



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

Broadcasting Authority of Ireland

Broadcasting Complaint Decisions

February 2014

Broadcasting Complaint Decisions

Broadcasting Complaint Decisions

Under the Broadcasting Act 2009, viewers and listeners can complain about broadcasting content which they believe is not in keeping with broadcasting codes and rules. In line with the complaint process, the viewer or listener should direct their complaint to the broadcaster in the first instance with regard to the broadcaster's *Code of Practice for Handling Complaints*, a policy 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 in their Code of Practice (usually 21 days), then the viewer or listener can refer the complaint to the BAI for consideration.

In assessing complaints, and having regard to the codes and rules, the BAI considers all written material submitted by the relevant parties together with the broadcast material. Complaints are assessed at Executive level and/or by the Compliance Committee of the Authority. The details of the broadcasting complaints decisions reached by the BAI are set out in this document.

At its meeting held in January 2014, the Compliance Committee upheld one complaint and three complaints were resolved by the Executive at meetings held in December 2013 and January 2014.

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Upheld by BAI Compliance Committee

Complaint made by: Mr. Martin Long

Ref. No. 94/13

Station:

RTÉ Radio 1

Programme:

Liveline

Date:

14 August 2013

Complaint Summary:

Mr. Long's complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*: Rules 4.17(due accuracy) and 4.20(acknowledge and rectify a mistake). The complaint refers to a topic discussed on the programme regarding people sympathising with the bereaved at a funeral and the *Guidelines on the Funeral Mass* by Bishop Michael Smith, Bishop of Meath.

The complainant states that during the discussion, one caller stated that it is not permissible to offer sympathies to families of the deceased inside churches in the diocese of Meath and that this was at the direction of the Bishop of Meath. The complainant states that this comment was incorrect and that the *Guidelines on the Funeral Mass* in place for the Diocese of Meath state "*clear arrangements allowing people the opportunity to offer sympathy to the family of the deceased should be put in place in each parish*".

The complainant states that the diocesan office in Meath informed the programme makers of the guidelines on foot of the programme being broadcast and informed them that in many parishes in the Diocese of Meath, including in the Cathedral in Mullingar where Bishop Smith is Parish Priest, the congregation is always invited to sympathise with the family at the top of the church, at both the Removal and after Funeral Mass. The complainant states that it is disappointing that this response was not broadcast or that a clarification was not provided by the programme makers in a subsequent broadcast.

The complainant claims that he is aware that some callers to the programme, whose voices were not broadcast, sought to point out that there is no such diocesan prohibition. The complainant also outlined his disappointment at the delay he experienced in receiving a response from RTÉ to his complaint.

Broadcaster's Response:

Initial response to complainant:

RTÉ states that the call to the programme on the issue of condolences at funerals held in the Diocese of Meath came in the middle of a robust discussion about eulogies at funeral masses in light of the directive issued by Bishop of Meath, Dr. Michael Smith about the possible banning of eulogies which did not fall within religious guidelines at funerals.

The broadcaster states that Liveline had a variety of callers on air over two days – from listeners describing funerals they had attended and the importance of eulogies, to praise for priests who had been very sensitive to callers' needs during a very stressful time.

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The broadcaster states that a caller contacted the show to highlight an issue she had when arranging her mother's funeral. The caller stated that her family were told by the parish priest that attendees at the funeral could not offer sympathies within the church; they could do so outside or at the graveside as this was what was allowed. The caller was of the view that this was as a result of a directive by Bishop Smith in the context of the religious guidelines for funerals.

The broadcaster states that prior to going on air the producer concerned did put a call into the Meath Diocese but there was no reply. A decision was then made to go on-air with the call from the listener. The broadcaster states that there were some other listeners who said that they were allowed to sympathise within the church but according to RTÉ's records, they would not go on-air. They state that a parish priest who called in agreed with the caller but he was not available to talk. RTÉ states that, unfortunately on the day they did not get a chance to put these calls on air. The broadcaster states that the caller was contacted again after the show and she was adamant that her experience was reflective of what happened in some rural parishes in Meath and reiterated that it happened at her own mother's funeral.

The broadcaster states that an email was sent to the Diocese of Meath Press Office on 16th August and a reply was received. The email response states that in "many" parishes in the Diocese of Meath you can sympathise within the church. The statement does not clarify that this incident did not happen in the caller's case. In addition, RTÉ states that they have spoken with the caller twice since the complaint was received from the complainant and she is adamant that this happened to her family. However, she did acknowledge that she did not know if this was a directive of Bishop Smith but she concluded that the priest must be acting in accordance with guidelines from the Bishop. RTÉ states that they felt it inappropriate to read out a clarification at that time. They state that Liveline discusses religion and religious issues on a regular basis and will in future endeavour clarify the issue within such discussions.

