



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

Broadcasting Authority of Ireland

Broadcasting Complaint Decisions

March 2013

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 the broadcasting codes and rules of the Broadcasting Authority of Ireland (BAI). In line with the BAI's complaints handling process, the viewer or listener should direct their complaint to the broadcaster in the first instance. If a viewer or listener is not satisfied with the response from the broadcaster or if the broadcaster does not respond within the timeframe specified in their *Code of Practice for Complaints Handling*, usually 21 days after receipt of complaint, 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 the material submitted by the relevant parties together with the broadcast material. Complaints are assessed at Executive level by the Executive Complaints Forum and/or by the Compliance Committee of the Authority. The details of the broadcasting complaint decisions reached by the BAI are detailed in this document.

- This publication records the decisions of the BAI Compliance Committee and the Executive Complaints Forum at meetings held in March 2013.
- The Compliance Committee rejected 10 complaints and one complaint was resolved by the Executive Complaints Forum.

Further information on the BAI's complaints handling process can be found on www.bai.ie or by phoning 01 644 1200.

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Rejected by BAI Compliance Committee

Complaint made by: Mrs. Mary Stewart

Ref. No. 133/12

Station:
RTÉ One

Programme:
6.01 News

Date:
14 November 2012

Complaint Summary:

Mrs. Stewart's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a)(objectivity and impartiality in news). The complainant objects to an interview that featured a man who claimed that he and his wife were forced to go to England in order to have an abortion. The complainant believes that this amounted to a linking of the death of Ms. Halappanavar's death to abortion before the full facts were known about the cause of her death. The complainant also raises concerns in relation to the use of the word "forced" by the reporter. The complainant states that the programme was biased as a result of the use of this word and in its treatment of the death of Ms. Halappanavar.

Broadcaster's Response:

Initial response to complainant:

RTÉ states that their journalists report on matters of public controversy. This involves, on occasions putting on air public figures and private individuals who give their views on controversial matters which may differ from others. In relation to the death of Ms. Savita Halappanavar, RTÉ journalists had been at pains to inform viewers and listeners that the facts surrounding her death are unclear and that there is to be an inquiry. This inquiry will take several months to complete. In the meantime, any discussion has to be tempered by the recognition that vital information is not in the public domain. RTÉ has reported accurately what is known so far and has moderated all debate fairly. RTÉ further states it has no agenda in reporting on and facilitating a debate on the death of Ms. Savita Halappanavar.

Second response to complainant:

RTÉ states that this report did feature a short item on a couple who gave their views on abortion in Ireland based on their particular experience. However, it is important to note that this report also featured a GP who discussed the law and medical details. RTÉ believes it is reasonable to include this in the coverage, especially when the issue is in the news. The quotes of the man whose wife travelled to England reflected his personal perspective.

RTÉ further states that they have reported extensively on the controversy surrounding the death of Savita Halappanavar. At all times, journalists and presenters have prefaced discussions by saying that the full facts that led to her death are not known and that until inquiries are completed, much of the discussion has to be based on speculation. RTÉ states that they have reported accurately and factually and have chaired discussions and debates in an even-handed manner. Both sides of the debate have been extensively represented.

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Response to BAI:

RTÉ states that a number of reports on the Six One News of 14 November 2012 were related to the death of Savita Halappanavar. They included the statement by Ms. Halappanavar's husband that she had requested a termination of her pregnancy when informed it was not viable and that this was refused. Other items reported on the discussion in the Dáil and Seanad of Ms. Halappanavar's death in the context of the expert group report on options for dealing with the European Court of Human Rights judgement on abortion in Ireland, a demonstration outside the Dáil calling for abortion legislation and a studio interview with a medical law specialist on the legal context for a termination such as that requested, according to her husband, by Ms. Halappanavar.

The report complained of looked at the background of abortion in Ireland. It included interviews with a barrister and a doctor as well as with the husband of a woman who, when informed that the foetus she was carrying was suffering from a syndrome which meant that it would die in the womb or immediately after birth, had travelled to England for termination.

RTÉ news did not initiate a linkage between the death of Ms. Halappanavar and the issue of abortion but in its extensive reporting reflected the fact that this connection had been made by members of the Oireachtas, by legal and medical commentators and by people such as the husband interviewed in the report complained of who saw an association between their own experience and the death of Ms. Halappanavar.

