BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 21/91
Dated the 14th day of May 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

NEW ZEALAND FISHING INDUSTRY ASSOCIATION
of Wellington

Broadcaster
TELEVISION NEW ZEALAND LIMITED

I.W. Gallaway Chairperson
J.B. Fish
J.L. Hardie
J.R. Morris

DECISION

Introduction

The *Frontline* programme, broadcast on TV1 at 6.30pm on September 1990, dealt with two aspects of commercial fishing activity off the West Coast of the South Island. First, it examined the extent that fur seals were being caught in the nets of fishing vessels working the Hokitika Canyon for hoki. Secondly, it examined suggestions that the hoki and orange roughy fisheries were becoming depleted because of the level of fishing permitted.

Fishing Industry Association's and Fishing Industry Board's Complaint to Television New Zealand Limited

The Fishing Industry Board and the Fishing Industry Association wrote jointly to TVNZ Ltd on 5 October 1990 to make a formal complaint about the programme. They stated:

"The programme is heavily biased against the New Zealand Fishing Industry. It portrays the industry as the "number one killers of marine mammals in the South

Pacific", as plunderers of the fisheries and as law-breakers.

The language used in the programme to describe the activities of the fishing industry is emotive, exaggerated and overstated. For example the industry is accused of "plundering" the Hoki fishery and "strip mining" the Orange Roughy fishery.

...

In our view the use of this kind of emotive and exaggerated language to describe the activities of the fishing industry is of itself a breach of the TV Programme Standards. In our opinion the programme, looked at as a whole, breaches both the letter and the spirit of the Television Programme Standards.

The letter concluded that although there were ten specific complaints about the programme (listed below), the complaint focused on the entire programme, and on the biased and slanted view it gave of the fishing industry. A retraction and apology were requested.

The ten specific complaints were:

1) Despite the programme's impression that the fishing industry was deliberately and insensitively killing a large number of seals, the seals were dying because they were caught in the fishing nets.

2) The language used in the script implied that the fishing industry was stealing and otherwise unlawfully stripping the fisheries.

3) The fishing industry had not expressed the view attributed to it in emotive terms that "delinquent" seals were "stealing fishermen's livelihoods".

4) The programme was factually inaccurate in not acknowledging that the seals that drowned in the nets were the same seals washed up dead on the beach.

5) Use of the word "extinction" in relation to a seal colony, as well as being an exaggeration, was untrue as the colony from which the seals came was unknown and New Zealand's seal population was increasing.

6) Comments in the programme that fishermen were under-reporting seal deaths or were shooting seals left an impression that fishermen were not to be trusted. Moreover, the Board and the Association were not given the opportunity to respond to these allegations.

7) Comments in the programme which suggested that the industry treated the marine environment uncaringly were exaggerated and untrue. Not giving the Board and the Association the opportunity to comment on these allegations was an example of the programme's unbalanced and biased attitude towards the fishing industry.

8) As the allowable catch for hoki was set before the orange roughy quota reductions were indicated, the programme misrepresented the correct situation by suggesting a

link between the two.

9) The impression that the industry's greed was the reason for the cuts was wrong as the industry caught, or attempted to catch, the allowable catch set by the government.

10) The programme was unbalanced in that no comments were incorporated from MAFFish staff, no comments were sought from an inter-departmental committee referred to, and large parts of the interviews with the Board and Association representatives were omitted.

TVNZ's Response to the Formal Complaint

The decision of TVNZ's Complaints Committee was conveyed to the complainants in a letter dated 3 December 1990.

Noting that the matters raised in the general part of the letter were repeated in relation to the ten specific points listed, TVNZ reported that its Committee had confined itself to these points and had then related these findings to the standards raised.

1) TVNZ said the programme made clear on several occasions that the seals' deaths were accidental. Further, although the programme included criticism about the Industry from a Forest and Bird Society representative, the Industry was defended by the Fishing Industry Association's spokesperson.

2) TVNZ stated that the programme outlined the quota management system and that it did not imply that fishermen were stealing the resource. It maintained that the use of the word "pluck" was acceptable in the context and that one definition of another word used, "plunder" (quoting 1601 and 1653 sources) was to spoil. The word had been used in that sense, TVNZ insisted, and not in terms of the definition of "to rob" (Concise Oxford Dictionary).