Response to BAI:

RTÉ in its response to the BAI reiterated the points made in its initial response to the complainant as set out above.

They further add that on the 4th September, following a telephone conversation with the Series Producer of Liveline, the complainant wrote to request the broadcast of a "correction and clarification" of practice in regard to condolences in the Diocese of Meath. Due to the producer in-charge of the week of the broadcast being on leave in September, and partly due also to the confusion arising from the inclusion of an incorrect date in the complainant's correspondence to RTÉ, the matter took some time to clarify. RTÉ regrets the delay in responding to Mr. Long's original complaint.

The broadcaster states that no information has come to light that would contradict the experience of the caller at her mother's funeral and no statement has been made that this experience of a proscription on condolences within the church is not to be found in other parishes in Meath. Accordingly, RTÉ believes that there was no lack of fairness, objectivity or impartiality in the handling of the broadcast on this topic on 14th August.

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RTÉ accepts nonetheless that the caller's experience is not the unavoidable consequence of a directive by the Bishop of Meath, who requires parishes to put clear arrangements in this regard in place, without specifying what they should be. The broadcaster wishes to reaffirm the offer made by the broadcaster to take the opportunity within the next discussion of a religion-related topic on the Liveline to clarify that the Diocese allows parishes to make different arrangements in respect of condolences, that the experience of the caller and her family is not universal throughout Meath parishes and that in Bishop Smith's own parish of Mullingar such condolences are expressed within the church.

Decision of the Compliance Committee

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following consideration of the matter, the Committee has decided to uphold the complaint. In reaching this decision, the Committee had regard to the following:-

- The item concerned a matter of importance to those who are Catholic and who live in the Diocese of Meath, namely, the guidelines in place in the diocese in respect of funeral masses. As such, the comments made by the caller to the programme about what she understood were limitations on the expression of condolences following the funeral mass had the potential to cause concern for those who live in the Diocese. It was therefore important that the programme makers took steps to ensure that such comments were accurate.
- Following a review of the broadcast, the Committee noted that the caller made a number of strong criticisms of the guidelines and of the Bishop of Meath at whose behest she states the restrictions on condolences had been instigated. The Committee also noted that the broadcaster acknowledged in its response to the complaint that a clarification was required on-air to confirm that the experience of the caller when attending the funeral of her mother were not as a consequence of a Directive on the part of the Bishop of Meath and were not mandated across the diocese.
- It is the view of the Committee that the error (acknowledged by the broadcaster) in the programme in respect of the Bishop of Meath could have been addressed during the programme or in a subsequent edition of the Liveline programme. In addition, while noting that a number of callers were not available to go on-air, the programme makers could have conveyed the views of these callers during the programme in order to provide another perspective on the issue.
- The Committee also noted that information on the guidelines in place would appear to have been readily available to the programme makers on the website of the Diocese of Meath. As such, the veracity of the comments made by the caller could have been examined during the programme.
- In view of the above, it was the Committee's opinion that the item did not meet the requirements for fairness in current affairs content and was not presented with due accuracy and should have been rectified by the broadcaster.

Resolved at Executive Complaints Forum

Complaint made by: Mr. John Fitzgerald

Ref. No. 43/13

Station:
RTÉ Radio 1

Programme:
Today with Pat Kenny

Date:
26 March 2013

Complaint Summary:

Mr. Fitzgerald's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a)(fairness, objectivity & impartiality in current affairs).

The complainant states his complaint relates to an item carried on this programme about the corporate culture of Google in Ireland. He further states the item was one-sided, unbalanced and partial in its presentation. He states that the item reflected wholly the positive view of such companies which he states has been promoted over past months at almost every opportunity by government. He states that it neglected to consider any of the broader concerns which have been presented in the media regarding the operations of major multi-nationals such as Google in this country over the past months.

Broadcaster's Response:

Initial response to complainant:

RTÉ acknowledged receipt of Mr. Fitzgerald's mail and stated they would forward his comments to the producer of *Today with Pat Kenny* for their attention and response. No further response was received by the complainant.

