



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

Broadcasting Authority of Ireland

Broadcasting Complaint Decisions

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BAI Complaints Handling Process

Under the Broadcasting Act 2009, viewers and listeners to Irish radio and television services can complain about broadcasting content which they believe is not in keeping with broadcasting codes and rules. When making a complaint, the relevant programme or commercial communication should be identified, including the date of broadcast and time. The complainant should explain what it is about the broadcast that has led them to make a complaint. It is important to set out clearly the grounds of the complaint and why the programme material or commercial content does not comply with the BAI's Broadcasting Codes. A copy of the codes may be found on the BAI's website: www.bai.ie, by emailing info@bai.ie or by phoning the BAI on 01 644 1200.

In line with the complaint process, the viewer or listener should direct their complaint to the broadcaster in the first instance and in the manner detailed in the broadcaster's *Code of Practice for Handling Complaints*, a document which each broadcaster has available on its website. If a viewer or listener is not satisfied with the response from the broadcaster or if the broadcaster does not respond within the timeframe provided for in their *Code of Practice* (usually 21 days), then the viewer or listener can refer the complaint to the BAI for consideration.

In assessing complaint referrals, the BAI will have regard to the relevant codes and rules, the written material submitted by the relevant parties, together with the broadcast material. Complaints are assessed at Executive level by the Executive Complaints Forum and/or by the Compliance Committee of the Authority. Further information may be found on the complaints handling section of the BAI's website: www.bai.ie.

The details of the broadcasting complaints decisions reached by the BAI are set out in this document. The decisions deal with the issue of whether a programme or a commercial communication did or did not comply with the relevant legal requirements and the relevant broadcasting codes or rules. The decisions do not constitute endorsement or support for the views of either parties to the complaint nor will they address every aspect of a complaint submission. The BAI will not carry out a separate or independent assessment outside of the matters raised in the complaint.

In total, 9 complaints were considered by the Compliance Committee of the BAI. Of these, 3 have been upheld/upheld in part, 2 have been resolved and 4 rejected. The Executive Complaints Forum considered and rejected 23 complaints. The decisions of the Compliance Committee were reached at meetings held in February, March and April 2016. The decisions of the Executive Complaints Forum were reached at meetings held in November 2015, January and February 2016.

Upheld/Upheld in Part by the BAI Compliance Committee

Complaint made by: Ms. June Twomey

Ref. No. 152/15

Station:

Programme:

Date:

RTÉ Radio 1

The Ray D'Arcy Show

19th October 2015

1. Programme

The complaint concerns *The Ray D'Arcy Show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm to 4.30pm. The item about which the complaint was made was an interview with Mr. Graham Linehan and Mrs. Helen Linehan on the topic of abortion.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1 and 2).

3. Complaint Summary

The complainant states that, in her opinion, the presenter promoted his personal view in respect of abortion during this discussion. The complainant states that the presenter ignored the side effects/harmful effects of abortion on the mother, let alone the baby. The complainant states that, once during the interview, the presenter mentioned that abortion may have a negative psychological effect on the mother, but he did not explore it further and allowed Mr. Linehan to counteract this comment immediately. The complainant also states that the presenter allowed his guests to make a number of comments in respect of abortion which should have been challenged. This included comments about the views of those who oppose abortion and the impact that Irish laws have on couples. The complainant also notes that, while the presenter read out texts from people holding other views to those of his interviewees, these were not explored and the guests were allowed to comment on these texts without any examination of these comments by the presenter.

The complainant states that the broadcaster will argue, as it has previously, that this is a chat show, but even if it is a person's own testimony, abortion is a matter of current affairs, public controversy and the subject of current public debate. Therefore, the complainant argues that the presenter was completely unfair and biased during this interview.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states that the editorial format of *The Ray D'Arcy Show* consistently includes human interest interviews which explore the personal experience behind current topics. The editorial format does not generally include the hosting of debates between antagonists and the format of the interview with Mr. Graham Linehan and Mrs. Helen Linehan was conducted in the exploratory, conversational style which is known and expected by the programme's audience.

The broadcaster states that Principle 2 of the *BAI Code of Programming Standards* may have some relevance with regard to the likely expectations of the audience as to the nature of the particular programme. The broadcaster states that *The Ray D'Arcy Show* frequently covers a wide diversity of items for their broad audience. The broadcaster states that Principle 1 of the *BAI Code of Programming Standards* recognises that community standards are ever evolving and broadcasting must be facilitated in representing the rich diversity, plurality and realities of contemporary Irish society. This may sometimes involve editorial content which might cause offence to some listeners but is justified for creative or editorial reasons.

The broadcaster states that the focus of the interview was primarily on the personal trauma endured by the couple. They states that prior to the interview, RTÉ canvassed for and received separate statements from the *Pro-Life Campaign* and *Every Life Counts* which were read out during the interview. The presenter also offered alternative viewpoints to the couple throughout the interview. The broadcaster states that neither organisation has registered any complaints about the interview, in light of the input they were afforded prior to broadcast.

4.2 Broadcaster's Response to BAI

RTÉ states that the context of the item was the release of a video by Mrs. Helen Linehan and Mr. Graham Linehan in which they recounted their experience of a diagnosis that their first baby would not survive beyond birth.

The broadcaster states that the greater part of the interview focused on the personal experience of the couple and the presenter's questions in this respect were designed to draw out that experience and its effect on the couple and their thinking in regard to abortion in such circumstances.

The broadcaster states that the item did include discussion of the view of Irish abortion legislation which the couple had reached through their experience and the presenter put questions to them so that listeners might understand the connection between their own experience and such views.

The broadcaster states that it may be noted in the context of fairness, objectivity and impartiality that the presenter pointed out that some women choose to carry their baby to term in circumstances such as those experienced by the couple. In the same context, the programme had requested in advance and the presenter read out on air statements in response to the video by the couple from the organisations the *Pro Life Campaign* and *Every Life Counts*. The broadcaster states that this was a predominantly human-interest item in which the programme legitimately took that editorial angle on a matter of current public debate in relation to a life experience which had just come into the public domain.

5. Decision of the Compliance Committee: Uphold (Majority)

Having considered the broadcast and the submissions from the complaint parties and having had regard to Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in news and current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1 and 2), the Committee has decided to uphold the complaint.

In this regard:-

- The Committee noted that the topic of fatal foetal abnormalities and the experiences of Irish people dealing with the complications arising from such conditions in the context of Irish law has been the subject of a number of complaints considered by the Committee in the past year. The Committee also noted that this topic is a matter of current public debate. This does not, however, mean that any discussion of the topic will fall under the heading of news and current affairs and be subject to the requirements of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* and the Broadcasting Act 2009. A determination in this regard will depend on the specific content of a given programme.
- In this context, the Committee has rejected a number of complaints on the basis that the content was focused on the human interest aspects of this issue, in particular, the personal impact of current Irish law on the difficult choices made by individuals and couples dealing with a pregnancy where the foetus has a fatal foetal or life limiting condition.

It has also noted that a discussion on a current affairs topic does not automatically require the presence of another party holding opposing views, because the presenter can fulfil this role or because the content is simply an exploration of a perspective on a topic.

Broadcasting Complaint Decisions

- Notwithstanding the above, the Committee was of the view that the complaint in question did not meet the requirements of its Code or the Broadcasting Act. In particular:
 - The Committee did not agree with the characterisation of the interview by the broadcaster as predominantly human interest in nature. It noted that the interviewees had created the video that was discussed during the programme in support of a campaign to change the *Irish Constitution*. This was evident from the comments by the interviewees and by interviewer.
 - The Committee noted that the campaign in question, '*She is not a Criminal*' is one being run by *Amnesty International*. The campaign calls for the repeal of Article 40.3.3 (the Eighth Amendment) of the *Irish Constitution*, requests the decriminalisation of abortion and the repeal of two Acts, namely, the *Protection of Life During Pregnancy Act 2013* and the *Regulation of Information (Services Outside the State for the Termination of Pregnancies) Act 1995*.
 - In view of this, while agreeing that the interview did include an exploration of the experiences of the interviewees, these views were secondary and set out so as to encourage support for the *Amnesty International* campaign and the interview could not therefore be considered simply or primarily as an exploration of the interviewee's personal experiences.
 - Having reviewed the content, the Committee noted that the interviewees made consistent and strong criticisms of the approach of the Irish State to access to abortion and what they saw as the impact of the law on Irish men and women and on the medical profession.

The interviewees also criticised opposing views to their own, describing such views as '*fundamentalist*', '*simplistic*' and '*childish*' and characterised the actions of politicians on this matter as '*particularly cowardly*'. The interview concluded with the presenter inviting the interviewees to elaborate on the campaign and the guests informed listeners that the video that they had created was available online and encouraged them to sign the campaign petition and to pressure politicians to bring about a change to the *Irish Constitution*.

- The Committee noted that the programme included comments from the *Pro-life Campaign* and *Every Life Counts* which had been sought in advance of the programme and also comments from those who had sent texts to the programme. It also noted that the presenter made references to other choices that couples had made when faced with a pregnancy where the foetus had a fatal foetal abnormality or a life-limiting condition. However, it found the treatment of these other views during the item as cursory and the issues highlighted by those statements were not examined in any detail by the presenter with his guests.

Broadcasting Complaint Decisions

- The Committee noted that the topic under discussion was editorially appropriate and in line with audience expectations for *The Ray D'Arcy Show*, given the range and mix of items commonly addressed on the programme. In this context, it was legitimate and in line with the right to free expression to give the interviewees the opportunity to outline their honestly held reasons for participating in the *Amnesty International* campaign.

However, in a context where the interviewees were actively engaging in a campaign to change the *Irish Constitution*, the Committee was of the view that the other perspectives provided (as set out above) were insufficient, particularly where there were no other contributions via interviewees and where the presenter did not challenge in any significant manner the views of the interviewees.

- In view of the above, the Committee has decided to uphold the complaint further to the Broadcasting Act 2009 and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

Broadcasting Complaint Decisions

Complaint made by: Mr. Brendan O' Regan

Ref. No. 159/15

Station:

RTÉ Radio 1

Programme:

The Ray D'Arcy Show

Date:

19th October 2015

1. Programme

The complaint concerns *The Ray D'Arcy Show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm to 4.30pm. The programmes included an interviews with Mr. Graham Linehan and Mrs. Helen Linehan on the topic of abortion.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 3 and 22).

3. Complaint Summary

The complainant states that the programme featured what he describes as an attack on the 8th Amendment of the *Irish Constitution*. He states that this section of the *Irish Constitution* deals with the status of the unborn. He states that the attack came from Mr. Graham Linehan and Mrs. Helen Linehan. The complainant states that the interview lacked balance, impartiality and fairness. The complainant states that the presenter did almost no challenging of the positions of his guests and seemed to be largely in agreement with them. He states that the interviews were soft in their approach and largely supportive of the views of the interviewees. The complainant asks why no balancing views were allowed and if 'pro-life' figures are on air, will they be treated to equally soft interviews?

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states that the editorial format of *The Ray D'Arcy Show* consistently includes human interest interviews which explore the personal experience behind current topics. The editorial format does not generally include the hosting of debates between antagonists. With regard to the interview with Mr. Graham Linehan and Mrs. Helen Linehan, the focus of the interview was primarily on the personal trauma endured by the couple. The broadcaster states that, prior to the interview, RTÉ canvassed for and received separate statements from the *Pro-Life Campaign* and *Every Life Counts* which were read out during the interview.

4.2 Broadcaster's Response to BAI

The broadcaster states that the context of the item was the release of a video by Mrs. Helen Linehan and Mr. Graham Linehan in which they recounted their experience of a diagnosis that their first baby would not survive beyond birth.

Broadcasting Complaint Decisions

The broadcaster states that the greater part of the interview focused on the personal experience of the couple and the presenter's questions in this respect were designed to draw out that experience and its effect on the couple and their thinking in regard to abortion in such circumstances.

The broadcaster states that the item did include discussion of the view of Irish abortion legislation which the couple had reached through their experience and the presenter put questions to them so that listeners might understand the connection between their own experience and such views.

The broadcaster states that it may be noted in the context of fairness, objectivity and impartiality that the presenter pointed out that some women choose to carry their baby to term in circumstances such as those experienced by the couple. In the same context, the programme had requested in advance and the presenter read out on-air statements in response to the video by the couple from both the *Pro-Life Campaign* and *Every Life Counts*.

The broadcaster states that it is also notable that the presenter referred in one of his questions to the possibility that experiences such as that of the couple – of a diagnosis of fatal foetal abnormality – were not necessarily representative of the Irish experience of abortion but could be effective in a campaign context.

The broadcaster states that this was a predominantly human-interest item in which the programme legitimately took that editorial angle on a matter of current public debate in relation to a life experience which had just come into the public domain. (The video was published on YouTube on the day of the broadcast and received extensive coverage in print and other broadcast media in Ireland and Britain).

5. Decision of the Compliance Committee: Uphold in Part (Majority)

Having considered the broadcast and the submissions from the complaint parties and having had regard to Broadcasting Act 2009, Section (48(1)(a) (fairness, objectivity and impartiality in news and current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 3 and 22), the Committee has decided to uphold the complaint in part.

In this regard:

- The Committee noted that the topic of fatal foetal abnormalities and the experiences of Irish people dealing with the complications arising from such conditions in the context of Irish law has been the subject of a number of complaints considered by the Committee in the past year. The Committee also noted that this topic is a matter of current public debate. This does not, however, mean that any discussion of the topic will fall under the heading of news and current affairs and be subject to the requirements of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* and the Broadcasting Act 2009. A determination in this regard will depend on the specific content of a given programme.

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- In this context, the Committee has rejected a number of complaints on the basis that the content was focused on the human interest aspects of this issue, in particular, the personal impact of current Irish law on the difficult choices made by individuals and couples dealing with a pregnancy where the foetus has a fatal foetal or life limiting condition.

It has also noted that a discussion on a current affairs topic does not automatically require the presence of another party holding opposing views, because the presenter can fulfil this role or because the content is simply an exploration of a perspective on a topic.

- Notwithstanding the above, the Committee was of the view that the complaint in question did not meet the requirements of its Code or the Broadcasting Act. In particular:
 - The Committee did not agree with the characterisation of the interview by the broadcaster as predominantly human interest in nature. It noted that the interviewees had created the video that was discussed during the programme in support of a campaign to change the *Irish Constitution*. This was evident from the comments by the interviewees and by interviewer.
 - The Committee noted that the campaign in question, '*She is not a Criminal*' is one being run by *Amnesty International*. The campaign calls for the repeal of Article 40.3.3 (the Eighth Amendment) of the *Irish Constitution*, requests the decriminalisation of abortion and the repeal of two Acts, namely, the *Protection of Life During Pregnancy Act 2013* and the *Regulation of Information (Services Outside the State for the Termination of Pregnancies) Act 1995*.
 - In view of this, while agreeing that the interview did include an exploration of the experiences of the interviewees, these views were secondary and set out so as to encourage support for the *Amnesty International* campaign and the interview could not therefore be considered simply or primarily as an exploration of the interviewee's personal experiences.
 - Having reviewed the content, the Committee noted that the interviewees made consistent and strong criticisms of the approach of the Irish State to access to abortion and what they saw as the impact of the law on Irish men and women and on the medical profession. The interviewees also criticised opposing views to their own, describing such views as '*fundamentalist*', '*simplistic*' and '*childish*' and characterised the actions of politicians on this matter as '*particularly cowardly*'. The interview concluded with the presenter inviting the interviewees to elaborate on the campaign and the guests informed listeners that the video that they had created was available online and encouraged them to sign the campaign petition and to pressure politicians to bring about a change to the *Constitution*.
- The Committee noted that the programme included comments from the *Pro-life Campaign* and *Every Life Counts* which had been sought in advance of the programme and also comments from those who had sent texts to the programme. It also noted that the presenter made references to other choices that couples had made when faced with a pregnancy where the foetus had a fatal foetal abnormality or a life-limiting condition.

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However, it found the treatment of these other views during the item as cursory and the issues highlighted by those statements were not examined in any detail by the presenter with his guests.

- The Committee noted that the topic under discussion was editorially appropriate and in line with audience expectations for *The Ray D'Arcy Show*, given the range and mix of items commonly addressed on the programme. In this context, it was legitimate and in line with the right to free expression to give the interviewees the opportunity to outline their honestly held reasons for participating in the *Amnesty International* campaign.

However, in a context where the interviewees were actively engaging in a campaign to change the *Irish Constitution*, the Committee was of the view that the other perspectives provided (as set out above) were insufficient, particularly where there were no other contributions via interviewees and where the presenter did not challenge in any significant manner the views of the interviewees.

- In view of the above, the Committee has decided to uphold the complaint further to the Broadcasting Act 2009 and Section 4.1 and 4.3 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.
- While noting that the presenter set out a range of views in the interviewee, the Committee did not agree that the presenter acted in a manner that amounted to the advocating of a partisan view. For this reason, the Committee rejected the complaint in respect of Section 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

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Complaint made by: Mr. John J. Geraghty

Ref. No. 149/15

Station:

Programme:

Date:

FM 104

The FM 104 Phone Show

12th November 2015

1. Programme

The complaint concerns *The FM 104 Phone Show*, which is a late night chat/entertainment show broadcast each weekday evening from 9pm to 1am Monday – Thursday and from 10pm to 12am on Friday. This broadcast took place on a Thursday evening. The item complained of refers to comments during the programme which were about black people living in Ireland, Europe and Africa.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009 Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48(1)(b)(harm and offence); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2) and the *BAI Code of Programme Standards* (Principle 5 – Respect for Persons and Groups in Society).

3. Complaint Summary

The complainant states that the programme permitted persons to express hatred and racism against other nationals in our society. The complainant further states that journalistic integrity was lost in this programme and he states that the programme was, in his opinion, disrespectful, offensive and biased.

The complainant states that individuals identify with their own racial or ethnic group and, on a live radio phone-in show on racial questions where the presenter is of the same ethnicity as the majority of persons interviewed, dominant groups develop and that is what he heard on this show. The complainant states that more airtime was given to those who used negative stereotypes to portray immigrants as culturally more prone to violence, laziness, and welfare dependency than was given to persons presenting opposing views. He states that, although 50/50 airtime cannot always be given, it should be fair and not cause offence to groups in society and we should not facilitate the fuelling of the fire of racial resentment.

The complainant was particularly offended where it was obvious one caller used the N-word and a time delay should have been used more effectively.

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4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

FM 104 states that the FM 104 Phone Show carries a warning at the start of the Show because some views expressed on air by callers can be extreme. It is their duty to challenge these views through the presenter and other callers, with differing opinions. In this case, the extreme views to which the complaint is based on were challenged repeatedly during the Show by both the presenter and other callers, thus showing enough balance and debate to counteract any view made that someone disagreed with.

