



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

# Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs

Consultation document  
February 2012





**CONSULTATION DOCUMENT  
DRAFT CODE OF FAIRNESS OBJECTIVITY AND IMPARTIALITY IN  
NEWS AND CURRENT AFFAIRS**

**1<sup>st</sup> February 2012**

## Introduction

This consultation document has been published by the Broadcasting Authority of Ireland (BAI) to accompany the **Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs** (referred to as the Draft Code in this document). The Draft Code has been developed by the BAI further to the requirement to do so under the Broadcasting Act, 2009.

The BAI is now seeking the views of all interested parties with regard to the provisions of the Draft Code, in advance of it being finalised and published. Members of the public and interested groups are asked to read the consultation document and consider the questions contained within it.

## Structure of the Consultation Document

The consultation document is broken out into 5 parts, as follows:

- **Section 1** presents the Introduction and Framework to the Draft Code;
- **Section 2** provides an overview of the draft Code's Objectives and information on how the Draft Code is to be applied;
- **Section 3** details the principles which underpin the fairness, objectivity and impartiality rules;
- **Section 4** looks at the rules themselves and briefly outlines the rationale for their inclusion in the Draft Code;
- **Section 5** presents the Draft Code in its entirety.

## Responding to the Consultation

A series of consultation questions is posed at the end of each of the sections listed above. Respondents are asked to respond to the consultation on the basis of the questions posed. We encourage you to answer all of the questions asked throughout this consultation document. You may however wish to concentrate only on certain aspects of the Draft Code in your consultation response. The BAI welcomes your views on all or any of the questions posed. Responses to the consultation process should be submitted **no later than 5 p.m. on Wednesday 14<sup>th</sup> March, 2012**. Responses can be sent to:

**[fairness@bai.ie](mailto:fairness@bai.ie)**

Alternatively, you can send a written submission to:

**Draft Code of Fairness, Impartiality and Objectivity Consultation,  
Broadcasting Authority of Ireland,  
2-5 Warrington Place,  
Dublin 2.**

The Authority will consider all responses received to the consultation process before deciding the final content of the Code.

## **Consultation and Freedom of Information**

This is a public consultation process and once the submissions have been considered by the Authority, all information submitted will be publicly available on request. However, there may be aspects of your submission which you may wish to make in confidence due to its sensitivity. **If this is the case, when making the submission please identify any information that you do not wish to be publicly disclosed and specify the reasons for its sensitivity.**

Agreements between the BAI and respondents to the consultation, regarding confidential and/or commercially sensitive information, are without prejudice to the BAI's obligations under the Freedom of Information Act, 1997 and the Freedom of Information (Amendment) Act, 2003. If the BAI receives a request for information submitted in confidence, you will be consulted before any decision is made.

## 1. Introduction and Framework to the Code

Section 42 of the Broadcasting Act 2009 requires the BAI to prepare and revise a code, or codes which will govern standards and practices to be observed by broadcasters. The introduction to the Draft Code refers to the specific part of the Act which applies to this Code. It also states who the Code applies to and reminds broadcasters of their duties in relation to the broadcast treatment of news and current affairs. This section of the Draft Code also details the range of matters specified in the legislation which the Authority must have regard to in preparing or revising a Code. Finally, in preparing this Draft Code the Authority had regard to its own objectives as set out in the Act, its Strategy Statement and the existing practice among broadcasters regarding fairness, objectivity and impartiality in the treatment of news and current affairs content. The impact that these considerations have had on the development of the Draft Code is set out.

The boxed text below contains the proposed Introduction and Framework to the Code. You are asked to review this text and to respond to the consultation questions posed:

### Introduction

This Code deals with matters of fairness, objectivity and impartiality in news and current affairs content and is prepared in accordance with sections 42(2)(a) and 42(2)(b) of the Broadcasting Act, 2009 ('the Act').

The Code applies to broadcasters within the jurisdiction of Ireland. It does not apply to other services commonly received in this State, but licensed in the United Kingdom or other jurisdictions.

In observing this Code, broadcasters are reminded of their duties as set out in the Act, specifically requirements in relation to the broadcast treatment of news and current affairs, including matters which are either of public controversy or the subject of current public debate.

In developing this Code, the Authority had regard to a range of legislative and strategic matters which it believes are important in providing a context for the Code now published. **These matters have informed the Authority's approach to drawing up the Code. By extension, therefore, a broadcaster shall have regard to these matters in interpreting and applying the principles and rules as set out here.** The requirement of a broadcaster to have regard to such matters may also assist viewers and listeners when considering whether news and current affairs material broadcast meets the standards to which this Code aspires.

## **The Code and its Framework**

### ***Relevant Legislative Provisions***

Section 42 (3) requires the Authority to have regard to a range of matters in preparing or revising a broadcasting code. The matters contained in the legislation specific to this Code are:

- (i) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
- (ii) the likely expectation of the audience as to the nature of a programme's content can be brought to the attention of potential members of the audience;
- (iii) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
- (iv) the desirability of maintaining the independence of editorial control over programme content.

The Authority had regard to its own statutory objectives as set out in Section 25 of the Act, and in particular, that in performing its functions the BAI shall:

- endeavour to ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld,
- provide a regulatory environment that will sustain independent and impartial journalism,
- seek to ensure that any measures it takes are proportionate and will produce regulatory arrangements that are stable and predictable.

In devising the rules, the Authority also took into account the European Convention on Human Rights, and in particular, the provisions relating to freedom of expression, the right to privacy and the securing of rights without any discrimination on any ground.

The Authority is mindful of the citizen's right to access news and current affairs content in as unrestricted a manner as possible. However, setting out rules as to how broadcasters should ensure fairness, impartiality, and objectivity to some extent limits freedom of expression. Therefore, the Authority's approach to developing the rules is underpinned by public interest considerations, coupled with a principle of proportionality in relation to each rule.

