

Raymond J Paola vs Daily Maverick

Deputy Press Ombud: Tyrone August

4 July 2024

Finding: Complaint 30748

Dates of publication: 12 March 2024, 21 March 2024 and 21 March 2024

Headlines:

Article 1: *Steinhoff: Reserve Bank manager signed off on billions in alleged unlawful cross-border transactions (Part One)*

Article 2: *Le Roux, Mbikiwa, Trengrove: NPA's A-team was ready to charge Markus Jooste*

Article 3: *Steinhoff mastermind Markus Jooste reportedly commits suicide shortly after R475m fine*

Author: Pauli van Wyk¹

Particulars

This finding is based on a written complaint by Mr Raymond J Paola, together with five annexures, lodged by attorney Mr Roderick Harper on behalf of Mr Paola; a written response on behalf of Daily Maverick by Ms Pauli van Wyk, a journalist with its investigative unit Scorpio, and five annexures; and a written response by Mr Paola.

Complaint

The complainant submits that the three articles transgress **Clauses 1.1, 1.2, 1.3, 1.4 and 3.3** of the Press Code:

"1. The media shall:

"1.1 take care to report news truthfully, accurately and fairly;

"1.2 present news in context and in a balanced manner, without any intentional or negligent departure from the facts whether by distortion, exaggeration or misrepresentation, material omissions, or summarisation;

"1.3 present only what may reasonably be true as fact; opinions, allegations, rumours or suppositions shall be presented clearly as such;

"1.4 obtain news legally, honestly and fairly, unless public interest dictates otherwise; ...

¹**Article 3** was co-authored by Neesa Moodley.

“3. The media shall:

3.3 exercise care and consideration in matters involving dignity and reputation, which may be overridden only if it is in the public interest and if:

3.3.1 the facts reported are true or substantially true; or

3.3.2 the reportage amounts to protected comment based on facts that are adequately referred to and that are either true or reasonably true; or

3.3.3 the reportage amounts to a fair and accurate report of court proceedings, Parliamentary proceedings, or the proceedings of any quasi-judicial tribunal or forum; or

3.3.4 it was reasonable for the information to be communicated because it was prepared in accordance with acceptable principles of journalistic conduct; or

3.3.5 the article was, or formed part of, an accurate and impartial account of a dispute to which the complainant was a party; ...”

1. Summary of articles

Article 1: *Steinhoff: Reserve Bank manager signed off on billions in alleged unlawful cross-border transactions (Part One)*

1.1. According to this article, a document of the Hawks’ serious commercial crime unit throws light “on some alleged backroom schmoozing apparently aimed at paving the way for the questionable facilitation of billions of Steinhoff rands out of South Africa – with South African Reserve Bank (Sarb) approval”.

1.1.1. It states that it was clear that Sarb had suspected that Steinhoff may have contravened various exchange control laws, and goes on to refer to the alleged complicity “of one of its own”.

1.1.1.1. The article claims that Sarb was faced with an embarrassing dilemma regarding the divisional head of its financial surveillance department, Raymond Paola, and that this was kept under wraps for three years.

1.1.1.2. It states that, despite formal and informal questions as well as a Promotion of Access to Information Act (PAIA) application, Sarb did not “pull back the blanket from the Paola case”. Nevertheless, the publication says its investigative unit, Scorpio, was able to collect various documents and background information in its efforts “to build the puzzle”.

1.2. The article further notes that Steinhoff’s risk manager Chris Grové, a former Sarb employee, was “[n]etted during Sarb investigators’ preliminary probe”. It states that documents suggest that he was the point of contact between Steinhoff and Sarb, and that he worked closely with Paola.

1.2.1. Sarb investigators also reportedly unearthed evidence suggesting that 16 exchange control applications contravened several of the bank’s rules governing cross-border

transactions. Paola allegedly signed off on these applications between 2012 and 2017, in which Steinhoff asked permission to engage in billions of rands in offshore transactions.

1.2.1.1. As a result, Sarb brought internal disciplinary charges against Paola relating to gross dishonesty, conflict of interest, abusing confidential information, soliciting gifts and failing to declare those gifts. He resigned in June 2021 before the disciplinary hearing was concluded, and Sarb allowed him to do so.

1.3. Through his lawyer, Paola declined to answer questions from Scorpio on the grounds that these were biased or ill-informed and also because he was bound by confidentiality in terms of his conditions of employment.

1.4. In 2022 Sarb registered a complaint with the Hawks against Paola, Grové and former Steinhoff CEO Markus Jooste in terms of South Africa's corruption legislation.

1.4.1. During its investigation, Sarb investigators claimed to have found evidence that Paola was "wined and dined" by Steinhoff on numerous occasions.

1.4.1.1. According to Sarb investigators, Paola also attended the 2013 and 2016 Sansui Summer Cup as well as the 2014 Vodacom Durban July at the invitation of Phumelela Gaming and Leisure, a company linked to Jooste.

1.4.1.2. And, in 2014, 2015 and 2016, Paola "is said to have" solicited gifts for golf tours to Durban, East London and Cape Town from individuals and companies with which Sarb had a "business relationship".

1.4.2. A subsequent Sarb investigation reportedly led to Paola's suspension in mid-2021 on the grounds that he had created a conflict of interest, was grossly dishonest and had failed to comply with the bank's policies and rules.

1.4.2.1. According to the article, Paola's version is not available because he did not contest the disciplinary charges and also because he repeatedly declined to answer questions about them.

1.4.2.2. It suggests that Paola portrays himself as "the fall guy" in order to protect Sarb from embarrassment. It also notes that Paola allegedly claims that he may have made some mistakes and that he may have been deceived by Steinhoff executives.

1.4.2.3. The article concedes that Paola may have a point but suggests that, in view of known facts, "some scepticism about his version would be prudent".

1.4.2.4. It reports that Paola worked almost exclusively on the bank's Steinhoff business. Furthermore, he was a senior manager at Sarb's financial surveillance department that was

responsible for the regulatory oversight of cross-border transactions and worked at the bank for more than 33 years before he resigned.

1.4.2.5. In addition, the evidence allegedly suggests that, in some cases, Steinhoff belatedly asked “permission” for transactions that it had actually already pushed through – which, according to the article, should have alarmed Paola.

Article 2: *Le Roux, Mbikiwa, Trengrove: NPA’s A-team was ready to charge Markus Jooste*

1.5. According to insiders, it is unlikely that Jooste knew about the legal team recruited to bring charges against him. However, he was reportedly informed to present himself for arrest on 22 March 2024.

1.5.1. His fatal shooting occurred just more than 24 hours after the Financial Sector Conduct Authority (FSCA) fined him R475 million and announced its intention to institute a criminal case against him.

1.5.1.1. The appointment of advocates Michelle le Roux SC, Wim Trengove SC and Michael Mbikiwa had reportedly been a closely guarded secret. According to an insider, the initial plan was for the three advocates to be sworn in by a sitting Judge President on 22 March 2024 to act as state prosecutors in the Steinhoff case.

1.5.1.2. The plan was reportedly for Jooste and his co-accused to face charges the following week. According to two insiders, these charges were linked “to the manipulation of Steinhoff’s share price, misrepresentations to third-party business people he did deals with ... as well as misstatements in the company’s annual financial statements”.

1.5.1.3. The National Prosecuting Authority (NPA) will have to decide how to proceed after Jooste’s unexpected death.

1.5.2. Jooste and Steinhoff were reportedly “the darlings of the JSE [Johannesburg Stock Exchange]” before the company imploded in December 2017. It listed in Germany and the Netherlands, and the Public Investment Corporation spent billions of rands to acquire Steinhoff shares with money from the Government Employees’ Pension Fund.

1.5.2.1. However, the article states that while Jooste did make some excellent business decisions, he and a number of Steinhoff managers were later accused of “having papered over ... failures by artificially inflating profits with the aid of seemingly unrelated companies — all the while moving billions of rands out of South Africa”.