4.2 Broadcaster's Response to BAI

FM 104 states that the suggestion that expressions were 'facilitated' or 'permitted' by the presenter are not true. While offensive and racist opinions were put forward by some contributors to the programme, these opinions were not permitted to stand. They were constantly challenged, disagreed-with and effectively belittled, with those who expressed these opinions called out and basically shamed on air for daring to hold them - by both the presenter and many other callers.

Having reviewed the audio of the programme broadcast, the "N word" was not spoken at any point by anybody contributing to the programme and, therefore, there is no case to answer in this particular matter.

With regard to the complaint as a whole, the programme is well known as one which contains robust debate carried out by contributors who often hold extreme views which some may find offensive. With the programme having carried such content over many years, there is a perfectly reasonable and normal expectation that such content will continue to be a regular feature on the programme and to this effect, it carries an obviously worded warning at the beginning of the broadcast, leaving the listener in no doubt as to the strength of the content to be expected.

Another particular trait of the programme that is very well known is that extreme views such as these do not go unchallenged - either by the presenter or by callers brought on air - and a balance is therefore struck.

5. Decision of the Compliance Committee: Uphold (Majority)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009 Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48(1)(b)(harm and offence); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2) and the *BAI Code of Programme Standards* (Principle 5 – Respect for Persons and Groups in Society), the Committee has decided to uphold the complaint.

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In this regard:-

- The Committee noted that the programme about which the complaint has been made is one driven by audience interaction. The programme is also broadcast after the 'watershed' when more adult content may be heard.

Moreover, the programme is characterised by often controversial and trenchant views often stated using coarse and offensive language. Notwithstanding this, regular listeners to such programmes are familiar with the style and tone of such programming and this is relevant to a consideration of a complaint about phone-in programmes.

- However, while the above contextual factors are relevant in assessing whether a programme has infringed requirements in respect of offence and harm, they do not remove the obligation on the broadcaster to put limits on content that would reasonably be expected to cause undue offence. In this respect, having reviewed the programme, it was the Committee's opinion that it contained content that was not justified by the editorial content of the programme and which would be likely to stir up hatred against persons and groups in society, in this instance, hatred against migrants and asylum seekers.
- In particular, the Committee noted that the topic of the programme derived from a caller who was concerned about a request, from her ex-partner and father of her child, to bring the child to visit his family in his home country of Nigeria. The caller was concerned that she might not see the child again if she granted this request. The programme invited listeners to contact the programme with their opinions. While the programme did include contributions that dealt with this topic, it also included a caller, who was on-air for most of the duration of the programme, who expressed clearly racist views which the Committee would consider likely to stir-up hatred.
- The Committee found that the views expressed by this caller had no evident editorial relevance to the discussion since the issue of race was not highlighted by the caller who was facing the dilemma that was the focus of the programme. Moreover, the Committee found that the caller was invited throughout the programme to air his views and was permitted to make continuous racist remarks throughout the majority of the programme, and in circumstances where the comments had no editorial relevance. Other contributions of a similar nature were also permitted.
- The caller in question made the following assertions, amongst others: -
 - He was of the view that Africans/Nigerians were only in relationships with Irish women so as to secure passports. That the only reason Africans/Nigerians were in Ireland was to '*sponge off the welfare*' and that they are '*parasites*'.
 - How he was appalled that any Irish woman would '*stoop so low*' as to have a relationship with an African. His view that Irish women who have relationships with African men were '*absolute sluts*', '*white trash*', '*dirtbags*' and how African men are '*contaminating our gene pool*' and '*outbreeding us 2-1*'. How he was concerned that the Irish are going to end up like Americans – '*A mongrel race*'.

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- How Ireland has been turned, because of immigration, into '*a colony of Africans*' and how certain parts of Ireland are '*...crawling with them*'.
- How he wouldn't believe '*the Lord's prayer from a Nigerian*'.
- While the comments of this caller were challenged throughout the programme, it was the view of the Committee that the caller's views were extremely racist in nature and amounted to hate speech and the caller was given repeated opportunities to air these views, views which the Committee believe should not have been broadcast in such an extensive manner and because they had not editorial justification.
- In view of this, the Committee has decided to uphold the complaint.

Resolved by the BAI Compliance Committee

Complaint made by: Ms. Alicia Holder

Ref. No. 4/16

Station:

Programme:

Date:

Irish TV

The Irish Music Lounge

16th November 2015

1. Programme

The complaint concerns *The Irish Music Lounge*, which is an entertainment programme broadcast on Mondays from 7.00pm to 8.00pm and on Tuesday and Wednesday afternoons from 2.00pm to 3.00pm.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(d) *BAI General Commercial Communication Code* (Sections 3.1.1; 3.3.1, 4.1; 4.4; 6.3).

3. Complaint Summary

The complainant states that, at the beginning of the programme, the text on the screen read *"Paid for presentation on behalf of Irish Music & Irish Radio Org"*. The complainant claims that the entire show consisted of a presenter who spoke to the camera with text on the screen. The complainant further states that the camera consistently cut back to the presenter, who provided the website address and phone number where viewers can purchase the CDs and DVDs of the artists whose videos are included in the programme.

The complainant maintains that the programme is not listed in the Electronic Programme Guide (EPG), Information TV nor Irish TV's website as *"teleshopping"* and, therefore, comes across to the viewer as editorial programming content. The complainant states that Irish TV already runs 3 hours of teleshopping from 6:00am to 9:00am daily and, therefore, to run this programme as teleshopping would mean Irish TV exceeded its daily allowance. The complainant states that it is also very unclear whether there is paid-for spot advertising during the show which should be distinct from the editorial content. The complainant states that there is a lack of transparency in relation to whether the programme is a commercial communication – the fact that it is a *"paid for presentation"* does not identify it as a commercial communication.

The complainant points out that although her complaint refers to the broadcast on the 16th November, all *'Irish Music Lounge'* programmes follow the same format.

Broadcasting Complaint Decisions

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Irish TV states that, at the outset of the programme, it is clear that this is a “*paid for presentation*”. Irish TV apologise that the programme is not to the complainant's liking, however, many of their viewers regularly watch and enjoy the programme. The broadcaster claims that the complaints section of Irish TV will request the editorial department to continually review future ‘*Irish Music Lounge*’ programmes to ensure that Irish TV is fully compliant with all its Codes, Laws and Regulations.

4.2 Broadcaster's Response to BAI

Irish TV concedes that, after a review of the programme, there was an element of teleshopping. The broadcaster states that immediate contact was made with the relevant producer with instructions that the BAI Rules and Codes should be followed. It was stressed that no details of pricing or purchasing information for the products should be included. The editorial team at Irish TV were also reminded of the need for compliance with the Codes at all times. In turn, the editorial team requested that the producer change the programme content to reflect an entertainment show and not a teleshopping programme. As a temporary measure, the programme was immediately called ‘Teleshopping’ in the EPG which replaced another teleshopping programme to ensure that the number of allocated hours for teleshopping was in accordance with the BAI Codes. The programme format for the programme has since been changed to a music entertainment show. It is no longer considered teleshopping and has no calls to action.

5. Decision of the Compliance Committee: Resolved (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009 Section 48(1)(d) *BAI General Commercial Communication Code* (Sections 3.1.1; 3.3.1, 4.1; 4.4; 6.3), the Committee has decided that the complaint requires no further investigation.

In this regard:-

- The Committee noted that it was evident from the content that the programme was clearly of a commercial nature and that audiences viewing this programme would have been clear in this regard. This was evident from the on-screen information at the outset of the programme which stated that the programme was a ‘paid-for presentation’.
- While the Committee noted that the degree of transparency was not in accordance with the requirements of the Section 4 of the *BAI General Commercial Communications Code* it did not consider the programme to include surreptitious advertising, contrary to Section 3 of this code. Having had regard to the fact that the commercial character of the programme was flagged to audiences and having also had regard to the steps taken by the broadcaster to address the issues arising, the Committee deemed the matter resolved.

Broadcasting Complaint Decisions

- Notwithstanding this, the Committee agreed that the programme would be pro-actively monitored with a view to assessing whether the steps taken by the broadcaster have ensured compliance. The *BAI Compliance and Enforcement Policy* will be applied should non-compliance be evident. This policy provides for a range of enforcement measures ranging from the issuing of Compliance and Warning Notices up to and including the suspension and termination of contract or the issuing of significant fines following an investigation.

Broadcasting Complaint Decisions

Complaint made by: Ms. Alicia Holder

Ref. No. 6/16

Station:

Programme:

Date:

Irish TV

The Phil Mack Country Show

11th November 2015

1. Programme

The complaint concerns *The Phil Mack Country Show*, which is a music programme which has been removed from the broadcaster's schedule since the complaint was submitted.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(d) *BAI General Commercial Communication Code* (Sections 6.1, 6.2 and 6.3).

3. Complaint Summary

The complainant states that the programme was sponsored by the *Allinghams Arms Hotel* and during the opening sponsor message there was a call to action from the sponsor to visit their website and also to phone their number which was included onscreen. The complainant states that, in addition, there was no clear distinction between the editorial programme content and the advertising breaks.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Irish TV states that having investigated the complaint fully they have requested their editorial department to ensure that all sponsorship bumpers are in compliance with BAI Codes.

4.2 Broadcaster's Response to BAI

Irish TV states that after being made aware of the complaint and carrying out an investigation, they removed the *Phil Mack Country Show* from air immediately. The producer was instructed to submit new sponsorship bumpers with all new programmes to confirm compliance with the BAI Code and to ensure that references to calls to action were not included. The sponsorship bumpers have now been changed.

The broadcaster states that, furthermore, a discussion has taken place with the editorial department to highlight the need to ensure that external producers comply with the BAI Codes.

Broadcasting Complaint Decisions

5. Decision of the Compliance Committee: Resolved (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(d) *BAI General Commercial Communication Code* (Sections 6.1, 6.2 and 6.3), the Committee has decided that the complaint requires no further investigation.

In this regard:

- The Committee noted that the broadcaster, in its initial response to the complainant, acknowledged that the announcements were non-compliant with the BAI's rules on sponsorship. The broadcaster removed the programme from air and also took steps to ensure that the issue was reviewed internally with a view to ensuring that a similar issue did not arise again.
- Having had regard to the steps taken by the broadcaster to address the issues arising, the Committee has deemed the matter resolved. Notwithstanding this, the Committee agreed that the service would be pro-actively monitored with a view to assessing whether the steps taken by the broadcaster have ensured compliance. The *BAI Compliance and Enforcement Policy* will be applied should non-compliance be evident. This policy provides for a range of enforcement measures ranging from the issuing of Compliance and Warning Notices up to and including the suspension and termination of contract or the issuing of significant fines following an investigation.

Rejected by the BAI Compliance Committee

Complaint made by: Ms. June Twomey

Ref. No. 151/15

Station:

RTÉ Radio 1

Programme:

The Ray D'Arcy Show

Date:

29th Sept 2015

1. Programme

The complaint concerns *The Ray D'Arcy Show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3pm to 4.30pm. The complaint refers to an interview with Dr. Andrew Rynne, which included a discussion on vasectomies and abortion.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Rules 4.2 and 4.22).

3. Complaint Summary

The complainant states that the presenter introduced the issue of abortion and the 8th Amendment to the *Irish Constitution* into a discussion on vasectomies as part of an interview with Dr. Rynne. The complainant believes that this was an attempt by the presenter to indoctrinate the listeners to what she describes as the abortion viewpoint and mindset. The complainant claims that the presenter failed to mention the benefits of not having an abortion. The complainant also states that the presenter allowed Dr. Rynne to speak uninterrupted about his beliefs, which the complainant states, included his personal opinion of the medical and psychological benefits of abortion. The complaint states that the presenter failed to ask his interviewee if there could possibly be any disadvantages to abortion.

The complainant claims that Dr. Rynne suggested that if we don't repeal the 8th Amendment we would have backstreet abortions. The complainant states that the interviewee provided no proof of this happening in Ireland today, and for this reason, this part of the interview was misleading.

The complainant also claims that the presenter led the interviewee with the statement "*We've come a long way*" and by using language such as "*reproductive rights*" which she states implied that killing a baby using what she describes as the most violent of methods should be a right and is progressive. The complainant believes that this is the presenter's personal opinion.

Broadcasting Complaint Decisions

The complainant further maintains that the presenter allowed go unchallenged what she states were Dr. Rynne's comments about people who follow the moral code and teachings of a church. She states that the interviewee's remarks inferred that such people lack the intelligence, insight and ability to critically evaluate issues such as abortion for themselves using that moral code.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states that in *The Ray D'Arcy Show* does not generally host debates. Interviews are conducted on an exploratory basis, drawing out an interviewee's point of view in a conversational style for which the presenter is known.

The broadcaster states that the context of Dr. Rynne's appearance on the show was a follow-on from an interview with two listeners to the show four weeks previously, during which they discussed the prospect of getting a vasectomy. The broadcaster states that there were some texts about Dr. Rynne on the day reminding us that he was the first doctor in Ireland to carry out a vasectomy in this country back in 1974. He is also a figure of historical significance concerning 20th century Ireland, and the debates at the time about contraception and issues of personal morality. The broadcaster states that a wide range of topics were touched on during the item, including the formation of his clinic in Clane and also being shot by a former patient in 1990.

The broadcaster states that it would be inconceivable in a life and times interview with Dr. Rynne to avoid his involvement in the *Irish Family Planning Association (IFPA)* and his interests in reproductive medicine. They state that he was a central figure during the debate in 1983 about the vote on the 8th Amendment to the Constitution. The broadcaster states that Dr. Rynne asserted, while speaking about this, that he was not a proponent of abortion, and spoke only about limited access to abortion.

The broadcaster states that his discussions about backstreet abortions were based solely on fact and focused on the well documented case of the convicted murderer and back street abortionist Ms. Mamie Cadden.

RTÉ claim that it is Dr. Rynne's right to be able to describe his own personal religious formation and his personal journey to contentment in his own life.

RTÉ point out that Principle 2 of the *BAI Code of Programme Standards* focuses on the importance of context and the likely expectations of the audience as to the nature of the particular programme or broadcast service. The audience for *The Ray D'Arcy Show* is well used to the tone and broad ranging nature of items on the show.

The broadcaster states that Principle 6, which deals with the protection of the public interest describes such programming as that which "*encourages and facilitates debate and understanding of social and political topics;—Informs the public, or raises a debate, on matters of public importance*". RTÉ states that the issues explored by Dr. Rynne were undoubtedly of public interest.

Broadcasting Complaint Decisions

4.2 Broadcaster's Response to BAI

RTÉ refers to the response (above) by a member of *The Ray D'Arcy Show* production team to the complainant's initial response to the broadcaster and would add the following.

The broadcaster states that the interview was prompted in the context of a recent discussion on the programme on the topic of vasectomy during which the name of Dr. Andrew Rynne, who pioneered the operation in Ireland, had arisen. The resulting interview with Dr. Rynne was focused on his personal experience, as a doctor in Canada and Ireland, as a social campaigner, and as a musician. The broadcaster states that it was, therefore, predominantly a human interest item, touching on social change in Ireland as seen through the experience of the interviewee. The broadcaster states that it was neither focused on any of the social topics which were touched on, nor was it a debate on any of those topics. RTÉ notes the support in recent and previous decisions of the BAI for the broadcaster's freedom to choose both stories to cover and the angle on those stories.

RTÉ claim that the complaint mischaracterises the programme as "*encouraging*" Dr Rynne to "*express his own desire to see the 8th Amendment repealed.*" However, it would have been a strange editorial omission not to have touched on the topic in an interview with a long-time campaigner from the perspective of reproductive rights and medicine and author of *Abortion: The Irish Question* (Ward River Press, 1982). In respect of the 8th amendment to the Constitution, Dr. Rynne said on the programme: "*None of us were pro-abortion, none of us liked the idea of abortion, but we thought that the eighth amendment was a bad idea.*"

RTÉ maintain that the presenter facilitated Dr. Rynne's recounting of his life and his free expression of some of his views, as was appropriate in an interview designed to draw out his personality, motives and beliefs for the information and engagement of the audience. While properly encouraging the interviewee to be forthcoming, RTÉ claim that the presenter did not express partisan views. The quotation of the presenter in the complaint as saying "*We've come a long way*" misconstrues a statement of fact in terms of Irish society, intended to prompt an interviewee involved in social change over decades, as the expression of a partisan view.

5. Decision of the Compliance Committee: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality*, (Rules 4.2 and 4.22), the Committee has decided to reject the complaint.

In this regard:

- The Committee noted the context for the interview, namely, that the topic of vasectomies had arisen in an earlier programme and that had informed the decision to interview Dr. Rynne. In terms of the editorial approach, the Committee noted that the item focused on the personal history and reflections of the interviewee, including his reflections on issues in Irish society that had impacted on him, as well as his own contribution to debates in Irish society.

Broadcasting Complaint Decisions

Topics covered included: the interviewee's professional history (as a doctor who was the first to provide vasectomies in Ireland and as one of the founders of *Clane General Hospital*); his role with the *Irish Family Planning Association*; his involvement in the debate around the 8th Amendment to the Irish Constitution, and; his involvement in the Irish traditional music scene.

- Having considered the broadcast, the Committee was of the view that a focus on reproductive rights in Ireland, how they had evolved since the interviewee first undertook vasectomies and current issues concerning the legal situation regarding access to abortion, as well as the exploration of these issues by the presenter, had a clear editorial context given the personal and professional history of the interviewee. Moreover, the expressing of views by the interviewee on the historic role of religion and religious institutes on the approach of the Irish State to reproductive rights had, for the same reasons, a legitimate context. In view of this, the Committee did not agree with the complainant that inclusion and exploration of issues pertaining to abortion or the social and cultural developments in respect of reproductive rights, including the role of religion and religious institutions, were introduced by the presenter were evidence of a partisan position intended to '*indoctrinate [his] viewers to the abortion viewpoint and mindset*'. On the issue of the role of religion and religious institutes, it was the view of the Committee that the interviewee's comments were about the societal impact on the historical approach to reproductive rights rather than on the views of those who hold such beliefs.
- In considering the complaint, the Committee also had regard to the right of free expression that should be afforded to contributors. In this context, it was legitimate that the interviewee be permitted to set out his personal views on matters pertaining to reproductive rights in Ireland. A decision to facilitate the free expression of these views does not amount to a lack of objectivity or impartiality nor does it automatically require the expression of a contrary view to ensure objectivity or impartiality. In the case of the interview in question, there was no requirement for the presenter to mention, as suggested by the complainant, the benefits of not having an abortion or the disadvantages of abortion in circumstances where the discussion was not on the substantive issue of the rights or wrongs of this medical procedure.
- Regarding the role of the presenter, the Committee did not agree with the complainant that the presenter's use of the term '*reproductive rights*' or his observation that Ireland has come '*a long way*' in this area were evidence of a lack of objectivity or impartiality.

The term '*reproductive rights*' is a clearly established one and while there are different views as to the appropriate boundaries of those rights, the Committee was of the view it is reasonable to use this term and reasonable to hold a position that rights in this area have improved significantly in Ireland in the last four decades.