### ***The Code and Existing Broadcasting Practice***

The rules set out in this Code are intended to provide clarity and certainty as to the minimum standards audiences can expect in the treatment of news and current affairs content, while protecting broadcasters' editorial independence. The Authority is aware of broadcasters' own existing codes of practice regarding news and current affairs content.

***The Code and the BAI Strategy Statement***

The Authority had regard to its own Strategy Statement - in particular, its commitment to reflecting the public interest; its focus on working within the broadcasting environment; and its strategic themes of ensuring plurality in Irish broadcasting and of promoting responsible broadcasting and empowering audiences.

**CONSULTATION QUESTIONS**

- 1. Does this section of the Draft Code provide clarity as to its scope and application? If not, is there other information that might be included in this section to aid understanding? Please provide details in your response.**
- 2. Are there other factors that the Authority should have regard to in finalising the Draft Code, over and above those detailed in this section?**

## 2. Code Objectives, Structure and Application

These sections of the Draft Code address the objectives of the Code, how it is constructed and how it will be applied to broadcasters. It also briefly details the guidance that is available to broadcasters to assist with the Code's interpretation and instructs on the procedure in relation to complaints.

In developing the objectives of the Draft Code, the Authority had regard to the relationship between the regulator, the broadcaster and the citizen. Therefore the objectives of the Draft Code are informed by the concerns of facilitating independent and impartial journalism; clearly setting out minimum standards and practices expected of broadcasters; and generating awareness among citizens regarding standards they can expect in addition to protecting their interests, through the Code's implementation.

Under the heading of **Code Structure and Application**, the requirements for broadcasters to comply with the Code are set out. This sub-section also references the Guidance Notes that will be developed in conjunction with the Code, prior to the Code's finalisation and implementation. These Guidance Notes will be important in generating understanding of the intent of each rule and will be updated from time to time with reference to decisions in relation to complaints, changes in practice in the area of news and current affairs broadcasting or technological change which may impact on the treatment of news and current affairs content.

Reference is also made to complaints and what actions viewers or listeners can take. In this Draft Code, members of the public are referred to the BAI web-site or the BAI offices for more information. The rationale for this approach is that detailed supporting information on the complaints process is contained on-line, or can be accessed by contacting the broadcaster or the BAI.

The boxed text below contains the proposed draft text for this section of the Code. You are asked to review this text and to respond to the related consultation questions:

### **Code Objectives**

- To set out clearly the minimum standards and practices that are expected of broadcasters in their treatment and broadcast of news and current affairs content;
- To provide general guidance to broadcasters to assist in their decision-making processes, as they pertain to news and current affairs content;
- To promote independent and impartial journalism in the provision of news and current affairs content;
- To inform and generate awareness among citizens with regard to standards they may expect in relation to news and current affairs content;
- To protect the interests of citizens, in their right to access fair, objective and impartial, news and current affairs content.

## **Code Structure and Application**

The Code is set out in terms of a set of broad, underpinning principles and a range of more specific rules under key headings.

Broadcasters are required to comply with the rules specified in their treatment and broadcast of news or current affairs content. Broadcasters should note that compliance with the Code will be assessed with reference to legislative requirements, the principles and the rules.

### ***Guidance Notes***

It is not intended that this Code will set out each and every rule in relation to the broadcast of news and current affairs items. In this regard any broadcaster or programme maker should have regard to the Guidance Notes which have been developed in conjunction with this Code. These notes are provided as an aid to understanding the intent of each rule and the manner of their application in a broadcast context. The BAI will update the Guidance Notes from time to time.

### ***Complaints***

If a viewer or listener has a complaint or is dissatisfied with the manner in which a broadcaster is complying with this Code, the matter should, in the first instance, be referred directly to the relevant broadcaster. Further information on the complaints process is available on [www.bai.ie](http://www.bai.ie) or by phoning 01 6441200.

## **CONSULTATION QUESTIONS**

- 3. Are you satisfied that the objectives outlined above are appropriate for inclusion in this Draft Code?**
- 4. Are there any additional objectives that you believe should be included in the Draft Code? If so please detail them and provide a rationale as to why you think they should be included?**

### 3. Principles Underpinning the Rules

This section outlines the principles underpinning the specific rules contained in the Code. The approach of devising principles to underpin the rules is felt to have a number of advantages both in the implementation of the Code by broadcasters and in the process of adjudication, by the broadcaster or the Compliance Committee, in the case of complaints. Given the unique nature of each news or current affairs item, it was felt that a 'rules only' approach would not be sufficient and could not hope to cover every eventuality. Instead, the Authority has opted to devise a set of principles, providing direction as to the general standards expected in order to achieve fairness, objectivity and impartiality in the treatment of news and current affairs content. The principles have been grouped under four headings and a brief narrative attaches to each heading, outlining how the principles are given practical effect in the Code. They provide a benchmark for broadcasters to consider whether their treatment of content is fair, objective and impartial in each case.

The boxed text below contains the proposed draft text for this section of the Code. You are asked to review this text and to respond to the consultation questions posed:

#### **Principles Underpinning the Fairness, Objectivity and Impartiality Rules**

This section outlines the principles underpinning this Code. In addition to the specific rules outlined in this Code, the principles provide direction as to the general standards expected in order to achieve fairness, objectivity and impartiality in the treatment of news and current affairs content. Thus, a broadcaster is expected not only to comply with the rules, but also to apply these general principles to its news and current affairs content.

Given that each news or current affairs item is unique, a 'rules only' approach could not cover every eventuality. Principles which apply to all content facilitate the ability to respond with flexibility in interpretation and adjudication in each case. The principles applied in this Code, together with a brief narrative, are set out below:

***Fairness:*** The BAI is committed to ensuring that through the implementation of this Code, individuals and organisations that are the subject of programme content, or persons who contribute to programmes or items, are treated fairly and honestly. Viewers and listeners have a legitimate expectation that a broadcaster will demonstrate an even-handed approach to how content is presented and interrogated and how contributors are treated. The principle of fairness does not necessarily require that all opinions on a subject are addressed or that they should receive equal air-time. The approach to covering issues, particularly those of public controversy or current public debate, should be guided by ensuring equitable, proportionate coverage.