1.5.2.2. According to the article, “the game was up” by December 2017, and local and international government authorities started closing in on Jooste’s assets.

1.5.2.3. Steinhoff's former European finance chief, Dirk Schreiber, received a three-year prison sentence from a German court in August 2023. He reportedly cooperated extensively with the court and was "helpful" to South African authorities as well.

1.5.2.4. Jooste was charged as well, but did not show up for the trial.

1.5.3. After extensive investigations over a number of years, Sarb attached all the assets they could link to Jooste and a number of former Steinhoff executives, including Grové and Ben la Grange.

1.5.3.1. Sarb reportedly found that Paola signed off on a list of "suspicious" exchange control applications from Steinhoff. Grové, in particular, and Jooste were suspected of being central to attempts to "cajole Paola into allegedly favouring Steinhoff".

1.5.3.2. In this way, Steinhoff "possibly" moved billions of rands offshore unlawfully. This discovery led to Sarb freezing R5.5 billion of the company's funds in its local bank accounts in 2023.

1.5.3.3. In addition, Sarb took control of the Lanzerac Wine Estate in Stellenbosch, land linked to the winery Klein Gustrouw in Stellenbosch, the contents of Jooste's property in Hermanus and the Jooste family's Silver Oak Trust.

Article 3: *Steinhoff mastermind Markus Jooste reportedly commits suicide shortly after R475m fine*

1.6. This article starts off by reporting on the death of Jooste, who reportedly shot himself at his Hermanus property on 21 March 2024. It notes that Jooste died a day after he was informed he had to pay a R475-million administrative penalty to the FSCA by 19 April 2024.

1.6.1. According to the FSCA penalty order, Jooste maintained that there were no financial irregularities that he was either aware of or participated in. The FSCA added that he did not provide information to the investigation "in a cooperative manner".

1.6.1.1. The R475-million fine was reportedly for issuing false or deceptive statements about Steinhoff International Holdings Limited and Steinhoff International Holdings NV, which he knew – or ought reasonably to have known – were false or deceptive.

1.6.1.2. The Steinhoff documents related to the fine were reportedly Steinhoff's annual financial statements and annual reports for the 2014 to 2016 financial years and for the 2017 half-year.

1.6.2. The article further reports that the company and Jooste were "the darlings of the JSE" before Steinhoff imploded in December 2017 (see 1.5.2). However, Jooste and other Steinhoff managers now "stand accused of artificially inflating profits while pulling a blanket

over the money-losing business decisions – all the while moving billions of rands out of South Africa”.

1.6.2.1. Since December 2017, local and international government authorities were reportedly closing in on Jooste’s assets. In October 2022, Sarb attached all the assets they could link to Jooste (see 1.5.3.3).

1.6.3. According to the article, Jooste is suspected of being central to attempts to “cajole” Paola to allegedly sign off on a number of unlawful cross-border transactions. This reportedly led to the freezing of R5.5 billion of Steinhoff’s funds in the company’s local bank accounts in 2023 (see 1.5.3.2).

2. Arguments **Raymond J Paola**

2.1. By way of background, the complainant notes that Steinhoff brought several applications regarding foreign exchange transactions between 2012 and 2017. These applications were prepared by its authorised dealer.

2.1.1. He points out that he did not sign all these applications. However, he states that those he did sign followed “a thorough process conducted at the Reserve Bank and after comprehensive discussions with the dedicated team in the Financial Surveillance Department”.

2.1.2. He submits that he and his team applied their minds to each application in accordance with their duties and that he treated all applications in the same manner – regardless of who brought them.

2.2. The complainant states that the auditors Deloitte drew attention to accounting irregularities in Steinhoff’s financial documents in 2017. Up to that date, he submits, he and Sarb managers were unaware that Steinhoff had been engaging in “unlawful activities”.

2.2.1. Sarb lodged a notice of a disciplinary enquiry and “employment related” charges against him during May 2021. He resigned the following month, but points out that the bank did not proceed with the enquiry even though it was entitled to do so.

2.3. The complainant further notes that he was contacted by the respondent in February 2024 in connection with questions relating to his employment at Sarb.

2.3.1. He referred the matter to his attorney, Roderick Harper, who informed the respondent that he (the complainant) was “not prepared to become involved in a question-and-answer session” and, furthermore, that many of the questions “are not in context, are one-sided and do not reflect a proper understanding”.

2.3.2. The respondent subsequently published several articles that are the subject of these complaints.

2.4. The complainant then proceeds to outline his complaints about **Article 1**.

2.4.1. **Complaint one:** The complainant states that – “to his complete surprise” – the article contains detailed summaries of the charges lodged against him by Sarb. He goes on to submit that these charges lack detail, and are one-sided and devoid of context.

2.4.1.1. The complainant refers to the publication’s request under the PAIA for access to information on Sarb’s records of its disciplinary action against him and for various other documents. He says he did not consent to the disclosure of the information in question and points out that Sarb turned down the publication’s PAIA request as well.

2.4.1.2. He maintains that, in terms of section 33 of the SARB Act 90 of 1989, he was legally bound to “a preservation of secrecy” and was therefore not entitled to disclose any information on Sarb affairs that were acquired during the exercise of his duties at the bank.²

2.4.1.3. However, he says, the questionnaire submitted by the respondent in February 2024 was comprehensive and detailed the charges lodged against him. He therefore submits that he does not believe this information was obtained lawfully, honestly and fairly.

2.4.1.4. In light of the above, he submits that the article is in breach of **Clause 1.4** of the Press Code.

2.4.1.5. He adds that it appears the respondent is relying on “a source who, possibly, has a hidden agenda and is attempting to divert attention from him/herself by placing suspicion on myself in the media by making unsubstantiated comments and statements”.

2.4.2. The complainant further submits that the respondent cannot rely on public interest for a number of reasons.

2.4.2.1. Firstly, he says, Sarb’s disciplinary enquiry did not commence and was, accordingly, not finalised. As such, the charges against him were never proven. He suggests that it is unfair to treat them as proven facts and damaged his reputation.

2.4.2.2. Secondly, he repeats his point that Sarb was entitled to proceed with the disciplinary enquiry during his notice period but chose not to do so.

2.4.2.3. Thirdly, he states that he has never been charged with a criminal offence.

2.4.2.4. Lastly, he declares that there is “no imminent and serious public safety or environmental risk”.

² See https://www.gov.za/sites/default/files/gcis_document/201503/act-90-1989.pdf

2.4.2.5. In view of the above, he maintains the article failed to take due care of his dignity and reputation (a breach of **Clause 3.3**), and rendered him unable to earn an income.

2.5. Complaint two: The second complaint relates to the following two paragraphs:

“Sarb’s acutely embarrassing dilemma of divisional head at Sarb’s Financial Surveillance department, Raymond Paola, had been kept airtight for nearly three years. Neither formal nor informal questions posed nor a PAIA application could move Sarb representatives to pull back the blanket from the Paola case.”

“Paola, through his lawyer, declined to answer detailed questions. He claimed that ‘many of [Scorpio’s] questions are not in context, are one-sided and do not reflect a proper understanding. [Paola] is also bound by confidentiality in accordance with his terms and conditions of employment’.”

2.5.1. The complainant suggests that the respondent wants to create the impression that he and Sarb are covering up the matter out of, among other things, embarrassment. He argues that this distorts the real reason for their silence on the matter and is therefore in breach of **Clause 1.2** and **Clause 3.3** of the Press Code.

2.5.1.1. He repeats his view that section 33 of the SARB Act binds him to secrecy (see point 2.4.1.2 above).

2.5.1.2. He also says the respondent informed him that his arrest was imminent. He denies any knowledge of his pending arrest but adds that, if he is to be arrested and charged, it is even “more imperative” for him to remain silent to protect his rights.