TVNZ concluded:

> Given all the circumstances the words "pluck" and "plunder", used in the context of the programme, were considered to be accurate descriptions of the activities of the fishing industry and in no way suggested that anything illegal or underhand was involved.

3) Although TVNZ did not directly address the point that the "delinquent" seal view had been ascribed to the Industry, it said the script was designed to convey the fishermen's view of apparently playful seals.

4) TVNZ denied that dead seals were double counted. A Department of Conservation officer had said that observers on the fishing boats were instructed to mark in some way the bodies of dead seals prior to their return to the sea and only 3 of the 200 washed up on the beaches were so marked.

5) A Department of Conservation report, TVNZ noted, concluded that one seal colony was affected by the hoki fishing more than others. Further, Departmental figures released since the broadcast of the programme indicated about a thousand seal deaths in the hoki fishery annually. As this exceeded the natural increase of 800 seals a year for the entire New Zealand fur seal population, "extinction" of one colony was appropriate. The Complaints Committee, as *Frontline* suggested, thought that an accurate count of seal deaths was essential.

6) TVNZ disputed the complainant's allegation that the programme implied that the fishing industry was not reporting seal deaths accurately. The programme, it said, had merely wondered why the boats with observers reported the bulk of seal deaths. Moreover, it averred that those close to the industry accepted that not all seal deaths were reported.

Regarding the shooting of seals by fishermen, not only did the Department of Conservation report it found dead seals with bullet wounds in the head, the Committee had received unattributable advice that seals were being shot.

Regarding the accurate reporting of catch volumes, TVNZ referred to the independence of the commentator who made the statement about inaccuracies on the programme.

The programme did not refer to fishermen as untruthful or untrustworthy, it was said, and surprise was expressed that offence had been taken at the commentator's humorous comment that all fishermen lied and that the magnitude of the lie seemingly depended on the size of the fisherman's catch.

7) The programme did not, TVNZ stated, display bias in referring to an industry taking risks. The complainant's allegation of bias, it continued, was based on lines of the script taken out of context.

The programme indicated, and in the Complaints Committee view correctly, that the industry's investment was based on inadequate and sometimes inaccurate research. Orange roughy, TVNZ maintained, quoting a newspaper story, were "strip-mined" and this was acknowledged by the Government in announcing substantial quota cuts.

The programme's comments about the Industry's impact on the marine ecosystem were considered to be accurate.

8) TVNZ said that all Industry sources had agreed that hoki was all the more valuable because of the decline in the orange roughy catch.

9) The programme's emphasis, TVNZ wrote, was on inadequate and sometimes inaccurate research, not about illegalities or greed within the Industry. And the Industries' representatives had been interviewed on the matter of research.

10) Denying a lack of balance, TVNZ pointed out that the Industry's representative (Mr Talley) responded on five separate occasions to criticisms. Following a

> background briefing for the *Frontline* staff from MAFFish personnel, interviews were conducted with the then Ministers of Conservation and of Fisheries. The inter-departmental committee's findings had been studied and used where appropriate. Not all the material gained in the interviews with the Industry representatives had been used because of time restraints.

In summary, TVNZ recorded that the programme had not breached the standards in the Television Codes requiring truth and accuracy, dealing fairly with people taking part, balance and objectivity, or accurate editing.

TVNZ concluded:

> The Committee found that this programme included a broad, well researched overview of an existing situation and that there were interview extracts included from eleven people - all with an interest and stake in the industry concerned. Several of the interviewees appeared more than once. It considered the views expressed were presented fairly, objectively and responsibly.

Fishing Industry Association's Complaint to the Broadcasting Standards Authority

As the Association was dissatisfied with TVNZ's decision, it referred the complaint to the Broadcasting Standards Authority on 17 December 1990 under s8(a) of the Broadcasting Act 1989. The Fishing Industry Board, which had been a party to the complaint to TVNZ, did not refer its complaint to the Authority. The Association later completed the Authority's Complaint Referral Form. Referring to standards 1, 4, 12, 15 and 16 of the Television Codes of Broadcasting Practice, the letter began:

> In asking the Authority to investigate and review the complaint which has been made we emphasise the point made in our letter of 5 October 1990 addressed to the Chief Executive of Television New Zealand. The complaint by the New Zealand Fishing Industry Association is in respect of the entire programme, the biased and slanted view it gives of the fishing industry, the emotive, exaggerated and overstated language which is used, and the general negative tone of the programme insofar as it relates to the industry.

