage of the source data that occurred while Labour was in Government did not make the advertisement misleading within the advocacy environment.

The Complaints Board said the advertisement was not likely to mislead or deceive consumers, taking into account context, medium, audience and product and when viewed through the lens of advocacy advertising. It ruled the advertisement was not in breach of Principle 2 or Rules 2(b) and 2(e) of the Advertising Standards Code.

#### **Outcome**

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

#### **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](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.

## APPENDICES

1. Complaint
  2. Response from Advertiser
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### Appendix 1

#### COMPLAINT FROM C SMITH

I would like to make a complaint about this advertisement by the National Party (attached and linked here

<https://twitter.com/NZNationalParty/status/1222417970741137408> )

In the ruling on Complaint 19/465, the majority of the Board said an advertisement "was saved by providing the correct data and the source of the information".

This ad does not meet this test. The ad claims "Despite her promises, seven out of nine child poverty indicators have worsened under Labour. That's a fact" . Contrary to the 19/465 precedent, it does not provide a data source and the data does not establish the fact claimed. This is exasperated by the ad saying "That's a fact".

#### **No data source**

No data source is provided in the ad.

My research indicates the source is Statistics NZ's Child Poverty Statistics, which provides nine of the ten measures that will be used to measure progress under the Child Poverty Reduction Act. <https://www.stats.govt.nz/news/child-poverty-statistics-released>

#### **Inaccuracy in the data**

While this data does show an increase in seven of the nine poverty measures between the second to last year and last year of data, this change has not occurred "under Labour" and the publisher of the data says such a year to year comparison is invalid.

#### not "under Labour"

The last year in the data is 2017/18, and was collected as part of the Household Economic Survey throughout that year. The Labour-led Government only came to office in late October of that year. So it is not possible to say whether the change occurred "under Labour" or in the portion of the year before the Government came to office.

Furthermore, the "promises" referred to in the ad are election promises made by Jacinda Ardern for the Families Package, which was promised to come into effect until 1 July 2018 (and did so), after the end of this data period.

In fact, the explanation of the data provided by Statistics NZ notes 2017/18 is to be used as a baseline for the Government's poverty measures, this is precisely because it is before the policies Jacinda Ardern promised came into effect.

#### Invalid use of data

Because the survey data used for the child poverty statistics was not designed for this purpose, it has

limitations, which make the year on year comparison in the ad invalid. As Statistics NZ notes

## Data and methodology caution

The estimates in today's release are based on household economic surveys (HES) from 2012/13 to 2017/18. HES is a random sample survey of between 3,000 and 5,500 households, of which around a third are households with dependent children. It is well suited for and delivers valuable information for purposes such as the overall distribution of household income and material wellbeing, and relativities between groups. However, **when the focus is on very short-term changes, especially year-on-year or when more precision is required in a given year, the current HES is not able to deliver robust results** given its relatively small sample size.

This is borne out in the data released by Statistics NZ. In seven of the nine measures, the reported change between 2016/17 and 2017/18 is smaller than the reported sampling error.

<https://www.stats.govt.nz/assets/Uploads/Child-poverty-statistics/Child-poverty-statistics-Year-ended-June-2018/Download-data/child-poverty-statistics-year-ended-june-2018.xlsx>

This means it is statistically invalid to say an increase has occurred - in layman's terms, the increase is less than the margin of error.

Therefore, this ad has breached the standards set out by the ASA in 19/465 in two ways:

- it does not provide a source of the alleged facts
- Contrary to the language of the ad, the data does not show it is "a fact" that "seven of nine poverty indicators have worsened under Labour". The data does not show an increase 'under Labour' but, rather, between 2016/17 and 2017/18, only part of which was with a Labour Government, and before the policies promised by Jacinda Ardern were due to be implemented. In any case, the publisher of the data says it should not be used for this kind of year to year comparison.