2.5.1.3. He further denies that the Sarb charges had anything to do with the allegedly illegal activities of Steinhoff and Jooste, but says the publication “irrationally and unprofessionally” chose to conflate the two issues.

2.5.1.4. He says the impression created by the article was “entirely speculative” and impacts negatively on his dignity and reputation.

2.6. Complaint three: In the third complaint, the complainant points to the reference in the article to the gifts he allegedly received and, in particular, to the conclusion of the article, including the following paragraphs:

“And then there are the gifts.

“If the complaints against Paola are proven to be correct, this may well be an important example of how bribes and corruption need not involve the staggering amounts punch-drunk South Africans have become used to over the past decade.

“Influence peddling and being included on a sought-after Christmas gift list can have equally devastating consequences.”

2.6.1. He dismisses these statements as reckless, irrational and defamatory, and once again contends that the article conflates “distinct issues” and that there is no “evidential basis” for making false assumptions. As such, he argues, they breach **Clause 1.2**, **Clause 1.3** and **Clause 3.3** of the Press Code.

2.6.1.1. He submits that the article makes it seem as if he was the only Sarb employee to receive gifts from banks, corporates “and the like”, and says it was an established commercial custom during that period. When Sarb introduced new policies on corporate gifts from around 2011, he notes, he duly completed the gifts register numerous times.

2.6.1.2. He goes on to argue that that there is no connection between the “vague charges” lodged against him by Sarb and the alleged illegal activities of Steinhoff and Jooste.

2.6.1.3. In fact, he claims that he suggested that Sarb conduct an independent investigation in view of the reaction to Steinhoff’s collapse and says he was subsequently questioned extensively by a forensic team.

2.6.1.4. He submits that there was no indication in the disciplinary charges lodged against him that there was any “any illegal activity relating to the alleged illegal activities of ... Jooste and Steinhoff and my conduct at the Reserve Bank”.

2.7. The complainant further maintains that the article ignores the “intricacies and difficulties” faced by Sarb’s financial surveillance department and the processes involved in considering applications for foreign exchange transactions.

2.7.1. As a result, he argues that the article is not balanced and fair, and reduces his role to that of a simple task in which fraudulent schemes can easily be identified. He notes that hundreds of people were duped by Jooste and Steinhoff, including the company’s board of directors and auditors.

2.7.2. He further maintains that the suggestion in the article that he worked exclusively on Steinhoff unfairly creates the impression that he was the only person at Sarb who dealt with that company. He says this is untrue and that he and a team would consider foreign exchange applications.

2.7.2.1. He adds that he also dealt with numerous applications from other corporates and banks, and submits that he treated them all equally.

2.7.3. He also denies that he “*may have advised the Steinhoff managers on how to structure their requests*” and says that Grové – as deputy general manager of Sarb’s financial surveillance department – was closely involved in dealing with foreign exchange

applications, and that he therefore did not require his assistance on how to structure Steinhoff's applications.

2.7.4. In light of the above, the complainant suggests that the article is false and fails to take care of his dignity and reputation.

2.8. The complainant then goes on to outline his complaint about **Articles 2 and 3**.

2.8.1. **Complaint four:** This complaint objects to the reference in **Article 2** that the complainant "*signed off on a list of suspicious exchange control applications from Steinhoff*".

2.8.1.1. He dismisses this statement as false and careless, and says Sarb was not aware during that period that Steinhoff was engaging in unlawful activities.

2.9. The complainant also objects to the statement in **Article 3** that he allegedly signed off "*on a large number of unlawful cross-border transactions*" which, in turn, led to R5.5 billion of Steinhoff's funds being frozen.

2.9.1. He denies, too, that he was ever cajoled into signing off on a large number of unlawful cross-border transactions and maintains that there is no evidence to support this allegation. He contends that this statement is in breach of **Clause 1.1**, **Clause 1.2** and **Clause 3.3** of the Press Code.

2.9.1.1. He further contends that **Articles 2 and 3** fail to consider his position fairly. He maintains that, if the applications in question were indeed suspicious, the suspicion only arose once Steinhoff's fraudulent activities became known. He also states that Sarb relies on other parties – such as the JSE and auditors – to provide accurate information.

2.10. The complainant again suggests that the articles conflate the charges lodged against him by Sarb with the illegal activities of Steinhoff and Jooste and, furthermore, that they give the impression that, because he allegedly received gifts, he must have been involved in the illegal activities of Steinhoff and Jooste.

2.10.1. He repeats his contention that the articles fail to take due care regarding his dignity and reputation, and states that they rendered him unable to earn an income.

2.10.2. He also maintains that the assumptions in the articles are based on charges that are vague and have not been proved. He believes he has been made "a victim in completely unwarranted circumstances".

2.10.3. In conclusion, the complainant requests that the statements in question be retracted and that the respondent publish a detailed apology if found to be in breach of the Press Code.

Daily Maverick

2.11. The respondent starts off by noting that it has an ethical obligation to protect its sources, and adds that they “are at significant personal risk in respect of their livelihoods”. It adds that the obligation to protect these sources places constraints on its response to the complaint.

2.11.1. It points out that it has prepared “a separate confidential disclosure”, which it is willing to submit to the Press Ombud but not to the complainant or his representatives. Doing so, it says, would be in breach of its ethical obligation.

2.11.2. It also says it is prepared to deliver certain documents to the Press Ombud, in hard copy format, but requests that these be treated with the utmost confidentiality and that they be returned.

2.12. In response to the complaint, the respondent starts off by sketching the background to the story and its investigation.

2.12.1. The publication states that it first became aware of the complainant’s suspension and subsequent resignation in October 2022 during the course of reporting on Sarb’s investigation into Steinhoff. It then began an in-depth investigation that lasted for more than a year.

2.12.2. The publication further notes that, after Steinhoff imploded in December 2017, Sarb initiated an investigation into suspected contraventions of foreign exchange rules and legislation.

2.12.2.1. It states that a firm of attorneys and a firm of auditors were briefed to assist with the investigation, and says that all the investigative interviews that were part of this process were recorded.

2.12.2.2. During the investigation, interviews were conducted with Paola, Jooste and Grové as well and “an extensive body of documentary evidence was obtained”. The complainant was subsequently suspended and he resigned in 2021.

2.12.2.3. The publication says Sarb filed a criminal complaint with the Hawks against Paola, Jooste and Grové in or around May 2023 under section 34 of the Prevention and Combating of Corrupt Activities Act, which the respondent subsequently refers to as the corruption complaint. It adds that “the same essential evidence” was used by the bank with regard to the disciplinary charges, the corruption complaint and the freezing of local Steinhoff accounts.

2.12.3. The publication further submits that the first relevant documents are Sarb’s notice of precautionary suspension and the disciplinary charge sheet handed to the complainant in May 2021. According to the publication, the notice states that preliminary evidence points to serious misconduct, including “suspicious interactions with people employed and linked to Steinhoff, including Grové and Jooste”.

2.12.3.1. The disciplinary charges include failing to declare gifts, soliciting gifts, gross dishonesty, acting in conflict of interest and abusing confidential information. Furthermore, according to the publication, these charges contain details of exact dates and people involved as well as “some specificity” about the gifts and benefits bestowed on the complainant.

2.12.4. The respondent states that the second piece of evidence its reporting relied on was Sarb’s corruption complaint. This detailed investigators’ suspicions that Paola, Grové and Jooste may have committed acts of corruption.

2.12.4.1. According to the publication, the corruption complaint makes the point that the complainant was in a regulatory oversight position at Sarb when he allegedly solicited and received gifts and benefits from Steinhoff as well as from “linked entities and officials”.

2.12.4.2. It also states that Sarb alleges in its criminal complaint to the Hawks that Steinhoff may have obtained approval of at least 16 exchange control applications from the complainant under possibly corrupt circumstances.

2.12.5. The respondent points out that it first contacted the complainant directly on 7 February 2024 by telephone, but he declined to answer questions and referred these to Harper.