Rather than repeating the ten specific items complained about initially, the letter recorded some disagreement with the comments in TVNZ's letter of 3 December. For the ease of recording, the Industry's comments are related, where appropriate, to the points 1-10 discussed above.

> 2) Complaining that TVNZ's response overlooked the unbalanced and slanted tenor of the programme, the letter maintained that the use of the words "pluck" and "plunder" conveyed a highly prejudicial view of the fishing industry. Moreover, 17th century definitions were inappropriate.

> 5) The Department of Conservation's report, it was written, did not conclude that hoki fishing affected one seal colony more than another. Furthermore, research did

not conclude that seals returned to the same colony to breed.

In addition it was noted that even if 800 or 1,000 seals died in hoki nets annually, a 2% annual population growth from a New Zealand seal population of 60,000 amounted to 1200 seal births a year. This disproved the programme's thrust that fur seals were in danger of extinction.

7) Regarding bias, the Industry wrote:

> The allegation of bias is based upon an assessment of the programme as a whole. As we have endeavoured to make clear in our letter of 5 October the impression left on an objective viewer watching the programme would be that the fishing industry are law breakers, are totally unconcerned with the preservation of the environment, are unconcerned at the fact that seals are dying in the hoki nets, and are actuated purely by greed and profit motives in carrying out their fishing operations. Nowhere in the programme is there an assessment of the economic benefits to New Zealand of the fishing industry or of the hoki fishery so that this can be balanced against the number of fur seals which are dying in the nets at the present time.

It questioned the use of presenting a newspaper interpretative phrase "strip-mined" as a statement of fact and observed that the Industry was well aware that it was dealing with a finite resource.

8) TVNZ, it noted, had not dealt with the original complaint that it was not correct to suggest that the hoki fishery was focused on when orange roughy cuts were signalled.

In conclusion, the letter repeated that the programme as a whole portrayed the fishing industry in a negative and unjustifiably critical way.

TVNZ's Response to the Authority

At the Authority's invitation for a comment dated 14 January 1991, TVNZ responded in a letter dated 12 March 1991. It initially dealt with the specific points which again are related to the points noted above.

2) The Industry seemed to be suggesting, it was noted, that the programme should not have addressed both seal deaths and the risk of the depletion of the fishery. As this viewpoint was not advanced in the original letter of complaint of 12 October, it should not now be considered by the Authority. Nevertheless, the viewpoint was insubstantial as both matters were controversial aspects of commercial fishing activity off the West Coast.

The programme had not suggested that fishermen were acting illegally. Any criticism of the quota management system was directed at the Ministry of

Agriculture and Fisheries, the Government department involved.

The items "pluck" and "plunder" were appropriate to the circumstances where the fishermen, pursuing a legal activity, might fish out a non-renewable resource.

5) Acknowledging that its statement in the letter of 3 December about a distinct colony might have been wrong, TVNZ wrote that it was referring to a single breeding district which in fact comprised eleven colonies.

Similarly, although seals return to the same area to breed, it had been inaccurate to say that seals return to the same colony. This minor inaccuracy, TVNZ maintained, did justify a finding that the truth and accuracy standard had been breached.

The programme did not state seals in New Zealand were in danger of extinction. However, as the death of a large number could result in the extinction of seals in one area, the comment was valid.

7) The programme did not question the fact that the Industry brought economic benefits to New Zealand. It questioned whether the benefits were long-term for the West Coast fishery.

TVNZ disagreed that an objective viewer would be left with the impression that the fishing industry were:

* law breakers;
* totally unconcerned with the environment;
* unconcerned that seals were dying in hoki nets;
* activated purely by greed or profit.

The programme, it was argued, established the fact that orange roughy were "strip-mined". It was an acceptable term when a resource was being used at a non-renewable rate.

8) TVNZ denied that the programme stated that hoki was focused on when orange roughy quota cuts were signalled. The programme did not imply that the quantity of hoki to be taken was unlimited.

With regard to the general point about the programme's tenor and its overall effect, TVNZ expressed the opinion:

> ... it is necessary to determine whether the criticisms of the fishing industry which are implied in the programme are borne out by the information provided.

