



THE BROADCASTING AUTHORITY OF IRELAND

STATEMENT OF FINDINGS ISSUED PURSUANT TO SECTION 55 (2) OF THE BROADCASTING ACT 2009

1. INTRODUCTION

On the 23rd May 2011, a programme was broadcast by Raidió Teilifís Éireann (“RTÉ”) entitled “Prime Time Investigates – Mission to Prey” (“the programme”).

At its meeting on the 29th November 2011, the Compliance Committee of the Broadcasting Authority of Ireland (“the Committee”) concluded, in accordance with Section 53(1) of the Broadcasting Act 2009 (the “Act”), that there were circumstances in respect of the programme suggesting that it was appropriate to investigate and report on an apparent breach or breaches (breach being defined by Section 52 of the Act) by Raidió Teilifís Éireann (“RTÉ”) of certain requirements of Section 39(1) of the Act and in particular of the requirements that every broadcaster shall ensure that

(b) *the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of his or her own views, except that should it prove impractical in relation to a single broadcast to apply this paragraph, two or more related broadcasts may be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other,*

and/or that

(e) *in programmes broadcast by the broadcaster, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon”*

The Committee decided to appoint an Investigating Officer in accordance with Section 53 of the Act and appointed Anna Carragher to carry out this role in accordance with her Terms of Appointment. A Notification was made to the RTÉ on the 8th December 2011 in accordance with Section 53 of the Act. RTÉ submitted a detailed response to the Notification.



In addition the relevant individuals associated with the programme (the programme makers) were invited to make submissions to the Investigator but elected not to avail of this opportunity.

In order to assist the investigation and with a view to clarifying and elaborating on certain issues, the programme makers Aoife Kavanagh, Ed Mulhall, Brian Páircéir and Ken O'Shea were requested to attend meetings with the Investigating Officer and Mark Lappin (who was outside the State) responded to written questions.

The Investigating Officer compiled a report containing her views and recommendation pursuant to her Terms of Appointment and a copy is appended at Appendix A. The Executive Summary of the report and the views and recommendation were provided to RTÉ and to the programme makers.

The Committee met on March 13th to consider the Report and recommendation of the Investigating Officer, the submission made by RTÉ in response to the Investigating Officer's views and recommendations and responses from the programme makers.

The Committee found that, in broadcasting this programme, RTÉ had:

- Seriously breached sub-sections 39(1) (b) and (e) of the Act:
- Co-operated fully with the investigation.

On 21st March, the Committee issued a recommendation to the Authority that it notify RTÉ in accordance with the provisions of Section 54 (4) of the Act.

On 5th April 2012, the Authority issued a notification pursuant to Section 54(4) of the Act in which it set out an indicative financial sanction of €200,000 as being appropriate.

2. PROCEDURE UNDER SECTION 55 (2) OF THE ACT

Pursuant to Section 54 (4) of the Act, RTÉ subsequently requested that the Authority deal with the matter under Section 55 (2) of the Act. As part of this process, the Authority provided RTÉ with a copy of the report of the Investigating Officer and RTÉ duly made submissions in accordance with Section 54 of the Act.



The submissions of RTÉ included the following:

- RTÉ accepted the Notification of the Authority pursuant to Section 54 (3) of the Act in connection with the breaches of Sections 39 (1) (b) and (e) of the Act and makes its submissions on the indicative figure in the Notification for a financial sanction under the Act.
- RTÉ accepted that the defamation of Fr. Reynolds was one of the most significant errors made in its broadcasting history. It has acknowledged prior to and throughout the investigation that the material in Prime Time Investigates – A Mission to Prey relating to Fr. Reynolds should never have been broadcast.
- Other matters that RTÉ also requested the Authority to take into account included:
 - The changes in the internal organisational and editorial arrangements and its acceptance of the recommendations of Professor Horgan.
 - Its commitment to ensure that the errors in this programme did not impact on its objective to produce strong investigative journalism in the future.
 - Its decision to stand down the Prime Time Investigates strand.
 - Its compensation of and apologies to Fr. Kevin Reynolds and the broadcast of the High Court Correction Order.
 - Its implementation of the recommendations made by the Investigating Officer.
- RTÉ re-iterated its acceptance from the outset of the investigation that there had been a breach.

While the subject of the statutory investigation and process under Chapter 2 Part 5 of the Act is the broadcaster RTÉ, in the interests of natural justice, the programme makers were also provided with a copy of the Investigating Officer's report to enable them to make submissions to the Authority. Four of the programme makers, namely Aoife Kavanagh, Brian Páircéir, Ken O'Shea and Mark Lappin made submissions.



