

<b>COMPLAINT NUMBER</b>	20/479
<b>APPEAL NUMBER</b>	20/018
<b>ADVERTISER</b>	Safer Future Charitable Trust
<b>APPLICANT</b>	The Complainant
<b>ADVERTISEMENT</b>	Vote Safe NZ, Billboard
<b>DATE OF MEETING</b>	15 October 2020
<b>OUTCOME</b>	Appeal Declined Complaint No Grounds to Proceed

### **SUMMARY**

The Chair of the Complaints Board ruled on 29 September 2020 the complaint made about a billboard advertisement for Vote Safe NZ had no grounds to proceed.

The Complainant appealed the decision. The Chairperson of the Appeal Board said the grounds on which the appeal would be considered was (d) the decision is against the weight of evidence.

The appeal application was considered by the Chairperson of the Appeal Board.

The Chairperson agreed with the decision made by the Chair of the Complaints Board. She said the likely consumer takeout of the billboard advertisement is the Advertiser opposes the End of Life Choice Act. The Chair said the identity requirements had been met for an advocacy advertisement and the colours used did not relate so directly to the ACT Party colours as to likely confuse or deceive consumers.

The Chairperson said there were no grounds on which the appeal could proceed, and the application was declined.

Please note this headnote does not form part of the Decision.

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### **CHAIRPERSON'S RULING**

The Chairperson of the Appeal Board viewed the application for appeal. She noted there are five grounds upon which an appeal is able to proceed. These are listed at Clause 6.4 of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and are as follows:

- (a) The proper procedures have not been followed.
- (b) There is new evidence of sufficient substance to affect the decision.
- (c) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (d) The decision is against the weight of evidence.

(e) It is in the interests of natural justice that the matter be reheard.

The Chairperson said the ground upon which she considered the appeal was (d), the decision is against the weight of evidence

The Chairperson reviewed the complaint, the advertisement, the decision from the Chair of the Complaints Board, and the appeal application from the Applicant.

***Does the decision go against the weight of evidence?***

The Chairperson of the Appeal Board said the likely consumer takeout of the billboard advertisement is that in the Advertiser's opinion, people should vote no to the End of Life Choice Act.

The Chairperson reviewed the billboard advertisement and agreed with the Chair of the Complaints Board that the identity of the Advertiser was clear. The advertisement included the Advertiser's name and contact information in the promoter's statement which said "for signage maintenance or to report damage, FREE Phone 0800 868 372. Authorised by Safer Future Charitable Trust, 5 Fig Tree lane, Silverdale". It also included a website address: votesafe.nz.

The Chairperson considered the use of colours in the billboard advertisement and agreed they did not relate so directly to the official colours used by the ACT Party that a consumer was likely to be confused or misled in thinking the message in the advertisement was associated with the Party.

The Chairperson said in her view, the Applicant's appeal submission did not raise new issues, but rather restated their initial position about the identification issues of the Advertiser and the consumer takeout that the advertisement was for an official site about the referendum.

The Chairperson agreed with the decision made by the Chair of the Complaints Board. The Chairperson said that while the Applicant disagreed with the decision, this was not a ground for appeal.

***Why are referenda websites not adjudicated on?***

With regard to the ASA's decision to decline to adjudicate on complaints about unpaid advertising on social media site or websites belonging to candidates and political parties and promoters of referendum issues, the Chairperson directed the Applicant to the [ASA Guide on Election and Referenda Advertising](#). In particular the Chairperson noted the explanation which states:

"The ASA will decline to adjudicate on complaints about posts on branded social media pages (referred to as organic posts) or websites from political parties, candidates, and election-related advocacy groups. Context is a key part of assessing a breach of the advertising codes. In an election year, if consumers choose to visit or follow websites or branded social media pages from political parties, candidates, and election-related advocacy groups, they need to be aware the content is presented from a particular perspective and should be viewed in that context. This content may also be shared with them by people they know, but that is outside the control of advertiser.

**Referenda Advertising**

The ASA will deal with complaints about paid advertising in all media on the two referenda subjects, enactment of the End of Life Bill and the Cannabis Legalisation and Control Bill. The ASA will decline to adjudicate on complaints about referenda-related posts on branded social media pages (referred to as organic posts) or websites from political parties, candidates, and referenda-related advocacy groups.”

The Chairperson ruled there were no grounds on which the appeal could proceed, and the application was declined.

**Chairperson’s Ruling:** Appeal application **Declined** Complaint **No Grounds to Proceed**

## APPENDICES

1. Description of Advertisement
  2. No Grounds to Proceed Ruling
  3. Appeal Application
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### Appendix 1

#### Description of Advertisement

Billboard advertisements for Votesafe.co.nz are a standard format with the wording “Lethal dose” on one side of the billboard and on the other side a statement reflecting the Advertiser’s view on aspects of the legislation, examples include “with no physical pain required” and” and “no required assessment for coercion”. The advertisement has the question: “Is the End of Life Choice Act Safe?” a website address and a promoter statement.