**Objectivity & Impartiality:** The principles of objectivity and impartiality are concerned with ensuring that news and current affairs content is compiled, produced and presented in a manner which can be seen as independent, unbiased, and without prejudgement. The rules set out in this Code with regard to objectivity and impartiality should not be taken to imply that a presenter or a reporter cannot convey critical views or pursue vigorous lines of questioning. Indeed, this is very often required in order to achieve fairness, objectivity and impartiality. What is necessary, however, is that production, reporting and questioning on any news or current affairs item is credible, trustworthy and editorially independent.

**Accuracy & Responsiveness:** Audiences are entitled to, and do, trust that the news and current affairs content they access from the broadcast media is accurate. Accurate information enables citizens to participate more fully in a democratic society. Accuracy is therefore a fundamental principle associated with the broadcast of news and current affairs content and should always take priority over the speed with which content can be delivered. It is also acknowledged that despite best efforts, inaccurate information can sometimes be conveyed, whether explicitly or implicitly. The principle of responsiveness is designed to ensure that broadcasters adopt fair, timely and appropriate remedies in handling the broadcast of inaccurate information.

**Transparency & Accountability:** the principles of transparency and accountability are concerned with ensuring that practices and procedures adopted by broadcasters in sourcing, compiling, producing and presenting news and current affairs are visible, open to scrutiny, robust and accessible. This is particularly the case where a decision to broadcast may impact on an individual's privacy.

## CONSULTATION QUESTIONS

5. Do you believe that the principles, as outlined above, are appropriate to a Code of this nature? If not, please provide a rationale for your response.
6. Are there any additional principles that you believe should be included in the Draft Code? If so, please detail them and provide as rationale for their inclusion.

#### **4. Rules**

This section of the Draft Code details a total of 32 draft rules that have been grouped under a range of headings.

Draft rules 1, 2 and 3 reflect the statutory duties of broadcasters; as expressed in section 39(1)(a) and 39(1)(b) of the Broadcasting Act, 2009; in relation to objectivity and impartiality in their broadcast of news; and in ensuring that the treatment of current affairs is fair, objective and impartial. The statutory duties of broadcasters in relation to news and current affairs also extend to ensuring that the broadcast of news and current affairs does not include the expression of a broadcaster's own views. It further provides that two or more related broadcasts can be considered for the purposes of achieving fairness, objectivity and impartiality, in the case of current affairs content. In essence then, the remaining rules in the Draft Code are geared towards ensuring that the processes, procedures and techniques used by broadcasters to compile and broadcast news and current affairs content are in keeping with both the letter and the spirit of a broadcaster's statutory duties under section 39(1)(a) and 39(1)(b) of the Act. Given that rules 1-3 address the statutory duties of broadcasters, it is not proposed to consult on them as part of this process.

Rules 4-16 of the Draft Code deal with matters of fairness, while rules 17-27 are concerned with matters of objectivity and impartiality. Rule 28 addresses the issue of election and referendum coverage. Rules 29 and 30 again reflect the statutory duties of broadcasters. In this instance the rules relate to the coverage of broadcasting policy proposals which are being considered by the Government or the Minister. As these two rules reflect the statutory duties of broadcasters, it is not proposed to consult on them in the current process. Rules 31 and 32 deal with the requirement to adhere to legislation and to have regard to guidance in respect of the Code.

For the purposes of consultation, the draft rules have been further sub-divided and questions pertaining to a group of rules are posed.

It is also important to note that as part of this section of the Draft Code, the definition of the term 'broadcaster' is provided and this merits a brief explanation. The Broadcasting Act 2009 is specific in relation to what it understands by the term 'broadcaster' and the Authority believes that it is important to make clear the distinction between a broadcaster and a presenter. Ultimately the broadcaster, as the service provider, is responsible and accountable for the manner in which news and current affairs content is treated on their service. However, the Authority is keenly aware of the role that presenters and reporters of news and current affairs play in giving effect to the editorial policy and decisions of the broadcaster. As a matter of regulatory policy therefore, the Authority believes it is appropriate to specify a number of rules in relation to presenters and reporters.

### ***Rules 1-3: Statutory Duties of Broadcasters***

Listed below are the first three rules of the draft Code, reflecting the statutory duties of broadcasters. It is not proposed to consult on these rules and they are included here for information purposes only:

1. Every broadcaster shall ensure that all news broadcast by the broadcaster is reported and presented in an objective and impartial manner, and without any expression of the broadcaster's own views.
2. Every broadcaster shall ensure that the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned, is presented in an objective and impartial manner and without any expression of the broadcaster's own views.
3. Should it prove impracticable to apply rule 2 in relation to a single broadcast, two or more related broadcasts may be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other.

### ***Fairness Rules***

#### ***Rules 4-5: Procedures for dealing with contributors/interviewees***

These two rules deal with the manner in which contributors are dealt with by broadcasters. The rules are primarily concerned with the process of how a person or organisation is dealt with on-air and the process of informing an interviewee of the subject matter that will be covered during the course of an interview. The draft rules are as follows:

4. A broadcaster shall deal fairly with contributors to current affairs content or with persons or organisations referred to in that content.
5. Interviewees for news and current affairs programmes or items shall generally be made aware of the subject matter and the nature and format of their contribution, so that their agreement to participate constitutes informed consent. Changes to the focus or structure of the programme/item shall be notified to the contributor where not to do so could be deemed unfair or partial.

### **CONSULTATION QUESTIONS**

7. **What are your views in relation to the scope and wording of these rules?**
8. **Are there any additional rules that you believe need to be included? If so, please provide the detail and a rationale for their inclusion.**

**Rules 6-9 Consent: 'no comment'; refusal to participate.**

The next three rules are concerned with matters of consent; including consent relating to children and vulnerable individuals; 'no comment' scenarios and situations where a person or organisation refuses to participate in a broadcast item.