The Authority carefully and fully considered these submissions. They did not each of them make the same submissions but collectively their submissions included issues concerning the following:

- Expressions of deep regret surrounding the circumstances which gave rise to the defamation of Fr. Reynolds and the damage caused to him.
- Procedural matters surrounding the investigation process and the report of the Investigating Officer with which they disagreed.
- No request was made to interview RTÉ Legal Affairs or the Kenyan journalist who provided services in respect of the programme.
- That at all appropriate stages Legal Affairs were involved in the decision making process.
- All matters which informed the decision-making in relation to the programme were not given appropriate weight in the Investigating Officer's report.
- The unauthorised publication/leaking of documentation had prejudiced their rights, has put into the public domain observations which they would wish to contest and seriously undermined the entire process and caused damage to them.

3. DETERMINATION

The Authority carefully considered all relevant matters, including the report of the Investigating Officer and the submissions made both by RTÉ and the programme makers, in reaching its determination together with the matters set out in Section 56 of the Act. These findings are directed to the broadcaster, RTÉ. They are not – and should not be understood as – a sanction imposed on or a statement of culpability of the individuals involved in the making of the programme. The Authority has no such power and no such intention.

Having considered the matter, the Authority determined that there had been breaches of Section 39(1) (b) and (e) of the Act by RTÉ. In making its determination, the Authority found as follows:

- The programme was not fair in that it broadcast serious, damaging and untrue allegations about Father Reynolds that he had abused a teenage girl in Africa in the early 1980's, that she had borne his child and that he had then abandoned her and



the child. These allegations were broadcast in the face of denials and in circumstances where Father Reynolds had offered to take a paternity test; despite this, RTÉ decided to broadcast the programme. Given the fact that Fr. Reynolds is an ordained priest, currently in ministry, the impact upon his reputation was particularly severe. This constituted a breach of Section 39 (1) (b) of the Act.

- The means employed to make the programme, including secret filming and a doorstep interview, unreasonably encroached upon Fr. Reynolds's privacy. This constituted a breach of Section 39 (1) (e) of the Act.
- There was a significant failure of editorial and managerial controls within RTÉ which failed to anticipate, monitor or control the possibility of such a breach occurring and which failed to recognise the grave injustice which could be done to Fr. Reynolds. This constituted a breach of Section 39 (1) (b) of the Act.
- RTÉ accepted that its broadcast of seriously defamatory allegations against Fr. Reynolds gave rise to breaches of Sections 39(1)(b) and (e) of the Act and expressed its deep regret that this had happened. RTÉ accepted that there was no truth whatsoever in the allegations against Fr. Reynolds.
- RTÉ fully co-operated with the investigation.
- It is a source of regret that RTE did not choose to waive its claim to privilege in the solicitor/client relationship between itself and its in-house legal staff. Such an approach would have assisted a greater understanding of the extent of the advices available to the broadcaster and of the role they played in RTÉ's decision to transmit the programme.
- The procedures followed were, at all times, appropriate and reflected not only the statutory obligations pursuant to the Act but the requirements of natural justice.
- The Authority regretted that information regarding the process entered into the public domain. The Authority is satisfied that there was no prejudice to anybody concerned in this investigation or determination.
- The Authority accepted that RTÉ had ultimately acknowledged its error and that steps had been taken by the broadcaster to prevent further breaches of its obligations under the Act.
- There was no gain (financial or otherwise) made by RTÉ as a consequence of the breach.



4. Financial Sanction

The Authority wishes to stress that its findings should not, in the slightest way, be construed as representing a deterrent, for this or any other broadcaster, in respect of a continuing engagement with investigative journalism. On the contrary, it is to emphasise for audiences the importance that the Authority attaches to the observance of the highest standards in policy and practice in respect of current affairs and to act as a reassurance that the audience's confidence in the expectation of such high standards, especially from a publicly funded broadcaster, will be respected and quickly restored.

The Authority also noted the importance of current affairs, the significant public potential of effective investigative journalism and the past commendable performance of RTÉ in this area.

Bearing in mind those considerations and having regard also to the Authority's determination of the seriousness of the breaches of Section 39 of the Act, the Authority determined that there should be a financial sanction.

Having given careful consideration to the submissions and to the matters set out in Section 56 of the Act, the Authority determined that the sanction should be set at €200,000.