- For these reasons, the Committee did not agree that the broadcast infringed the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality*, (Rules 4.2 and 4.22), in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Ms. Alicia Holder

Ref. No. 5/16

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
Irish TV	The Phil Mack Country Show	16 th November 2015

1. Programme

The complaint concerns *The Phil Mack Country Show*, which is a music programme which has been removed from the broadcaster's schedule since the complaint was submitted.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009 Section 48(1)(d) *BAI General Commercial Communication Code* (Sections 3.1.3, 3.3.1, 3.3.3, 6.1 and 6.2).

3. Complaint Summary

The complainant states that the show included a music video by the artist Mr. Robert Mizzell for his song '*John Deere Beer*'. The complainant states that this is a fictional product as *John Deere Beer* does not actually exist but it looks like fake bottles of beer were made-up for the video. The complainant states that *John Deere* is a massive and recognisable worldwide brand founded in 1837 by Mr. John Deere and known for farm equipment. However, it is now a large brand which extends well beyond the farmyard to all sorts of licensed merchandise. The complainant believes that the video for *John Deere Beer* was a blatant advertisement for the brand as it constantly cut to close up shots of *John Deere* merchandise and the *John Deere* brand logo. The complainant maintains that if this is not product placement (which should be acknowledged), then it must be undue prominence of a brand within "editorial programming".

The complainant maintains that it is unclear whether the programme was sponsored in any way or if any product placement took place. The complainant believes that the inclusion of this video constituted surreptitious commercial communication as it contains images of products, the name and trade mark of products and is clearly intended by the programme makers to serve as a commercial communication.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Having reviewed the material and investigated the complaint, Irish TV apologised for any inconvenience caused to the complainant during the airing of Mr. Robert Mizzell's music video. While noting the complainant's comments, the broadcaster also states that they are fully committed to compliance with BAI Codes and Regulations.

Broadcasting Complaint Decisions

4.2 Broadcaster's Response to BAI

Irish TV states that after being made aware of the complaint, they removed the *Phil Mack Country Show* from air immediately. The producer has confirmed that no payment or sponsorship was made by *John Deere*. The broadcaster states that they were advised that the musician in question distributed the music video to all media outlets for airing at no cost. The broadcaster claims that no product placement took place either with the agreement of the producer or the broadcaster. Irish TV expressed regret that the music video may have appeared as a promotional video for the *John Deere* brand and products. The music video will not be aired again on the channel without Product Placement being featured at the start of the video. The editorial teams have reiterated to third party producers the need for compliance with the BAI Code.

5. Decision of the Compliance Committee: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009 Section 48(1)(d) *BAI General Commercial Communication Code* (Sections 3.1.3, 3.3.1, 3.3.3, 6.1 and 6.2), the Committee has decided to reject the complaint.

In this regard:

- The Committee had regard to the obligations on broadcasters in respect of commercial communications, including product placement. These obligations are detailed in the *BAI General Commercial Communications Code* and apply in circumstances where a commercial arrangement is in place, either a payment or a similar consideration to the broadcaster (or to a producer who has been commissioned by the broadcaster to make a programme).
- The Committee also had regard to the definition of Product Placement included in the commercial communications code, which states:-

Any form of commercial communication on television consisting of the inclusion of or reference to a product, a service or the trademark thereof so that it is featured within a programme, in return for payment or for similar consideration.

- Having reviewed the broadcast and the complaint submissions in the context of the overarching obligations of broadcasters and the product placement definition and rules in place, it is the Committee's view that there is no evidence to suggest that any payment or similar consideration was made to either the broadcaster or the independent producer of the programme in question in return for including the video that is the subject of the complaint. The Committee also noted that *John Deere Beer* is not a product that can be purchased. For this reason, it was the Committee's view that the provisions of the *BAI General Commercial Communications Code* did not apply to the content that was the subject of the complaint.

Broadcasting Complaint Decisions

- In considering this complaint, the Committee noted that the production of a programme which has been acquired by a broadcaster but which has not been made by or for them will, in many cases, have been financed in part by third parties located outside of the Irish jurisdiction. Due to the nature of such programming, a broadcaster may not have control over the production of the programmes. Accordingly, due care is necessary on the part of a broadcaster so as to ensure that the interests of audiences are minded, insofar as it is practicable and having regard to the extent of the obligations that apply to them. In the case of the current complaint, the Committee was of the view that the interests of audiences were not infringed.
- Accordingly, the Committee did not agree that the programme infringed the requirements of the *BAI General Commercial Communications Code* in the manner specified by the complaint and, for this reason, the Committee has decided to reject the complaint.

Broadcasting Complaint Decisions

Complaint made by: **Mr. Paul Kelly**

Ref. No. **20/16**

Station:

Programme:

Date:

Red FM

The Neil Prendeville Show

12th January 2016

1. Programme

The complaint concerns *The Neil Prendeville Show*, which is a weekday talk show broadcast from 9am to 12pm that incorporates news and current affairs. The complaint refers to a discussion about immigrants and asylum seekers and included phone-in comments from the public.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in news and current affairs) and Section 48(1)(b)(harm and offence); the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2) and the *BAI Code of Programme Standards* (Principle 5 - Respect for Persons and Groups in Society).

3. Complaint Summary

The complainant states that the topic related to immigrants and asylum seekers and included phone-in comments from the public with regard to refugees etc., coming to Cork. The complainant claims that the presenter goaded contributors with out of context anecdotes and negative stories regarding asylum seekers, which, the complainant believes, the presenter realised would provoke a reaction from listeners. The complainant further states that there was little attempt to provide balance to some hysterical callers who suggested that Cork might be "*over-run with rapists and murderers*".

The complainant states that the programme featured little from an opposing view and the presenter did very little to make up for that lack of balance. He states that, instead, he kept referring to stories of asylum seekers claiming benefits or unusual stories such as an asylum seeker suing the Health Services Executive (HSE). The complainant states that the presenter repeatedly brought up examples of how well he felt asylum seekers are treated.

The complainant states that one example came from a text from someone who supposedly worked at the asylum centre or direct provision centre in Cork, where the residents were "*given the best of food*". The complainant wonders if they should be given average or poor food because they are seeking asylum.

The complainant states that it appeared that the presenter was trying to line-up the most inflammatory examples of immigration to Ireland and failed to balance to the story. Nothing was mentioned about any of the positives that immigrants can bring to a society. In the complainant's view, this programme was unfair, unbalanced and incited racial hatred.

Broadcasting Complaint Decisions

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Red FM states that balance was provided by the presenter, especially in relation to comments made by a particular female caller. For example, he mentioned that the refugee centres referred to by the caller, are "*horrible places to live*" and went further stating that asylum seekers are being kept in these conditions for "*far too long*". Other callers to the programme who disagreed with the female caller's comments, were invited to go on air but they declined the offer.

Red FM claim that a large number of people interacted with the show subsequent to this caller and that their correspondence was read out on air the following day. Cork's Red FM is satisfied, therefore, that the presenter provided balance to the caller's comments while she was on-air on January 12th and again while reading out comments the following day.

Red FM also refute the suggestion by the complainant that the presenter "*seems to have a big issue with immigrants*". The broadcaster state that the presenter has visited the centres in his own capacity and shared his experiences on-air at various times. He has described the dreadful conditions and on-going issues with these centres.

4.2 Broadcaster's Response to BAI

Red FM restates its position to the BAI as set out above.

5. Decision of the Compliance Committee: Reject (Majority)

Having considered the broadcast and the submissions from the complaint parties and having had regard to Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in news and current affairs), the *BAI Code of Fairness, Objectivity & Impartiality* in news and current affairs – Rules 4.1 and 4.2, Section 48(1)(b)(harm and offence) and the *BAI Code of Programme Standards* - Principle 5 (Respect for Persons and Groups in Society), the Committee has decided to reject the complaint.

In this regard:-

- In assessing a complaint, the BAI will have consideration to a range of contextual factors. These contextual factors include considerations of the type of programme and audience expectations and they are intended to reflect the reality that the tastes and interests of Irish radio and television audiences are not the same and the need for, and suitability of, broadcasters providing different programming to serve these different audiences. Balancing the different needs of audiences will often involve airing content that has the potential to offend some listeners and viewers.

Audience expectations are not, however, grounds for permitting any content and content must be handled responsibly so as to minimise offence and harm. The handling of such content should also be fair, objective and impartial, particularly when dealing with minorities or groups in society that may be vulnerable, such as refugees and asylum seekers.

Broadcasting Complaint Decisions

- In the case of the programme that is the subject of the complaint, the Committee had regard to the type of programme about which the complaint was made. It noted that the programme was a current affairs programme driven by current news stories and with a significant input from callers to the programme. In this instance, the news story concerned a court case taken by an individual living in a direct provision facility who was complaining about the quality of food provided. The Committee also noted that the content of the programme was also informed by those that chose to speak on-air and those who contacted the programme by text.
- Regarding the focus on the news story about the court case being taken, the Committee was of the view that it is solely a matter for a broadcaster to decide the editorial focus of a programme. While the focus of a programme on a given day may not appeal to all audience members, the role of the Committee is not to consider that choice but rather whether the treatment of the topic meets the standards set by the Broadcasting Act 2009 and the BAI's broadcasting codes had been met.
- Upon listening to the programme, the Committee found that views were expressed that some listeners may have found offensive. This included views expressed during a contribution from a caller who was a candidate in the then forthcoming General Election and who was campaigning for, amongst other things, greater restrictions in respect of entry into the State by migrants and refugees.
- While noting that offence may have been caused, the views held were those of a candidate in an election and it is not unreasonable for the broadcaster to provide airtime to those views given that the individual is seeking a mandate from voters. The Committee also noted that these views and the views of other contributors are expressions of opinion that are held in the community and the broadcaster has a role in highlighting the diversity of views on a topic (within reason), even where such views may be considered intolerant.
- In considering the complaint, the Committee had regard to other perspectives provided by contributors to the programme and by the presenter. The Committee also had regard to the handling of the topic on the following day's programme when the programme provided time for feedback from listeners to the item.

On balance, the Committee was of the view that the programme did not cause harm and would not have caused undue offence. It was also of the view that, on balance, it did not lack objectivity, impartiality and fairness. In particular, the Committee had regard to the comments of the presenter which provided other views to those of the callers. This included critical comments in respect of direct provision which were based on his own experiences of visiting locations where it is provided. He also questioned whether anyone would voluntarily choose to be in such places.

The Committee also found that the presenter questioned comments by a caller which suggested that Irish society, with increasing numbers of refugees and migrants, would suffer similar sexual assaults as those that had occurred during recent New Year celebrations in Germany. However, the Committee noted that the presenter's counterpoints to callers who were critical of refugees, migrants and government policy in this respect, were minimal.

Broadcasting Complaint Decisions

It was of the view that compliance issues may have arisen in the absence of other callers and texts to the programme who were also critical of those seeking to restrict migrants and refugees and had it not been the case that the programme gave time over to listener feedback on the following day's programme.

- In view of the above, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, the *BAI Code of Programme Standards* or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Notwithstanding this, in deliberating on this matter, the Committee was of the view that greater care should have been taken by the programme makers in the handling of the topic and the broadcaster is advised to have regard to this finding when dealing with this topic in future.

Broadcasting Complaint Decisions

Complaint made by: Ms. Fiona Martyn

Ref. No. 24/16

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
Newstalk 106-108FM	The Right Hook	7 th January 2016

1. Programme

The complaint concerns *The Right Hook*, which is an entertainment/current affairs programme broadcast each weekday evening from 4.30pm to 7pm. The two topics which are the subject of the complaints are proposals in Britain and Northern Ireland to change the dates of school exams to allow for the religious Ramadan period and, separately, the attacks in Germany on New Year's Eve by suspects of Arabic descent.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009 Section 48(1)(b)(harm & offence); the *BAI Code of Programme Standards* (Principle 5 – Persons and Groups in Society).

3. Complaint Summary

The complainant states that the presenter commenced by dismissing the idea that exam timings in Britain and Northern Ireland should be altered to avoid scheduling during Ramadan, the religious period observed by Muslims. The complainant states that the presenter appeared to believe that nobody thought there should be allowances during the Christian Lenten period and so a student fasting during day light hours shouldn't be accommodated in 2016 in the manner proposed.

The complainant states that the presenter then likened students of Islamic faith to gangs of people in Germany who were perpetrating sexual crimes against women, and then implied that crimes of sexual assault are part of the culture of Islam. The complainant states these remarks, which she describes as "*ugly and vilifying rants*" add fuel to anti-Islamic and racist hate speech in communities.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Newstalk 106-108FM did not respond to the complainant. They expressed their sincere apologies to both the complainant and to the BAI for their lack of response stating it was the result of genuine human error on their behalf.

4.2 Broadcaster's Response to BAI

Newstalk 106-108FM states that in this segment every day the presenter delivers a narrative to listeners around the main stories of the day. The broadcaster states that this narrative is designed to inform listeners but also to provoke thought around issues arising. In the section the complainant refers to, the presenter discusses two stories:

1. Proposals in Britain and Northern Ireland to change the dates of school exams to allow for Ramadan;
2. Confirmation that attacks in Germany on New Year's Eve ranging from pick pocketing to sexual assault were carried out by suspects of Arabic descent.

The broadcaster states that the presenter posed a question as to why state exam times would be changed to facilitate a minority, thus suggesting that, in this case, political correctness may be the motivation. The broadcaster states that the presenter's commentary was not about whether or not exam times should be changed to facilitate students observing Ramadan, but more about probing the reasons why such a proposal might be made. They states that he clearly said that the same question would arise if a Catholic minority were being facilitated in this way and probed whether due regard was been taken of the majority when such issues were been discussed.

The broadcaster states that the presenter in no way *'likened students of Islamic faith to gangs of people in Germany who were perpetrating sexual crimes against women'* as stated by the complainant. Rather, he proceeded with his point about political correctness to suggest that a desire to be politically correct may have been the reason that the ethnicity of those responsible for the New Year's Eve attacks in Germany was not disclosed until a week after they occurred. The broadcaster states that in the course of making this point, the presenter stated as fact that the German police had now identified these attackers as of Arabic descent.

The broadcaster states that the presenter clearly stated that the suspects are not believed to be migrants, but long term residents of Germany.

The broadcaster states that the presenter expressed concern about the compatibility of Arabic and European cultures and the long term implications of the current migrant crisis and open border policies.

The broadcaster states that this did not amount to an *'ugly and vilifying rant'* as suggested by the complainant. The manner in which he discussed these issues was appropriate and justifiable and did not prejudice respect for human dignity. It facilitated robust debate as is appropriate for a presenter, but did not stigmatise, support or condone discrimination or incite hatred against persons or groups in society in particular on the basis of nationality, ethnicity or religion.

5. Decision of the Compliance Committee: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to Broadcasting Act 2009 Section 48(1)(b)(harm & offence) and the *BAI Code of Programme Standards* (Principle 5 - Persons and Groups in Society), the Committee has decided to reject the complaint.

- In considering complaints under the *BAI Code of Programme Standards*, the Committee has regard to a number of contextual factors. These contextual factors have been identified by the BAI as those that will play a role in whether content that has been broadcast is harmful or would likely cause undue offence. These factors include, amongst others, the likely expectation of the audience as to the nature of the particular programme or broadcast service and whether the inclusion of the programme material is editorially justified.
- In view of this, the Committee considered these contextual factors as well as the requirements of Principle 5 of the *BAI Code of Programme Standards*. This principle is intended to ensure that the manner in which groups and persons in society are represented in programming is appropriate and justifiable and does not prejudice respect for human dignity.

The principle does not prohibit robust debate or the challenging of assumptions but does state that programme content shall not stigmatise, support or condone discrimination or incite hatred against persons and groups in society, in particular on the basis of age, gender, marital status, membership of the Traveller community, family status, sexual orientation, disability, race, nationality, ethnicity or religion.

- Having regard to the above, the Committee determined that the content about which the complaint has been made did not infringe Principle 5 of the *BAI Code of Programme Standards*. The Committee noted that the comments were made by the presenter as part of a regular segment at the beginning of the programme which involves the presenter providing an overview of the news stories of the day that may be of interest to the audience. Accordingly, the focus on the story about the interface of religion and education in Britain and Northern Ireland and the story about reports of sexual assaults in Germany and elsewhere were both editorially justified in the context of the programme. The Committee noted that the segment also included comments about the RTÉ television programme, *Operation Transformation* and Irish Rugby.
- In line with the style of the presenter, the two stories discussed were approached in the usual style of the programme presenter, which can be robust and challenging and which is intended to provoke a response from listeners. In the case of both topics discussed, it was evident that the focus of the presenter was not on the religion of Islam but rather on the question of how to integrate different cultures in European society where different cultures have different views on the role and importance of religion and different views on the rights of women and their role and place in society. The Committee found that the presenter's comments focused on his view about how this balance might be skewed against the interest of the majority, for example, in circumstances where exam schedules might be altered for all students to accommodate a minority of students.

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- It was the view of the Committee that the decision to follow the story of education with one dealing with sexual assaults was unfortunate insofar as it may have been heard by some listeners as associating one with the other. However, on balance, it was the view of the Committee that the focus of the item was on the topic of political correctness and on cultural accommodation rather than on religion, race or on adherents to the Islamic faith. For this reason, the Committee did not agree with the complainant that the item would, contrary to the Broadcasting Act and the *BAI Code of Programme Standards*, stigmatise, support or condone discrimination or incite hatred against persons and groups in society in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Rejected by the Executive Complaints Forum

Complaint made by: Mr. Brendan O' Regan

Ref. No. 79/15

Station:

Newstalk 106

Programme:

Breakfast Show

Date:

23rd April 2015

1. Programme

The complaint concerns the *Breakfast Show*, which is a weekday news and current affairs programme, broadcast from 7am to 10am. The complaint refers to a discussion on the then forthcoming *Marriage Referendum*.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009 Section (48(1)(a) (fairness, objectivity and impartiality in news); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Rules 4.1, 4.3 and 4.22).

3. Complaint Summary

The complainant states that one of the programme presenters claimed, on two occasions, that surrogacy had nothing to do with the *Marriage Referendum*. The complainant believes that this is a matter of opinion and an opinion promoted by the 'Yes' side. The complainant states that a presenter should not take sides in such a manner and should refrain from stating their own opinions. The complainant believes that, it is at least arguable, that surrogacy is relevant to the *Marriage Referendum*. The complainant states that the fact that the presenter stated that this issue was going to be put by the programme makers to the *Referendum Commission* shows that this matter had not yet been adjudicated upon. The complainant states that, even if the *Referendum Commission* states that it is not connected, one is still free to hold a different opinion and there is often different legal advice given on a variety of matters in different situations.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Newstalk states that the wording of the *Marriage Referendum* is as follows:

"Marriage may be contracted in accordance with law by two persons without distinction as to their sex"

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In this context, they state that there is no mention of surrogacy. The broadcaster states that the issue of surrogacy is being dealt with separately in legislation by the Government. The broadcaster states that it is possible to link any number of issues to this *Referendum* and both the 'Yes' and 'No' sides have done so.