2.12.5.1. The publication then emailed a letter on the same day with questions to Harper for the complainant’s attention, followed by an email with another question on 7 March 2024.

2.12.5.2. Harper later informed the publication that he had lodged a complaint with the Press Council. The publication’s attorneys then advised it not to engage further with the complainant pending the outcome of the complaint.

2.13. The respondent disagrees that publication of the article is not in the public interest for a number of reasons.

2.13.1. Firstly, the publication declares that the story relates to one of the biggest corporate frauds in South Africa’s history. An estimated R220 billion was wiped off the JSE when Steinhoff collapsed. And, after Jooste resigned, the stock lost 86% of its value in two days.

2.13.1.1. It also says that 948 of the 1 651 pension funds registered in South Africa – more than half – “had exposure” to Steinhoff. According to one estimate, civil servants alone lost more than R21 billion.

2.13.1.2. Furthermore, Steinhoff’s exchange control applications involved substantial sums of money. Some sources suspect that more than R400 billion in capital allegedly unlawfully flowed out of South Africa during “the Steinhoff scam”.

2.13.1.3. The publication states that Sarb, and in particular its financial surveillance department, was tasked with preventing the unlawful movement of money out of the country. And, at the time, the complainant was one of the most senior officials tasked with protecting South Africa's economy.

2.13.2. Secondly, the respondent submits that the article is about the administration of criminal justice. However, not a single person has yet been held accountable for "the biggest corporate fraud in South Africa's history".

2.13.2.1. The publication states that the three men identified in Sarb's corruption complaint in connection with Steinhoff's exchange control applications are Jooste, Grové and Paola. It argues that the complainant's assertion that he has never been charged or questioned does not change this fact.

2.13.2.2. The publication further contends that Steinhoff is an example of the shortcomings of South Africa's authorities in prosecuting corruption and financial crime. Accordingly, it believes the public have a right to be informed about the complaint "against Paola *and* the failure of its prosecution, as the case may be" (emphasis by the respondent).

2.13.3. Thirdly, the respondent believes the story is reporting "an ongoing risk to the public".³

2.13.3.1. It submits that the complainant presents himself to the public as an expert on exchange control transactions and refers to his LinkedIn profile, a tweet from the South African Institute of Taxation and an interview on SAFM as examples.

2.13.3.2. The publication maintains that it is in the public interest for the public to be informed about "the true nature" of the complainant's professed credibility as an exchange control expert.

2.13.3.3. It argues that the allegations against him are serious and that the public have a right to be informed about them. It believes these are "not mere matters that would appeal to the prurient interest of the public".

2.14. The respondent then addresses each of the specific complaints raised by the complainant with regard to **Article 1**.

2.14.1. **Complaint one:** The publication states that the complainant does not offer any evidence that it obtained news or reported information in a manner that is dishonest, illegal or

³ The publication points out that the complainant successfully applied for a position in the corporate sector after he resigned from Sarb. However, it says, this offer was terminated when the circumstances of his resignation were discovered. The publication adds that this took place before it published **Article 1**, which casts doubt on the complainant's claim that it is responsible for his reputational damage and "rendered him unable to earn an income".

unfair in breach of **Clause 1.4** of the Press Code. Nor, adds the publication, does he refer to any published statement on this aspect of the complaint.

2.14.1.1. The publication further says that, although its PAIA request was rejected, its investigation continued for about 11 months and that it relied on “substantial evidence” and interviews with sources over and above the information requested via PAIA.

2.14.1.2. It contends that the fact that its PAIA request was turned down does not legally preclude further reporting on the matter nor does it mean that any information that was obtained was acquired unlawfully. And while PAIA does provide an avenue for formal access, the publication argues that this is not the only way that journalists obtain information that is in the public interest.

2.14.1.3. The respondent further disputes the complainant’s claim that the material obtained by the publication was in breach of the law because section 33 of the SARB Act requires secrecy to be preserved.

2.14.1.4. It argues that this section of the law does not apply to a journalist but specifically places an obligation, under certain defined circumstances, on “directors, officers or employees of the bank”.

2.14.1.5. It also contends that a confidentiality provision in legislation, such as section 33 of the SARB Act, cannot be used to conceal unlawful activity.

2.14.1.6. Moreover, the publication maintains that the public interest “override” in Clause 1.4 means that the article does not breach this provision of the Press Code.

2.15. The respondent further denies that the article provides a “one-sided view” and is “devoid of context”. It says the allegations in the article were put to the complainant, and it was therefore up to him to provide “the view from the other side”.

2.15.1. The publication states that it was presented with his version – “for the first time” – in the complaint to the Press Council. However, it notes, the complainant was given an opportunity to provide this context on four occasions over a period of 12 months.

2.15.1.1. Despite his failure to do so, the publication contends, it nevertheless went to great lengths to exercise care and consideration, in line with **Clause 3.3** of the Press Code.

2.15.1.2. It argues that both the article and headline refer to allegations in relation to “critical statements”; such statements are not presented as facts. (It cites a number of examples in support of its argument.)

2.15.1.3. The publication also says the article reflects the views of those who believe the complainant may have been deceived into believing Steinhoff executives, which “seems to accord with what he says in his complaint”.

2.15.1.4. It repeats its contention that it took due care and consideration in terms of Clause 3.3, both in reporting on the matter and in its attempts to obtain the complainant’s version. Furthermore, it notes that his complaint does not identify any particular statement in the article to which it can meaningfully respond regarding an alleged breach of this clause.

2.15.1.5. However, it suggests that even if there was a breach of the obligation imposed on it by Clause 3.3, the article as a whole is published in the public interest.

2.15.1.6. In compliance with the provisions of this clause, the respondent submits that the article is true or substantially true, is protected comment based on facts adequately referred to and/or publication was reasonable because the article was prepared in accordance with acceptable principles of journalistic conduct.

2.16. **Complaint two:** The respondent denies that two statements in **Article 1** are in breach of **Clause 1.2** and **Clause 3.3** of the Press Code (see point 2.5 for the statements in question).

2.16.1. Firstly, the respondent maintains that the first paragraph does not “reference” the complainant’s unwillingness to answer questions; it simply mentions his case. It says the statement in question refers to Sarb: *“Neither formal nor informal questions posed nor a PAIA application could move Sarb representatives to pull back the blanket from the Paola case.”*

2.16.1.1. The publication maintains that this paragraph simply means that Sarb “refused to be forthcoming” with information on the matter. And to state that this is an *“embarrassing dilemma”*, it says, is a statement of opinion based on facts that are adequately reflected in the article.

2.16.1.2. Secondly, the respondent maintains that the other statement the complainant objects to – that he is unwilling to speak to the media because he is bound by confidentiality under the terms and conditions of his employment – is a quote from his own lawyer. As such, the publication fails to understand how this can be a breach of **Clause 1.2** of the Press Code.

2.17. The respondent then proceeds to address other aspects of the complaint.

2.17.1. It notes the complainant’s submission that suggests that section 33 of the SARB Act was the real reason for his silence, and refers to the publication’s earlier response (see points 2.14.1.3 to 2.14.1.6).

2.17.1.1. With regard to the second paragraph in question, the respondent states that Harper gives two reasons for the complainant’s refusal to comment. The publication argues that “the

contextual nature or otherwise” of its questions could not have had any impact on what Harper deemed to be his legal duty.

2.17.2. The publication then refers to its earlier response on why its PAIA request is irrelevant to further reporting on this matter (see point 2.14.1.2). It submits that the PAIA cannot be a bar to accessing information and adds that there is no departure from the facts in the article.

2.17.3. The publication also denies it informed the complainant that his “arrest was imminent” and says this is not mentioned in its request for comment. However, it adds that even if it did do so, it is not clear how this advances the complaint that there was a departure from the facts. It further notes that it did not publish anything about his arrest, “imminent or otherwise”.