In the case of consent relating to a child or vulnerable person, the overriding principle is the protection of that individual and the avoidance of broadcasting material that could be detrimental to their interest. In terms of obtaining consent from a parent, legal guardian or legal representative, the Authority is proposing a more flexible approach for children over the age of 16 in recognition, generally, of a young person's maturity and ability to give their own consent at and over this age. In the case of both rules 6 and 7, any decision to broadcast in the absence of consent must be editorially justified.

Rule 8 is concerned with a person or organisation's refusal to contribute or to make no comment. In these situations there is an onus on the broadcaster to clearly and reasonably outline why a person has refused to contribute. A refusal to participate does not imply that an item cannot be broadcast. However the broadcaster has additional responsibilities in reflecting the views of the absent party. The draft rules are as follows:

6. A broadcaster shall not generally broadcast any news or current affairs interview with any person without the consent of that person. The broadcast of any news or current affairs content in the absence of consent must be editorially justified. Requests for withdrawal of consent must be given due consideration by the broadcaster, having regard to the principles of fairness, objectivity and impartiality.
7. Care must always be taken with the inclusion of interviews with children or vulnerable people in news or current affairs programmes. In all cases, the overriding principle must be to avoid the broadcast of material that may be unfair or detrimental to their interest. The consent of a parent, guardian or legal representative shall generally be obtained prior to the broadcast of any interview with a child (for the purposes of this Code, a person less than 16 years of age) or a vulnerable person, where the subject matter is of a sensitive or serious nature or where not to do so could be deemed unfair. A decision to broadcast an interview in the absence of consent must be justified in the public interest.
8. Where a person or organisation refuses to contribute to news and current affairs content or chooses to make no comment, the broadcast shall make this fact clear and shall report in a reasonable manner the person/organisation's explanation for declining to participate, where not to do so could be deemed unfair.
9. The refusal of a person or organisation to participate will not invalidate the broadcast of the item. However, the broadcaster has a responsibility to reflect the views of the absent party. A presenter representing the views of a person/organisation that has chosen not to participate in a news and current affairs programme or item shall do so fairly.

## CONSULTATION QUESTIONS

- 9      **What are your views in relation to the scope and wording of these rules? Please provide details in your answer.**
- 10     **Are there any additional provisions that you believe the Authority should include? If so, please detail them and provide a rationale for their inclusion.**

### ***Rules 10-12 Programme Compilation: Editing; Material re-use; Reconstructions.***

The rules in relation to editing and the re-use of material are primarily concerned with issues of context. The Authority recognises that in the course of an interview a person may express views which, when taken out of their original interview setting, can appear distorted and could, if broadcast, result in unfairness to that individual. Therefore the Authority believes that due care should be exercised by the broadcaster in the process of programme editing. Similarly the Authority believes that caution should be exercised in the use of archive material, particularly where the passage of time may have changed the circumstances of an individual who previously gave consent to broadcast. With regard to re-construction or re-enactment, the Authority believes that clear identification is required, in the interests of the audience. The draft rules are as follows:

- 10.** The editing process shall not distort the context or meaning of the original interview.
11. A broadcaster shall ensure that the re-use of news or current affairs material, including the use of archive material, does not create unfairness or result in inaccuracies.
- 12.** The re-construction or re-enactment of an event in news or current affairs programmes must be clearly identified as such and should be accurate in its depiction of the event/s in question.

## CONSULTATION QUESTIONS

11.     **What are your views in relation to the scope and wording of these rules? Please provide details in your answer.**
12.     **Are there any additional provisions that you believe the Authority should include? If so, please detail them and provide a rationale for their inclusion**

**Rules 13-16 Secret/Undisclosed Recording; “Door Stepping”; Confidentiality.**

The over-riding concern in relation to rules 13-16 is balancing the public interest with the right to privacy of an individual. The Authority recognises that there are certain situations, particularly in the area of investigative journalism, where obtaining footage by covert means, or through the use of techniques such as “door-stepping”, may be the only mechanism available to the broadcaster to provide coverage of an item or an issue that is demonstrably in the public interest. Due to the fact that such techniques; in particular secret or undisclosed recording; have the potential to impinge upon the privacy of an individual and can be unfair if not used appropriately, the Authority believes that a range of considerations must be fulfilled in order to warrant the practice and that authorisation for the use of such techniques must be obtained at an appropriate level. In addition, and in the interests of due process, any person secretly recorded should be offered the opportunity to present their case.

The Authority recognises that sometimes important news or current affairs items can only come to light through contributions that must remain anonymous or confidential in order to protect the contributor. The Authority is proposing a rule to ensure that such confidentiality is honoured and that any audio-visual technique such as image pixilation or voice distortion must be sufficient to protect confidentiality. The draft rules are as follows:

13. The use of secret or undisclosed recording or filming in current affairs programming shall only be used in exceptional circumstances. It must be warranted and a broadcaster shall have appropriate procedures in place for the authorisation of such recordings at a senior editorial level. The following considerations are essential elements in determining if secret or undisclosed recording or filming is warranted:
  - The item being covered is demonstrably in the public interest and the broadcaster has evidence of matter that merits coverage.
  - The co-operation of the subject is unlikely to be forthcoming
  - There is reason to believe that coverage of the subject matter will be frustrated as the content cannot reasonably be obtained by other means.
14. Any person secretly filmed or recorded must be offered the opportunity to present their case in the light of material filmed or recorded.
15. In limited circumstances it may be justifiable to dispense with the normal practice of making arrangements for an interview directly with an interviewee, or with a representative, and with suitable notice. A direct unarranged approach, “door-stepping”, may be appropriate where the subject matter is of public interest; the interviewee is unlikely to co-operate if approached in the normal way; and the approach to the individual(s) is necessary to the authenticity and credibility of the programme or item in question.
16. Any undertaking given to a contributor relating to confidentiality or anonymity shall be clear and be honoured. Any associated audio-visual techniques utilised in editing shall be carefully applied to ensure complete confidentiality is achieved and commitments are fully honoured.