The broadcaster states that, ultimately, it is the responsibility of a broadcaster to bring the listener back to the wording of the *Referendum*. Newstalk claims this does not display bias; it is the presenter doing his job.

The term '*Marriage Equality*' is a Government term and its use is not in contravention of broadcasting guidelines or indicative of bias.

4.2 Broadcaster's Response to BAI

Newstalk states that the presenter was reading out a story that appeared in *The Irish Times* newspaper that day. They state that he was not expressing an opinion or debating the issue. The broadcaster states that the presenter correctly and accurately informed the listener about the story about the *Referendum Commission* considering stepping-in to issue a statement clarifying a poster which brought surrogacy into the *Marriage Referendum* and that dozens of complaints were received about the poster. The broadcaster states that the listener was also directed to page 9 of *The Irish Times* for further information on the story.

The broadcaster states that the presenter was simply presenting the actual position and was not encouraging any view or advocating that any particular position be adopted. Newstalk also states that, around the same date as this broadcast, there were other related debates and broadcasts where both sides were given an opportunity to present their arguments and debate the issue.

Newstalk reiterate that the term "*Marriage Equality Referendum*" was a Government term and cannot be indicative of bias or partiality.

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.3 and 4.22), the Forum has decided to reject the complaint.

In this regard: -

- The item in question was a short piece in which a presenter reviewed a story that appeared in *The Irish Times* newspaper on the day of broadcast. Reviewing newspaper articles of the day is a regular feature of the programme and the format would be familiar to listeners.

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- The story related to the *Referendum Commission* considering issuing a statement about a poster which linked surrogacy to the *Marriage Referendum*. The complainant felt that the presenter stated his opinion regarding surrogacy not being linked to the *Marriage Referendum* on two occasions. It was the view of the Forum members that most listeners would reasonably be of the understanding that the presenter was relaying views given in the newspaper article and not providing his own opinion on the matter or advocating a partisan position.

As such, the item was simply a factual summary of the newspaper article and this was evident from, amongst other aspects of the item, that part of the item where the presenter provided listeners with the name of the publication and the page number on which the story appeared on. The Forum was of the view that the facts of the news story were relayed in an objective and impartial manner and the format was transparent.

- The members noted that the complainant felt that the use of the term “*Marriage Equality Referendum*” was unfair and displayed bias on the part of the presenter. The Forum noted that the ‘Yes’ campaign often uses the term “*Marriage Equality*”, however, they noted that the official name of the Bill is “*Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015*”. In this context, the Forum was of the view that the reference to marriage equality could not be seen as displaying bias but was rather a factual reflection of the name of the Bill.
- When considering the complaint, it was the view of the Forum that the complainant had failed to provide any rationale as to how the content did not comply with Rule 4.3 of the of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.
- In view of the above, the Forum was of the opinion that the programme did not infringe the requirements of the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 3 4.22) in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. William Campbell

Ref. No. 130/15

Station:

Programme:

Date:

RTÉ One

Claire Byrne Live

7th Sept 2015

1. Programme

The complaint concerns *Claire Byrne Live*, which is a current affairs programme broadcast on Monday evening at 10.35pm. The topic discussed was the migrant/refugee crisis in Europe.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2).

3. Complaint Summary

The complainant states that the programme dealt with refugees, racism and the provision for asylum seekers. He states that RTÉ and the presenter should have been on alert that this range of topics is particularly vulnerable to strong opinions, and that false claims made tend to gain currency by repetition. For this reason, the complainant states that it was important for the presenter to challenge false factual claims and that this was not done on the programme in question. The complainant feels extravagant claims were made without the presenter challenging them, as follows:-

- The complainant states that journalist Mr. Ian O' Doherty, claimed that "*from Sweden down to Portugal there are problems [with large scale Islamic immigration]*" and that "*we [Europe] are facing cultural and demographic suicide*". The complainant states that this may well be Mr. O 'Doherty's view, but no space was provided in the programme to challenge it.
- The complainant states that businesswoman Ms. Nora Casey claimed that "*[400 children] completely disappeared into child trafficking*". The complainant states that this is not correct and should have been challenged by the presenter.
- The complainant states that Independent Councillor, Mr. Seamus Treanor, claimed that "*there are now 900,000 [migrants from Eastern Europe living in Ireland]*". The complainant states that this is incorrect and that the correct figure is about 220,000. He further states that even if the presenter did not know that figure immediately, she should have recognised that the figure of 900,000 was a wild exaggeration and challenged the comment. The complainant states that Cllr. Treanor also said "*a Government report said 90% of people living in direct Provision are bogus [asylum seekers]*". The complainant states that this is incorrect and that it went unchallenged.

- The complainant states that a contributor said “*in fact, the real cause for the child’s death [Aylan Kurdi], and I’ve only seen this on Sky News, was because the father brought his wife and two children, why? Because he wanted to get his teeth fixed ... to be fair to that child if that happened in this country, the person involved would be before the authorities for child abuse*”. The complainant states a search on *Google* could find no mention of this on *Sky News*. He also found that the contributor had been a political activist and that this was not made apparent to viewers. By contrast, Ms. Edel McGinley and Ms. Cathy Kelly were both challenged in their views by the presenter with Ms. McGinley’s views being, in part, accompanied by images of Mr. Reynolds reacting negatively.

4. Broadcaster’s Response

4.1 Broadcaster’s Response to Complainant

RTÉ states the vast majority of contributions to the programme were very sympathetic to the refugees and – as illustrated by their poll – very much in tune with the 54% of Irish people who agree with the suggestion that we should open our arms to 5,000 people directly affected by this crisis. In particular, Syrian refugee, Mr. Marwan Aljarad, spoke passionately about his terrible experience in Syria and why he was glad to be here in Ireland and author, Ms. Cathy Kelly told of her first-hand experience of life in refugee camps as a *UNICEF Ambassador*.

The broadcaster states that the programme also gave space to contrary views. The poll also showed that 37% of the public don’t wish to see 5,000 refugees enter the country and there’s no doubt that many people have strong feelings on that side of the debate as well. One or two of the views expressed clearly offended some viewers who felt that airtime was being given to views that ought not to be broadcast.

For instance, Cllr. Seamus Treanor from Monaghan called for Nigerian refugees to be returned to Nigeria before any more refugees are accepted into Ireland and made a number of assertions which the presenter pointed out on-air were not fair to Nigerian people.

The broadcaster states that another contributor made very unsympathetic comments about the father of little Aylan Kurdi, comments which have been made by an Australian politician and which, understandably, some viewers found offensive and felt should not have been broadcast. In his case, the presenter felt it best to simply interrupt him and move on – later in the programme Ms. Cathy Kelly referred back to his comments and said that they were untrue.

The broadcaster states that, while *RTÉ* generally has a good idea which side of the argument any audience contributor is on, they do not know exactly what they’re going to say and any programme which attempted to “vet” in detail every contribution beforehand would not be giving genuine public access and would probably not be live. *RTÉ* states they do not knowingly seek out people who will cross it but they cannot always guarantee that live audience contributors will know where that line is and will stay on the right side of it.

The broadcaster states that the panel was made up of four people with different views, three of whom were very sympathetic to refugees from Syria and one, Mr. Ian O' Doherty who raised his concerns about having open EU borders and put forward the idea that the real solution would be to tackle *ISIS* directly. Businesswoman, Ms. Norah Casey directly challenged him and stated that we are obliged to help these refugees, Mr. Colin Murphy did likewise.

In terms of Ms. Casey's comments about unaccompanied minors "*disappearing*" into child trafficking, there have been reports from groups such as the *Children's Rights Alliance* who estimate that more than 500 children in the care of the state have gone missing since 2000 and that 90 per cent of those remain missing with many feared to have been trafficked.

4.2 Broadcaster's Response to BAI

RTÉ states the complainant selects a small number of statements from a 34-minute broadcast in which a multiplicity of viewpoints were fairly and impartially represented. *RTÉ* asserts that a fair assessment of the broadcast must take into account its totality and that they do everything possible to ensure accuracy in their broadcasts.

The broadcaster states that live broadcasts can pose particular difficulties in this regard. It is simply impossible for any programme team to predict every factual claim which will be made in a live broadcast. Neither are other contributors necessarily in a position to challenge any and every claim made. Notwithstanding the diligent efforts which can reasonably and fairly be expected of a broadcaster, the risk of unchallenged inaccurate claims will therefore always be present. It may be noted that a broadcast has an editorial purpose and that this properly entails pursuing key arguments and headings.

The broadcaster states that the reference made by a contributor to assertions by *Australian Senator*, Mr. Cory Bernardi, in relation to the death of Aylan Kurdi will certainly have been found distasteful by many viewers, including the complainant. However, the editorial decision by the presenter not to engage with this statement not only kept the discussion on more substantial lines but arguably avoided dignifying Senator Bernardi's assertions by giving them attention.

The complaint suggests that there was a lack of transparency in the presentation of a particular contributor from the audience. There was no such lack. The contributor, whatever his past political history, was present in a personal capacity and not as a representative of any group. Indeed, the complainant offers no evidence whatsoever that the contributor is currently a member of any political grouping.

Taken in full, this broadcast fairly, impartially and objectively presented a range of opinions on a very contentious topic.

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that the programme was in the format of a debate and, in line with this format, it included a free flowing range of opinions, points and counterpoints on the topic under discussion.

As a debate format, programme guests are invited to participate with the intention that they will express their views on the subject matter in question and it is appropriate that they be permitted to do so. A programme of this nature will, therefore, include a very large number of views and opinions that are provided in a free flowing and moderated manner. Some of these views and opinions will be contested and some may include comments that are factually incorrect. Some of these views will also be deemed by some audience members as offensive. Furthermore, individual comments made by contributors will be made in the context of the entire programme (including comments made by the presenter or other programme contributors) and in assessing a programme the Forum will therefore have regard to the programme as a whole. It is not always practical to address every comment made or inaccuracy articulated. In addition, such an approach would impact on the imparting of information to audiences.

- In this context, one of the roles of the presenter is to facilitate discussion and debate in the interest of the audience, so as to ensure fairness, objectivity and impartiality. It is also the role of the presenter to challenge significant errors or to facilitate their challenge by programme contributors. In addition, fairness is also provided by contributions from programme participants, including views they may have which are challenging or critical of the opinions of other programme participants.
- Having reviewed the programme, the Forum was satisfied that the discussion in question was moderated in a fair and impartial manner and without any expression of the presenter's own views. In this regard, the Members noted that the presenter challenged the contributors on occasion and questioned the veracity of some comments made by the panel and audience members. For example where she summarised and put the views of one side of the debate to the other side of the debate with a view to eliciting their response. The Forum also found that the audience was given access to a wide variety of views on the topic and that the subject matter was explored in a balanced and transparent manner. This included the facilitation of challenges by other contributors. For example the exchanges between the Journalist, Mr. Ian O' Doherty and Government T.D. Mr Andrew Doyle.

Broadcasting Complaint Decisions

While noting that some of the contributors made factually incorrect statements, such as the one pertaining to the number of Eastern European Migrants residing in Ireland, the Forum were of the opinion that the errors were not of a nature that they would materially affect the overall fairness of the discussion.

- In view of the above, the Forum was of the opinion that the programme did not infringe the requirements of the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. W. L. Mongey

Ref. Nos. 132/15, 133/15, 134/15 and 135/15

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ Radio 1	132/15 News at One	24 th July 2015
	133/15 Drivetime	
RTÉ One TV	134/15 Six-One News	
	135/15 Nine News	

1. Programme

The complaints concern the *News at One*, *Drivetime*, *Six-One News* and *Nine News* which are all news and current affairs programmes and are broadcast each day on *RTÉ Radio 1* and *RTÉ One TV*. All these complaints relate to the reported coverage given on the day of the publication of the Heads and General Scheme of a new *Domestic Violence Bill*.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs), Section 48(1)(b)(harm & offence and law and order); the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.17, 4.19, 4.21, 4.22 and 4.28) and the *BAI Code of Programme Standards* (Principle 3: Protection from Harm and Principle 5: Persons and Groups in Society).

3. Complaint Summary

The complainant states that, in both *News at One* and *Drivetime*, the presenters discussed the new *Domestic Violence Bill* only in terms of domestic violence/abuse against women, giving the impression that this was what the *Bill* dealt with. However, the complainant found that there was nothing gender-specific in the *Bill* and that it applies also to male victims of domestic violence/abuse. He believes the coverage of the news item on the programme was unfair for the following reasons:-

- Every man in the country is a potential victim of domestic violence/abuse and it is obviously of great interest and importance to them to know how the new *Bill* affects their position if they were to become victims.

He states that by omitting all mention of male victims, these broadcasts gave the false and misleading impression that the new *Bill* does not affect male victims.

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- He states that, since the *House of the Oireachtas* is drawing up legislation which does not distinguish between male and female victims, in the eyes of the law they are of equal importance. In fact, the most recent figures available from the *Cosc* website (Watson and Parsons, 2005) show that figures for male and female victims of domestic abuse are fairly similar (29% of women and 26% of men) and that 88,000 men have suffered severe domestic abuse in Ireland. The complainant states that all of these men were treated unfairly by the broadcasts.
- The complainant states that the exclusion of male victims continued in all the news bulletins (including TV bulletins) for the rest of the day. The complainant states that, once the day was over, the immediacy of the story was lost and it was too late to make up for the omissions.
- It seems inescapable that other male listeners and viewers who did not seek out the original source material (and did not know that it was necessary for them to do so) were denied the knowledge that the *Bill* affected them and, therefore, also denied the opportunity to seek the truth elsewhere. He states that those male listeners and viewers continue to be ignorant of the facts due to the unfair way the issue was treated by *RTÉ*. By failing to state that the broadcasts omitted certain key information *RTÉ* listeners and viewers were not provided with relevant information which would have allowed them to determine that the broadcast was unfair.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Only an acknowledgement of the complaint was received by the complainant.

4.2 Broadcaster's Response to BAI

132/15 News at One

RTÉ states the interview with *Minister for Justice*, Ms. Frances Fitzgerald T.D., on the *Domestic Violence Bill* is 6.01 minutes long and in describing the *Bill* the conversation is completely gender neutral from 0.00 to 1.48 and from 4.12 to 6.01 minutes.

The broadcaster states that it was made clear by both presenter and interviewee that the legislation applied to “persons” and “people”. Similarly, when discussing ‘*Celine’s Law*’ the terms “spouses” and “his or her” were used. The broadcast could not have given the impression to listeners that the *Domestic Violence Bill* applied only to women.

133/15: Drivetime

The broadcaster states that *Drivetime* coverage of the *Domestic Violence Bill* consisted of a clip of the *Minister for Justice*, Ms. Frances Fitzgerald T.D, a series of clips of female abuse survivors and an interview with Ms. Margaret Martin, *Director of Women’s Aid*.

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It was completely clear in the interview that the proposals in the *Bill* were not gender-specific. Throughout, the *Minister* referred to, for example, "*victims in a crisis situation*", "*the person*" and "*less intimidating place for victims.*" Similarly, the presenter's interview with Ms. Martin discussed issues such as stalking, harassment, barring orders and the *Istanbul Convention* in a gender non-specific way.

134/15 Six-One News and 135/15 Nine News

The broadcaster states that these news reports did not report or state that the *Domestic Violence Bill* only applied to women and there was no intention to convey that impression. The gender of the interviewees arose impartially from the fact that the *Minister for Justice* is a woman, as is the Director of *Women's Aid*. There was a universal welcome for the proposals in the new *Bill* and RTÉ received a number of press statements from groups such as *Women's Aid* and the *National Women's Council*. A representative of *Women's Aid* was interviewed, not to exclude the experiences of men, but because the group is the largest and longest-established organisation supporting and lobbying on behalf of victims of domestic violence and the proper editorial decision was made that a spokesperson from one of the advocacy groups would reflect the overall positive response to the proposed legislation. Like the *Bill*, the report was essentially 'gender-neutral', not distinguishing between male and female victims of domestic violence. Children were referenced in the context of the new provision in the proposed legislation allowing for the voices of children to be heard. The report also specifically referred to the *Council of Europe Convention on Combating Violence Against Women* because the legislation will not be introduced until the Government signs up to that convention.

RTÉ further states:-

Section 48(1)(a), Broadcasting Act 2009

The broadcasts were in every respect fair, objective and impartial.

Section 48(1)(b), Broadcasting Act 2009

RTÉ asserts that no case has been made by the complainant in relation to this section and that there was in the broadcasts nothing which could reasonably be regarded as causing harm or offence, or as being likely to promote or incite to crime or as tending to undermine the authority of the State, nor has the complainant shown how this section has been breached.

Rule 4.1

The broadcasts were objective and impartial and contained no expression whatsoever of the broadcaster's views.

Rule 4.2

There was in the broadcasts no breach whatsoever of this Rule and the complaint does not give evidence of any such breach.

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Rule 4.17

There was no inaccuracy in respect of the *Domestic Violence Bill* or any other matter in any of the broadcasts and the complaint does not indicate any such inaccuracy.

Rule 4.19

The broadcasts contained no misrepresentation of views or facts and in their clear and accurate reporting of the *Bill* could not have been in any way misleading or led to misunderstanding, whether in substance or in tone. The complaint does not give evidence of any such breach.

Rule 4.21

No view on the topic was expressed by presenter or reporter in any of the broadcasts. Furthermore, it is at least questionable whether a piece of legislation addressing domestic violence (on a gender-neutral basis) can be characterised as a matter of public debate or controversy.

Rule 4.22

All four broadcasts, on the day of publication of the Heads of the *Domestic Violence Bill*, were news reports, either in news bulletins as such or, in the case of *Drivetime*, a news magazine format. None were in a current affairs format, nor were they presented as such. In the context of this Rule, the universal welcome of the legislation may also be noted. It may also be noted that these reports contained no expression whatsoever by presenter/interviewers or reporters of their own views.

Rule 4.28

The broadcasts adhered to all legislative requirements and the complaint has not indicated any such failure.

Principle 3

The complaint does not demonstrate how, in reporting legislation which applies equally to the protection of women and men, these broadcasts caused harm in any way whatsoever.

Principle 5

Nowhere in any of the broadcasts was there any support or condoning of discrimination against any person or group in society.