I believe honesty in political advertising is important and I look forward to your ruling on this complaint

## Appendix 2

### RESPONSE FROM ADVERTISER, NEW ZEALAND NATIONAL PARTY

In response to the complainant's first allegation, as you are aware, there is no Advertising Standards Code principle requiring all sources to be provided. Advertisers must however hold evidence to substantiate claims. That evidence is as follows.

As the complainant has correctly identified, the data is derived from Stats NZ. The link provided by the complainant lays out the three primary and six supplementary (nine) child poverty measures.

By downloading the data, you can see year-by-year data points of the nine measures, as below:

1. Percentage of children living in households in New Zealand in each financial year who fell in: Low income: less than 50% median equivalised disposable household income before housing costs (BHC) for the financial year

Year ending 30 June 2017: 14.2%

Year ending 30 June 2018: 16.5%

**Conclusion: Worse**

2. Percentage of children living in households in New Zealand in each financial year who fell in: Low income: less than 50% median equivalised disposable household income after housing costs (AHC) for the base financial year (1)

Year ending 30 June 2017: 22.4%

Year ending 30 June 2018: 22.8%

**Conclusion: Worse**

3. Percentage of children living in households in New Zealand in each financial year who fell in: Material hardship (1)

Year ending 30 June 2017: 12.7%

Year ending 30 June 2018: 13.3%

**Conclusion: Worse**

4. Percentage of children living in households in New Zealand in each financial year who fell in: Low income: less than 60% median equivalised disposable household income before housing costs (BHC) for the financial year

Year ending 30 June 2017: 22.1%

Year ending 30 June 2018: 25.3%

**Conclusion: Worse**

5. Percentage of children living in households in New Zealand in each financial year who fell in: Low income: less than 60% median equivalised disposable household income after housing costs (AHC) for the financial year

Year ending 30 June 2017: 28.4%

Year ending 30 June 2018: 30.6%

**Conclusion: Worse**

6. Percentage of children living in households in New Zealand in each financial year who fell in: Low income: less than 50% median equivalised disposable household income after housing costs (AHC) for the financial year

Year ending 30 June 2017: 21.4%

Year ending 30 June 2018: 22.8%

**Conclusion: Worse**

7. Percentage of children living in households in New Zealand in each financial year who fell in: Low income: less than 40% median equivalised disposable household income after housing costs (AHC) for the financial year

Year ending 30 June 2017: 16.1%

Year ending 30 June 2018: 15.7%

**Conclusion: Not worse**

8. Percentage of children living in households in New Zealand in each financial year who fell in: Severe material hardship (1)

Year ending 30 June 2017: 6.7%

Year ending 30 June 2018: 5.8%

**Conclusion: Not worse**

9. Percentage of children living in households in New Zealand in each financial year who fell in: Low income and hardship: less than 60% median equivalised disposable household income after housing costs (AHC) for the financial year and material hardship (1)

Year ending 30 June 2017: 7.8%

Year ending 30 June 2018: 8.8%

**Conclusion: Worse**

I would note in the complaint, the complainant has conceded seven of the nine child poverty measures have worsened in this time period.

The complainant is correct in saying Labour came to office in late October 2017, which means they were in office for eight months as the 2018 data was being gathered – the majority of the time period. For the complainant's claim to be correct, the Government would have had to introduce absolutely no policies or changes in its first eight months in office that could have any effect on the economy, incomes, or cost of living.

The complainant has also claimed we have referred to 'election promises' made by Jacinda Ardern 'for the families package.' This is incorrect. The quote used in the graphic is from the Speech from the Throne, as explained at the bottom of the graphic.

On the complainant's claim this data cannot be used due to statistical limitations, this is an advocacy advertisement. I would ask the ASA to acknowledge how the Labour Party would be using this data if it showed an improvement in seven out of nine of the measures. It is absurd to claim the Opposition should not be allowed to point out the Government's own data shows seven out of nine child poverty measures have worsened. If the data should not be used, the Government should not release it.

**Conclusion:**

The complainant has summarised their complaint by claiming the National Party is in breach of an Advertising Standards Code principle which does not exist and then acknowledging that the claims made in the post are factually correct.