2.18. **Complaint three:** The respondent then turns to the complaints about a number of statements at the end of **Article 1**, and notes that it has already addressed the aspect of public interest (see under point 2.13).

2.18.1. The publication submits that it is true that “*Mr Paola almost exclusively worked with and oversaw the Steinhoff business*”. It claims that there is “a substantial amount of evidence that substantiates this” and reiterates that the complainant approved at least 16 of the 21 questionable transactions.

2.18.1.1. According to the publication’s sources, in certain cases the complainant approved exchange control applications without consulting his team or used his seniority to persuade them.

2.18.2. The respondent then addresses the complaint about the following statement in the article: “*The evidence allegedly suggests that Steinhoff in some cases belatedly asked ‘permission’ for transactions they actually had already pushed through – a transgression that should have raised Paola’s hackles.*”

2.18.2.1. It says the first part of this statement is presented as an allegation.

2.18.2.2. It adds that the second part of the statement is clearly “a hypothetical statement of opinion that is based on facts that are adequately reflected in the article”, including the complainant’s experience and his position at Sarb. Furthermore, this specific allegation was put to him in the publication’s request for comment on 7 February.

2.18.2.3. The respondent then turns to the following statement: “*In other instances, it seems that Paola may have advised the Steinhoff managers on how to structure their requests.*” It says this statement is also presented as an allegation and adds that this allegation was directly put to the complainant as well in its request for comment on 7 February.

2.18.3. Regarding the statement, “*And then there are the gifts*”, the respondent submits that the basis for this is referred to in the article. It further states that the complainant has not made any attempt to address these allegations in his complaint.

2.18.4. The respondent says the statement “... *how bribes and corruption need not involve the staggering amount punch-drunk South Africans have become used to over the past decade*” is qualified as follows: “*If the complaints against Paola are proven to be correct...*” It states that the rest of the statement is clearly an opinion, “which is hypothetical, based on facts that are adequately reflected in the story”.

2.18.4.1. The publication contends that this statement was intended to convey that bribery in the private sector does not always involve significant sums of money, but can include many small favours. It suggests that this does not make it any less newsworthy.

2.18.4.2. It further submits that the mere fact that a comment is expressed in a news story does not necessarily constitute a breach of the Press Code, “provided that the factual reporting [has] been presented in a contextualised and balanced way and ... does not impact on what has been presented as truth”. It says this is clearly recognised in Clause 3.3.2 of the Press Code.

2.18.4.3. For these reasons, the publication says the article is completely justifiable.

2.18.5. Regarding the references in the articles to gifts “and the like”, the publication says that it would have published the complainant’s version, even though it found his explanation “deeply troubling”.

2.18.5.1. It further points out that the disciplinary charges against the complainant accuse him of having contravened Sarb’s policies on “gifting” and that, as far as the publication is aware, he is the only Sarb employee to have been charged in a disciplinary hearing and a criminal complaint in this regard.

2.18.6. The respondent goes on to dispute the complainant’s statements that imply that the charges against him do not have anything to do with Steinhoff’s criminal activities. “While that may be true of the totality of Jooste and Steinhoff’s criminality,” it submits, “this story is about the Reserve Bank and the alleged corrupt ECA’s [exchange control applications].”

2.18.6.1. The publication says the article makes it clear that the Sarb investigation in terms of which the complainant was questioned was an investigation into Steinhoff. And, by his own account, he recommended this investigation (see point 2.6.1.3).

2.18.6.2. The publication adds that the article is not based on the disciplinary charges only, but also on the corruption complaint, a Sarb letter to Steinhoff and on various interviews and other evidence.

2.18.6.3. It also notes that a corruption complaint has been lodged against the complainant, Jooste and Grové, and that these relate to Steinhoff's exchange control applications. It adds that the complainant is accused, among other things, of soliciting and/or accepting gifts in exchange for "undue activities", and that the charge sheet specifically includes invitations from Jooste and entities related to him.

2.18.6.4. The publication therefore argues that there is no way that the disciplinary case and the subsequent criminal case against the complainant – "which is what this story is about" – can be extricated from Steinhoff.

2.19. The respondent rejects the complainant's attempts "to shift blame" (see points 2.7.1, 2.7.2 and 2.7.2.1). It states that he was the divisional head at Sarb responsible for considering exchange control applications by Grové on behalf of Steinhoff and other entities related to Jooste.

2.19.1. The publication points out that the article did not state that the complainant dealt exclusively with Steinhoff's applications, but that he dealt "*almost exclusively*" with them, and adds that this statement was made by a source.

2.20. Regarding the reference in the article that "*... it seems that Paola may have advised the Steinhoff managers on how to structure their requests*", the respondent points out that the article makes it clear that Grové left Sarb for a position at Steinhoff.

2.20.1. The publication notes that it provides a basis for the statement of Grové's cooperation with Steinhoff and submits that there has not been a breach of the Press Code in relation to this complaint.

2.21. **Complaint four:** The respondent notes that **Articles 2 and 3** were published after the first article and contends that both "were merely contextual paragraphs inserted in other stories, that were entirely based on the first article".

2.21.1. Nevertheless, with regard to **Article 2**, the publication rejects the "tortured interpretation" that the complainant attaches to the word "suspicious" in the following sentence: "*SARB found that ... Paola ... has signed off on a list of suspicious exchange control applications from Steinhoff.*"

2.21.1.1. It argues that this ignores the fact that the sentence begins with the following words, "*SARB found that ...*". According to the publication, this self-evidently means that the bank found the transactions suspicious.

2.21.1.2. The publication also states that it attributed the following statement to Sarb and that every effort was made to refer to the allegations in context: "*Jooste and Grové ... are suspected*"

of having been central to coercive attempts to cajole Paola into allegedly favouring Steinhoff."⁴ (emphases by the respondent)

2.21.1.3. The respondent then addresses the following sentence complained about in **Article 3**: "*Jooste is suspected to have been central to coercive attempts to cajole ... Paola to allegedly sign off on a large number of unlawful cross-border transactions ...*"

2.21.1.4. The publication argues that to "cajole" someone means to "persuade someone to do something by sustained coaxing or flattery".

2.21.1.5. It further notes that the complaint against the complainant is one of corruption. In light of the contents of **Article 1** and the explanation given, the publication maintains, the use of the word "cajole" is justified.

2.21.1.6. The publication therefore denies that there has been any breach of the provisions of the Press Code.

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2.22. The complainant provides a six-part response to the respondent's reply to his complaint.

2.22.1. Firstly, the complainant objects to any confidential disclosures being considered on the grounds that it is a violation of his constitutional rights.

2.22.1.1. He submits that, under the Promotion of Administrative Justice Act 3 of 2000, he is entitled to just administration which is lawful, reasonable and fair. He says this includes the right to *audi alterem partem* – "the right to be heard on all information which is put before the Ombud or the Adjudication Panel in the course of his or their determination".

2.22.1.2. He maintains that a secretive confidential disclosure process is anathema to South Africa's constitutional democracy and to the rule of law.

2.22.2. The complainant further submits that the Press Council rules do not make provision for confidential disclosures and therefore cannot deviate from these rules, "particularly where to do so would be an infringement of my constitutional rights".

2.22.3. The complainant also contends that there is no basis in the respondent's reply to warrant a confidential submission.

2.22.3.1. He states that, while he is sympathetic to the need to protect confidential sources as a general principle, he finds the respondent's explanation wanting. He says he is not an

⁴ The respondent mistakenly attributes this quote to **Article 3**.

employer of anyone who could potentially be a source for the publication and is hence not in a position to affect the livelihood of any of its sources.

2.22.3.2. However, if the reason for protecting confidential sources is because they have acted unlawfully (“as it appears they have”), the complainant argues that they should accept the consequences. He says lawful and legitimate protected disclosures are protected from “adverse employment consequences” under the Protected Disclosures Act 26 of 2000.

2.22.3.3. The complainant maintains that a member of the media cannot simply cite the need to protect confidential sources without providing “a proper basis” and regards doing so as an abuse of process.

