

# Road Traffic Infringement Agency vs TimesLive & Sunday Times

Complaint 30661

Ruling by the Press Ombud

**Date of article:** 29 January 2023

**Headline of publication:** “RTIA senior officials continue to pull in the big bucks”,  
amended after publication to read: “RTIA board costs rise  
as agency struggles.”

**Author:** Gill Gifford

1. This is an appeal against the Public Advocate’s decision not to condone a late complaint.
2. The complainant is represented by Cheadle Thompson & Haysom Inc. Attorneys and Sunday Times editor S’thembiso Msomi answered on behalf of the publications.

## Background

3. TimesLive and Sunday Times published an article on 29 January 2023 about the Road Traffic Infringement Agency (RTIA). It was critical of “top-ranking staffers and board members who continue to rake it in”.
4. RTIA was aggrieved by the contents of the article and issued a statement on 1 February 2023 disputing several aspects of the article.
5. Upon receiving the statement, TimesLive made changes to the original article. The headline and sub-headline were changed, amongst other detail.
6. RTIA remained unsatisfied.

7. What followed was a period of consultations between the RTIA and its lawyers and engagement with the publications.
8. To fast-forward, a complaint was sent to the Press Council on 9 June 2023, more than five months after the article appeared. But it later emerged that the complaint was sent to an incorrect e-mail address. This was not detected until 17 July 2023 when the RTIA's lawyers phoned the offices of the Press Council and the complaint was submitted to the correct address.
9. Paragraph 1.3. of the Complaints Procedure requires complaints to be submitted as soon as possible, but not later than 20 working days after the date of publication giving rise to the complaint.
10. The Complaints Procedure grants the Public Advocate the power to condone the late filing of complaints on reasonable grounds. The Public Advocate declined to do so.
11. The matter is therefore before me as an appeal against this decision. In line with the procedure set out in the Appeal Decision of **News24 vs Jurie Roux**, the merits of the complaint also had to be ventilated, which led to further delays in the matter. Those delays cannot be laid at the door of the complainant. The question is merely whether the delay from 29 January 2023 to 17 July 2023, being almost six calendar months, ought to be condoned.

### **Public Advocate's decision**

12. In declining to condone the lateness of the complaint, the Public Advocate referred to another decision of the Chair of Appeals, Judge Ngoepe, in the matter of **Spotlight Publications and Sadmon Projects and Consulting CC**, where he said:

*“The longer a delay, the more cogent the explanation should be... None of what is said above even begins to explain why no effort was taken to ensure that the complaint was filed in time. Better explanations with even shorter*

*delays have been rejected in the past. To uphold this condonation would create a very bad precedent. The whole process aims to deal with the complaints as expeditiously as possible.”*

13. The Public Advocate did not find an acceptable explanation for the delay. In summary, he said 62 working days (3 calendar months) of the delay was attributed to consultations. This, the Public Advocate said, might have been acceptable in a complicated matter, but not in this case.

### **The appeal**

14. The explanation for the delay is elaborated on in the appeal:

- 14.1. Lawyers for the RTIA explains in the appeal that they were first approached on 15 February 2023 to advise on the recourse available to the complainant after the 1 February 2023 amendments did not address all their complaints.

- 14.2. From 15 February 2023 to 9 March 2023, the complainant was collating a variety of documents for their lawyers.

- 14.3. On 24 February 2023, the day the 20-day period for submitting a complaint prescribed, the RTIA's lawyers sent a letter to an incorrect e-mail address of the Public Advocate noting their "intention to lodge a complaint" should the continued engagement with the publication not yield sufficient results.

- 14.4. On 10 March 2023, the attorneys sought advice from an advocate and received a preliminary view by 24 March 2024.