Response to BAI:

RTÉ states that on *Today with Pat Kenny* it included a report by Marie-Louise O'Donnell on her visit to the Headquarters of Google Ireland in Dublin. They further state Marie-Louise O'Donnell is a regular contributor to *Today with Pat Kenny*, delivering colourful reports on her visits to different locations around the country. These reports deal with many aspects of contemporary life but are presented as personal accounts of her experiences, not as current affairs items.

The item was not presented as a comprehensive or wide-ranging overview of Google Ireland but as one reporter's experience of her visit to the company, having described the company's history and business activities as context for the listeners.

In her report, Ms. O'Donnell was extremely enthusiastic about her experience of this workplace, describing the work environment as stunning and the benefits for the employees as exceptional. She did also refer to the requirement on employees to work very hard in return for these benefits but was very positive about the creative culture. Issues such as data protection and online pornography were raised by M. O'Donnell during her visit and the response of the Google executives conveyed to listeners. Ms. O'Donnell's report on her visit was clearly honest and sincerely impressed with what she saw there.

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While *Today with Pat Kenny* has on other occasions discussed Google and other multinational companies' decisions to base themselves in Ireland in the context of tax breaks, etc, (for example in a forty-minute item on 22 May last), on this occasion a validly personal journalistic angle was taken, focussed on the company as a workplace.

Decision of the Executive Complaint Forum:

When considering the complaint, the members of the Forum reviewed the broadcast, the submissions of the complainant and the broadcaster. The Forum also had regard to section 48(1)(a) fairness, objectivity and impartiality in current affairs.

The Forum noted that the complaint related to an item during *Today with Pat Kenny* in which Marie-Louise O'Donnell reported on a visit she made to the Google Headquarters in Dublin. The complainant felt that this piece was once-sided and partial in the favour of Google and was effectively "a propaganda piece" for Google.

Having listened to the report in question and considered the arguments raised by the complainant and the response submitted by the broadcaster, the Forum acknowledged that there was only one point of view provided during this segment but noted that this is a regular feature which is an opinion piece based on Ms. O'Donnell's experience in various places throughout Ireland.

The Forum considered that this is a magazine-type feature, not a current affairs piece and regular listeners of the show would be aware of the format. As such, the statutory requirement for fairness, objectivity and impartiality in news and current affairs did not apply. Further, the members noted that the complainant took issue with the fact that the item failed to explore the issues which he felt should be raised. However, the broadcaster is not required to explore all aspects of the selected topic in each show.

The Forum was of the view that the complaint did not raise issues that required further consideration and, accordingly, the complaint did not require further investigation.

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Complaint made by: Mr. Malachy McGuinness

Ref. No. 97/13

Station:
RTÉ 2FM

Programme:
2FM - Arthur's Day Competition

Date:
22 September 2013

Complaint Summary:

Mr. McGuinness' complaint is submitted under the Broadcasting Act 2009, *General Commercial Communications Code*: sections 3.1.1; 3.1.3; 3.2.4; 3.2.5; 3.4.3; 6.3; 6.5; 8.1.9; 8.1.11 (protecting the individual and society, offence, harm and human dignity, compliance, rules pertaining to sponsorship and rules pertaining to specific products and services).

The complainant states his complaint relates to the promotion of alcohol and the culture of alcohol consumption to young people. He states that this advertising was subliminal, normalising and glamorising of alcohol consumption to children, who he describes as one of the most vulnerable groups in society. The complainant states this advertisement was by way of an Arthur's Day free ticket competition at 4.15pm on Sunday afternoon.

Broadcaster's Response:

Initial response to complainant:

RTÉ acknowledged receipt of Mr. McGuinness' mail and stated they would follow up with a substantive response. No further response was received by the complainant.

Response to BAI:

RTÉ states the item complained of was a competition for two tickets to a musical performance on Arthur's Day at Dakota Bar in Dublin City. The competition, The Wrong Answer Quiz, is a regular feature of the programme for which appropriate prizes are offered.

While the nationwide music event of Arthur's Day is of course promoted by Guinness/Diageo, there was no reference whatsoever to the company or its products in the competition and no encouragement whatsoever to consume alcohol; nor was the consumption of alcohol a condition or a necessary consequence of either the winning of tickets or attendance at the musical event.

3.1 Protecting the Individual and Society

There was nothing in this item, which made reference to brand or product, which could infringe this provision. Neither was there any surreptitious, subliminal or misleading element in this item. Arthur's Day is a music event known to be promoted by Guinness/Diageo; however nothing in the editorial contained any element of surreptitious, subliminal or misleading promotion or communication of Guinness/Diageo. The questions, for example, while appropriately music-based for the programme, contained no reference of any kind to Guinness/Diageo or its products.