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5. Decision of the Executive Complaints Forum: Reject (Majority)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) and Section 48(1)(b) (harm and offence); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.17, 4.19, 4.21, 4.22 and 4.28) and the *BAI Code of Programme Standards* (Principle 3 – Protection from Harm and Principle 5 – Protection from Persons and Groups in Society), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that the news items broadcast related to a new *Domestic Violence Bill*, which was announced earlier the same day by Minister Francis Fitzgerald T.D. The Members noted that each story focussed on the benefits that the new *Bill* would give to victims of domestic abuse. Each report also included statistics which related to the number of women who suffer from abuse in Ireland per year and some of the interviews focussed on example of female victims.
- Having reviewed the content, the Members noted that each news broadcast was factually accurate and, in each case, the story was explored through an in-studio introduction, followed by clips of pre-recorded interviews. This is a legitimate editorial approach to covering a news story. In respect of statistics relating to women, the Forum were of the view that it is widely understood that a higher percentage of women than men suffer from domestic abuse in Ireland and that the examples and statistics were used in the context of conveying the scope of the problem of domestic abuse in Ireland.
- In the case of the *Drivetime* programme, the Forum noted that the presenter introduced the item by incorrectly stating that Minister Fitzgerald T.D. said that “*the new measures would help women escape violent situations*”. However, the Members noted that the *Bill* is gender-nonspecific and that the pre-recorded interview with Minister Fitzgerald T.D. focussed on victims in general, without mention of whether they were male or female. The Forum considered this inaccuracy in the context of the entire broadcast and felt that a listener would reasonably understand that the Irish legislation relates to all victims of domestic abuse. The Members were not of the view that the inaccuracy rendered the item misleading.
- The Members noted that the broadcasts omitted any specific reference to male victims, and while this aspect of the story could have been explored, the Forum were not of the view that the broadcasts could reasonably be considered to have misled the audience into believing that the *Bill* only related to female victims.
- When considering the complaint, it was the view of the Forum that the complainant had failed to provide any rationale as to how the content did not comply with Rule 4.21, 4.22 or 4.28 of the of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, or Principle 3 and Principle 5 of the *Code of Programme Standards*.

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- In view of the above, the Forum was of the opinion that the programme did not infringe the requirements of the Broadcasting Act 2009, the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* or the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaints made by: Mrs. Josephine McEvoy

Ref. Nos. 138/15

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ Radio 1	Callan's Kicks	3 rd April 2015

1. Programme

The complaint concerns 'Callan's Kicks', which is broadcast on RTÉ Radio on Friday evenings at 6.30pm. The complaint relates to a parody by the comedian on the biblical story of *The Last Supper of Jesus Christ*.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b) (harm and offence); *the BAI Code of Programme Standards* (Principles 1 and 5).

3. Complaint Summary

The complainant states that she was disgusted that this programme was allowed to include a parody on *The Last Supper* under the guise of being funny. The complainant states that humour is subjective, but should never be insulting. She states that to target *The Last Supper*, especially during Holy Week, was an abomination and, in her opinion, offensive to every Christian. The complainant doubts if the programme would ever include content that spoke so offensively about the Prophet Muhammad and she believes that Christians are always the soft target.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states that *Callan's Kicks* is a humorous programme which satirises and pokes fun at public figures from the world of sport, media, news, politics and entertainment and plays off characters, institutions and issues that are appropriate for public discussion and attention. They state that it is an accessible, topical, satirical programme that reviews the follies, themes and conflicts of public life in a manner which is appropriate for the channel and slot.

RTÉ Content Standards Guidelines state that it is acknowledged that "comedy programming where there are observations on everyday life will, inevitably skirt close to giving offence. Good comedy is sometimes likely to be close to offensive. The justification for this has to be found within the comedy itself. Is the comic sketch a commentary on life, are its targets suitable for the attention of the scriptwriters? How skilful is the sketch executed? Was the particular humour expected of the programme? What time was it broadcast?"

It is RTÉ'S view that this programme did not infringe these guidelines or any related BAI Codes.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response of 20th November 2015 of RTÉ Broadcast Compliance to the original complaint.

The broadcaster states that *Callan's Kicks* is made and broadcast for the adult audience of RTÉ Radio 1 and is well known to that audience for its satirical comedy, having been on air since 2011. The broadcaster states that while, as comedy, its content may not be to the taste of all listeners, and indeed may offend some, it is not beyond the bounds of acceptable community standards. The broadcaster states that some evidence of this may be indicated by the tiny number of complaints received by RTÉ in respect of the programme. The broadcaster states that the above complaint was the only one received by RTÉ in respect of this edition.

In the context of Principle 5 of the *BAI Code of Programme Standards*, RTÉ refers to previous acknowledgement by the BAI Compliance Committee of the role of satirical comedy, including in response to BAI Referral No 88/15:

"It is common for [satirical comedy programmes] to treat topics in a humorous and sometimes vulgar manner. It also common for such programmes to push the boundaries of acceptable content and this is a well-established aspect of comedy programming."

That BAI decision also noted that:

"The Committee found that the focus of the humour was not aimed at religion or those who held religious beliefs."

The broadcaster states that, similarly, the material complained of in the edition of *Callan's Kicks* of 3rd April 2015 was targeted at the political travails of the *Fianna Fáil* political party.

The broadcaster states that it used elements of the Gospel accounts of the *Passion of Christ*, not to make fun of religion or religious belief but as a culturally recognisable metaphor for the party's circumstances (and one which was appropriate in the context of broadcast in the Easter weekend). The broadcaster states that such metaphors and references have been a commonplace of comedy in Ireland, on stage, radio and television, for many years. There was no blasphemy, and no mockery of any religious belief.

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Sections 48(1)(b) harm and offence and the *BAI Code of Programme Standards* (Principles 1 and 5), the Forum has decided to reject the complaint.

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In this regard:

- The Forum noted that the programme, *Callan's Kicks*, is a satirical comedy programme. As a satirical programme, it treats the subject of its comedy in a broad range of tones, from the mocking to the sardonic to the derisive. Audiences would therefore have been familiar with the type of content and the approach of the programme.
- In the case of that element of the programme that was the subject of the complaint, the Forum found that the focus of the satire was the *Fianna Fáil* political party, including its leader, Mr. Micheál Martin T.D. This was done by drawing on the biblical story of *The Last Supper of Jesus Christ* and using it as a basis to satirise the political future of *Fianna Fáil* and its leader in a context where the party has suffered significant electoral losses in 2011 and were facing a coming election.
- Upon its review of the programme item, the Forum concluded that the focus of the satire was *Fianna Fáil* and not the Christian religion or the person of Jesus Christ. While some listeners may have found the use of images from the story of *The Last Supper* offensive, the Forum found that the content was not directed at religious views, practices or beliefs and for this reason the item did not infringe the requirements upon broadcasters to show due respect for persons and groups in society (as set out in Principle 5 of the *BAI Code of Programme Standards*). In this context, the Forum also concluded that Principle 1 of this Code (General Community Standards) was not infringed. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Ms. Anne Murray

Ref. No. 139/15

Station:

Programme:

Date:

RTÉ Radio 1

The Ray D'Arcy Show

4th August 2015

1. Programme

The complaint concerns *The Ray D'Arcy Show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm to 4.30pm. The topic discussed was medically difficult pregnancies, including pregnancies involving foetuses with fatal abnormalities. The item was prompted by an article in the *Irish Independent* newspaper, written by Cllr. Kate O'Connell of *Fine Gael*, where she set out her experience of a pregnancy involving a foetus with a medical problem.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4; Rules 4.1 and 4.2).

3. Complaint Summary

The complainant states that throughout the interview with Cllr. O'Connell, the presenter agreed with her views. The complainant states that in her opinion no attempt was made to challenge Cllr. O'Connell on some of her views on the liberalisation of Ireland's abortion laws. She states that, instead, the presenter agreed and encouraged her while making his own position clear. The complainant states that the presenter was first to bring up the controversial phrases "*not compatible with life*" or "*fatal foetal abnormality*". The complainant also states that the presenter prompted Cllr. O'Connell to talk about what she would have done in circumstances where her foetus was not compatible with life or where it had a fatal foetal abnormality.

The complainant claims that the interview was set up and divided by the presenter to support the liberalisation of Ireland's abortion laws. She states that for the first 12 minutes of the interview, Cllr. O'Connell related her experience of carrying and giving birth to a sick baby who has now fully recovered. For the remaining 17 minutes, she spoke about why the laws need to be changed.

The complainant wishes her complaint to be considered taking into account the following points:

- a) The fact that, in her opinion, the presenter agreed with Cllr. O'Connell throughout the interview;

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- b) The bias that she states was shown when discussing the Oireachtas hearings on abortion;
- c) The way in which the presenter, in his opinion, facilitated a discussion about abortion on demand;
- d) The way the presenter prompted Cllr. O'Connell to speak about how she would have reacted to the more challenging diagnosis of terminal illness.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states that, in keeping with their entitlement to make decisions on editorial matters, such as the format of a programme, *The Ray D'Arcy Show* does not generally host debates. They states that the interview with Cllr. Kate O'Connell was in keeping with that editorial format and presentational manner. Cllr. O'Connell made it clear as a personal citizen and as a *Fine Gael* Councillor that she is in favour of abortion in Ireland and of repealing the 8th Amendment of the *Bunracht na hÉireann* and having a Referendum on this subject in Ireland. The presenter asked Cllr. O'Connell where that position sat with her own political party and had anyone been in contact with her from *Fine Gael* with a reaction and was told that there had been no contact and no reaction that she knew of.

The broadcaster states that the programme is a daily live show covering a diverse range of issues, stories, guests and talking points. This was a human interest story focused on the difficult choice faced by one woman. The presenter dealt with the topic in a fair and even-handed manner facilitating Cllr. O'Connell to describe her personal experience.

The broadcaster states that the presenter said that there were other views on the issue. After the interview, the presenter read out a text from a listener who had experienced a devastating diagnosis when pregnant and went to term with the pregnancy holding her dead new born baby in her arms, an experience the woman said she never regretted and she would never support abortion. A member of the production team also contacted this person to ask her if she would be interested in telling her personal story on the programme but the invitation was declined as she wished her identity to remain private.

4.2 Broadcaster's Response to BAI

RTÉ states that the editorial format of *The Ray D'Arcy Show* consistently includes human interest interviews which explore the personal experience behind current topics. In this instance, the interview with Cllr. O'Connell was prompted by an article in that day's *Irish Independent* newspaper.

The broadcaster states that the programme's editorial format does not generally include the hosting of debates between antagonists and the interview was conducted in the exploratory, conversational style which is known and expected by the programme's audience. They state that it was for the most part focused on Cllr. O'Connell's personal experience of pregnancy and the way in which that experience affected her views on the practice of termination of pregnancy in Ireland.

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Through questions by the presenter and his reading of a selection of comments from listeners which accurately reflected the balance of the audience response to the interview, listeners were consistently reminded of points of view other than that of Cllr. O'Connell.

The broadcaster states that while there was reference to legislative and constitutional provisions, the interview was substantially of a personal nature; indeed it was made clear that Cllr. O'Connell's view on termination is an individual one and not a matter on which she claims to represent the view of her party. In the interests of transparency, Cllr. O'Connell's political involvement and ambitions were made clear.

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, the Forum has decided to reject the complaint.

In this regard:-

- The Forum noted that the context for the interview was a newspaper article wherein Cllr. O'Connell wrote about her own experience of dealing with a complicated pregnancy. From its review of the programme, the Forum found that the majority of the interview was focused on her personal experiences and, in this regard, the interview included discussions on, amongst other matters, the medical problems encountered by the interviewee, their impact on her and her husband and on the potential impact on the health prospects of the baby to be born, including its viability.

The Forum found that during the interview, the presenter approached the topic with a view to facilitating the expression by the guest of her own personal story, how she dealt with the experience and its impact on her political beliefs. In particular, the Forum found that her experience led the interviewee to hold the position that abortion on demand should be permitted in Ireland, subject to certain restrictions. The Forum found that this position was explored by the presenter in terms of its potential impact on her political career and her prospects in the context of the forthcoming *General Election*. The Forum found no evidence that the presenter expressed a partisan view on the topic under discussion.

- The Forum concluded from its review of the programme that the focus of the interview was predominantly on the interviewee's personal experiences and how they shaped her own personal political views on abortion. While the Forum agreed that the content constituted current affairs, it also had regard to the fact that there is no automatic requirement to challenge the views of a contributor on a current affairs topic. For this reason, the Forum found that the approach to the interview by the presenter was fair, objective and impartial.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. W. L. Mongey

Ref. Nos. 140/15 and 141/15

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ Radio 1	140/15 News at One - Headlines 141/15 Drivetime - News Headlines	28 th August 2015

1. Programme

The complaints concern the headlines on *News at One* and *Drivetime*, which are news and current affairs programmes and are broadcast each day on *RTÉ Radio 1*. The complaints relate to a report on the deaths of 71 people found in an abandoned lorry in Austria.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48(1)(b) (offence and harm); the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.17, 4.19, 4.22 and 4.28); the *BAI Code of Programme Standards* (Principle 3: Protection from Harm and Principle 5: Persons and Groups in Society).

3. Complaint Summary

The complainant states that in both headlines on *News at One* and *Drivetime*, RTÉ failed to mention the male victims among the 71 deaths. The complainant states that some 59 men, 8 women and 4 children were among the dead. The presence of men among the dead was omitted from the headlines and instead the listeners were forced to infer their unspoken presence. The complainant believes that the coverage therefore was unfair as it:

- Airbrushed out most of the victims on the basis of their gender;
- It strongly implied that the male victims were of lesser importance than the others;
- It was not a one-off and was repeated at various times during the day thereby cementing the bias.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Only an acknowledgement of the complaint was received by the complainant. RTÉ state that the delay in a response being sent to the complainant was due to an internal error and apologies have been offered to the complainant.

Broadcasting Complaint Decisions

RTÉ does not accept that coverage of this news items was unfair or that it reflected any bias against men or that it “*airbrushed out*” most of the victims on the basis of their gender or that it implied that the male victims were of lesser importance than the others. It has been repeatedly stated by those working on the ground that a majority of migrants/asylum seekers are male. RTÉ believe this is known by the general public.

4.2 Broadcaster’s Response to BAI

RTÉ state that the two news items complained of reported on “*the deaths of seventy-one people, including eight women and four children*” found in an abandoned lorry in Austria.

Listeners, all of them accustomed to such a form of words, will have very clearly understood that eight women, four children (of unspecified gender) and fifty-nine men had died. There was, therefore, no omission or failure to acknowledge the male victims. Nor was there the slightest implication that any one category of victims was “*of lesser importance*” than others, as claimed by the complainant. The broadcaster states the following in respect of each of the relevant rules and principles:-

- **Rule 4.1:** The news reports were objective and impartial and contained no expression whatsoever of the broadcaster’s views.
- **Rule 4.17:** There was no inaccuracy in either report and the complaints do not indicate any such inaccuracy.
- **Rule 4.19:** The reports contained no misrepresentation of views or facts and included clear and accurate reporting of the facts, which could not have been in any way misleading or have led to misunderstanding, whether in substance or in tone. The complainant does not give evidence of any such breach.
- **Rule 4.22:** Both items were news reports, both within news bulletin. None were in a current affairs format, nor were they presented as such. These reports contained no expression whatsoever by newsreader or reporter of their own views.
- **Rule 4.28:** The broadcasts adhered to all legislative requirements and the complainant has not provided any evidence of any such failure.
- **Principle 3:** The complainant does not demonstrate how, in reporting the deaths of women, children and men, these broadcasts caused harm in any way whatsoever.
- **Principle 5:** Nowhere in either of the reports was there any support or condoning of discrimination against any person or group in society

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs), Section 48(1)(b) (offence and harm), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.17, 4.19, 4.22 and 4.28) and the *BAI Code of Programme Standards* (Principle 3 and 5), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that the complaints relate to two factual news broadcasts about the deaths of 71 refugees, whose bodies were found in a truck in Austria. The members noted that both reports quoted *Austrian Interior Minister* Johanna Mikl-Leitner as saying “*the deaths of 71 people, including 8 women and 4 children found in an abandoned lorry in Austria should serve as a wake up call...*” and that the complainant felt that the failure to mention the male victims was unfair and implied that the male victims were less important than the female victims.
- The members noted that both news reports were factually accurate and that the comments which the complainant took issue with were attributed to the *Austrian Interior Minister* and could not reasonably be seen as being an expression of the presenter or broadcaster’s own views. Further, the fact that the broadcast did not specify the number of male victims could not be reasonably seen as infringing the requirements for news to be objective and impartial. The members also noted that the complainant did not demonstrate how the reports caused harm or how the content stigmatised, discriminated or incited hatred against any persons or groups in society.
- In view of the above, the Forum was of the opinion that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs), Section 48 (1) (b) (offence and harm), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.17, 4.19, 4.22 and 4.28) and the *BAI Code of Programme Standards* (Principle 3 and 5), in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaints made by: Mr. Anthony Donnelly

Ref. No. 143/15

Station:

RTÉ Radio 1

Programme:

Morning Ireland

Date:

18th September 2015

1. Programme

The complaint concerns *Morning Ireland* broadcast weekday mornings on RTÉ Radio 1 from 7am to 9am. The topic discussed was the “Ask Consent” campaign and the interviewee was Mr. Tom Meagher, who, following the murder of his wife, Mrs. Jill Meagher, in Sydney in 2012, has become an advocate for *White Ribbon Ireland*.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48(1)(b) (offence and harm); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Sections 4.17 and 4.19.) and the *BAI Code of Programme Standards* (Principle 5 – Respect for Persons and Groups in Society).

3. Complaint Summary

The complainant claims that:

- This item was a supportive piece to promote the campaign.
- Several statements by the interviewee remained unchallenged.
- The broadcast was misleading and inaccurate.
- The presenter expressed personal opinions which supported and condoned discrimination against a social demographic.

The complainant states that, in his opinion, the interviewee iterated that the campaign was non-gender specific. However, he states that it is his view that this was misleading as the campaign is gender-neutral in name only.

He states that although the campaign has two posters (opposing gender language), it is overwhelmingly presented using either the male-directed poster or with an accompanying photo of Mrs. Meagher, creating a visual link to the male orientation. The complainant states that the tone and language used, and information provided throughout the rest of the interview, contradicted the assertion of gender-neutrality.

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The interviewee asserted that sex without consent (only) is rape, regardless of gender. The complainant claims that this is incorrect. Non-consensual sex by a female with a male is not recognised as rape in Ireland even if non-consent is fully verbalised. The assertion that a male can be raped in this manner is incorrect and very relevant to the topic.

The complainant states that throughout the broadcast, both the presenter and the interviewee represented the crime of rape as being equally applicable to all persons. The complainant states that this misrepresented the fact that non-consensual sex by a female with a male is not a crime.

The complainant states that, during the broadcast, the interviewee referred to a US study and said *“people ...students... were asked would they rape if there were no consequences”*. The study asked male, heterosexual students only, thus rendering the statement both incorrect and misleading. The interviewee also stated that *“31%, almost a third of men would rape if there were no consequences”*. The complainant claims that this is an incorrect assertion, unreasonably extrapolated beyond the confines of the study. The complainant states that the presenter did not attempt to correct this assertion.

The complainant claims that the broadcast condoned, supported and encouraged discrimination, fear and hatred of heterosexual males.