2.22.4. Furthermore, the complainant contends that placing a confidential disclosure before the Press Ombud denies him the opportunity to respond to that evidence and cites various statements in the respondent’s reply to his complaint.

2.22.4.1. He believes the publication is attempting to justify these statements on the basis of a confidential disclosure and believes that the use of a confidential submission has nothing to do with the need to protect its sources.

2.22.4.2. Accordingly, he objects to any confidential disclosures being considered and calls for all references to such disclosures in the respondent’s reply to be disregarded. He argues that the publication’s response to his complaint must be assessed on the basis of evidence that is disclosed.

2.23. Secondly, the complainant submits that the “defamatory allegations at the heart of [the] articles rest on innuendo and suggestion”.

2.23.1. He refers to **Article 1** and cites the use of words such as “*suggest*”, “*supposedly*”, “*claimed*”, “*apparently*”, “*allegedly*”, “*probably*” and “*seems*” in support of this submission.

2.23.1.1. He maintains that the only explicit fact alleged in the article is that the complainant “*almost exclusively worked with and oversaw the Steinhoff business*”. However, he denies this and repeats his earlier point that he dealt with numerous applications from banks and other corporate organisations during the period in question (see point 2.7.2.1).

2.23.1.2. The complainant further says the article does not offer any explanation of why 16 exchange control transactions were unlawful or even questionable nor why he (and others) may have incorrectly approved these on the basis of facts known to them at the time.

2.23.1.3. He further maintains that the publication does not offer any factual basis to suggest that there was anything illegal about the exchange control transactions that he approved between 2012 and 2017.

2.23.1.4. The complainant argues that the respondent essentially relies on unproven allegations and innuendos to insinuate that there was a corrupt relationship between himself and Steinhoff executives. He contends that there are no facts to substantiate this.

2.23.1.5. The complainant believes this is unfair and irresponsible journalism, and submits that the article therefore violates **Clause 3.3** of the Press Code.

2.24. Thirdly, the complainant views the publication's reliance on the disciplinary charge sheet as unfair and unlawful. He repeats that Sarb chose not to pursue the disciplinary enquiry against him after he resigned in June 2021 (see point 2.2.1).

2.24.1. He says he will not confirm or deny the accuracy of the publication's description of these charges as they were not answered or adjudicated.

2.24.1.1. He reiterates that, in light of Sarb's decision not to pursue the disciplinary enquiry during his notice period, it is unfair for the publication to refer to the disciplinary charges and is therefore in breach of **Clause 1.4** and **Clause 3.3** of the Press Code.

2.24.1.2. He also maintains that to rely on the disciplinary charge sheet is in violation of the Protection of Personal Information Act 4 of 2023 (Popia) as well as section 33 of the SARB Act.

2.25. Fourthly, the complainant addresses the publication's reliance on the Hawks investigation.

2.25.1. He says that, although the Hawks spokesperson confirmed that it was "*supposedly*" investigating a complaint lodged by Sarb against himself, Jooste and Grové, she did not confirm who was being investigated. In other words, he notes, there was no confirmation that he was supposedly being investigated.

2.25.1.1. He adds that the Hawks confirmed to his legal representatives at a meeting in May 2024 that its officers are not allowed to confirm any investigations and that this was adhered to in this instance. Furthermore, Hawks officers are prohibited as well from engaging in discussions with the media on its investigations.

2.26. Fifthly, the complainant deals with his employment at Sarb, and denies that he had an unlawful relationship with either Steinhoff or Jooste.

2.26.1. He states that he was acting head of department when Steinhoff imploded in December 2017 because the department head was on leave. When the department head returned from leave, the complainant says he advised him of the need to appoint a third party to investigate the matter rather than conduct an internal investigation.

2.26.1.1. The complainant points out that, as head of Sarb’s financial operations division, 32 staff members reported to him, including five managers. These managers were responsible for managing their teams and dealing with all applications received by them.

2.26.1.2. However, he notes that “high profile” applications were referred to the head of the division and a list recorded that would be sent to the department head and, eventually, to the Governor’s executive committee.

2.26.1.3. The complainant then describes the process involved in dealing with exchange control applications.

2.26.1.4. He further says he worked on all Sarb’s divisions and would be approached for advice on policy matters and processes both from inside and outside the bank. He states that he prides himself on following governance procedures at all times.

2.27. Finally, the complainant repeats his demand for an unambiguous retraction that there is any evidence that he engaged in an unlawful relationship with Steinhoff, Jooste, Grové “and/or any other person”. He demands a formal apology in view of the “immense prejudice” he has suffered. In addition, he wants an apology for the violation of Popia.

3. Analysis

3.1. Before I discuss the four complaints, it is necessary to first address the complainant’s objection to the confidential disclosure referred to in the respondent’s reply to his submission.

3.1.1. There are two aspects to note regarding the confidential disclosure: one, it relates to information that is published in the three articles (see point 2.11); and two, it provides additional information on which these articles are based (see point 2.11.1).

3.1.1.1. Regarding the first aspect, it is important to bear in mind that the use of confidential and anonymous sources in an article is protected by **Clause 11** of the Press Code. This clause explicitly makes provision for the protection of confidential and anonymous sources, and states that this is “a basic principle in a democratic and free society”.

3.1.1.2. And, while this clause does caution against relying on confidential and anonymous sources, it condones the use of such sources when “there is no other way to deal with a story” and care is taken to corroborate information.

3.1.1.3. The second aspect regarding the confidential disclosure relates to a matter of procedure – whether the office of the Press Ombud can consider information provided in a confidential disclosure when adjudicating a complaint.

3.1.1.4. The complainant argues that the respondent cannot do so for reasons outlined in points 2.22.1 to 2.22.4.2.

3.1.1.5. The respondent, on the other hand, justifies the confidential disclosure on the grounds that it is under an ethical obligation to protect the confidentiality of its sources.

3.2. I will start by addressing this matter in general terms before dealing with it in relation to the complainant's objection.

3.2.1. It is an established Press Council practice to allow confidential information to be shared with the Press Ombud and is in line with the Press Code's acknowledgement of the need to protect confidential sources.

3.2.1.1. An example is **Antoni and Debbie Rangousis vs Netwerk24** (29 June 2023),⁵ in which I requested the publication to provide certain confidential information regarding the identity of its sources and the measures it employed to check the veracity of certain confidential information in its article. I was satisfied with the response on both counts.

3.2.1.2. In the complaint currently before me, I requested a copy of the respondent's confidential disclosure.⁶ I was satisfied that there are reasonable and justifiable grounds to keep the information in the disclosure confidential in order to protect the identity of the publication's sources.

3.2.1.3. Furthermore, I am satisfied that it was reasonable for the publication to publish the articles based on the information at its disposal.

3.3. There is no evidence to support the complainant's submission that the confidential disclosure is motivated by an intention to place unlawfully obtained documents before the Press Ombud.

3.3.1. In any event, it is not the responsibility of the office of the Press Ombud to determine whether information was obtained lawfully or not. That is the domain of the criminal justice system.

3.3.1.1. The domain of the office of the Press Ombud is limited to the Press Code and, more specifically, to whether or not member publications comply with the provisions of the Press Code.

3.4. I will now turn to the four complaints about the three articles. The first three complaints relate to **Article 1**, and in particular to **Clauses 1.2, 1.3, 1.4** and **3.3** of the Press Code.

⁵ <https://www.presscouncil.org.za/Ruling/View/antoni-and-debbie-rangousis-vs-netwerk24-4669>

⁶ I did not request access to any other confidential documents (see the respondent's offer in point 2.11.2).

3.4.1. **Complaint one:** The gist of this complaint is that the complainant believes that the information about Sarb’s disciplinary charges against him was not obtained lawfully, honestly and fairly, and that the article is therefore in breach of **Clause 1.4** of the Press Code.