## CONSULTATION QUESTIONS

13. **What are your views in relation to the scope and wording of these rules? Please provide details in your answer.**
14. **Are there any additional provisions that you believe the Authority should include? If so, please detail them and provide a rationale for their inclusion.**

### ***Objectivity & Impartiality Rules***

#### ***Rules 17-21: Accuracy; Linking Broadcasts; Factual Representation; Handling Mistakes; Treatment of Individuals/Groups in Society***

The rules contained in this section of the Draft Code are concerned with accuracy and clarity in relation to news and current affairs content. Provision is made for ensuring that the accuracy of content is prioritised over the speed of its delivery. Of equal importance is the manner in which views and facts are presented. In this regard, the Authority believes that a presenter should be aware of their use of language in the matters presented. From an audience perspective there is a need for clear signalling of where broadcasts are linked, in order to achieve objectivity in relation to a subject matter. Broadcasters should also be mindful of the degree to which the nature of their coverage might be likely to lead to the unfair or partial treatment of individuals or groups in society. The Authority is aware that, despite best efforts, mistakes can be made and they should be rectified as speedily as possible. In the case of significant mistakes, the Authority believes that due regard should be had to a number of factors in rectifying such an error and that the correction should be appropriate and proportionate. The draft rules are as follows:

17. News and current affairs content must be presented with due accuracy, having regard to the circumstances and the facts known at the time of preparing and broadcasting the content.
18. The editorial linking of broadcasts shall be within a reasonable time period and such links shall be made clear to the audience.
19. Views and facts shall not be misrepresented or presented in such a way as to render them misleading. A presenter shall be aware of their use of language in reporting news and current affairs so as to avoid misunderstanding of the matters covered.
20. News and current affairs coverage should not result in the unfair, inaccurate or partial treatment of individuals or groups in society.
21. A significant mistake shall be acknowledged and rectified as speedily as possible, in an appropriate and proportionate manner. A broadcast correction or clarification shall have regard to the time and circumstances of the original broadcast.

## CONSULTATION QUESTIONS

15. **What are your views in relation to the scope and wording of these rules? Please provide details in your response.**
16. **Are there any additional provisions that you believe the Authority should include? If so, please detail them and provide a rationale for their inclusion.**

### ***Rules 22-25: Presenters' own views; Authored Programmes***

Rules 22-25 of the Draft Code are concerned with the issue of presenters' own views. The Authority believes that presenters of news and current affairs programmes play a critical role in ensuring the objective and impartial coverage of items, particularly matters that are of public controversy or the subject of current public debate. The Authority is therefore proposing two rules relating to the expression of own views by news presenters and reporters and by current affairs presenters and reporters. The Authority believes that these rules have the capacity to prevent an intrinsically biased form of journalism. Furthermore, their application has the potential to enhance the presenter's role as a conduit for a wide variety of views, particularly views which may not be seen as mainstream, thereby leading to a broader exploration of issues, which would be to the benefit of audiences. The Authority believes that such rules are necessary in order to prevent a potential move towards editorial bias on the part of the broadcaster overall, which is not permitted under the Act. The inclusion of these rules should not be taken to imply that a presenter or a reporter cannot convey critical views or pursue vigorous lines of questioning. Indeed such a journalistic approach is very often what is required to achieve fairness, objectivity and impartiality. What is being guarded against is the possibility of partial or biased treatment on the part of the presenter in relation to controversial matters or matters of current public debate. The draft rules are as follows:

22. A news presenter and/or a reporter in a news programme may not express his or her own view on matters that are either of public controversy or the subject of current public debate.
23. It is an important part of the role of a presenter of a current affairs programme to ensure that the audience has access to a wide variety of views on the subject of the programme or item; to facilitate the expression of contributors' opinions – sometimes by forceful questioning; and to reflect the views of those who cannot, or choose not to, participate in a programme. This being so, a presenter and/or a reporter on a current affairs programme shall not express his or her own views or opinions on matters that are either of public controversy or the subject of current public debate.
24. The inclusion in a current affairs programme of so-called 'personal view' or 'authored' items is not inappropriate, subject to normal editorial control, but their inclusion does not exempt the programme – or a series of related programmes – from the statutory obligations to be impartial, objective and fair to all interests concerned. Similarly, an "authored" programme may be permitted if part of a series of related programmes which, taken together, will discharge the statutory obligations.

25. A 'personal view' or 'authored' programme or item must be clearly signalled to the audience at the outset, or in the case of a series of programmes, at the start of each programme.

## **CONSULTATION QUESTIONS**

17. **What are your views in relation to the scope and wording of these rules? Please provide details in your answer.**
18. **Are there any additional provisions that you believe the Authority should include? If so, please detail them and provide a rationale for their inclusion.**

### ***Rules 26-27: Conflicts of Interest; Public Register of Interests***

The Authority is aware that situations can arise when presenters, reporters or persons involved in editorial decision making are conflicted in relation to certain news or current affairs items, by virtue of their personal, professional, business or financial interests. From a transparency perspective, the Authority is proposing that such conflicts should be flagged and, where appropriate, a presenter or reporter should not present the item, nor should a person with an editorial role be involved in editorial decision making. To further enhance transparency, the Authority is also proposing a rule requiring broadcasters to maintain a Public Register of Interests. The draft rules are as follows:

26. Any personal, professional, business or financial interest of a presenter or reporter which would call into question the perceived fairness, objectivity or impartiality of the item being covered must be made clear to the audience. A presenter or reporter should not participate in a news or current affairs matter where such a conflict of interest arises.
27. Each broadcaster shall maintain a Public Register of Interests in which personnel with an editorial role in news and current affairs shall enter details of all financial or commercial relationships that might be perceived as representing a material influence on them in, or in relation to, the performance of such editorial role, together with an indication of any individuals or companies to which the personnel in question may be deemed to owe a fiduciary duty.