RTÉ claimed that their balanced coverage in this news and other bulletins of Ms. Halappanavar's death and subsequent events and discussion has consistently reported that the full facts that led to her death are not known and that until inquiries are completed much of the discussion has to be based on speculation. Reports, including an item on the Six One bulletin of 14th November, have included the view, in this instance of Oireachtas members, that her death and the legal circumstances surrounding pregnancy termination are not necessarily linked.

RTÉ maintains that its coverage has not initiated the linking of the subject of abortion with the death of Ms. Halappanavar, that its reporting has been objective and impartial.

Decision of the Compliance Committee:

The Committee considered the broadcast, the submissions from both the broadcaster and the complainant. Following consideration of this material the Committee decided to **reject** the complaint. In reaching this decision, the Committee took into account the following:

- The programme about which the complaint was made concerned a significant breaking news story that had raised a broad range of issues relating to the legal framework in Ireland that applies in the case of a request for an abortion in circumstances where the life of the mother is threatened by her pregnancy.

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- In this context, it was the Committee's view that it was suitable that a range of issues relating to this story would be covered across the duration of the programme. Such issues included the possible reasons for the death of Ms. Halappanavar, the response of Government and the Opposition to her death, an overview of the history of abortion law in Ireland including decisions and consequences of a range of referenda, legislation and court cases on this matter, as well as the medical and legal issues arising from the death of Ms. Halappanavar. It was the Committee's view that these aspects were dealt with during the programme in a factual manner appropriate for a story of this nature. It was also the view of the Committee that the programme did not link the death of Ms. Halappanavar to the fact that her pregnancy was not terminated. Rather, the programme addressed the issue of abortion in a context where the husband of Ms. Halappanavar had highlighted what he had described as decisions made to refuse a request by him and his wife for an abortion, the consequences of the refusal on the health of his wife (as he saw it) and the reasons provided to him for the refusal of his request.
- Regarding the specific interview with the husband who had travelled with his wife to the UK to procure an abortion, it was the Committee's view that this interview raised no concerns in terms of objectivity or impartiality. Addressing the impact of an event on the lives of individuals is a legitimate approach in news and current affairs content and the Committee considered the interview with the husband to constitute a factual outline of the experience of a couple that did not endorse or comment upon their choices. It was the Committee's view that the use of word "forced" was with reference to current Irish law as opposed to coercion and was a description of the circumstances as experienced by the couple referred to in the broadcast. It was the view of the Committee that this interview did not amount to bias in the manner specified by the complainant.
- In reaching decisions in respect of programme content, the Committee has regard to the programme as a whole and interviews or other content in the context of the totality of the programme. Taking this into account and taking the aforementioned points into account, the Committee agreed that the complaint would be rejected.

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Complaint made by: Mr. Brian J. More

Ref. No. 128/12 & 129/12

Station:

TV3

Teleshopping:

Psychic Readings Live

Date:

22 November 2012

23 November 2012

Complaint Summary:

The complaints are submitted under the Broadcasting Act 2009, section 48(1)(d)(General Commercial Communications Code): sections 3.1.1 / 3.1.3 / 3.1.6 / 3.4.1 / 3.4.4 (protecting the individual and society and compliance). The complainant states that dialling sound effects are being broadcast, including when the presenter is talking, which, in his opinion, are designed to induce people to call the number. The complainant states that TV3 claims that these sounds are merely used as background sounds. However, the complainant believes their use amounts to surreptitious and/or subliminal communication.

Broadcaster's Response:

Initial response to complainant:

TV3 states the sounds referred to by the complainant are merely used as background sounds. Furthermore, the Codes states that surreptitious commercial communications "exploits the possibility of conveying a message to, or otherwise influencing the minds of members of an audience without their being aware or fully aware of what has been done". TV3 points out that in a commercial service that openly asks viewers to call, these sounds would not influence the minds of members of the audience without their being fully aware of what has been done.

Response to BAI:

TV3 in their response to the BAI reiterated that which they had already stated in their response to Mr. More (above).

Decision of the Compliance Committee:

The Committee considered the broadcast and the submissions from the complainant and the broadcaster. Following consideration of this material, the Committee has decided to **reject** the complaint. In reaching this decision, the Committee took into account the following:

- Upon review of the broadcast, it was the Committee's view that the content did not substantiate the complainant's arguments. In this regard, the Committee noted that the broadcast constitutes a commercial teleshopping segment intended to generate revenue via premium rate telephone calls. In this context, the Committee found no issues arose with the inclusion in the broadcast of content, such as the sound effects highlighted by the complainant, which encouraged the use of the service.
- In addition, the Committee did not form the view that these sound effects fell within the definition of surreptitious or subliminal advertising since audiences would have been clearly aware of the nature of the broadcast and the requirement for payment to participate in the broadcast.
- For these reasons, the Committee has decided to reject the complaint.

