

REPORT OF THE INDEPENDENT MEDIA OMBUD  
(WESTERN CAPE)

<b>Complaint</b>	
Complaint number	3
Independent Media Publication	Daily Voice
Journalist/s	Genevieve Serra
Photographer	Tracey Adams
Complaint lodged by	City of Cape Town
Date complaint lodged	25 <sup>th</sup> April 2018
Type of complaint	Alleged inaccuracy in reporting.
<b>Ruling</b>	
Date Ruling delivered	10 May 2018
Applicable version of the Independent Media Press Code	1.0
Clauses considered by the Ombud Panel	2.1, 2.3
Related complaints considered	N/A
Sanction / Remedy	Apology to be published
Complaint fee	N/a
Is this report notable?	Yes
Summary of notability	Non-applicability of other Press Codes Nature of publication to be ignored when considering whether Independent Media Press Code contravened.

## 1 Complaint

- 1.1 On 25 April 2018 a complaint was submitted by Luthando Tyhalibongo, the Manager of Media in the City of Cape Town, regarding a story that was published in the Daily Voice on 5 April 2018 with the headline 'CITY SHUTS HERO'S LIBRARY'. The corresponding article (on page 6) had a headline of 'HERO'S LIBRARY IS SHUT DOWN'.
- 1.2 In brief the article alleged that the City of Cape Town had instructed John Nicholson - who ran a community library in Lavender Hill - that he must either 'remove (the) illegal garage or pay R30k fine'. The journalist did contact an employee of the City of Cape Town, Eddie Andrews, who is quoted as saying 'John will face a penalty if the structure is not removed as there was no plan submitted prior to the construction of the garage'.
- 1.3 Two follow up stories were published in the Daily Voice on 9 April 2018 and 13 April 2018 respectively. In the story on 9 April 2018, Eddie Andrews was provided with a right of reply which was entitled 'City: We didn't close the library'. Part of this right of reply includes the sentence, 'Mr Nicholson was informed that his current unauthorised structure will incur an administrative penalty in terms of the Municipal Planning By-law, 2015. He was informed that the amount would have to be determined by the Municipal Planning Tribunal (MPT) according to the relevant criteria.'
- 1.4 Returning to the complaint it was alleged by the City of Cape Town that various sections of the Code of Ethics of the South African Press Council print were breached as well as clauses 2.1 and 2.3 of the Independent Media Press Ombud Code of Conduct in that the journalist 'failed in her duty to write a balanced story based on facts by distorting the facts to suit her story'. Specifically, the City of Cape Town never ordered Mr Nicholson to close the library and never served a 'Notice of Compliance or Closure' nor did the City of Cape Town issue a fine to Mr Nicholson. It was further alleged that the City of Cape Town 'threaten to fine him'.

## 2 Ruling

- 2.1 Before considering the merits of the matter it is worth noting that the Ombud of the Independent Media Group is empowered in terms of the Independent Media Press Code and so any reference to the Code of Ethics of the South African Press Council and online media is not relevant to this complaint and was not considered.
- 2.2 The question also arose as to whether the fact that the Daily Voice was a sensationalist publication should be considered when determining whether a breach of the Independent Media Press Code. The Ombud rules that the nature of the publication would not affect whether a section of the Independent Media Press Code had been breached, but could conceivably be taken into consideration as a mitigating factor when considering an appropriate sanction or remedy.
- 2.3 Turning to the stories in the question the Ombud accepts that the City of Cape Town never instructed Mr Nicholson to close the library and the Ombud further accepts that no fine has been levied by the City of Cape Town against Mr Nicholson as of the date of the publication of the relevant articles. As such the Ombud finds that the headline as published by the Daily Voice on 5 April 2018 was inaccurate and as such breached clause 2.1 of the Independent Media Press Code.

2.4 However, that does not end the matter. It is common cause that Mr Nicholson did not file the necessary building plans for the construction of the garage roof and while it is true that Mr Nicholson was not actually fined by the City of Cape Town, nor was he ordered to remove the library, it was legally possible for the City of Cape Town to conduct an inspection, determine that there was an unauthorised structure and levy a fine against Mr Nicholson which could have been as much as R30 000. The fact that the City had not in fact levied the fine does not detract from the threat which Mr Nicholson clearly felt and which was a reasonable fear in the circumstances. Had the fine been levied then it could well have been unaffordable for Mr Nicholson and resulted in the closure of the library.

2.5 After considering the submission the Ombud was unable to sustain the complaint in terms of clause 2.3 as the distinction between comment, conjecture and fact was clear (although, as indicated above the 'facts' were incorrect).

### 3 Mitigating Factors

3.1 In considering the sanction or remedy in this matter the Ombud took into consideration the following mitigating factors:

3.1.1 The journalist provided the City of Cape Town with a right of reply and went so far as to provide a column in the publication on 9 April 2018 to enable the City of Cape Town to provide its side of the story.

3.1.2 There was in fact a real threat to Mr Nicholson which was factually accurate, even though that threat had not actually manifested itself.

### 4 Aggravating factors

4.1 The following aggravating factors were considered:

4.1.1 The story was on the front page of the Daily Voice and resulted in considerable public interest as evidenced by the social media reaction.

## 5 Sanction / Remedy

5.1 The Daily Voice is ordered to publish an apology on within the first 6 (six) pages of the publication within 10 calendar days of the date of this report which is substantially similar to the following text:

### ‘APOLOGY

The independent Media Ombud (Western Cape) received a complaint from the City of Cape Town relating to a story which was published on 5 April 2018 in the Daily Voice. The article incorrectly claimed that the City of Cape Town had ordered the closure of a library run by Mr John Nicholson in Lavender Hill and further that a fine of R30 000 has been levied by the City of Cape Town. The City of Cape Town did not order Mr Nicholson to close the library nor did it levy a fine, although a fine could have been levied against Mr Nicholson based on the failure to submit building plans. The Daily Voice apologises for the error.’