4. Broadcaster’s Response

4.1 Broadcaster’s Response to Complainant

RTÉ states that

- The interviewee, Mr. Tom Meagher, husband of Mrs. Meagher, who was murdered in Australia, was asked by the presenter if this campaign was aimed directly at men, mainly or exclusively. He replied unequivocally that the campaign is non-gender specific. RTÉ therefore takes Mr. Meagher at his word.
- The organisers of the campaign base their approach on the notion that all parties to any relationship should adhere to the principal of consent. Mr. Meagher was very clear on this in his interview.
- In relation to the US study referred to in the interview by Mr. Meagher, RTÉ accepts that this is a discredited study. RTÉ was not aware that Mr. Meagher intended citing this study therefore was no reason to check its veracity. The first RTÉ knew of the study was when the interviewee attempted to cite the figures from it but got tangled up. The presenter decided then to move the interview on as he had no way of verifying what the study contained and it was important to hear what the campaign would actually involve.

RTÉ does not accept that any reasonable-minded listeners would have drawn the conclusion from the interview that 30% of men are rapists. The broadcast did not condone, support or encourage discrimination, fear or hatred of heterosexual males.

Broadcasting Complaint Decisions

4.2 Broadcaster's Response to BAI

RTÉ refers to the response (above) to the initial complaint by the Editor of *Morning Ireland*.

Rule 4.17

The first question asked by the interviewer was: "*Is this a campaign directed against men, mainly or exclusively?*" The interviewee's reply was "*The Ask Consent campaign is not gender-specific . . . It isn't aimed at any gender specifically.*"

The complainant's view of the *Ask Consent* campaign in relation to gender is not relevant to the broadcast which was clear and accurate in respect of the campaign not being gender-specific.

The legal status of 'female-on-male' rape was not a subject of the interview. The subject of the interview was the *Ask Consent* campaign. In the view of that campaign, rape is rape regardless of gender. There were therefore no inaccuracies in that respect.

RTÉ notes that the complaint appears to assume, incorrectly, that the *Ask Consent* campaign was exclusively directed at heterosexuals, for example in relation to the poster on Liberty Hall beginning '*You Asked Her Name*'.

Rule 4.19

Again, the crime of rape as such was not the subject of the interview, whose topic was the *Ask Consent* campaign which targets rape as an unacceptable act, regardless of the gender or sexual orientation of perpetrators or victims.

The study to which reference was made by the interviewee is not and does not claim to be a study of general attitudes to rape amongst the male population of the US, of a college or of any particular location or arena. It is in fact a study of differing responses amongst a clearly stated sample of eighty-six men to questions which do and do not use the term 'rape' though in fact all describing the act. The study has been to a degree the subject of misunderstanding and misreporting and much – though not necessarily all – of the criticism of it has been based on that misreporting and may to an extent underlie the 'discrediting' referred to in the complaint and the initial response on behalf of the programme.

What is relevant in respect of the actual broadcast is that in referring to this study, the interviewee said:

"There was a US study where people were – students were asked would they rape if there were no consequences and it was remarkable the difference in responses based on the language that was used. So when the word 'rape' was used it was 13.6% of men said they, they, sorry, when the word 'rape' was used 31% so almost a third of men said that they would rape if there was no consequences. Sorry, excuse me –"

Broadcasting Complaint Decisions

As can be seen in the study (provided to the BAI in the broadcaster's response) the interviewee essentially conveyed accurately the results of the survey, in which 31.7% of respondents answered 'Yes' when asked if they would force a woman to have sexual intercourse if there would not be any consequences. Although the survey found that respondents would make a distinction between such action and one described to them as 'rape', neither the *Ask Consent* campaign nor any other agency or authority concerned with the subject would make that distinction.

Therefore, the relevance of this particular study to the *Ask Consent* campaign is that the understanding of the range of actions which are properly viewed as rape can be deficient. While this could perhaps have been explained more clearly in the interview, it should be remembered that the interviewee is someone for whom the subject of rape has tragically close relevance, perhaps reflected in the conclusion to his answer at this point and indeed the interviewer's sympathetic response.

It may be noted also that the term '*men*' was used by the interviewee, again accurately, in relation to the male respondents to the study, as a specific example of troubling attitudes to the definition of rape. The term did not refer to men generally, as a group in society.

RTÉ notes also that the interviewee did not alert the programme to the fact that he would cite the study, not in the briefing he gave the night before, nor in the original communication to the programme. The programme therefore had no reason to check the background to the study or the reaction to it, and therefore no duty of care in this respect was breached or ignored.

RTÉ does not accept that reasonable-minded listeners would have drawn the conclusion from the interview that thirty per cent of all men are rapists.

Principle 5

RTÉ claims that the broadcast did not misrepresent any group in society. Nor did it condone, support, or encourage discrimination fear or hatred of any section of the community, including heterosexual males. They state that it presented a male interviewee with immediate and terrible experience of the impact of sexual violence whose sole concern and goal is the reduction and eventual elimination of such violence whether directed towards or perpetrated by men or women. The only sections of society of whom the interviewee was critical in any way were rapists and those who would condone rape.

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs), Section 48(1)(b) (offence and harm), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.17 and 4.19) and the *BAI Code of Programme Standards* (Principle 5), the Forum has decided to reject the complaint.

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In this regard:

- The topic of the discussion was a new campaign “*Ask Consent*”, which was announced by Minister Francis Fitzgerald T.D. on the morning of the broadcast. The piece was introduced by the presenter, who briefly summarised the aims of the campaign. The Forum noted that this introduction was factually accurate.
- The Forum noted that the presenter then interviewed Mr. Tom Meagher, who is involved in the *White Ribbon* campaign, and is supporting the *Ask Consent* campaign. The complainant felt that the interviewee’s statement that “*the campaign is non-gender specific*” is misleading as, in the view of the complainant, the campaign is not gender neutral.

The Forum noted that the campaign is being advertised as a gender neutral campaign and the interviewee was iterating this stance. The members were not of the view that the Mr. Meagher’s comment was inaccurate or misleading.

- The complainant was of the view that the presenter and interviewee mislead the audience by asserting that sex without consent is rape regardless of gender as, he states, non-consensual sex perpetrated by a woman against a man is not a crime. The members noted that the comments in question were made in the context of the campaign being discussed and, in particular, one of the campaign slogans “*sex without consent is rape*”. The Forum was of the view that the presenter was very clear as to the context of the discussion and the comments made could not be reasonably considered as being misleading to the audience.
- The complainant was of the view that the interviewee’s reference to the findings of a US study regarding rape was inaccurate and misleading. The Forum noted that the interviewee was not clear about the parameters of the US study and acknowledged that some clarification regarding the study may have helped to contextualise the findings. However, the members noted that the interviewee was somewhat tongue-tied when commenting on the study and were of the view that the presenter made a comment regarding the results being “*scary*” in an attempt to move the discussion on.

The Forum was mindful of who the interviewee was and the nature of his contribution. At the outset of the piece the presenter made it clear to listeners that Mr. Meagher became involved in the *White Ribbon* and *Ask Consent* campaigns as a result of a personal tragedy and, in this regard the Forum were of the view that audiences would be clear about the nature of Mr. Meagher’s contribution and the type of interview to expect and, in this context, the members did not believe that his reference to the study would have been misleading to listeners or could be considered as condoning discrimination or inciting hatred of men.

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- In view of the above, the Forum was of the opinion that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) Section 48(1)(b) (offence and harm), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 17 and 4.19) or the *BAI Code of Programme Standards* (Principle 5), in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaints made by: Mr. David Walsh

Ref. No. 144/15

Station:

Programme:

Date:

RTÉ Radio 1

Morning Ireland

18th September 2015

1. Programme

The complaint concerns *Morning Ireland*, which is broadcast weekday mornings on RTÉ Radio 1 from 7am to 9am. The topic discussed was the “*Ask Consent*” campaign and the interviewee was Mr. Tom Meagher, who, following the murder of his wife, Mrs. Jill Meagher, in Sydney in 2012, has become an advocate for *White Ribbon Ireland*.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48(1)(b) (offence and harm); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Sections 4.17, 4.19 and 4.20) and the *BAI Code of Programme Standards* (Principle 5 – Respect for Persons and Groups in Society).

3. Complaint Summary

The complainant claims that:

- This item was a supportive piece to promote the campaign.
- Several statements by the interviewee remained unchallenged.
- The broadcast was misleading and inaccurate.
- The presenter expressed personal opinion which supported and condoned discrimination against a social demographic.

The complainant states that, in his opinion, the interviewee iterated that the campaign was non-gender specific. However, he states that it is his view that this was misleading as the campaign is gender-neutral in name only.

He states that although the campaign has two posters (opposing gender language), it is overwhelmingly presented using either the male-directed poster or with an accompanying photo of Mrs. Meagher, creating a visual link to the male orientation. The complainant states that the tone and language used, and information provided throughout the rest of the interview, contradicted the assertion of gender-neutrality.

Broadcasting Complaint Decisions

The interviewee asserted that sex without consent (only) is rape, regardless of gender. The complainant claims that this is incorrect. Non-consensual sex by a female with a male is not recognised as rape in Ireland even if non-consent is fully verbalised. The assertion that a male can be raped in this manner is incorrect and very relevant to the topic.

Throughout the broadcast, both the presenter and the interviewee represented the crime of rape as being equally applicable to all persons. This misrepresented the fact that non-consensual sex by a female with a male is not a crime.

The complainant states that, during the broadcast, the interviewee referred to a US study and said *“people ...students... were asked would they rape if there were no consequences”*. The study asked male, heterosexual students only, thus rendering the statement both incorrect and misleading. The interviewee also stated that *“31%, almost a third of men would rape if there were no consequences”*. The complainant claims that this is an incorrect assertion, unreasonably extrapolated beyond the confines of the study. The complainant states that the presenter did not attempt to correct this assertion.

The complainant claims that the broadcast condoned, supported and encouraged discrimination, fear and hatred of heterosexual males.

4. Broadcaster’s Response

4.1 Broadcaster’s Response to Complainant

RTÉ states that

- The interviewee, Mr. Tom Meagher, husband of Mrs. Meagher, who was murdered in Australia, was asked by the presenter if this campaign was aimed directly at men, mainly or exclusively. He replied unequivocally that the campaign is non-gender specific. RTÉ therefore takes Mr. Meagher at his word.
- The organisers of the campaign base their approach on the notion that all parties to any relationship should adhere to the principal of consent. Mr. Meagher was very clear on this in his interview.
- In relation to the US study referred to in the interview by Mr. Meagher, RTÉ accepts that this is a discredited study. RTÉ was not aware that Mr. Meagher intended citing this study therefore was no reason to check its veracity. The first RTÉ knew of the study was when the interviewee attempted to cite the figures from it but got tangled up. The presenter decided then to move the interview on as he had no way of verifying what the study contained and it was important to hear what the campaign would actually involve.

RTÉ does not accept that any reasonable-minded listeners would have drawn the conclusion from the interview that 30% of men are rapists. The broadcast did not condone, support or encourage discrimination, fear or hatred of heterosexual males.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response (above) to the initial complaint by the Editor of *Morning Ireland*.

Rule 4.17

The first question asked by the interviewer was: "*Is this a campaign directed against men, mainly or exclusively?*" The interviewee's reply was "*The Ask Consent campaign is not gender-specific It isn't aimed at any gender specifically.*"

The complainant's view of the *Ask Consent* campaign in relation to gender is not relevant to the broadcast which was clear and accurate in respect of the campaign not being gender-specific.

The legal status of 'female-on-male' rape was not a subject of the interview. The subject of the interview was the *Ask Consent* campaign. In the view of that campaign, rape is rape regardless of gender. There were therefore no inaccuracies in that respect.

RTÉ notes that the complaint appears to assume, incorrectly, that the *Ask Consent* campaign was exclusively directed at heterosexuals, for example in relation to the poster on Liberty Hall beginning '*You Asked Her Name*'.

Rule 4.19

Again, the crime of rape as such was not the subject of the interview, whose topic was the *Ask Consent* campaign which targets rape as an unacceptable act, regardless of the gender or sexual orientation of perpetrators or victims.

The study to which reference was made by the interviewee is not and does not claim to be a study of general attitudes to rape amongst the male population of the US, of a college or of any particular location or arena. It is in fact a study of differing responses amongst a clearly stated sample of eighty-six men to questions which do and do not use the term 'rape' though in fact all describing the act. The study has been to a degree the subject of misunderstanding and misreporting and much – though not necessarily all – of the criticism of it has been based on that misreporting and may to an extent underlie the 'discrediting' referred to in the complaint and the initial response on behalf of the programme.

What is relevant in respect of the actual broadcast is that in referring to this study, the interviewee said:

"There was a US study where people were – students were asked would they rape if there were no consequences and it was remarkable the difference in responses based on the language that was used. So when the word 'rape' was used it was 13.6% of men said they, they, sorry, when the word 'rape' was used 31% so almost a third of men said that they would rape if there was no consequences. Sorry, excuse me –"

Broadcasting Complaint Decisions

As can be seen in the study (provided to the BAI in the broadcaster's response) the interviewee essentially conveyed accurately the results of the survey, in which 31.7% of respondents answered 'Yes' when asked if they would force a woman to have sexual intercourse if there would not be any consequences. Although the survey found that respondents would make a distinction between such action and one described to them as 'rape', neither the *Ask Consent* campaign nor any other agency or authority concerned with the subject would make that distinction. Therefore, the relevance of this particular study to the *Ask Consent* campaign is that the understanding of the range of actions which are properly viewed as rape can be deficient.

While this could perhaps have been explained more clearly in the interview, it should be remembered that the interviewee is someone for whom the subject of rape has tragically close relevance, perhaps reflected in the conclusion to his answer at this point and indeed the interviewer's sympathetic response.

It may be noted also that the term 'men' was used by the interviewee, again accurately, in relation to the male respondents to the study, as a specific example of troubling attitudes to the definition of rape. The term did not refer to men generally, as a group in society.

RTÉ notes also that the interviewee did not alert the programme to the fact that he would cite the study, not in the briefing he gave the night before, nor in the original communication to the programme. The programme therefore had no reason to check the background to the study or the reaction to it, and therefore no duty of care in this respect was breached or ignored.

RTÉ does not accept that reasonable-minded listeners would have drawn the conclusion from the interview that thirty per cent of all men are rapists.

4.20

In the view of RTÉ, no significant mistake was made that required correction.

Principle 5

RTÉ claims that the broadcast did not misrepresent any group in society. Nor did it condone, support, or encourage discrimination fear or hatred of any section of the community, including heterosexual males. They state that it presented a male interviewee with immediate and terrible experience of the impact of sexual violence whose sole concern and goal is the reduction and eventual elimination of such violence whether directed towards or perpetrated by men or women. The only sections of society of whom the interviewee was critical in any way were rapists and those who would condone rape.

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs), Section 48(1)(b) (offence and harm), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.17 and 4.19) and the *BAI Code of Programme Standards* (Principle 5), the Forum has decided to reject the complaint.

Broadcasting Complaint Decisions

In this regard:

- The topic of the discussion was a new campaign “*Ask Consent*”, which was announced by Minister Francis Fitzgerald T.D. on the morning of the broadcast. The piece was introduced by the presenter, who briefly summarised the aims of the campaign. The Forum noted that this introduction was factually accurate.
- The Forum noted that the presenter then interviewed Mr. Tom Meagher, who is involved in the *White Ribbon* campaign, and is supporting the *Ask Consent* campaign. The complainant felt that the interviewee’s statement that “*the campaign is non-gender specific*” is misleading as, in the view of the complainant, the campaign is not gender neutral.

The Forum noted that the campaign is being advertised as a gender neutral campaign and the interviewee was iterating this stance. The members were not of the view that the Mr. Meagher’s comment was inaccurate or misleading.

- The complainant was of the view that the presenter and interviewee mislead the audience by asserting that sex without consent is rape regardless of gender as, he states, non-consensual sex perpetrated by a woman against a man is not a crime. The members noted that the comments in question were made in the context of the campaign being discussed and, in particular, one of the campaign slogans “*sex without consent is rape*”. The Forum was of the view that the presenter was very clear as to the context of the discussion and the comments made could not be reasonably considered as being misleading to the audience.
- The complainant was of the view that the interviewee’s reference to the findings of a US study regarding rape was inaccurate and misleading. The Forum noted that the interviewee was not clear about the parameters of the US study and acknowledged that some clarification regarding the study may have helped to contextualise the findings. However, the members noted that the interviewee was somewhat tongue-tied when commenting on the study and were of the view that the presenter made a comment regarding the results being “*scary*” in an attempt to move the discussion on.

The Forum was mindful of who the interviewee was and the nature of his contribution. At the outset of the piece the presenter made it clear to listeners that Mr. Meagher became involved in the *White Ribbon* and *Ask Consent* campaigns as a result of a personal tragedy and, in this regard the Forum were of the view that audiences would be clear about the nature of Mr. Meagher’s contribution and the type of interview to expect and, in this context, the members did not believe that his reference to the study would have been misleading to listeners or could be considered as condoning discrimination or inciting hatred of men.

- When considering the complaint, it was the view of the Forum that the complainant had failed to provide any rationale as to how the content did not comply with Rules 4.20 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

Broadcasting Complaint Decisions

- In view of the above, the Forum was of the opinion that the programme did not infringe the requirements of the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 17 and 4.19) or the *BAI Code of Programme Standards* (Principle 5), in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Ted O’Keeffe

Ref. No. 146/15 and 147/15

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
Newstalk 106	Off the Ball	1st November 2015
		3 rd November 2015

1. Programme

The complaint concerns *Off the Ball*, which is a sports programme broadcast each weekday evening from 7am to 10pm and on Saturday and Sunday afternoons. The complaint refers to the language used in the introduction to the programme.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009 Section (48(1)(b) harm and offence); *BAI Code of Programme Standards* (Principle 1 - Respect for Community Standards).

3. Complaint Summary

The complainant states that he objects to the coarse expletives used in the introduction to this programme. In particular is the use of the word “*bollocks*” played from a previous interview with Mr. Paul Kimmage and a quote from the boxer Mr. Bernard Hopkins stating “*I will guarantee that I would give him a free plastic surgery facelift.*” The complainant believes these are offensive words used on national radio especially when young people would be listening. He states that, apart from the vulgarity of the words, their use in the context of sport demeans that activity and reduces it to almost the level of hooliganism. The complainant states that his complaint hinges on the use of these words week after week which he believes encourages thuggery in sport.

4. Broadcaster’s Response

4.1 Broadcaster’s Response to Complainant

Newstalk states that the quote used, including the word “*bollocks*”, emanates from an interview with Mr. Paul Kimmage and is a significant piece of Irish sports history, dating back to a time when Mr. Kimmage and other Irish journalists led a crusade against drugs in sport. As sports fans, *Newstalk*, denounces cheating in sport and playing that clip featuring Mr. Kimmage at the very outset of the show, sets the tone for the listener. They understand ‘*Off the Ball*’ will deliver a no-nonsense approach to analysis and conversation around all aspects of sport.