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Complaint made by: Ms. Norella Broderick

Ref. No. 01/13

Station:
RTÉ One

Programme:
6.01 News

Date:
1 December 2012

Complaint Summary:

The complaint is submitted under the Broadcasting Act 2009, section 48(1)(a)(objectivity and impartiality in news). The complainant states that the aspect of the programme that dealt with the results of an opinion poll on abortion in the Sunday Business Post was, in her view, not accurate. The news report, in the complainant's view, did not reflect the contradictory nature of the opinion poll. The complainant states that responses to the first question in the poll gave a majority of 85% favouring 'X Case' legislation. The complainant states that the responses to this question were reported during the news item. The complainant states that responses to the second question in the poll gave a majority of 63% favouring a constitutional amendment to overturn the X case judgment.

The complainant states that this result was not reported on during the news item. In the opinion of the complainant, this in itself gives a false and inaccurate impression of the results of the opinion poll. Looking at the results, the complainant proposes that there must be a large overlap between those who answered the first question in support of legislation and those who answered the second question in favour of a constitutional amendment to overturn the X case judgment and that these positions are irreconcilable. The complainant queries why this aspect of the story was entirely ignored by RTÉ news.

Broadcaster's Response:

Initial response to complainant:

RTÉ states that this poll asked four questions on the abortion issue. Because of the usual time constraints of a news programme, RTÉ concentrated on the question that had the most news value. That was the question on legislation because it is the only issue the Government has committed to consider. The Expert Group Report, commissioned by the Government, is concerned only with the legal/regulatory options on this. The other questions were interesting but they did not refer to anything that was under active consideration by the Government. Both sides of the abortion debate could take comfort from answers to other questions which show confusion among the respondents. Against that background RTÉ felt the fairest way to deal with this was to focus only on the one question that was directly related to the actual proposal under consideration by the Government.

Response to BAI:

RTÉ states that RTÉ News normally carries a report on the Saturday evening before publication of the month-on-month *Sunday Business Post/Red C* polls which for the most part are political polls on party support; in some instances they ask topical questions and these may also be included alongside the party results.

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The RTÉ News report on Saturday 1 December covered the subjects of the poll due to be published in the newspaper on the following day – on approval ratings as usual and also in this instance on abortion and on the Budget. The report led on the approval ratings for the various political parties; Fine Gael's rating had fallen by 6% since the previous poll.

In the context of abortion legislation/regulation being the strategy, the Government has committed to consider arising from the expert group report on options for dealing with the European Court of Human Rights judgment on abortion in Ireland, the RTÉ News report concentrated on the poll's question on legislation. This was based on the objective editorial decision to focus on the question directly related to the proposals under consideration by the Government and reporting that it was the option favoured by the highest percentage of respondents to the poll. The data arising from that question would have been used irrespective of the response to it; if the poll had found a majority opposed to the Government position, RTÉ would have reported that finding.

RTÉ maintains that the reporting of these poll findings was objective and impartial and determined solely by professional consideration of the political significance of the results.

Decision of the Compliance Committee:

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following consideration of the material, the Committee has decided to **reject** the complaint. In reaching this decision the Committee took into account the following:

- Opinion polls commonly deal with a wide range of issues. Whereas a newspaper publication that has commissioned such research will often have both the space and the interest in covering the results of such polls in detail, radio or television reports of third party opinion polls require broadcasters, on account of time, to make necessary editorial judgements as to what aspects of an opinion poll are of the most news value to their audiences. In this regard, a broadcaster has the discretion as an independent media organisation to make decisions as to what is covered or not covered during programming that it broadcasts and different broadcasters will focus on different aspects of an opinion poll taking into account the type of programme being produced and the audience likely to view. Such editorial decisions are a matter for each broadcaster to make. The role of the Compliance Committee is to adjudicate where complaints have been made about whether the content that the Broadcaster has chosen to transmit complies with relevant broadcasting legislation.
- Upon its review of the broadcast material, it was evident to the Committee that the report of the opinion poll results did not cover all the results of the poll. It was also clear that the broadcaster chose to emphasise particular aspects of the opinion poll. The Committee was of the view that the focus of the news report and the emphasis chosen by the broadcaster were editorial judgements on the part of the broadcaster in the context of their role as an independent entity. The Committee did not consider these decisions of the broadcaster evidence of a lack of objectivity and impartiality. Accordingly, the complaint was rejected.

