

COMPLAINT NUMBER	20/515
ADVERTISER	Sinead Donnelly
ADVERTISEMENT	Vote No to the End of Life Choice Act, Radio
DATE OF MEETING	16 October 2020
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a radio advertisement for Sinead Donnelly supporting a no vote in the End of Life Choice referendum. This is because the statement about the increase in non-assisted suicides in the Netherlands was substantiated by the Advertiser in the context of an advocacy advertisement.

Advertisement

The radio advertisement from Sinead Donnelly states: “Did you know that from 2007 on, just 5 years after euthanasia was legalised, the number of suicides in the Netherlands rose 33% in 10 years. Think that’s just a coincidence? Don’t risk it. Vote no to the End of Life Act.” The advertisement contains a promoter’s statement.

Summary of the Complaint

The Complainant said the advertisement “citing statistics and ‘correlation’ with [an increase in] suicide” was false and there is no supporting evidence.

Issues Raised:

- Truthful Presentation
- Advocacy Advertising

Summary of the Advertiser’s Response

The Advertiser defended the advertisement and said she was expressing an opinion there is a risk about the rise in suicide rates in the Netherlands. The Advertiser said the claims made in the advertisement are factually accurate and cites an open letter signed by 21 New Zealand mental health experts and researchers based on OECD data. The letter discusses possible trends associated with the overall rates of non-assisted suicides where euthanasia is available, suggesting assisted dying may lead to an increase in non-assisted suicides. The Advertiser provided the open letter and suicide statistics as appendices to their response.

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

The Complaints Board said the advertisements 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 say:

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.

Role of the ASA when considering an advocacy advertisement

The Complaints Board noted its role is to consider the likely consumer takeout of an advertisement and complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

The Board will consider whether the advertisement includes statements of fact or opinion and decide whether any factual claims have been adequately substantiated by the Advertiser. The Complaints Board noted that a fact is something that is objectively true and can be verified as such whereas an opinion is a personal belief. Others may agree or disagree with an opinion, but they cannot prove or disprove it. Some statements contain both fact and opinion. The Board referred to the ASA Guidance Note on Advocacy which says:

“Evidence may be cited in support of the opinion, but it should be clear it supports an opinion rather than being the full factual position. Evidence in support of an opinion should be clearly cited and readily obtainable. Academic studies are often cited as evidence. Such studies are treated as expert opinion rather than the full factual situation...the Board will not determine which of competing academic studies or other evidence is correct. The Complaints Board’s only role is to determine whether there has been a breach of the ASA Codes, taking into account the Advocacy Principles.”

The Complaints Board observed that in a free and democratic society, issues 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.

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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to a precedent decision, Decision 20/474 which was Not Upheld.

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

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

Decision 20/474 concerned a print advertisement for Vote No to End of Life Act and is headed “A life or death decision”. The text includes the statement: “You may say yes without considering the conflict with suicide prevention or how the Act inadvertently says taking your own life is somehow ok as a response to suffering. Or how, as in the Netherlands, we might expect an increase in non-assisted suicide.” The Complaints Board did not uphold the complaint because the statement about the increase in non-assisted suicides in The Netherlands was substantiated by the Advertiser in the context of an advocacy advertisement.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was it supported a no vote in the End of Life Choice referendum because suicides may increase if the Act comes into force, as happened in the Netherlands.

Has the advocacy advertisement been adequately identified?

The Complaints Board agreed the advertisement had been adequately identified as an advocacy advertisement.

The Chair confirmed the Advertiser's identity is clear. Sinead Donnelly is a registered promoter for the End of Life Choice referendum. The Advertiser's position on the issue is clear. The advertisement draws attention to Sinead Donnelly's opposition to the upcoming End of Life Choice referendum. The advertisement complied with the requirements of Rule 2(e) of the Advertising Standards Code.

The Complaints Board confirmed the importance of open debate during an election campaign. However, under the ASA complaints process, the onus is on the Advertiser to support factual statements made in advertisements, if challenged.

Is the statement in the advertisement likely to mislead?

The Complaints Board agreed the statement: "Did you know that from 2007 on, just 5 years after euthanasia was legalised, the number of suicides in the Netherlands rose 33% in 10 years" is presented as a statement of fact.