Newstalk refutes the idea that the use of this quote is either in poor taste or that it reflects in any way, a lack of intelligence on the part of listeners.

Broadcasting Complaint Decisions

4.2 Broadcaster's Response to BAI

Newstalk states that there are three different opening sequences used for “*Off the Ball*” and they are chosen randomly for each programme.

One of the opening sequences that are the subject of this complaint is comprised of three quotes, from Mr. Roy Keane, Mr. Paul Kimmage and from Mr. Ronan O’Gara. The quote from Mr. Kimmage is as follows:

“He’s welcome back by all the muppets in the press room and he deserves another chance, he does in his “bollocks.”

The complainant takes issue with a quote used in another opening sequence, which is a quote from Mr. Hopkins, stating;

“But if he steps in the ring with Bernard Hopkins, I will guarantee that I would give him a free plastic surgery facelift”

In respect of the complaint in relation to the use of the word “*bollocks*” which is in the Mr. Kimmage quote, the reason this quote is used is that *Newstalk* feels that this represents the attitude of many Irish sports journalists and fans who are robust in their views against drugs in sport.

The broadcaster states that, as a sports show, it is important to make this view known and set the tone for the listener. The word is not used in a gratuitous way. The quote is used to provide context and to set the tone and style of the programme.

In relation to both quotes, *Newstalk* does not accept that they are offensive in a manner that would infringe general community standards and what could be reasonably considered unduly offensive. Principle 1 of the *BAI Code of Programme Standards* acknowledges the importance of editorial independence and freedom and the entitlement of audiences to a diverse range of programming.

Newstalk claims that the programme style and audience expectation justify the use of the quotes and as a broadcaster, *Newstalk* is obliged to be provocative and contribute to the awareness that society has of itself of its dynamic and changing character and of its place in the modern world. The show deals with topics within the world of sport that are controversial and this often evolves into heated and spirited debates. That is what makes “*Off the Ball*’s” style as a sports show so unique.

Newstalk states that it wholly respects and indeed accepts the obligation to adhere to the BAI codes and not to cause widespread offence. *Newstalk* does not accept that this programme is encouraging thuggery in sport as the complainant suggests. There is a large body of content/interviews which appear on “*Off the Ball*” on a regular basis which proves that *Newstalk* challenges thuggery in sport.

Broadcasting Complaint Decisions

Aside from the above points, having regard to the appropriateness and the justification for the inclusion of the language complained of, *Newstalk* submits that the show is aimed at an adult audience and is an irreverent sports programme with a tongue in cheek style and the target adult audience are aware of the tone, context and style of the programme.

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(b) (offence and harm) and the *BAI Code of Programme Standards* (Principle 1 - Respect for Community Standards), the Forum has decided to reject the complaint.

In this regard:

- The Forum has regard to the programme, the channel and the audience expectations for this programme. It noted that the programme, and the channel, is aimed at an adult audience with a strong interest in sports. Furthermore, it was the view of the Forum that the style of the programme is edgy and the presenting style and the overall editorial approach reflects this approach. In this context, regular audiences would be familiar with this approach.
- In terms of the language used, the Forum found that, given the channel and the likely audience, the coarse language used was mild and of the sort commonly heard in day-to-day conversations. In terms of the other references, the Forum was of the view that while they may be viewed as expressing coarse sentiments, they had a context and reflected a passion for sport on the part of those expressing these views. The Forum found that the language and the sentiments expressed were appropriate in the context of the programme style and noted that they were included at the introduction of the programme with a view to setting the tone for the programme.
- While some audience members may have found the content vulgar and offensive, the Forum did not consider the content as that which would cause undue offence such that a finding against the broadcaster that the programme infringed the Broadcasting Act or the *BAI Code of Programme Standards* (Principle 1 - Respect for Community Standards) would be warranted. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Seán Healy

Ref. No. 148/15

Station:

Red FM

Programme:

The Neil Prendeville Show

Date:

22nd October 2015

1. Programme

The complaint concerns *The Neil Prendeville Show*, which is a weekday talk show which incorporates news and current affairs which is broadcast from 9am to 12pm. The complaint refers to a discussion with a listener regarding the termination of a pregnancy.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009 Section 48(1)(a) (fairness, objectivity and impartiality in news and current affairs) and Section 48(1)(b)(harm and offence); the *BAI Code of Programme Standards* - Principle 1 (Respect for Community Standards) and Principle 5 (Respect for Persons and Groups in Society).

3. Complaint Summary

The complainant states that during a discussion regarding the termination of a pregnancy, a caller to the show attempted to give a scientific or biological perspective to the question of when a fertilised egg becomes a human being. The complainant states that the context for this question is the fact that, in the caller's view, the cycle of life commences when the woman's egg is fertilised.

The complainant states that the presenter claimed that death broke that cycle and the caller responded by saying that death was not an issue in the point he was trying to make. The complainant states that the presenter then asked about the caller's religious persuasion and the caller replied that his religious background had nothing to do with him trying to make his point. The complainant states that the presenter then made remarks to the effect that the point being made by the caller was above the presenter's head and he, the presenter, maintained that the caller was 'obtuse' and that his point was also above the intelligence of most of his listeners. The complainant states that the definition of 'obtuse' is '*simple minded, stupid, or dim witted*'. The complainant states that not only did the presenter insult the caller, he also insulted the complainant and other listeners.

The complainant felt the interview with the caller was offensive and unprofessional. The complainant is unhappy that no response was received by him from Red FM.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Red FM states that due to a technical and administrative error they did not receive the emails that were sent to complaints@redfm.ie. This they state is the only reason they did not respond to the complainant in the timeframe stipulated under their Code of Practice for Complaints Handling. They further state they were not aware of the complaint, except for the initial complaint that was emailed to neil@redfm.ie, which was not channelled through their dedicated complaints handling email.

4.2 Broadcaster's Response to BAI

Red FM states that *The Neil Prendeville Show* was presented on this day by Mr. Colm Moore. The station acknowledges that the presenter did describe the caller as "obtuse". The broadcaster states that the use of the word was meant to indicate that the caller was being indirect in his description of the item in question. The presenter in no way meant that the caller was "simple minded or stupid". The broadcaster states that the presenter was attempting to let the caller know that his description was, perhaps, too difficult for the listeners to understand. The broadcaster states that many of the items discussed on *The Neil Prendeville Show* can be complex issues and it is the aim of the show to make these items as accessible as possible. The broadcaster states that it is regrettable that the complainant feels they "insulted" all their listeners. Cork's Red FM states that it does, at all times, respect their listeners and would never wish to insult them. Red FM states that they did not receive a complaint from the caller in question.

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a) (*fairness, objectivity and impartiality in current affairs*) and the *BAI Code of Programme Standards – Principle 1 (Respect for Community Standards) and Principle 5 (Respect for Persons and Groups in Society)*, the Forum has decided to reject the complaint.

In this regard:

- The Forum was mindful that this is a phone-in type programme when callers are invited to contribute or to debate the issues raised. In this case, the caller was well versed in the topic and put forward facts to support his argument in a forthright and vigorous style. The Forum found that the presenter challenged the caller's arguments in a robust manner, which is the norm for this type of programme. The Forum noted that the caller was given ample time to explain his position on the subject.

Broadcasting Complaint Decisions

- The Forum would acknowledge that the presenter did state that the caller was being 'obtuse'. However, he followed this by declaring that he, the presenter, couldn't understand what the caller was talking about and he believed that neither would many of the listeners. The debate continued with both sides robustly challenging the other. The Forum acknowledged that this was a vigorous debate. However, both the presenter and the caller contributed in an equally dynamic fashion and there was nothing to indicate that the caller was impeded in communicating his opinions.
- In view of the above, the members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009, Sections *BAI Code of Programme Standards – Principle 1 (Respect for Community Standards) and Principle 5 (Respect for Persons and Groups in Society)*, accordingly, the complaint was rejected.
- When considering the complaint, it was the view of the Forum that the complainant had failed to provide any rationale as to how the content did not comply Section 48(1)(a) (*fairness, objectivity and impartiality in current affairs*).

Broadcasting Complaint Decisions

Complaint made by: Mr. Brendan O' Regan

Ref. No. 150/15

Station:

RTÉ Radio 1

Programme:

The Ray D'Arcy Show

Date:

5th October 2015

1. Programme

The complaint concerns *The Ray D'Arcy show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3pm to 4.30pm. The discussion focused on a book called '*Bare: Irish Women's Sexual Fantasies*'.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009 Section (48(1)(b) (harm and offence); the *BAI Code of Programme Standards* (Principles 1, 2 and 4).

3. Complaint Summary

The complainant claims that the programme included some very graphic and explicit sexual fantasies and was most inappropriate for afternoon listening, especially at a time when children are in cars or buses coming home from school. The complainant states that the offence was further compounded by the fact that no specific warning was issued about the content in advance. The complainant believes the item offends against general decency and against child welfare because of the unsuitable timing.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ issued an apology for the late submission of a response to the complaint and put this down to an error on the part of the broadcaster.

RTÉ state that the book '*Bare*' is a publication which features Irish women's sexual fantasies and is a compilation of stories from ordinary Irish women. They state that the guest, Ms. Julianne Daly, told the presenter about how empowering the experience of compiling the book was for her as a normal Irish woman. As Julianne said on the programme, the book is targeted at "*regular Irish women*".

The broadcaster states that Principle 1 of the *BAI Code of Programming Standards* recognises that community standards are ever evolving and broadcasting must be facilitated in representing the rich diversity, plurality and realities of contemporary Irish society. This may sometimes involve editorial content which might cause offence to some listeners but is justified for creative or editorial reasons.

Broadcasting Complaint Decisions

The broadcaster states that, with regard to the passages from the book, they were selected with a view to audience sensitivity. There were no graphic sexual phrases used and the description of lovemaking was tastefully written. They were also clearly targeted at a regular Irish audience, including one about a fantasy regarding a GAA player.

RTÉ believes that Principle 2 of the BAI Code may also have some relevance here with regard to the likely expectations of the audience as to the nature of the particular programme. They state that *The Ray D'Arcy Show* frequently covers a wide diversity of items of reference to the broad audience, and the sexual and romantic relationships of Irish adults are a subject frequently covered. For example a sex therapist is on the show every month. She answers listener's queries and it is handled in a sensitive and straightforward way.

The broadcaster states that the three passages that were read out on the show detailed consensual sexual activity and did not transgress Principle 3 of the *BAI Code of Programming Standards* which cautions against the depiction of sexual violence.

4.2 Broadcaster's Response to BAI

RTÉ issued an apology for the late submission of a response to the complaint and put this down to an error on the part of the broadcaster.

RTÉ state that the book '*Bare*' is publication which features Irish women's sexual fantasies and is a compilation of stories from ordinary Irish women. They state that the guest, Julianne, told the presenter about how empowering the experience of compiling the book was for her as a normal Irish woman. As Julianne said on the programme, the book is targeted at "*regular Irish women*".

The broadcaster states that **Principle 1** of the *BAI Code of Programming Standards* recognises that community standards are ever evolving and broadcasting must be facilitated in representing the rich diversity, plurality and realities of contemporary Irish society. This may sometimes involve editorial content which might cause offence to some listeners but is justified for creative or editorial reasons.

The broadcaster states that, with regard to the passages from the book, they were selected with a view to audience sensitivity. There were no graphic sexual phrases used and the description of lovemaking was tastefully written. They were also clearly targeted at a regular Irish audience, including one about a fantasy regarding a GAA player.

RTÉ believes that **Principle 2** of the BAI Code may also have some relevance here with regard to the likely expectations of the audience as to the nature of the particular programme. They state that *The Ray D'Arcy Show* frequently covers a wide diversity of items of reference to the broad audience, and the sexual and romantic relationships of Irish adults are a subject frequently covered. For example a sex therapist is on the show every month. She answers listener's queries and it is handled in a sensitive and straightforward way.

The broadcaster states that the three passages that were read out on the show detailed consensual sexual activity and did not transgress **Principle 3** of the *BAI Code of Programming Standards* which cautions against the depiction of sexual violence.

Broadcasting Complaint Decisions

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(b) (offence and harm) and the *BAI Code of Programme Standards* (Principles 1, 2 and 4), the Forum has decided to reject the complaint.

In this regard:

- The complaint is regarding an interview with Ms. Julianne Daly, editor of the book '*Bare*', which contains a collection of sexual fantasies from Irish women.

Principle 1 of the *BAI Code of Programme Standards* requires broadcasters to take care in broadcasting descriptions of sexual content in programme material. The Forum noted that the discussion did not contain any graphic descriptions or explicit language.

- The members also noted that the context for '*Bare*' was a new publication and, in this context, the item was topical and the inclusion of the extracts were editorially justified.
- In considering this complaint, the Forum had regard for the channel and programme type and were of the view that regular listeners would expect interviews and discussions to be aimed at adults. The members noted that some listeners may have found the content of the broadcast offensive and some viewers may have benefited from a warning at the beginning of the piece. However, the Forum noted that the content of the discussion was mild and that the first extract wasn't read out until five minutes into the interview, at which point listeners would have been fully aware of the nature of the discussion.
- When considering the complaint, it was the view of the Forum that, as the complaint does not concern a children's programme, Principle 4 of the *BAI Code of Programme Standards* was not relevant.
- In view of the above, the Forum was of the opinion that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48 (1) (b) (offence and harm) or the *BAI Code of Programme Standards* (Principles 1, 2 and 4), in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Proinsias MacFhionnain

Ref. No. 153/15, 154/15 & 155/15

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ Radio 1	7am News Bulletin – Morning Ireland Midday News @ 12.01pm Today with Sean O’Rourke	15 th October 2015

1. Programme

The complaints concern the *7am news bulletin on Morning Ireland*, the *Midday News* and an interview on the *Today with Seán O’Rourke* programme. Each programme covers news and current affairs topics. The topic discussed was a series of news reports and two associated interviews reporting on a press release from the *Irish Dental Association* dealing with children’s dental health treatment. The press release stated that new figures indicate that up to 10,000 children under the age of 15 are being hospitalised for dental extractions under general anaesthetic every year in Ireland.

2. Complaint Category

The complaints are submitted under the Broadcasting Act 2009 Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 2, 8, 17, 18, 19, 20 and 22).

3. Complaint Summary

The complainant states that he is making a complaint in respect of coverage by the broadcaster of the contents of a press release from the *Irish Dental Association (IDA)*, which stated that up to 10,000 children has been hospitalised for dental extractions under general anaesthetic every year.

The complainant states that by broadcasting the views of the *IDA* during news bulletins and in other programming, RTÉ aired uncorroborated data from a vested interest as a news item in its highest listenership show and in doing so it failed in its duty to ensure accuracy. The complainant states that, in the news items, RTÉ interpreted accuracy very narrowly. He states that the *IDA* has not produced any evidence since the broadcast for the 10,000 figure.

The complainant also states that it is his opinion that RTÉ took no responsibility for checking the accuracy of the figure before broadcasting it and that RTÉ appears to believe that their only responsibility was to ask the *Health Services Executive (HSE)* if they agree with the figure quoted. The complainant states that RTÉ further claims that it achieved balance by broadcasting the Minister for Health’s view on the *IDA* figure.

Broadcasting Complaint Decisions

The complainant states that there were a number of children under 15 years of age treated in hospitals. However, the question is what figure is correct, the *IDA*'s 10,000 figure or the Minister's figure of 3,500. The complainant states that RTÉ broadcast both figures as if they had equal validity and that this is not balance. He states that RTÉ also claims balance by including an expert with close ties to the *IDA*.

Finally, the complainant states that RTÉ also failed to address the issues during an interview on this topic during the *Today with Seán O'Rourke* programme.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states the report by Ms. Karen Creed on the *Irish Dental Association's (IDA)* claims at all times sought to make clear that they were exactly that – claims. The broadcaster states that the report included phrases, such as '*according to*' and '*indicate that*', which sought to put forward the news item not as a matter of fact but as a report of what was being claimed.

The broadcaster states that, as soon as the *Minister for Health*, Mr. Leo Varadkar T.D. responded to the claims, his rebuttal was broadcast. The Minister was interviewed between half past 8 and 9 am on *Morning Ireland*. The broadcaster states that the 9am summary included the Minister's rebuttal and used a clip of the interview where he elaborated on his argument. A statement by the *HSE* rejecting the claims made by the *IDA* was broadcast on the RTÉ Radio One 12.01pm news summary.

The broadcaster states that the RTÉ news reports of the story attributed the claims to the *IDA* and sought to get a response from the *HSE* before the reports were broadcast. The response from the *HSE* came by e-mail mid-morning and was included in the 12.01pm RTÉ Radio One Summary.

The response from the *HSE* was as follows:-

"The HSE refutes the suggestion by the Irish Dental Association that approximately 10,000 children currently receive general anaesthetic for extractions. The HSE said it believes this figure to be in the region of 3,600 per annum. Dr. John Walsh a paediatric dentist and orthodontist in Blackrock in Dublin said children are not seeing dentists at an early enough age".

4.2 Broadcaster's Response to BAI

RTÉ states in the RTÉ News 7.00am and 8.00am news bulletins and 7.30am and 8.30am news headlines, the figures stated by the *IDA* were accurately ascribed to that organisation. The broadcaster states that it should be noted that RTÉ News attempted without success to get a response to the *IDA*'s statement from the *Health Service Executive (HSE)* before reporting the *IDA* claims.

Broadcasting Complaint Decisions

The broadcaster states that, at 8.48am, *Minister for Health*, Mr. Leo Varadkar T.D. was interviewed on *Morning Ireland*, primarily in relation to other matters. However, he was of course asked to address that morning's claims by the *IDA*. The broadcaster states that he did so, refuting the association's figure of 10,000 children hospitalised annually, saying that he was informed by the *HSE* and the *Chief Dental Officer* that the *IDA* figures were incorrect and giving a figure of 3,600 – “and that includes day cases and may even be an over-estimate”.

The broadcaster states that it may be noted that in the context of the Minister pointing out that the statement by the *IDA* had just been made that morning and that he had asked for it to be investigated, the topic was properly not pursued any further by the interviewer.

The broadcaster states that the Minister's rebuttal of the *IDA* claims was immediately reported in the next news bulletin at 9.00am, stating that “*The Minister for Health Leo Varadkar has disputed claims made by the Irish Dental Association.*” The figures claimed by the *IDA* were given and an excerpt from the Minister's interview, in which he stated the lower figure, was played.

The broadcaster states that at 10.20am on *Today with Sean O'Rourke*, Dr. John Walsh, a specialist paediatric dentist and orthodontist, and Mr. Gerard Kearns, a consultant oral and facial surgeon at St. James' Hospital, were interviewed on their expert professional view in relation to dental care for children. The disparity between the *IDA* and the Minister's figures was referenced; however the dispute between the *IDA* and the Minister was not a significant element of the interview.