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Complaint made by: Mr. Seán Ascough

Ref. No. 02/13

Station:
RTÉ One

Programme:
Scannal

Date:
10 December 2012

Complaint Summary:

Mr. Ascough's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a)(fairness, objectivity and impartiality in current affairs). The complainant states that this programme created the impression that the women in ABC .v. Ireland case in the European Court of Human Rights (ECHR) were denied necessary medical treatments during pregnancy in Ireland because of Ireland's legal ban on abortion. The complainant claims this is untrue. The complainant cites what he describes as the clear ethical distinction – recognised in law and in medical ethics – between medical treatments during pregnancy that may result in the death of an unborn child and abortion.

The complainant states that abortion campaigners have pointed to the case of ABC vs. Ireland as justification for the legalisation of abortion in Ireland. However, it is his view that we have no obligation to legalise abortion because of this ECHR case. As a result of the way in which the case was presented in the programme, the complainant states that the impression was given that Irish law endangers women. The complainant cites the experience in the UK where he states abortion is legal and widely available but where the maternal mortality rate is twice that of Ireland's and where he states that women die during or following abortions and where abortion is legal during the first 6-months of pregnancy, and in the case of disability – up to birth. The complainant states that this has resulted in situations where babies have come through abortion procedures alive.

The complainant believes that the failure of the programme to address these issues and the impact of the regulation of abortions at an international level gave the impression of women being denied necessary medical treatment. He also states that the failure to critically examine what an abortion regime would result in made this programme extremely misleading.

Broadcaster's Response:

Initial response to complainant:

RTÉ states Mr. Ascough makes a number of complaints about "Scannal: X-Case" in relation to its depiction of the ABC .v. Ireland case which was taken to the European Court of Human Rights. Specifically, he says the following:

"This programme created the impression that the women in ABC vs. Ireland case in the ECHR were denied necessary medical treatments during pregnancy in Ireland because of our ban on abortion. This is untrue."

He also says:

"The impression is given that Ireland denied ABC necessary medical treatments. In other words, that the law endangers women."

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He further adds:

“The programme’s impression of women being denied necessary medical treatment, along with its failure to critically examine what an abortion regime would result in made this programme extremely misleading.”

The programme section on the case of ABC .v. Ireland lasted about 40 seconds. It is reproduced here verbatim in its original Irish language version and as it appeared in the subtitled version.

ABC .v. IRELAND - Gaeilge Voiceover

Sa bhliain 2005, phléasc ceist na ginmhille arís nuair a thóg triúr ban, A, B agus C cás i gcoinne na hÉirinn i gCúirt na hEorpa um Chearta an Duine. Bhí dlíthe na tíre seo maidir le ginmhilleadh ag cur a sláinte i mbaol, dár leo. Dúirt an triú bean, ar ar tugadh C, gur cuireadh a beatha i mbaol chomh maith. Thug an chúirt breithiúnas i Mí na Nollag 2010. Theip ar achainí A agus B, ach i gcás C, rialaigh an Chúirt d’aonghuth gur sháraigh Éire Alt 8 de Choinbhinsin na hEorpa um Chearta an Duine toisc nár tugadh feidhm don cheart Bhunreachtúil ar ghinmhilleadh dleathúil in Éirinn. Bhí ceist achrannach na ginmhille agus Cás-X ar ais ar leic an dorais.

ABC v IRELAND - English Subtitles

In 2005, abortion hit the headlines once again when three women - A, B and C - took a case against Ireland to the European Court of Human Rights. They claimed that Ireland’s abortion laws had threatened their health. The woman called C also claimed that her life had been endangered. The court gave its verdict in December 2010. It found against A and B. But in the case taken by C, the court ruled unanimously that Ireland had violated Article 8 of the European Convention on Human Rights because of its failure to implement the existing Constitutional right to a lawful abortion in Ireland. The divisive issues of abortion and the X-Case had come home to roost.

RTÉ claim that a careful reading of both versions will confirm that no “impression” was created that women were “*denied necessary medical treatments during pregnancy in Ireland because of our ban on abortion*”.