- 14.5. Then, on 5 April 2023, the RTIA returned to the publications to “explore a settlement of the matter”. The publications did not respond immediately, but it was followed up on 13 April 2023 and 16 April 2023.
- 14.6. The publications’ attorneys entered the arena on 20 and 26 April 2023. This response also did not satisfy the complainant.
- 14.7. Another pause ensued. The attorneys then received instructions from the RTIA on 7 May 2023 to submit a complaint to the Press Council.
- 14.8. The complaint was submitted on 9 June 2023 to an incorrect e-mail address.
- 14.9. The complaint was followed up telephonically on 17 July 2023, when the error was discovered.
15. The RTIA says the **Spotlights Publications** decision is distinguishable as there was no engagement with the publication prior to lodging the complaint. The RTIA opted to first approach the publication.
16. Secondly, the RTIA views its attempt to alert the Public Advocate of a possible complaint as a sign that it never abandoned its intention to lodge a complaint.
17. The RTIA also says it followed up consistently after 17 July 2023. I do not deem it necessary to consider those aspects as I have already indicated that the complainant is only expected to explain the delay up until 17 July 2023 and not thereafter.
18. According to the complainant, the Public Advocate was incorrect in finding that the complaint does not involve complex subject matter. “(I)t required extensive consultations with our clients and a consideration of a variety of documents and Audit Report.”

19. The complaint involves no less than 12 alleged breaches of the Press Code. The RTIA believes it has strong merits in the complaints.
20. TimesLive and Sunday Times oppose the condonation application. Msomi says the Complaints Procedure itself warns complainants to familiarise themselves with the procedures and the need for expeditious resolution of disputes. Complainants declare that they have read the process.
21. The publications point to various gaps in the explanation offered. They say the RTIA only consulted with their lawyers 12 business days after publication and does not explain why documents had to be collated for a full three weeks while the information has been available since at least 1 February 2023.
22. They also point out that the RTIA set them a deadline on 5 April 2023 to respond to the RTIA's demands by close of business on 11 April 2023, failing which a Press Council complaint would follow. Even though the publication's lawyers only responded after that and did not entertain further complaints by the RTIA, it still did not get RTIA out of the blocks for another extended period.
23. This letter of 5 April 2023 was, in any event, the only attempt to resolve the dispute directly with the publications since publication.
24. Lastly, the publications are critical about the error with the incorrect e-mail address initially used. They say the correct details are recorded on the Press Council's website.

## **Analysis**

25. The Press Council should, in my view, be very slow to close the door on complainants due to procedural issues.
26. The Press Council is there to serve society at large and to promote more informal dispute resolution.

27. It is also in the best interest of the news media to have complaints resolved through the Press Council mechanism rather than protracted and expensive litigation. For this reason, I would ordinarily be surprised if a publication takes an overly technical objection to condonation being granted for a complainant. A responsive and responsible media outlet does not shy away from scrutiny of its journalistic work.
28. However, this is not an ordinary matter. TimesLive and Sunday Times are of the view that they have already made efforts to consider the RTIA's complaints. The publications even involved their lawyers who also considered the RTIA's complaints with a more dispassionate eye.
29. Having already engaged with the complainant, the publications oppose the condonation sought and take the stance that the Press Ombud should decline to entertain the (further) complaint.
30. I held in **Roux vs News 24** that the Public Advocate is to consider the following factors when considering a condonation request, over and above the usual factors to consider, being the extent of the delay, the explanation for the delay, any prejudice to the parties, and prospects of success:

*"1. The need for speedy resolution of complaints. The longer the delay, the less likely the Public Advocate ought to be to accept the complaint.*

*2 The nature of the complaint. The allegations by the complainant, if found to be true, must at least constitute a breach of the Press Code. The more serious the allegations are on face value, the more inclined he should be to accept it.*

*3 The reasonableness of the explanation for the delay. While an explanation is imperative (see **Spotlight Publications** cited above), a reasonable, well-motivated explanation for the delay carries far more weight than a sketchy reason.*

*4 The consideration that a rejection of the complaint effectively closes the door on a complainant without having had the opportunity to state their case."*

31. In the **Appeal Decision: Ramatlakane vs Sunday Times/TimesLive**, Judge Ngoepe also emphasised the line in the sand is a reasonable explanation:

*“The longer the period of delay, the stronger the explanation ought to be; there is none. There is no need for me to look at the merits of the appeal as the applicant fails to cross the first hurdle.”*