The broadcaster states that in the bulletin at 12.01pm, as mentioned above, the *HSE* refutation of the *IDA* figure of 10,000 children receiving dental care under general anaesthetic annually which had been received was reported and the *HSE* figure of 3,600 was given.

RTÉ further states:-

- *Rule 4.1*

The statements by the *IDA*, by the Minister and others were broadcast accurately, objectively and impartially. Interviewing on both *Morning Ireland* and *Today with Seán O'Rourke* was fair, objective and impartial.

- *Rule 4.2*

In both reporting and interviewing, all principles of the Code were adhered to.

- *Rule 4.8*

The views of absent parties were reflected as far – and as promptly – as practicable in both interviewing and reporting.

Broadcasting Complaint Decisions

- *Rule 4.10*

No re-use of material created inaccuracies in RTÉ reporting of statements by the *IDA* and other interested parties. In fact, bulletins were consistently updated in the light of emerging information and other statements.

- *Rule 4.17*

As shown and can be heard, all content was presented with due accuracy, having regard to the circumstances and the facts known at the time of preparing and broadcasting the content.

- *Rule 4.18*

All the broadcasts – news reports and interviews – referred to above were clearly linked through back-referencing on air.

- *Rule 4.19*

Nothing in the statements of the *IDA*, or the Minister, or of any other party was misrepresented in any way at any time or conveyed in language or tone which could have led to misunderstanding of the matters covered.

- *Rule 4.20*

No mistake was made in the reporting or other coverage of the statements of the *IDA*, of the Minister or of any other party.

- *Rule 4.22*

Across the news reports and interviews on the subject, listeners were given access to the widest variety of views available. No view whatsoever was expressed by any reporter or presenter.

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4 - Rules 1,2,8,17,18,19, 20 and 22), the Forum has decided to reject the complaints.

In this regard:-

- Having listened to the broadcasts, the Forum found that the statement first read out on the *7am News bulletin*, did provide the figure of 10,000 children requiring dental treatment in hospital under anaesthetic. However, during the *Morning Ireland* programme, the *Minister for Health* was asked about the figure and was quick to reject it and cited the *Health Service Executive (HSE)* figure of 3,600 as the accurate one.

Broadcasting Complaint Decisions

- The Forum noted that during the following programme '*Today with Sean O'Rourke*' there was an initial discussion on the figures with Dr. John Walsh, a specialist paediatric dentist. The Forum found that Dr. Walsh suggested that there may have been some confusion over the figures and was of the view that the Minister may have been using a subset of the available data.

Dr Walsh stated that 3,300 children were treated under general anaesthetic in the greater Dublin area alone and therefore the balance of only 300 would be the figure for the rest of the country, which he believed would be difficult to perceive as being accurate. The presenter then went on to suggest that clarification would probably be provided later in the day or in the coming days.

- The Forum was of the view that, given the additional report/interviews in the follow-up broadcasts after the initial *7am News Bulletin*, the broadcaster did make efforts to provide balance and further information as the news-story developed. This is in line with the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* which, while including a requirement for due accuracy, recognises that stories will evolve and are not static and will therefore require updating and revision over the course of a broadcast or a news cycle. In the case of this complaint, it was evident that the broadcaster had updated and revised its approach as part of its coverage.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Brendan O'Regan

Ref. Nos. 157/15 & 158/15

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ Radio 1	The Ray D'Arcy Show	15 th October 2015
		16 th October 2015

1. Programme

The complaints concern *The Ray D'Arcy Show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm to 4.30pm. The programmes included interviews with Dr. Peter Boylan on foot of the publication of a book that he had written and with Mr. Ruairi Quinn T.D. in advance of his retirement as a T.D.

2. Complaint Category

The complaints are submitted under the Broadcasting Act 2009 Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 3 and 22).

3. Complaint Summary

The complainant states that both programmes featured, what he describes as 'attacks' on the 8th Amendment of the *Irish Constitution*. He states that the attacks came from Dr. Peter Boylan on the 15th and from Mr. Ruairi Quinn T.D. on the 16th. The complainant states that the interviews amounted to a huge imbalance, partiality and unfairness on a controversial current affairs matter, the topic of abortion. The complainant states that the presenter did almost no challenging of the positions of his guests and seemed to be largely in agreement with them. He states that the interviews were soft and largely supportive of the views of the interviewees on the topic of abortion. The complainant asks why no balancing views were allowed and if pro-life figures are on air, will they be treated to equally soft interviews?

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states that the editorial format of *The Ray D'Arcy Show* consistently includes human interest interviews which explore the personal experience behind current topics.

The editorial format does not generally include the hosting of debates between antagonists and the format of the interviews with Mr. Peter Boylan and Mr. Ruairi Quinn T.D. were conducted in the exploratory, conversational style which is known and expected by the programme's audience. The broadcaster states that a whole host of other issues were covered in both the Ruairi Quinn and Peter Boylan interviews. In the case of Mr. Ruairi Quinn T.D., much of the interview covered educational topics while Mr. Peter Boylan offered advice to pregnant women, as he has a new edition of his book '*The Irish Pregnancy*'.

Broadcasting Complaint Decisions

The broadcaster states that the 8th Amendment and abortion legislation is clearly of relevance to both those men as one is a leading obstetrician and the other was a cabinet member when *The Protection of Life during Pregnancy Act 2013* was implemented.

4.2 Broadcaster's Response to BAI

RTÉ states, in respect of each complaint, the following:

Complaint 157/15

The broadcaster states that the interview with Dr. Peter Boylan, consultant obstetrician and former master of the *National Maternity Hospital*, was structured around the questions of listeners about pregnancy, birth and post-natal care, with the interviewer asking questions to set the wider context for obstetrical care. The broadcaster states that the reference to termination of pregnancy arose in the context of genetic tests which have become available over the forty years of Dr. Boylan's practice. The broadcaster states that he gave his view on the anomalies which arise for him as a medical practitioner in the context of legislation which allows him to give information on termination to women in certain circumstances, allows those women to travel to Britain for a termination, but does not allow termination in this jurisdiction. The broadcaster states that, in the context of an interview on obstetric medicine in Ireland, this was an appropriate and natural aspect of the topic.

The broadcaster states that this reference to termination in the context of a broad interview on medical care in pregnancy did not cause the broadcast to be of a current affairs nature. Nor did the interviewer express his own views on the topic such that a partisan position was advocated.

Complaint 158/15

The broadcaster states that the interview with Mr. Ruairi Quinn TD, prompted by the fact that he is not seeking re-election, ranged over his career as a Dáil deputy and a Government minister, his views on society and on the role of a left-wing party in coalition government.

The broadcaster states that, while inevitably dealing with public affairs, the emphasis and tone of the interview was personal, a human interest item looking back at a lifetime in politics. It naturally touched on current affairs but was not a current affairs item.

The broadcaster states that the interview did touch briefly on the topic of the eighth amendment to the constitution, the subject of the complaint. This was to be expected when dealing with such a long career and that of a politician whose party campaigned against the introduction of that amendment and continues to campaign for its removal. The broadcaster states that the presenter commented, but on what from his point of view is the hypocrisy of allowing women to travel to Britain for a procedure not legal in Ireland. He did not express a partisan position on the subject of abortion. The broadcaster states that the interviewee's comments were also mainly directed not to the subject of abortion but to that of the eighth amendment. He did at one point mention that he was in favour of limited abortion in cases such as fatal foetal abnormality. RTÉ believes that a programme contributor is entitled to express their view on a particular topic and that neither his comments nor any other material in the broadcast resulted in unfairness to any person or organisation.

5. Decisions of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a fairness, objectivity and impartiality in current affairs), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 3 and 22), the Forum has decided to reject the complaints.

In this regard:

157/15 – Interview with Dr. Boylan

- The Forum was of the view that this was a broad ranging discussion with a doctor who has over 40 years' experience in the field of obstetrics. The focus of the interview was based around his experience as a consultant obstetrician and advice in this area, as provided in the book that he had written and which was the context for the interview. The Forum found that the interview accordingly dealt with factual information about pregnancies and the interviewee's professional views on this topic and was a human interest item. In this context, and having reviewed the broadcast, the Forum was of the opinion that the interview did not fall to be considered under the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.
- While noting that the interview included a brief discussion on abortion at the end of the interview, the Forum found that the views expressed by the contributor were factual and set out how current Irish law impacts on medical options open to couples expecting a child and impacts on the professional decisions of obstetricians. This part of the discussion also included reflections on how the Irish laws might be perceived by those who had migrated to Ireland and who have come from countries where couples have greater legal options in respect of the termination of a pregnancy. The Forum found that the comments were relevant in a discussion on obstetrics and did not deal with the issue of abortion from a current affairs perspective.

158/15 – Interview with Mr. Ruairi Quinn T.D.

- The Forum found that this was a wide ranging interview that covered Mr. Ruairi Quinn's private and public life and was, in general, a human interest story. The members were also of the view that given that this was an interview with a T.D. not seeking re-election, it was inevitable that an element of current affairs would be covered. In this context, the part of the interview which touched on Mr. Quinn's views on the 8th Amendment to the Irish Constitution was considered under the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.
- The Forum was of the view that the mention of the removal of the 8th Amendment was inevitable given that Mr. Quinn's party, *The Labour Party*, had campaigned against its introduction and continues to believe in its removal. The presenter did comment on the illegality of abortion in this country, however, the Forum was of the view that this did not constitute a partisan view.

Broadcasting Complaint Decisions

- The Forum concluded from its review of the programme that the focus of the interview was predominantly on the interviewee's personal and political experiences over his lifetime.

While the Forum agreed that some of the content constituted current affairs, it also had regard to the fact that there is no automatic requirement to challenge the views of a contributor on a current affairs topic. For this reason, the Forum found that the approach to the interview by the presenter was fair, objective and impartial.

- In view of the above, the Forum was of the opinion that the programmes did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a fairness, objectivity and impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 3 and 22), in the manner specified by the complainant. Accordingly, the complaints were rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Brendan Cafferty

Ref. No. 1/16

Station:

Programme:

Date:

RTÉ One

Claire Byrne Live

23rd November 2015

1. Programme

The complaint concerns *Claire Byrne Live*, which is current affairs programme broadcast on Monday nights at 9.30pm. The complaint concerns a report on this programme by comedian/satirist Mr. Oliver Callan about *An Taoiseach*, Mr. Enda Kenny T.D's forty years as a member of *Dáil Éireann*.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs) and Section 48(1)(b) (offence and harm); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rule 1) and the *BAI Code of Programme Standards* (Principle 6 – Protection of the Public Interest).

3. Complaint Summary

The complainant states that a report was done by comedian/satirist, Mr. Oliver Callan, about *An Taoiseach*, Mr. Enda Kenny T.D's forty years as a member of *Dáil Éireann*. The complainant states that during the report, Mr. Callan made funny glib gestures, pulled funny faces, made reference to 'Trendy Enda' at least once and, spoke about the 2002 General Election when "Noonan's Baldy Bus crashed". The complainant believes this was personal and insulting of *An Taoiseach*. The complainant states that the report also included comments from people like *Fianna Fáil* T.D, Mr. Willie O'Dea, who, according to the complainant would hardly be objective or *Renua Ireland* T.D. Ms. Lucinda Creighton who left the *Fine Gael* party. The complainant states that Mr. Ivan Yates also has made it clear in his writings that he is no friend of *An Taoiseach*. The complainant states that, at one stage Mr. Callan, under the guise of satire, was shown acting as *An Taoiseach* and taking a phone call permitting rendition flights in Shannon. The complainant believes this was designed to cause harm and offense.

The complainant questions why a report by a comedian was carried on a serious current affairs programme. The complainant states that at the end of the programme, the presenter provided the times of Mr. Callan's radio programme, *Callan's Kicks*, on RTÉ radio. There was nothing about him being a journalist which, the complainant maintains, he is not known as, in the public mind.

Broadcasting Complaint Decisions

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states that this item was a look-back over Mr. Enda Kenny T.D.'s 40 years in *Dáil Éireann* by the journalist and comedian Mr. Oliver Callan. Mr. Callan is a journalist who in recent years has also become well known for his political comedy and satire.

RTÉ believes the piece was fair and impartial outlining many of Mr Enda Kenny T.D's achievements as well as his challenges over the 40 years, including his time as Taoiseach. The interviews consisted of people with a range of perspectives including *Minister of State* Mr. Michael Ring T.D. and Ms. Madeline Taylor Quinn, former T.D. and Senator, both ardent supporters of Mr. Kenny.

RTÉ state that there were some wry comments and snippets from Mr. Callan's comedy TV show, but generally the piece was a straight-forward look at the 40 years Mr. Kenny has spent in the *Dáil* through the eyes of Mr. Callan.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the Executive Producer of *Claire Byrne Live* to the complainant's initial complaint to the broadcaster (above).

RTÉ believe that this authored piece by Mr. Oliver Callan was a fair portrayal of Deputy Enda Kenny's career, including both positive and negative comment.

The broadcaster states that the editorial independence of broadcasters includes the right to choose contributors to programmes. The broadcaster states that *Claire Byrne Live* has established from the first programme in its first series, which included actor Mr. Colin Farrell, that its editorial brief, now familiar to and expected by its audience, will from time to time include less expected commentators on current affairs to the audience.

The broadcaster states that Mr. Callan's appearance was both an example of that editorial approach and also of someone whose education (at Dublin City University) and early career experience (with Today FM) as a journalist equip him to follow the programme's brief of looking back at Deputy Kenny's career. The broadcaster states that it is important to note that, although satirical notes were struck from time to time, the item was not either in structure or content the type of sketch which Mr Callan presents on *Callan's Kicks* but fundamentally a serious and even-handed account of the deputy's rise from youngest member of the *Dáil* to *Father of the Dáil* and *An Taoiseach*.

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a fairness, objectivity and impartiality in current affairs), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1) and the *BAI Code of Programme Standards* (Principle 6 – Protection of the Public Interest), the Forum has decided to reject the complaint.

Broadcasting Complaint Decisions

In this regard:

- While noting that Mr. Callan generally approaches political topics from a satirical perspective, the Forum found that in the case of this report, the approach taken by Mr. Callan in dealing with *An Taoiseach's* time in politics was a mixture of current affairs with comedic elements. The Forum also noted that there was a wide variety of people interviewed, some of whom would have been considered supporters of Mr. Kenny, for example Mr. Michael Ring and Ms. Madeline Taylor-Quinn, along with those with opposing views of him. Taken together, the Forum was of the view that the analysis was rounded and did not lack fairness, objectivity or impartiality.
- The Forum noted that while not all audience members would have found the content humorous, it did not consider the content to be such that it would cause harm and offence in the manner specified by the complainant.
- In view of the above, the Forum was of the opinion that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1) and the *BAI Code of Programme Standards* (Principle 6), in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: **Mr. Cormac McCarthy**

Ref. No. 2/16

Station:

Newstalk 106-108FM

Programme:

Moncrieff

Date:

23rd December 2015

1. Programme

The complaint concerns *Moncrieff*, which is a weekday talk show which includes a mix of phone-ins, text messages and interviews, broadcast from 1.30pm to 4.30pm. The complaint refers to an interview with a sexual therapist.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009 Section 48(1)(b)(harm and offence); the *BAI Code of Programme Standards* - Principle 4 (Protection of Children).

3. Complaint Summary

The complainant states that, given the time of broadcast, the discussion on men's sexual problems was inappropriate. The complainant states that the discussion included reference to the 'death grip' which apparently is something suffered by ardent masturbators, as well as references to orgasms of various sorts, vibrators and much else, in what the complainant describes as a no-holds barred afternoon of sexual discussion.

The complainant further states that, not only were most schools on holiday at the time of broadcast, but Newstalk effectively acknowledged younger listenership in their 2.30pm news break when it was announced that Santa had been given air traffic control clearance and was ready to arrive on Christmas Day (or words to that effect).

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Newstalk 106 – 108fm states that while the topic had its merits, there should have been better consideration to the placement and treatment of it. The production team will be reminded of this for the future. It is never Newstalk's intention to offend.

4.2 Broadcaster's Response to BAI

Newstalk 106-108fm states that the item in question was a serious conversation about a physiological and sexual problem faced by some men. As part of the item, the programme spoke to a professional sexual therapist, Ms. Carlyle Jansen, who dealt with the topic with sensitivity and due regard for our audience.

Broadcasting Complaint Decisions

The broadcaster states that *Moncrieff* regularly contains topics which address a diversity of tastes and interests which exist within listening audiences and aims to facilitate and cater for this diversity. Newstalk see this as a priority but it is never the intention to offend any audience member. The broadcaster states that the topic that is subject of this complaint would fall within the expected style and treatment of the *Moncrieff* programme and the likely expectations of the audience as to what the programme would contain.

Newstalk believes that the treatment of the piece was well handled with a mature approach and is in line with the general light-hearted nature of the programme. The broadcaster states that at no point did the discussion become gratuitous and Newstalk would wholeheartedly disagree with the complainant's contention that it was a '*no-holds barred sexual discussion*'.

Newstalk 106-108fm acknowledges that on occasion young children may be within ear shot of a topic that may not be appropriate and with this in mind, the programme included two extensive warnings in advance of the interview.

The first warning was aired at the very beginning of the programme and included the time that the interview would take place later in the programme, providing more than 30 minutes warning to listeners. The second warning was issued immediately before the interview in order to again give parents and guardians due notice that the upcoming programme material was not suitable for those aged under 18 or with a sensitivity to such topics.

Newstalk believes these very clear aural warnings allowed listeners and guardians to make an informed choice in advance of the item being broadcast, providing sufficient notice as to the content and providing ample opportunity for listeners to change channel.

The broadcaster states that only 2.28% of Newstalk 106-108fm's total audience is Under 18 years of age and of the entire audience to the *Moncrieff* programme, less than 1% are under 18 years of age.

The broadcaster states that, for this reason, this makes it highly unlikely that a significant number of children were exposed to the content.

Newstalk believes that this well researched and presented topical content was treated appropriately with sufficient warnings in advance so as to allow anyone with sensitivities to change channels.

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(b)(harm and offence); the *BAI Code of Programme Standards* - Principle 4 (Protection of Children), the Forum has decided to reject the complaint.

Broadcasting Complaint Decisions

In this regard:

- The Forum found that the presenter gave a clear warning of the upcoming topic at the beginning of the programme and was careful to provide another warning just before the interview began. While noting that the *Moncrieff* show is not a children's programme it was possible, given the holiday period and the time of broadcast, that the audience could have contained more children than would be usual outside of the holiday period.

However, the Forum members believe that the warnings given by the broadcaster was sufficient to ensure the mainly adult audience could take appropriate action should younger listeners be present.

- In view of the above, the Forum was of the opinion that the programme did not infringe the requirements of Broadcasting Act 2009, Section 48(1)(b)(harm and offence); the *BAI Code of Programme Standards* Principle 4 (Protection of Children), in the manner specified by the complainant. Accordingly, the complaint was rejected.