## CONSULTATION QUESTIONS

19. **What are your views in relation to the scope and wording of these rules? Please provide details in your answer.**
20. **Are there any additional provisions that you believe the Authority should include? If so, please detail them and provide a rationale for their inclusion?**

### ***Rule 28: Election & Referendum Coverage***

This rule proposes that coverage of an election or referendum shall comply with Codes of Practice issued by the BAI from time to time. In proposing this approach to dealing with election and referendum coverage, the Authority considered whether more detailed rules should be included in the Code itself. It came to the conclusion that a more practical and responsive approach would be to require that broadcasters would comply with any Codes of Practice issued in respect of elections and referenda. In future this would mean that the existing BAI Code on Referenda and Election Coverage would be amended, as appropriate, and issued as a Code of Practice. Such an approach would allow the Authority to adjust Codes of Practice in a timely manner and as appropriate, instead of amending rules to the Code which would require a public consultation process and would potentially be burdensome for the broadcaster, the public and the regulator. The draft rule is as follows:

28. Coverage of an election or a referendum shall comply with guidelines and codes of practice issued from time to time by the BAI.

## CONSULTATION QUESTIONS

21. **Are you satisfied with the proposed approach to election and referendum coverage? If not, please provide us with some detail as to what other approach the Authority should adopt.**
22. **Are there any additional provisions that you believe the Authority should include? If so please detail them and provide a rationale for their inclusion.**

### **Rules 29 & 30: Broadcast Treatment of Broadcasting Policy Matters**

As referenced earlier, these two rules address broadcasters' statutory duties in respect of the broadcast treatment of any broadcasting policy proposals being considered by Government or by the Minister. As the rules reflect the duties of broadcasters under the Act, no consultation questions are posed. The rules are as follows:

29. A broadcaster shall ensure that the broadcast treatment of any policy proposal as regards broadcasting, which is of public controversy or the subject of current public debate, which is being considered by the Government or by the Minister, shall be reported and presented in an objective and impartial manner.
30. A broadcaster may express his or her own views in relation to broadcasting policy matters, as set out in rule 29, subject to the obligation that the programme or item is objective and impartial overall.

### **Rules 31-32: Administrative Rules**

These rules require broadcasters to comply with any relevant legal requirements when producing news and current affairs content. In addition to this, broadcasters are also required to have regard to any Guidance Notes which the BAI may issue from time-to-time in respect of the rules contained in the Code. The practice of issuing Guidance Notes is one which the BAI has successfully operated in respect of other Codes. Guidance is important in explaining the intent and spirit of the rules, where appropriate. Furthermore, it is proposed that in assessing any complaints received, regard will be had to the rules themselves, the principles underpinning the rules and any Guidance Notes issued by the BAI, where relevant.

31. Broadcasters and programme makers shall adhere to all legislative requirements when producing and presenting news and current affairs content.
32. Broadcasters shall have due regard to guidance issued in respect of this Code.

### **CONSULTATION QUESTIONS**

23. **What are your views in relation to the scope and wording of these rules? Please provide details in your answer.**
24. **Are there any additional provisions that you believe the Authority should include? If so, please detail them and provide a rationale for their inclusion.**
25. **Have you any other general comments in relation to the provisions of the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs?**

## Section 5

# Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs

### Introduction

This Code deals with matters of fairness, objectivity and impartiality in news and current affairs content and is prepared in accordance with sections 42(2)(a) and 42(2)(b) of the Broadcasting Act, 2009 ('the Act').

The Code applies to broadcasters within the jurisdiction of Ireland. It does not apply to other services commonly received in this State, but licensed in the United Kingdom or other jurisdictions.

In observing this Code, broadcasters are reminded of their duties as set out in the Act, specifically requirements in relation to the broadcast treatment of news and current affairs, including matters which are either of public controversy or the subject of current public debate.

In developing this Code, the Authority had regard to a range of legislative and strategic matters which it believes are important in providing a context for the Code now published. **These matters have informed the Authority's approach to drawing up the Code. By extension, therefore, a broadcaster shall have regard to these matters in interpreting and applying the principles and rules as set out here.** The requirement of a broadcaster to have regard to such matters may also assist viewers and listeners when considering whether news and current affairs material broadcast meets the standards to which this Code aspires.

### The Code and its framework

#### *Relevant Legislative Provisions*

Section 42 (3) requires the Authority to have regard to a range of matters in preparing or revising a broadcasting code. The matters contained in the legislation specific to this Code are:

- (i) The degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description.
- (ii) The likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
- (iii) The likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
- (iv) The desirability of maintaining the independence of editorial control over programme content.

The Authority had regard to its own statutory objectives as set out in section 25 of the Act, and in particular, that in performing its functions the BAI shall:

- Endeavour to ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld,
- Provide a regulatory environment that will sustain independent and impartial journalism,
- Seek to ensure that any measures it takes are proportionate and will produce regulatory arrangements that are stable and predictable

In devising the rules the Authority also took into account the European Convention on Human Rights and in particular the provisions relating to freedom of expression, the right to privacy and the securing of rights without any discrimination on any ground.

The Authority is mindful of the citizen's right to access news and current affairs content in as unrestricted a manner as possible. However, setting out rules as to how broadcasters should ensure fairness, impartiality, and objectivity to some extent limits freedom of expression. Therefore the Authority's approach to developing the rules is underpinned by public interest considerations, coupled with a principle of proportionality in relation to each rule.

#### ***The Code and Existing Broadcasting Practice***

The rules set out in this Code are intended to provide clarity and certainty as to the minimum standards audiences can expect in the treatment of news and current affairs content, while protecting broadcasters' editorial independence. The Authority is aware of broadcasters' own existing codes of practice regarding news and current affairs content.

#### ***The Code and the BAI Strategy Statement***

The Authority had regard to its own Strategy Statement - in particular, its commitment to reflecting the public interest; its focus on working within the broadcasting environment; and its strategic themes of ensuring plurality in Irish broadcasting and of promoting responsible broadcasting and empowering audiences.