### Appendix 2

#### Chair of the Complaints Board Decision

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

**Complaint:** There are tons of billboards around the city within the campaign billboards which is made to look like an unbiased info page ‘votesafenz’ for info about euthanasia. They have used all the colours on the billboards and on their website of the Act party so it looks very much aligned when it is not. It is not an unbiased website at all it is an anti euthanasia campaign but it is very misleading.

**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

#### About Advocacy Advertising

Complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

In assessing whether an advocacy advertisement complies with the Advertising Standards Code, the freedom of expression provisions under the Bill of Rights Act 1990 must also be considered.

Section 14 of the Act says: “Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.” This freedom of expression supports robust debate on current issues in a democracy.

Under Rule 2(e) Advocacy advertising of the Advertising Standards Code:

- The identity of the advertiser must be clear
- Opinion must be clearly distinguishable from factual information, and
- Factual information must be able to be substantiated.

If the identity and position of the Advertiser is clear, a more liberal interpretation of the Advertising Standards Code is allowed.

### **About this complaint**

The Chair acknowledged the Complainant’s concern the advertisements are misleading as the use of the website “votesafe.nz” implies an unbiased source of information when the Advertiser is opposed to the End of Life Choice Act. The Complainant also considers the advertisements use similar colours to the ACT Party.

#### *Billboard advertisements*

The Chair confirmed the Advertiser’s identity was clear. Vote Safe is a public information campaign for the Safer Futures Charitable Trust and the organisation’s website address and a promoter’s statement are included in the advertisements.

The Chair said in her view, the Advertiser’s position on the issue is clear. The advertisements draw attention to the organisation’s opposition to the End of Life Choice Act. The advertisements complied with the requirements of Rule 2(e) of the Advertising Standards Code. The Chair did not consider the likely consumer takeout of the advertisements is that they provide a neutral and unbiased source of information.

The Chair said the colours used by Vote Safe were not the same as the ACT Party and she did not think consumers would be misled.

The Chair said the End of Life Choice Referendum is a significant social issue and it is important the New Zealand public has context for the differing views on it, in order to be able to take an active part in the debate. The Chair confirmed the Advertiser’s position against the End of Life Choice Act provides context for consumers when viewing this advertising.

The Chair said the advertisements were not in breach of Principle 2, Rules 2(b) and 2(e) of the Advertising Standards Code.

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

#### *Advertiser’s website*

The Chair noted the Complainant’s concerns about the content and use of colours on the Advertiser’s website, votesafe.nz.

**The Chair declined to adjudicate the website complaint.**

**Relevant Advertising Standards Authority (ASA) Guidelines**

The Chair referred to the [ASA Guide on Election and Referenda Advertising](#) which states the ASA deals with “complaints about paid election advertising in media not covered by the [Broadcasting Standards Authority Election Programmes Code](#) ... The ASA will decline to adjudicate on complaints about posts on branded social media pages (referred to as organic posts) or websites from political parties, candidates, and election-related advocacy groups.” This includes Facebook, Instagram, Twitter, YouTube, TikTok etc.

**Chair’s Ruling**

The Chair declined to adjudicate the website complaint.

The Chair noted the advertising is unpaid content on the website for votesafe.nz.

*Billboards:*

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

*Advertiser Website:*

**Chair’s Ruling:** Complaint **Decline to Adjudicate**

### Appendix 3

#### APPEAL APPLICATION FROM COMPLAINANT

I would like an Appeal on this please.

I fail to see how this billboard complies with Rule 2(e) regarding the identity of the advertiser being clear and that the opinion is clearly distinguishable from factual information.

I would also like a detailed explanation of the failure/refusal to adjudicate upon the website complaint please as I believe the colours used and the way in which this is presented could most certainly mislead the public into believing this is fact not opinion.

#### More information from complainant

The only item to add really is as mentioned in my previous email- on the billboards in question there is most certainly no indication of who the source is or that it is opinion only.

I would like to point out that in the findings it suggests that the party involved is the 'Safer Futures Charitable Trust'- if indeed you cannot adjudicate on websites, but your chair clearly had to go onto a website or further to ascertain who was behind this billboard, how is it expected that it is clear to laypeople that this is a biased advertisement?

The Safer Futures Charitable Trust is not mentioned anywhere in the billboard nor is any reference to such a thing, if it then requires further investigation into who is behind this, how can it be decided that 'the identity of the advertiser has been made clear' as per your own rules?

Clearly this is misleading for others and clearly the majority will not delve into the background of the advertisement as your Chair has, and by definition this is then not clear to others.

'Vote Safe NZ' does not indicate a trust, it does not indicate opinion and it does not indicate a political party, it sounds and appears to be an official website and it is exceptionally misleading.

I myself went to the website because I thought it may be informative only, I have an Engineering degree and a Law degree and do consider myself a critical thinker, however I was misled by the billboard. I do not consider myself easily misled and would state that if it happened to me, it most certainly could happen to others.

I believe in sharing of a range of facts and opinions so people can make an informed decision about ALL issues, I do not believe they should be biased as this ad most definitely is.