Criticisms of fishermen suggested in the programme were (1) their attitude to the fur seals and (2) their handling of the fishing resource.

TVNZ stated that to the extent that the Industry dealt with inadequate and sometimes

inaccurate research, it was a victim of circumstances. It also pointed out that the Industry representatives, (Peter Talley and Ray Dobson) were interviewed specifically about the problems with research, that Mr Talley also appeared elsewhere on the programme, that two Ministers spoke favourably about the industry and that Greenpeace supported the continuance of hoki fishing.

The Industry, TVNZ maintained, was not accused of deliberately causing seal deaths, nor was it regarded as being responsible for the unsatisfactory research which substantially miscalculated the size of the hoki resource.

Strongly denying that the programme breached any broadcasting standards, TVNZ concluded:

> It is clearly desirable that investigative current affairs journalism should highlight aspects of national and community life which do not seem to function in the best interests of the populace as a whole. This is what the programme did.
>
> The views of those involved in the industry were presented fairly, objectively and responsibly. Naturally the Industry would have produced the programme differently. To claim that the whole tenor of the programme was unbalanced and slanted against the fishing industry so as to convey a negative impression of it to the public is on our view unsustainable.

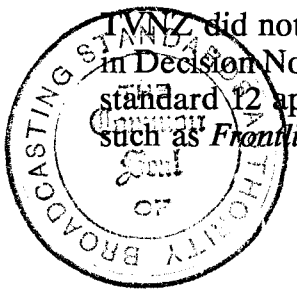
Fishing Industry Association's Final Comment to the Authority

In a letter dated 28 March 1991, at the Authority's request for a comment, the Industry declined to accept TVNZ's comments in its letter of 14 March and stood by its complaint in its letter of 17 December 1990.

Decision

The Authority has studied the correspondence and carefully considered the arguments put forward by the New Zealand Fishing Industry Association in support of its complaint and by TVNZ in response. All members have viewed the *Frontline* programme, "Net Profits", which gave rise to the complaint.

The Association complained to TVNZ that the programme breached standards 1, 4, 6, 12, 15 and 16 of the Television Code of Broadcasting Practice. When referring the complaint to the Authority, the Association omitted reference to standard 6. TVNZ's response to the Authority did not mention this omission. Indeed, in its discussion about standards, it referred back to its letter of 3 December to the complainant which discussed the complaint with reference to each standard - including standard 6. Further, TVNZ did not object to assessing the programme against standard 12. The Authority, in Decision No: 26/90, and in later Decisions, has pointed out that in view of its wording, standard 12 applies only to news and is thus inapposite to a current affairs programme such as *Frontline*.



Accordingly, the Authority has examined the programme "Net Profits", against the following standards of the Television Code of Broadcasting Practice:

1. To be truthful and accurate on points of fact.

4. To deal justly and fairly with any person taking part or referred to in any programme.

6. To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

15. Care must be taken in the editing of programme material to ensure that the extracts used are a true reflection and not a distortion of the original event or the overall views expressed.

16. No set formula can be advanced for the allocation of time to interested parties on controversial public issues. Broadcasters should aim to present all significant sides in as fair a way as possible, and this can be done only by judging every case on its merits.

In assessing the programme, the Authority has kept in mind the complainant's central focus on the entire programme which, it said, presented a biased, slanted and negative view of the Industry and used emotive, exaggerated and overstated language. In summary, the Industry considered that the viewer would be left with the impression that a greedy fishing industry operated illegally and was unconcerned about the environment generally or the seals specifically. In view of these concerns, the Authority has focused principally on standard 6 in assessing the programme.

The *Frontline* programme, "Net Profits", ran for approximately 31 minutes and included extracts of interviews with fishing industry representatives, fishermen, politicians and environmentalists. The fishing industry's point of view was given principally by Mr Peter Talley, Director of the New Zealand Fishing Industry Association, who appeared on five separate occasions. His point of view was supported by Mr Ray Dobson, Chairman of the New Zealand Fishing Industry Board. Although the programme by way of introduction included a clip of the former Prime Minister, (now) Sir Geoffrey Palmer, deploring drift netting in his address to the United Nations, the two (then) Cabinet Ministers interviewed explicitly for the programme (the Minister of Conservation and the Minister of Fisheries) both expressed sympathy for the Industry. Indeed, the Fisheries Minister (Mr Ken Shirley) described fishermen, with admiration, as the "last of the pioneers."