3.2 Offence, Harm and Human Dignity

The item was scheduled appropriately in this adult-oriented music programme; neither programme nor item are directed towards or made attractive to the children's audience. Only adults are eligible to participate in this item and no children were involved in the editorial content in any way.

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3.4 Compliance

The time of broadcast, type of channel and programme and composition of the audience was entirely appropriate to a competition for tickets to a music event which, while not necessarily involving the consumption of alcohol, was due to take place in a licensed premises.

6. Rules pertaining to Sponsorship

In so far as the item falls within the area of sponsorship it was fully compliant with all the relevant provisions of the Commercial Communications Code.

8. Rules pertaining to specific products and services

There was no communication of any kind in this item in relation to any product or service, alcoholic or otherwise; the programme is not primarily or in any way intended for children; and there was no infringement of any code of practice, including those recognised by the Department of Health and Children.

Decision of the Executive Complaint Forum:

When considering the complaint, the members of the Forum reviewed the broadcast, the submissions of the complainant and the broadcaster. The Forum also had regard to the General Commercial Communication Code; sections 3.1.1; 3.1.3; 3.2.4; 3.2.5; 3.4.3; 6.3; 6.5; 8.1.9; 8.1.11 under which the complaint was submitted.

The Forum noted that the complaint related to a competition for two tickets to a music event marking 'Arthur's Day', a promotional event organised by the drinks company Diageo. The complainant claims that this competition amounted to subliminal advertising, coupled with normalising and glamorising alcohol consumption aimed at the most vulnerable groups in society. The complainant also objects to the time of day the broadcast took place i.e. 4.15 on a Sunday afternoon.

Having listened to the whole programme and considered the complaint under all the sections selected by the complainant, the Forum was of the view that there was no issue with the promotion and that standards under the Code were met. Broadcasters are permitted to engage with sponsors so long as the existence of a sponsor is made clear. The members of the Forum noted that the complainant felt that the competition subliminally glamorised alcohol consumption but they found no evidence of this. There is no prohibition on alcohol sponsorship once it complies with alcohol and sponsorship rules, the programme in which the competition was run is not a children's programme and as the sponsorship agreement was sufficiently transparent, the Forum felt that the competition complied with the requirements of the General Commercial Communications Code.

The Forum was of the view that the complaint did not raise issues that required further consideration and, accordingly, the complaint did not require further investigation.

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Complaint made by:

Mr. Donal O'Sullivan-Latchford on behalf of Family & Media Association Ref No. 99/13

Station:

RTÉ Radio 1

Programme:

Risin' Time

Date:

16 September 2013

Complaint Summary:

Mr. O' Sullivan-Latchford's complaint is submitted on behalf of the Family and Media Association under the Broadcasting Act 2009, section 48(1)(a) *fairness, objectivity and impartiality in current affairs*, and the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs: Rules 4.1; 4.2; 4.3; 4.10; 4.19; 4.21; 4.22;4.23; 4.24 4.28 and 4.29.*

The context for the complaint was a comment made by the presenter of the programme during a review of the newspapers of the day. Specifically, a reference by the presenter during his description of an article, entitled "*Priest attacks extreme elements in the church*", which covered comments made by Fr. Iggy O'Donovan, on the occasion of his departure from his parish in Drogheda.

The complainant states that the comments made by the presenter during this item endorsed the views of Fr. O'Donovan at the expense of the other party referenced in the article. The complainant states that the presenter, speaking about Fr. O'Donovan, said he had been a regular contributor on RTÉ over the years and that he had met him a couple of times. The presenter described him as "*a decent man – he used to get up at half four in the morning to go organise himself to get the bus to Dublin. No limousines for him*". The complainant states that when a presenter decides to praise someone, specifically in the context of that person criticising someone else, then the presenter has clearly taken sides. He further states that the reference to "*no limousines for him*" invites the listener to make comparisons and this gives rise to a number of questions: Who does use limousines? Is it the person/s that Fr. O'Donovan has been criticising? The complainant states that Fr. O'Donovan is presented as a "*decent man*" precisely because he does not use limousines therefore what is the audience to conclude about those that do? The complainant claims that the presenter's comments constitute a clear breach of the 2009 Act.

Finally, the complainant disagrees with the broadcaster's characterisation of the presenter's comments as 'isolated' and questions whether the broadcaster would take the same opinion if the presenter had made positive remarks about An Taoiseach Enda Kenny in the context of a review of an article detailing Mr. Kenny's criticism of Fianna Fáil leader Micheál Martin?