3.4.1.1. However, he does not provide any evidence to support this claim. It is based entirely on the assumption that this is the case because he did not provide details of the Sarb disciplinary sheet in light of the secrecy provision of section 33 of the SARB Act and because he declined the publication’s PAIA request for information.

3.4.1.2. The publication makes the valid point that PAIA requests are not the only way to obtain information that is in the public interest and points out that it obtained information from multiple sources and documents.

3.4.1.3. It goes on to make a compelling case that the article is indeed in the public interest. Among other things, it states that the article relates to one of the biggest corporate frauds in South Africa’s history and that the complainant was one of the most senior officials at Sarb responsible for preventing the unlawful movement of money out of the country (see points 2.13.1 to 2.13.1.3).

3.4.1.4. Based on these grounds of public interest, the article meets the requirements of Clause 1.4 of the Press Code.

3.4.1.5. While this clause urges the media to obtain information legally, honestly and fairly, it does add the following crucial provision: “unless public interest dictates otherwise”.

3.4.1.6. It is also worth repeating here that it is not the responsibility of the office of the Press Ombud to determine whether or not information was obtained lawfully. That falls under the jurisdiction of the criminal justice system.

3.4.1.7. As stated in point 3.3.1.1, the ambit of the Press Ombud is confined to ensuring that member publications comply with the provisions of the Press Code. And, in this regard, the article meets the requirements of Clause 1.4.

3.4.2. In his reply to the publication’s submission, the complainant also objects to the use of information in the Sarb disciplinary charge sheet on the grounds that it is in violation of Popia and section 33 of the SARB Act.

3.4.2.1. As the Press Ombud pointed out in **Avantgarde Development (Pty) Ltd vs Sunday Times and TimesLive** (28 August 2022), the office of the Press Ombud has “strenuously avoided ... becom[ing] embroiled in complaints of alleged statutory transgressions”.⁷

⁷ <https://www.presscouncil.org.za/Ruling/View/avantgarde-development-pty-ltd-sunday-times-timeslive-4647>

3.4.2.2. He cites the examples of **Ms Leigh-Ann Mathys v EWN** (7 July 2021),⁸ which concerned a complaint about an alleged transgression of the National Health Act 61 of 2003, and **Dr Maiendra Moodley vs News24** (19 June 2022),⁹ in which the Intelligence Service Act 65 of 2002 was at issue.

3.4.2.3. The fact of the matter is that the Press Council is not a court of law and does not engage in interpreting the law. Its function is confined to upholding and enforcing the Press Code.

3.4.2.4. In light of this, I am unable to pronounce on the allegations that Popia and section 33 of the SARB Act have been infringed, and confine my finding to an application of the Press Code and its principles.

3.4.2.5. In this particular complaint, the relevant section of the Press Code that is applicable is Clause 3.3 of the Press Code.¹⁰ I will now address this clause in relation to Article 1.

3.5. There are no grounds for the complaint that the article is in breach of **Clause 3.3** of the Press Code. As noted above in point 3.4.1.3, the publication makes a persuasive case that the article is in the public interest.

3.5.1. Moreover, the publication was careful to present critical statements as allegations. It did not present such statements as proven facts (see point 2.15.1.2).

3.5.1.1. The same applies to the contents of the disciplinary charge sheet referred to in the article. The charges are reported as such, or as allegations, without any pronouncements on whether or not the complainant is guilty.

3.5.1.2. In addition, the article includes the view that the complainant may have been misled by Steinhoff executives: *“To his supporters, Paola paints himself as ‘the fall guy’, the one designated to shoulder Sarb’s embarrassment. He may have made some mistakes and he may have been duped into believing the Steinhoff boys, Paola allegedly claimed, but if he did, everyone else at the Sarb did, too. In any case, how was he to know the whole Steinhoff thing was a scam?”*

“Paola may well have a point.”

3.5.1.3. Even though the article says it would be prudent to be sceptical about this claim, Article 1 – as a whole – does sufficiently meet the requirements set out in Clause 3.3 of the Press Code.

⁸ <https://www.presscouncil.org.za/Ruling/View/decision-to-adjudicate-ms-leighann-mathys-vs-ewn-4623>

⁹ <https://www.presscouncil.org.za/Ruling/View/dr-maiendra-moodley-vs-news24-4638>

¹⁰ The Press Ombud takes a similar view in **Avantgarde Development (Pty) Ltd vs Sunday Times and TimesLive**.

3.6. Complaint two: This complaint relates to the two paragraphs identified in point 2.5 on the grounds that they distort or misrepresent the facts and are therefore in breach of **Clause 1.2** of the Press Code.

3.6.1. There appears to be little merit in this argument. The first paragraph in question does not offer any reason why Sarb was not prepared to provide any information on what the article refers to as “the Paola case”, so there cannot be any suggestion of distortion or misrepresentation.

3.6.1.1. Nor can there be any suggestion of a material omission because Sarb did not offer any explanation of why it could not, or was unable to, make any information available to the publication on the matter.

3.6.1.2. As for the second paragraph in question, it clearly quotes the complainant’s lawyer as saying that the complainant is bound by the obligations of confidentiality required by the terms and conditions of his employment and that the complainant believes the questions were biased and ill-informed.

3.6.1.3. As such, there is no intentional or negligent departure from the facts in this paragraph. It clearly explains why the article does not include any comment by the complainant.

3.6.1.4. In light of the above, there is therefore no evidence to support a claim that the paragraphs in question are in violation of Clause 1.2.

3.6.2. There is no merit either in the complaint that the article conflates the complainant’s disciplinary charges and Steinhoff’s illegal activities. Nowhere is it stated that there is a link between the charges and Steinhoff’s activities.

3.6.2.1. The closest the article comes to suggesting a connection is in its concluding paragraphs. However, this section includes the important qualification: *“If the complaints against Paola are proven to be correct, this may well be an important example of how bribes and corruption need not involve the staggering amounts punch-drunk South Africans have become used to over the past decade.* (my emphasis)

“Influence peddling and being included on a sought-after Christmas gift list can have equally devastating consequences.”

3.6.3. The complaint that the two paragraphs in point 2.5 are in breach of **Clause 3.3** are presumably based on the claim that they are in breach of Clause 1.2 of the Press Code. As there is no evidence to support the claim that these paragraphs are in violation of Clause 1.2, there is also no basis for the complaint that they are in breach of Clause 3.3.

3.7. Complaint three: The complainant contends that the article claims that, because he allegedly received gifts from Steinhoff, he therefore must have been involved in the company's illegal activities.

3.7.1. The article makes no such claim. It merely reports the general claim that Sarb's disciplinary charges against the complainant include "*soliciting gifts and the failure to declare those gifts*".

3.7.1.1. And while the article does refer elsewhere to a number of gifts and benefits that the complainant allegedly received from Steinhoff, nowhere does it state – as the complainant argues – that he therefore must have been involved in the company's illegal activities.

3.7.1.2. Accordingly, there is no evidence that the article is in breach of either **Clause 1.2** or **Clause 1.3** of the Press Code in this regard. In light of this, there is therefore also no basis for the complaint that this aspect of the article is in breach of **Clause 3.3** of the Press Code.

3.7.2. The complainant takes issue as well with the paragraphs in the article quoted in point 2.6. He again states that the article conflates Sarb's disciplinary charges and Steinhoff's illegal activities, and maintains that it is defamatory to do so.

3.7.2.1. This aspect has already been dealt with above in points 3.6.2 and 3.6.2.1. The paragraphs in question include the following qualification: "*If the complaints against Paola are proven to be correct ...*"

3.7.2.2. In other words, it is not an unequivocal statement of fact that there is indeed a connection between the gifts that the complainant allegedly received from Steinhoff and the company's illegal activities.

3.7.2.3. There are therefore no grounds for the complaint that the paragraphs in the article quoted in point 2.6 are in breach of **Clause 1.2** and **Clause 1.3** of the Press Code. There is, accordingly, no basis either for the complaint that this aspect of the article is in breach of **Clause 3.3** of the Press Code.