The case for the environment was advanced by a representative of the Forest and Bird Society who appeared on four occasions, and his criticisms of the fishing industry were supported by a marine biologist in his three appearances. On the other hand, the Greenpeace representative in his four appearances, although arguing for more controls, generally supported the economic benefits of the hoki fishery.

As well as the interviews, the programme consisted of extensive footage of marine

mammals and of the fishing industry in operation accompanied by voice-over commentary. The background material included an interview with an employee from the Department of Conservation, two interviews with commercial West Coast fishermen and one with a former observer on a hoki fishing boat. One of the commercial fishermen was unable to deny the claim that some fishermen shot seals illegally and the observer said that fishermen invariably underestimated their catch.

This description is noted to make the point that the programme advanced speakers to support its initial contention that the fishing industry was the number one killer of marine mammals in New Zealand, and to supply comment on the West Coast fishing industry generally. The programme also offered the Industry and other spokespeople an opportunity to reply to most of the specific issues raised. The industry representatives emphasised the economic costs and benefits of the Industry.

Before assessing the overall impact of the programme, the Authority examined briefly the ten specific complaints the Fishing Industry made in its letter of complaint to TVNZ on 5 October 1990. The total impact of the programme is very much influenced by the accumulation of the programme's details:

1. The first complaint referred to the programme's impression that the Industry was deliberately killing a large number of seals to which TVNZ responded by stating that the programme made clear that seal deaths were accidental. The Authority accepted TVNZ's explanation to the extent that it dealt with specific comments made during the programme. The Authority's overall findings about the impression of the programme will be discussed later.

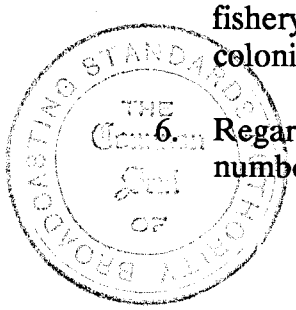
2. Secondly, the Industry complained about some of the emotive and exaggerated language used. The Authority found that most of the language was appropriate but it did not accept TVNZ's use of a 17th century definition of the term "to plunder". It accepted that plundering in common usage means robbing, and the impact of this term was a matter to be assessed when examining the programme's overall impression.

3. With regard to the term "delinquent seals", the Authority agreed with TVNZ that it was an acceptable term used to convey the effects of the seals' impact on the Industry.

4. The Authority accepted TVNZ's explanation about the method of counting dead seals to ensure that double counting did not occur.

5. The programme's suggestion that the Industry might be responsible for the extinction of a seal colony was correct, in the Authority's opinion in view of TVNZ's explanation of 12 March 1991, that the fur seals caught in the hoki fishery nets came from an area with a population of about 8,000 seals in 11 colonies.

6. Regarding the total number of seal deaths, the Authority accepted that the numbers were not known with any degree of accuracy. It also accepted that some



local West Coast fishermen shoot seals. Although the Industry's representatives seemed to be speaking on behalf of the total industry, and particularly the principal hoki fishermen, a more discernable balance would have been achieved by reporting the representatives' response to that allegation.

7. The attitude of fishermen to the marine environment related to the overall impression of the programme.

8. The Authority accepted that the hoki fishery has increased in importance to fishermen because of the decline of the orange roughy fishery, but that the programme did not establish, as the complainant stated, that there was a direct link between the two.

9. With regard to the complaint that fishermen's greed was the basis for possible cuts in the quota, the Authority accepted TVNZ's explanation that the programme explained that quota reductions might occur as a result of the re-examining the findings of the research. Indeed, the Ministry's apparently appalling research error which mistook the sea floor for masses of hoki, might well have been the explanation for the Industry's jaundiced view of fisheries research generally apparent in the programme. Furthermore, the Authority also accepted that the blame for the inadequate research was clearly explained as a governmental, not an Industry, responsibility and further, that the Fisheries Minister was the person who should have been, and was, questioned about it.

10. Although the programme did not include any interviews with MAFFish personnel, the Authority found convincing TVNZ's explanation that, following discussions with MAFFish staff and an examination of relevant material, it was appropriate to conduct interviews with the Ministers of Conservation and of Fisheries.