### **Code Objectives**

- To set out clearly the minimum standards and practices that are expected of broadcasters in their treatment and broadcast of news and current affairs content
- To provide general guidance to broadcasters to assist in their decision-making processes, as they pertain to news and current affairs content
- To promote independent and impartial journalism in the provision of news and current affairs content
- To inform and generate awareness among citizens with regard to standards they may expect in relation to news and current affairs content
- To protect the interests of citizens, in their right to access fair, objective and impartial, news and current affairs content

## Code Structure and Application

The Code is set out in terms of a set of broad, underpinning principles and a range of more specific rules under key headings.

Broadcasters are required to comply with the rules specified in their treatment and broadcast of news or current affairs content. Broadcasters should note that compliance with the Code will be assessed with reference to legislative requirements, the principles and the rules.

### **Guidance Notes**

It is not intended that this Code will set out each and every rule in relation to the broadcast of news and current affairs items. In this regard any broadcaster or programme maker should have regard to the Guidance Notes which have been developed in conjunction with this Code. These notes are provided as an aid to understanding the intent of each rule and the manner of their application in a broadcast context. The BAI will update the Guidance Notes from time to time.

### **Complaints**

If a viewer or listener has a complaint or is dissatisfied with the manner in which a broadcaster is complying with this Code, the matter should, in the first instance, be referred directly to the relevant broadcaster. Further information on the complaints process is available on [www.bai.ie](http://www.bai.ie) or by phoning 01 6441200.

## Principles Underpinning the Fairness, Objectivity and Impartiality Rules

This section outlines the principles which underpin this Code. In addition to the specific rules outlined in this Code, the principles provide direction as to the general standards expected in order to achieve fairness, objectivity and impartiality in the treatment of news and current affairs content. Thus, a broadcaster is expected not only to comply with the rules, but also to apply these general principles to its news and current affairs content.

Given that each news or current affairs item is unique, a 'rules only' approach could not cover every eventuality. Principles which apply to all content facilitate the ability to respond with flexibility in interpretation and adjudication in each case. The principles which shall be applied in this Code, together with a brief narrative, are set out below:

**Fairness:** The BAI is committed to ensuring that through the implementation of this Code, individuals and organisations that are the subject of programme content, or persons who contribute to programmes or items, are treated fairly and honestly. Viewers and listeners have a legitimate expectation that a broadcaster will demonstrate an even-handed approach to how content is presented and interrogated and how contributors are treated. The principle of fairness does not necessarily require that all opinions on a subject are addressed or that they should receive equal air-time. The approach to covering issues, particularly those of public controversy or current public debate, should be guided by ensuring equitable, proportionate coverage.

**Objectivity & Impartiality:** The principles of objectivity and impartiality are concerned with ensuring that news and current affairs content is compiled, produced and presented in a manner which can be seen as independent, unbiased, and without prejudgement. The rules set out in this Code with regard to objectivity and impartiality should not be taken to imply that a presenter or a reporter cannot convey critical views or pursue vigorous lines of questioning. Indeed, this is very often required in order to achieve fairness, objectivity and impartiality. What is necessary, however, is that production, reporting and questioning on any news or current affairs item is credible, trustworthy and editorially independent.

**Accuracy & Responsiveness:** Audiences are entitled to, and do, trust that the news and current affairs content they access from the broadcast media is accurate. Accurate information enables citizens to participate more fully in a democratic society. Accuracy is therefore a fundamental principle associated with the broadcast of news and current affairs content and should always take priority over the speed with which content can be delivered. It is also acknowledged that despite best efforts, inaccurate information can sometimes be conveyed, whether explicitly or implicitly. The principle of responsiveness is designed to ensure that broadcasters adopt fair, timely and appropriate remedies in handling the broadcast of inaccurate information.

**Transparency & Accountability:** the principles of transparency and accountability are concerned with ensuring that practices and procedures adopted by broadcasters in sourcing, compiling, producing and presenting news and current affairs are visible, open to scrutiny, robust and accessible. This is particularly the case where a decision to broadcast may impact on an individual's privacy.

## Rules

This section of the Code sets out the rules that apply to a broadcaster in their treatment of news and/or current affairs content. The term 'broadcaster' is understood in the context of the definition provided in the Broadcasting Act 2009, which is as follows:

"Broadcaster means a person who supplies a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service (whether that person transmits, relays or distributes that material as such a service or not)."

In the context of this Code, the term 'broadcaster' incorporates the public service broadcasters RTÉ and TG4, in addition to all radio and television services licensed by the BAI. A list of these services is available on the BAI's web-site.

What this means is that the broadcaster, the provider of the broadcast service, is accountable for ensuring that news and current affairs content produced for the service is in compliance with the rules outlined in this Code.

### ***Fairness, Objectivity and Impartiality - Statutory Duties of Broadcasters***

1. Every broadcaster shall ensure that all news broadcast by the broadcaster is reported and presented in an objective and impartial manner, and without any expression of the broadcaster's own views.
2. Every broadcaster shall ensure that the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned, is presented in an objective and impartial manner and without any expression of the broadcaster's own views.
3. Should it prove impracticable to apply rule 2 in relation to a single broadcast, two or more related broadcasts may be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other.

### ***Fairness Rules***

4. A broadcaster shall deal fairly with contributors to current affairs content or with persons or organisations referred to in that content.
5. Interviewees for news and current affairs programmes or items shall generally be made aware of the subject matter and the nature and format of their contribution, so that their agreement to participate constitutes informed consent. Changes to the focus or structure of the programme/item shall be notified to the contributor where not to do so could be deemed unfair or partial.
6. A broadcaster shall not generally broadcast any news or current affairs interview with any person without the consent of that person. The broadcast of any news or current affairs content in the absence of consent must be editorially justified. Requests for withdrawal of consent must be given due consideration by the broadcaster, having regard to the principles of fairness, objectivity and impartiality.
7. Care must always be taken with the inclusion of interviews with children or vulnerable people in news or current affairs programmes. In all cases, the over-riding principle must be to avoid the broadcast of material that may be unfair or detrimental to their interest. The consent of a parent, guardian or legal representative shall generally be obtained prior to the broadcast of any interview with a child (a person less than 16 years of age) or a vulnerable person, where the subject matter is of a sensitive or serious matter or where not to do so could be deemed unfair. A decision to broadcast an interview in the absence of consent must be justified in the public interest.