3.7.3. The complainant further denies that he signed all Steinhoff's exchange control applications and that, where he did do so, this followed a thorough Sarb process and discussions with the financial surveillance department team.

3.7.3.1. The publication claims that there is evidence that the complainant approved at least 16 questionable transactions (see point 2.18.1 above), and the article clearly identifies a Sarb investigation as the basis for this allegation:

"The internal net was cast even wider, causing Sarb investigators to unearth evidence suggesting 16 exchange control applications – in which Steinhoff asked permission to engage in billions of rands in offshore transactions – had in fact contravened a litany of the bank's

rules governing cross-border transactions. Paola is said to have signed off on all 16 flagged applications between 2012 and 2017.”

3.7.3.2. It is important to emphasise at this juncture that it is not within the ambit of the office of the Press Ombud to determine whether or not the complainant did indeed sign off on any questionable exchange control transactions. That is the responsibility of the criminal justice system.

3.7.3.3. As a previous Press Ombud pointed out in **Justice Ndaba vs Sondag** (29 February 2012): “Note that my office is not a court of law, which means that it is not my task to establish if Ndaba [the complainant] is guilty or not or, for that matter, if the story is accurate. My sole interest in this matter is whether the newspaper’s reportage was justified, or if it was breaching the Press Code.”¹¹

3.7.3.4. The current Press Ombud affirms this approach more recently in **Nage vs Sunday Times** (5 September 2023) and elaborates: “To be clear: Journalists are most definitely not confined to reporting ‘facts’ as found by a court or another forum or that are so clear that it is incapable of being disputed by any right-thinking individual. Journalistic practice, and the Press Code, makes provision for the reasonable reporting of allegations.”¹²

3.7.3.5. In line with the statements in these two complaints cited above, in points 3.7.3.3 and 3.7.3.4, I deem the article to meet the requirements of the Press Code (and, in particular, **Clause 1.3**).

3.7.4. In response to the complainant’s denial that he worked exclusively on Steinhoff business, the respondent rightly points out that the article does not claim that he did so. It states that he “*almost exclusively worked*” on that business.

3.7.4.1. As such, there are no grounds for this complaint and, hence, no breach of **Clause 1.2** of the Press Code.

3.7.5. The following reference in the article is slightly more problematic: “*In other instances it seems that Paola may have advised the Steinhoff managers on how to structure their requests.*”

3.7.5.1. The publication says in its response that the basis for this assertion is that Grové left Sarb to work at Steinhoff (see point 2.20 above). Of course, in itself this does not suggest that the complainant may have advised Grové on how to structure Steinhoff’s exchange control applications.

¹¹ <https://www.presscouncil.org.za/Ruling/View/justice-ndaba-vs-sondag-2289>

¹² <https://www.presscouncil.org.za/Ruling/View/nage-vs-sunday-times-4674>

3.7.5.2. Nevertheless, in terms of **Clause 1.3** of the Press Code, a supposition is permissible if it is clearly presented as such. The words “*it seems that*” and “*may have*” clearly indicate that the sentence in question is a supposition. It is, quite clearly, not a statement of fact.

3.8. The fourth and last complaint relates to **Articles 2** and **3** and, more specifically, to **Clauses 1.1, 1.2** and **3.3** of the Press Code.

3.8.1. **Complaint four:** The complainant describes the statement in **Article 2** that he “*signed off on a list of suspicious exchange control applications from Steinhoff*” as careless and adds that Sarb was not aware at the time that Steinhoff was engaging in unlawful activities (see points 2.8.1.1 and 2.9.1.1 above).

3.8.1.1. The respondent points out, with good reason, that this quotation is Sarb’s view. The full sentence in the article, in fact, reads as follows: “*SARB found that a divisional head at the bank’s financial surveillance department, Raymond Paola, has signed off on a list of suspicious exchange control applications from Steinhoff.*”

3.8.1.2. Furthermore, the paragraph that precedes the quotation referred to in point 3.8.1.1 makes it clear that the sentence in question is the view of Sarb after it conducted investigations into Steinhoff over some years: “*Extensive, multiyear investigations came to a head in 2022 when the SARB attached all assets they could link to Jooste ... and a number of former Steinhoff executives like Chris Grové and Ben la Grange.*”

3.8.1.3. In view of the above, the article is not in breach of the Press Code.

3.8.2. The complainant similarly objects to the statement in **Article 3** that he allegedly signed off on unlawful exchange control applications: “*Jooste is suspected to have been central to coercive attempts to cajole ... Paola ... to allegedly sign off on a large number of unlawful cross-border transactions, Scorpio revealed on 12 March this year.*”

3.8.2.1. This sentence is clearly presented as an allegation. As such, it is permissible in terms of **Clause 1.3** of the Press Code.

3.8.3. The complainant further denies that he was cajoled into allegedly signing unlawful exchange control transactions.

3.8.3.1. It is important to note that this suspicion emanates from Sarb – not the publication. It is Sarb that suspected that Jooste was involved in attempts to cajole the complainant into allegedly signing unlawful transactions.

3.8.3.2. The sentence that precedes the one in point 3.8.2 clearly provides the context for the allegation. It reads: “*The SA Reserve Bank seized cellphones and other digital devices.*”

3.8.3.3. There is therefore no basis for the complaint that this article is in breach of **Clauses 1.1 and 1.2** of the Press Code. Accordingly, there is no basis either for the complaint that the article is in breach of **Clause 3.3** of the Press Code.

4. Finding

Article 1:

Complaint one: The complaint that the article is in breach of **Clause 1.4** is **dismissed** (see the reasons set out in points 3.4.1.1 to 3.4.1.7 of my Analysis; also note points 3.4.2 to 3.4.2.5).

The complaint that the article is in breach of **Clause 3.3** is **dismissed** (for the reasons set out in points 3.5 to 3.5.1.3 of my Analysis).

Complaint two: The complaint that the article is in breach of **Clause 1.2** is **dismissed** (see the reasons set out in points 3.6.1 to 3.6.2.1 of my Analysis).

The complaint that the article is in breach of **Clause 3.3** is **dismissed** (for the reason set out in point 3.6.3 of my Analysis).

Complaint three: The complaint that the article is in breach of **Clause 1.2** is **dismissed** (see the reasons set out in points 3.7.1 to 3.7.1.2, points 3.7.2.1 to 3.7.2.3 and points 3.7.4 to 3.7.4.1 of my Analysis).

The complaint that the article is in breach of **Clause 1.3** is **dismissed** (for the reasons set out in points 3.7.1 to 3.7.1.2, points 3.7.2.1 to 3.7.2.3, points 3.7.3.1 to 3.7.3.5 and points 3.7.5 to 3.7.5.2 of my Analysis).

The complaint that the article is in breach of **Clause 3.3** is **dismissed** (for the reasons mentioned in points 3.7.1.2 and 3.7.2.3 of my Analysis).

Article 2:

Complaint four: The complaint that the article is in breach of **Clauses 1.1, 1.2 and 3.3** is **dismissed** (for the reasons mentioned in points 3.8.1.1 to 3.8.1.3 of my Analysis).

Article 3:

Complaint four: The complaint that the article is in breach of **Clause 1.1** is **dismissed** (see the reasons set out in points 3.8.2 to 3.8.2.1 and points 3.8.3.1 to 3.8.3.3 of my Analysis).

The complaint that the article is in breach of **Clause 1.2** is **dismissed** (for the same reasons mentioned in points 3.8.2 to 3.8.2.1 and points 3.8.3.1 to 3.8.3.3 of my Analysis).

The complaint that the article is in breach of **Clause 3.3** is **dismissed** (see the reason in point 3.8.3.3 of my Analysis).

Appeal

The Complaints Procedures lay 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

*Tyrone August
Deputy Press Ombud
4 July 2024*