32. The first hurdle trips up the RTIA in this matter.
33. I have some reservations whether the utilisation of an incorrect e-mail address is a reasonable excuse, even more so in the absence of any telephonic follow-up until 27 July 2023.
34. However, being as generous as possible to the complainant, I will consider the effective date of submission of the complaint as 9 June 2023 and disregard the e-mail address error.
35. The period from 1 February 2023, when the updated article was published, to 9 June 2023 is a period of **86 working days**, i.e. 66 working days out of time. This is also having regard to all the public holidays during the period, which were not counted.
36. The difficulty of the RTIA is the lack of any reasonable explanations for the following periods:
- 36.1. 2 February 2023 until 15 February when the RTIA first consulted its lawyers (10 days).
- 36.2. 15 February 2023 to 9 March 2023 which was ascribed to the collating of various documents (16 days). The generalised explanation is not rational as the RTIA managed to issue a detailed statement on 1 February 2023 quoting from all the relevant documents. The RTIA knew exactly what it was aggrieved about.
- 36.3. The attorneys then sought advice from counsel, which took 10 days.

- 36.4. After receipt of counsel's opinion, no explanation is provided for the next 7 days until the RTIA approached the publications for "settlement" on 5 April 2023.
- 36.5. Being as generous as possible again, I will stop the clock for "negotiations with the publications" from 5 April 2023 until 26 April 2023 when the attorneys of the publications sent a final deathblow to any prospects of informal dispute resolution.
- 36.6. There's a gap from 27 April 2023 until 7 May 2023 when instructions were given to proceed with the application. (5 working days)
- 36.7. From 7 May 2023, the only explanation is that the complaint was drafted until 9 June 2023. This is another 24 working days.
37. In total, the ball was in the court of the RTIA or its legal representatives for 65 working days. Of those, 46 working days have no explanation at all.
38. The RTIA emphasises that complainants should not be penalised if they first attempted to resolve disputes with a publication. I wholeheartedly agree.
39. However, the objective facts in this matter do not indicate that this is what occurred. After engaging with the publication from 29 January – 1 February 2023 that led to the initial changes to the article, nothing happened further until 5 April 2023 when the RTIA approached the publications again. This approach was effectively rejected on 26 April 2023, at which time the RTIA must have been aware that any further negotiations are fruitless.
40. For the lack of a reasonable explanation for the delay, the Public Advocate was correct in not accepting the complaint.
41. The placeholder e-mail on 24 February 2024 – sent to the wrong e-mail address of the Public Advocate – does not assist the complainant. It merely recorded the complainant's intention to possibly approach the Press Council at a later stage.



42. Even if it is accepted that there is an explanation (however thin) for the entire period of the delay, which I have found does not exist, other considerations also militate against the granting of condonation.
43. The complainant is not a layperson. It is an entity with an able communications department who managed to refute allegations within 72 hours of initial publication. The RTIA was then assisted by renowned attorneys and counsel.
44. The publications were responsive from the outset. The article was indeed amended to address most of the issues raised by the RTIA. The complainant did get some redress and its complaints were considered by the publications, its editor, and their attorneys. It does appear as if the publications gave serious consideration to all the complaints levelled, even if the outcome did not fully satisfy the RTIA.
45. I had regard to the merits of the complaint and could not find that the prospects of success are of such an overwhelming nature that it would justify the length of the delay.
46. A substantial part of the complaint was about the original article, which was promptly amended. I was not inclined to consider complaints addressed at the original article as the issues have been rectified long before the Press Council's procedures were invoked. Publications are encouraged to correct any mistakes or lapses as soon as possible. They need not wait for the Press Ombud to direct them to do so.

## **Conclusion**

47. For the above reasons, I uphold the Public Advocate's decision and decline to adjudicate.

## **Appeal**

*The Complaints Procedure lays down that within seven working days of receipt of this decision, either party may apply for leave to appeal to the Chairperson of the SA Press Appeals Panel, Judge Bernard Ngoepe, fully setting out the grounds of appeal. He can be contacted at [Khanyim@ombudsman.org.za](mailto:Khanyim@ombudsman.org.za).*

*Herman Scholtz*

*Press Ombud*

*19 June 2024*