Broadcaster's Response:

Initial response to complainant:

RTÉ state that without prejudice to whether or not this reference by the presenter constituted current affairs content, they assert that there was no expression of the broadcaster's own view, the broadcaster being RTÉ in the meaning of the Act, not the programme presenter.

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In respect of the expression of views by a presenter, Section 22 of the BAI Code of Fairness, objectivity and Impartiality in News and Current Affairs states that:

A presenter and/or reporter on current affairs programme shall not express his or her own views on matters that are either of public controversy or the subject of current public debate such that a partisan position is advocated.

The broadcaster states that the Code does not prevent the expression of views by a presenter but their expression in such a way that an agenda is pursued. RTÉ believe the presenter's isolated comment did not constitute the advocacy of a partisan position within the meaning of the Code. They further state that his comment did not relate to Fr. O'Donovan's position on any matter but entirely to the presenter's own personal experience of Fr. O'Donovan's character and that he neither supported any position taken by Fr. O'Donovan nor implicitly or otherwise criticised any positions opposed to those of Fr. O'Donovan.

Response to BAI:

RTÉ state that the presenter expressed no view whatsoever of the statements by Fr. O'Donovan quoted in the article or of any statements made at any time by Fr. O'Donovan or by critics of his views. He did not take any position on Fr. O'Donovan's relationship with the church, or the reason for his moving from Drogheda, or any of the statements made in relation to that move.

The presenter spoke, from his own previous experience as a researcher, of Fr. O'Donovan's declining of the offer to be picked up by car to be brought to studio but instead taking public transport, which had made a lasting impression on him.

This impromptu remark in the context of an entertainment format did not engage with a matter of public debate or discussion. To put it another way: Fr. O'Donovan could possess the characteristic of being "a decent man," ascribed to him by the presenter, and still hold wrong or invalid views; the presenter expressed no opinion whatsoever of those views.

Without prejudice as to whether or not this reference constituted current affairs content, RTÉ asserts that there was no expression of the broadcaster's own views.

In respect of the expression of views by a presenter, Section 22 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs states that the Guidelines for the code state:

The Code seeks to prevent a partisan position being advocated by the presenter and to guard against a presenter using his/her programme to pursue an agenda, via comments, choice of guest etc., such that a biased view on an issue is articulated.

The broadcaster states that the presenter's isolated comment on an aspect of Fr. O'Donovan's character did not constitute the advocacy of a partisan position within the meaning of the Code. Nor did he express any views on a matter of public controversy or current public debate.

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It is the view of RTÉ that there was no infringement of Section 39 of the Broadcasting Act 2009 or of any of the sections of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs cited in the complaint, insofar as that code may apply to Mr Byrne's comment.

Decision of the Executive Complaint Forum:

When considering the complaint, the members of the Forum reviewed the broadcast, the submissions of the complainant and the broadcaster. The Forum also had regard to the Broadcasting Act 2009, section 48(1)(a) fairness, objectivity and impartiality in current affairs and the Code of Fairness, Objectivity and Impartiality in News and Current Affairs: Rules 4.1; 4.2; 4.3; 4.10; 4.19; 4.21; 4.22; 4.23; 4.24; 4.28 and 4.29, under which the complaint was submitted.

The complaint centred on a comment made by the presenter when reviewing the morning newspapers. Several news items were read from a variety of newspapers during this segment of the programme. One of these included an article headlined "*Priest attacks extreme elements in the church*". This was followed by a comment by the presenter in which he referred to the priest at the centre of the article stating "*He has been a regular contributor here on RTÉ over the years. I met him a couple of times as well... a decent man. He used to get up at half four in the morning to go and organise himself to get the bus to Dublin... no limousines for him*".

Following a discussion, the Forum was of the view that the context for the presenter's comments was that of his personal opinion of the priest, having met him on a few occasions. The reference to "*no limousines for him*" was also considered by the Forum to be a reference to the type of person the presenter found the priest in question to be i.e. he would be more comfortable taking public transport than travelling by limousine. The Forum was of the view that the average listener would not have construed this reference as a criticism of those at whom the priest had aimed his comments, as reported in the newspaper article. Having considered the presenter's comments in full and in context, the Forum was of the view that on balance, the listener would not have linked the presenter's comments to the news story as claimed by the complainant.

The Forum was of the view that the complaint did not raise issues that required further consideration and, accordingly, the complaint did not require further investigation.