8. Where a person or organisation refuses to contribute to news and current affairs content or chooses to make no comment, the broadcast shall make this fact clear and shall report in a reasonable manner the person/organisation's explanation for declining to participate, where not to do so could be deemed unfair.
9. The refusal of a person or organisation to participate will not invalidate the broadcast of the item. However, the broadcaster has a responsibility to reflect the views of the absent party. A presenter representing the views of a person/organisation that has chosen not to participate in a news and current affairs programme or item shall do so fairly.
10. The editing process shall not distort the context or meaning of the original interview.
11. A broadcaster shall ensure that the re-use of news or current affairs material, including the use of archive material, does not create unfairness or result in inaccuracies.
12. The re-construction or re-enactment of an event in news or current affairs programmes must be clearly identified as such and should be accurate in its depiction of the event/s in question.
13. The use of secret or undisclosed recording or filming in current affairs programming shall only be used in exceptional circumstances. It must be warranted and a broadcaster shall have appropriate procedures in place for the authorisation of such recordings at a senior editorial level. The following considerations are essential elements in determining if secret or undisclosed recording or filming is warranted:
  - The item being covered is demonstrably in the public interest and the broadcaster has evidence of matter that merits coverage.
  - The co-operation of the subject is unlikely to be forthcoming
  - There is reason to believe that coverage of the subject matter will be frustrated as the content cannot reasonably be obtained by other means.
14. Any person secretly filmed or recorded must be offered to opportunity to present their case in the light of material filmed or recorded.
15. In limited circumstances it may be justifiable to dispense with the normal practice of making arrangements for an interview directly with an interviewee, or with a representative, and with suitable notice. A direct unarranged approach, "door-stepping", may be appropriate where the subject matter is of public interest; the interviewee is unlikely to co-operate if approached in the normal way; and the approach to the individual(s) is necessary to the authenticity and credibility of the programme or item in question.
16. Any undertaking given to a contributor relating to confidentiality or anonymity shall be clear and be honoured. Any associated audio-visual techniques utilised in editing shall be carefully applied to ensure complete confidentiality is achieved and commitments are fully honoured.

### ***Objectivity & Impartiality Rules***

17. News and current affairs content must be presented with due accuracy, having regard to the circumstances and the facts known at the time of preparing and broadcasting the content.
18. The editorial linking of broadcasts shall be within a reasonable time period and such links shall be made clear to the audience.
19. Views and facts shall not be misrepresented or presented in such a way as to render them misleading. A presenter shall be aware of their use of language in reporting news and current affairs so as to avoid misunderstanding of the matters covered.
20. News and current affairs coverage should not result in the unfair, inaccurate or partial treatment of individuals or groups in society.
21. A significant mistake shall be acknowledged and rectified as speedily as possible, in an appropriate and proportionate manner. A broadcast correction or clarification shall have regard to the time and circumstances of the original broadcast.
22. A news presenter and/or a reporter in a news programme may not express his or her own view on matters that are either of public controversy or the subject of current public debate.
23. It is an important part of the role of a presenter of a current affairs programme to ensure that the audience has access to a wide variety of views on the subject of the programme or item; to facilitate the expression of contributors' opinions – sometimes by forceful questioning; and to reflect the views of those who cannot, or choose not to, participate in a programme. This being so, a presenter and/or a reporter on a current affairs programme shall not express his or her own views or opinions on matters that are either of public controversy or the subject of current public debate.
24. The inclusion in a current affairs programme of so-called 'personal view' or 'authored' items is not inappropriate, subject to normal editorial control, but their inclusion does not exempt the programme – or a series of related programmes – from the statutory obligations to be impartial, objective and fair to all interests concerned. Similarly, an "authored" programme may be permitted if part of a series of related programmes which, taken together, will discharge the statutory obligations.
25. A 'personal view' or 'authored' programme or item must be clearly signalled to the audience at the outset, or in the case of a series of programmes, at the start of each programme.
26. Any personal, professional, business or financial interest of a presenter or reporter which would call into question the perceived fairness, objectivity or impartiality of the item being covered must be made clear to the audience. A presenter or reporter should not participate in a news or current affairs matter where such a conflict of interest arises.

27. Each broadcaster shall maintain a public Register of Interests in which personnel with an editorial role in news and current affairs shall enter details of all financial or commercial relationships that might be perceived as representing a material influence on them in, or in relation to, the performance of such editorial role, together with an indication of any individuals or companies to which the personnel in question may be deemed to owe a fiduciary duty.

#### ***Election & Referendum Coverage***

28. Coverage of an elections or a referendum shall comply with guidelines and codes of practice issued from time to time by the BAI.

#### ***Broadcasting Policy Matters - Statutory Duties of Broadcasters***

29. A broadcaster shall ensure that the broadcast treatment of any policy proposal as regards broadcasting, which is of public controversy or the subject of current public debate, which is being considered by the Government or by the Minister, shall be reported and presented in an objective and impartial manner.
30. A broadcaster may express his or her own views in relation to broadcasting policy matters, as set out in rule 29, subject to the obligation that the programme or item is objective and impartial overall.

#### ***Legal Requirements and Guidance***

31. Broadcasters and programme makers shall adhere to all legislative requirements when producing and presenting news and current affairs content.
32. Broadcasters shall have due regard to guidance issued in respect of this Code.





ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

2-5 Plás Warrington,  
Baile Átha Cliath 2, Éire  
2-5 Warrington Place,  
Dublin 2, Ireland

T: + 353 (0)1 644 1200  
F: + 353 (0)1 644 1299  
E: [info@bai.ie](mailto:info@bai.ie)  
W: [www.bai.ie](http://www.bai.ie)