The Authority's conclusion, after examining these specific points, was that some of the individual complaints would appear to be sustainable. However, when examining the overall impact of the programme, the Authority concluded that most of the matters advanced as facts, as well as the language used, were justified by the programme; that Mr Talley as the representative of the Fishing Industry Association was given ample opportunity to explain the Industry's point of view on most matters; that the Industry's point of view was supported by two Cabinet Ministers and by the Greenpeace spokesperson; that the speakers for and against the Industry propounded their positions clearly; and that the blame for the problems with the future of both the hoki and orange roughy fisheries were placed on the body responsible for them.

Despite these conclusions, there was one other aspect of the complaint which required a finding: that was whether the fishermen were blinded by profits or greed in their attitude to the environment. The programme explained that the fishing industry was divided at least between big and small participants who, although with vastly different investments in resources, shared the common stance of earning their livelihood from hunting the resources of the sea - or to repeat the terms used in the programme, strip-mining or plundering the resources. It was the use of such terms which implied that the Industry operated uncaringly.

The other point the Authority addressed concerned the Industry's alleged lack of care about the environment. Taking into account the language used - although admittedly somewhat emotive - the conclusions which could be drawn from the facts presented and the overall tone of the programme, the Authority was of the opinion that it was a good example of investigative journalism in which the conclusions about fishermen's diverse approaches to the marine ecosystem were adequately portrayed. Further, it was of the view that the criticisms advanced by the programme were principally directed at the incompetent managers of the resources and were justified by the material presented in the programme.

Having reached these conclusions about the programme, the Authority applied them to the standards noted by the complainant.

First, with regard to editing (standard 15), the complainant did not advance a case that the views of the Industry representatives were distorted by the editing process. As a result, no breach of the standard had been established.

Secondly, regarding the allocation of time (standard 16), the programme presented at various times the views of the supporters and opponents of the Industry which enabled all the participants to express their views and for the viewer to be acquainted fully with the conflicting perspectives. Therefore, no breach of standard 16 was established.

Thirdly, standard 4 requires that persons taking part in any programme are dealt with justly and fairly. The only evidence which might support a complaint that this standard was breached, the Authority considered, was the absence of the Industry's response to the question of shooting seals. However, the Authority accepted that one fisherman interviewed did not deny its occurrence and hence further comment could have been considered unnecessary. Accordingly, no breach of standard 4 had been established.

Fourthly, broadcasters are required by standard 1 to be truthful and accurate on points of fact. TVNZ acknowledged that the programme breached this standard in one statement but added that it was a "minor inaccuracy", and hence it was insufficient to justify a conclusion that the total programme was at fault. The Authority agreed that the use of the word "colony" for "area" was an inaccuracy. Furthermore, it was an inaccuracy which was pivotal to the complaint that the programme suggested, as the complainant alleged, that New Zealand's seal population was under threat of extinction. TVNZ denied that the programme referred to the danger for the New Zealand seal population, asserting that it referred only to the danger to the seal population in the West Coast "area". The Authority having viewed the programme, agreed with TVNZ. The seal population in the West Coast "area" is estimated at 8000 and may be affected by as many as 1000 deaths of seals in nets annually. The Authority accepted that a reference to extinction was applicable to this area, in view of the necessity to rely on estimates of the number of seal deaths in the hoki fishery. Thus, the Authority agreed that the inaccuracy was not of major importance to the overall theme and that standard had not been breached.

Fifthly, and most importantly, is the standard 6 requirement for balance, impartiality and fairness. Having concluded that the programme was a competent piece of investigative

journalism, the Authority accepted that the programme did not, as the complainant alleged, leave the impression that the members of the Industry were law breakers, were totally unconcerned about the environment or about seal deaths, or were entirely motivated by greed. The programme justified its comments that the Industry can be criticised to some degree on each of these issues. However, in the Authority's opinion, it did not convey the impression that possession of these attributes characterised the Industry as a whole. In other words, strongly held views were presented both for and against the actions of the Industry and consequently the requirement for balance in the programme was, in the Authority's view, achieved.

For the reasons set forth above, the Authority declines to uphold the complaint that the programme breached standards 1, 4, 6, 15 and 16 of the Television Code of Broadcasting Practice.

Signed for and on behalf of the Authority

Jocelyn Fish

BROADCASTING STANDARDS AUTHORITY THE Common Seal OF

14 May 1991