The Complaints Board ruled the Advertiser had substantiated the statement in its response. The Board noted the Advertiser referred to "an 'Open Letter' signed by 21 New Zealand mental health experts and researchers. This letter was sent to all New Zealand MPs on 7 November 2019, just prior to the Third Reading of the End of Life Choice Act.' The 'Open Letter' relies on official OECD data and cites numerous academic and journalistic articles, demonstrating that the relevant evidence, expert opinion and academic studies are robust and readily available."

The Complaints Board agreed the statement about the increase in non-assisted suicides in the Netherlands was substantiated by the Advertiser in the context of an advocacy advertisement.

Outcome

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

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 calendar days of receipt of this decision.

APPENDICES

1. Complaint
2. Response from Advertiser

Appendix 1

COMPLAINT

Rock FM- anti end of life choice act advertisement

End of life choice -vote no advert played, citing statistics and 'correlation' with suicide rises in Sweden. This is clearly a false grab for votes, as there is no supporting evidence and completely wrong to be airing.

Appendix 2

ADVERTISER RESPONSE, SINEAD DONNELLY

1. We wish to defend the advertisement in question.
2. The wording of the recorded radio advertisement in question, which is running on the Rock FM, follows:

"Did you know that from 2007 on, just 5 years after euthanasia was legalised, the number of suicides in the Netherlands rose 33% in the following ten years? Think that's just a coincidence? Don't risk it. Vote no to the End of Life Choice Act Authorised by Sinead Donnelly, 47 Chelmsford Street, Wellington."

3. We note that the complainant has stated that the statistic in question refers to suicide rises in Sweden (which does not have any form of legalised assisted dying). In our view, this informs an interpretation of the complaint, which is not based on a working knowledge of or interest in the evidence (despite reference to 'a false grab' and 'no supporting evidence'), but rather based on an emotive reaction.
4. The advertisement is booked to run through to Friday the 16th of October on the Rock FM as well as other radio stations that are part of the MediaWorks Platform. A version of the advertisement also appears on various digital billboards in Auckland, Wellington and Christchurch, all of which are also running until Friday the 16th of October.
5. The audience is all New Zealand voters.
6. We are defending the advertisement on the basis that:
 - i. it is factually correct that euthanasia was introduced in the Netherlands in 2002 and factually correct that the number of suicides in the Netherlands rose 33% from 2007 to 2017; and
 - ii. it is reasonable to express the opinion that there is a risk that the rise in suicides is not a coincidence (and that this risk is not worth taking). The advertisement does not use the term 'correlation' (as suggested by the

complainant) but we accept that it expresses the opinion (clearly distinguishable as such) that there is a risk of a direct link between the introduction of assisted dying and increasing suicide rates, and we submit that this is reasonable.

7. The statistic which the advertisement refers to is substantiated, and the opinion expressed is supported, by an 'Open Letter' signed by 21 New Zealand mental health experts and researchers. This letter was sent to all New Zealand MPs on 7 November 2019, just prior to the 3rd Reading of the End of Life Choice Act.' The 'Open Letter' relies on official OECD data and cites numerous academic and journalistic articles, demonstrating that the relevant evidence, expert opinion and academic studies are robust and readily available

8. At paragraphs [10]411] of the 'Open Letter', the experts note that:

... the trends associated with the overall rates of non-assisted suicide for the Netherlands and Belgium (where euthanasia is available) suggest that assisted dying may lead to an increase in non-assisted suicides. While not definitive, until more detailed and substantial research is carried out, the suicide statistics from these two countries show that the question of a direct and/or indirect causal relationship between assisted dying and non-assisted suicides, cannot be ruled out.

In the Netherlands, non-assisted suicides have continued to rise in the last 10 years, against the trend of surrounding European countries which all show falling rates of suicides over recent times. In 1991, the (crude) suicide rate per 100,000 population for the Netherlands stood at 11.6, before dropping to a low of 8.4 in 2007 and then increasing steadily again to 11.2 in 2017 (a 33% overall increase in 10 years). Dutch Professor and former long-serving member of a Dutch Euthanasia Review Committee, Theo Boer, notes that the "rise was all the more significant since in exactly that same period we made assisted dying possible for the categories of people that do commit suicide."

9. Therefore, it is reasonable to express the opinion that there is a risk (not worth taking) of a link between euthanasia and suicide rates. The advertisement does not claim the existence of such a link as fact. Rather, this opinion (albeit one shared by various pre-eminent experts) is clearly distinguishable from the factual information in the advertisement.

10. Accordingly, we believe that the advertisement is unlikely to mislead and consistent with the Advertising Standards Code.