What the programme does is simply to report the women’s *claims* (as Gaeilge: “*dár leo*”) that Ireland’s abortion laws had threatened their health, and in the Case of C, endangered her life. RTÉ states that this is simply a piece of factual reporting. There are no impressions, good, bad or indifferent, just the facts of the case.

In relation to a critical examination of “*what an abortion regime would result in*”, this was not the subject of the programme. The programme was about the 14 year old girl called X and what happened to her in 1992. The rights and wrongs of abortion per se were not the subject of this particular programme.

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Response to BAI:

RTÉ states the section of the programme dealing with the case of ABC .v. Ireland at the European Court of Human Rights lasted just over forty seconds and the voiceover narration is reproduced here in full, both in the original Irish and as subtitled in English:

ABC v IRELAND - Gaeilge Voiceover

Sa bhliain 2005, phléasc ceist na ginmhille arís nuair a thóg triúr ban, A, B agus C cás i gcoinne na hÉirinn i gCúirt na hEorpa um Chearta an Duine. Bhí dlíthe na tíre seo maidir le ginmhilleadh ag cur a sláinte i mbaol, dár leo. Dúirt an tríú ban, ar ar tugadh C, gur cuireadh a beatha i mbaol chomh maith. Thug an chúirt breithiúnas i Mí na Nollag 2010.

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ABC v IRELAND - English Subtitles

In 2005, abortion hit the headlines once again when three women - A, B and C - took a case against Ireland to the European Court of Human Rights. They claimed that Ireland's abortion laws had threatened their health. The woman called C also claimed that her life had been endangered. The court gave its verdict in December 2010. It found against A and B. But in the case taken by C, the court ruled unanimously that Ireland had violated Article 8 of the European Convention on Human Rights because of its failure to implement the existing Constitutional right to a lawful abortion in Ireland. The divisive issues of abortion and the X-Case had come home to roost.

RTÉ states that this account reports the claims of the women, as a matter of fact, and the verdict of the Court, also a matter of fact. It states that this verdict brought "*the divisive issues of abortion and the X-case*" back to the domestic agenda. The programme offers no view whatsoever, at this or any other point, on whether women in Ireland were denied necessary medical treatments during pregnancy.

The programme does not in fact address the substantive issue of abortion; it is concerned with the legal, social and political events and arguments which arose around and as a consequence of the 1992 'X Case'.

Decision of the Compliance Committee:

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following consideration of this material, the Committee had decided to **reject** the complaint.

In reaching this view, the Committee took into account the following:

- The programme is a strand of RTÉ television's Irish language programming that deals with matters of controversy in Ireland's recent and not-so-recent past. The focus of the programme was the X case which dealt with, among other issues, the legality of abortion in the Irish State.

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- Upon review of the programme content, it was the view of the Committee that the programme focused on the events surrounding the X case, the consequences of the case on law applying in Ireland to the legal termination of a pregnancy. It also addressed the background to the X case, including the 1980's referendum on abortion, the unexpected consequences of that change to the constitution and the circumstances that gave rise to the X case itself.

The programme included a range of interviews from those who were centrally involved in the legal and Government response to the X case including the then Attorney General and the Government Press Secretary. Footage was also used to illustrate the response by Irish society in general, 'pro-choice' and 'pro-life' groups, the Catholic Church, politicians and citizens to the issues arising. The programme concluded with a reference to the ABC court case where the European Court of Human Rights (ECHR) found against Ireland in the case of one of the litigants.

- It was the Committee's view that the programme dealt objectively in its description of the events and debate at the time of the X case as well as the impact of the court case on Irish law. The Committee noted that the breadth and strength of views were examined during the programme. The Committee also noted that the programme concluded with a reference to the ABC ECHR court case but it was of the view that the presentation of the outcome of that case was factual and presented in a manner that was fair, objective and impartial.
- The Committee noted that the complainant's submission highlighted the absence from this programme of an analysis of UK law or an examination of the impact of UK law on the health of women, the viability of fetuses and stated that the failure to compare the Irish situation with the international regulation of abortions was a failure on the part of the programme. However, while such issues of law and health are important in a debate on the approach that current Irish society should take towards legislating, or not legislating, on foot of the decision of the ECHR, the programme focused on the X case and its content was accordingly limited to that issue. There was therefore no need to include broader issues of abortion and its consequences, as suggested by the complainant, in order to ensure that the programme was fair, objective or impartial.
- In reaching decisions in respect of programme content, the Committee has regard to the programme as a whole and in the context of the totality of the programme. Taking this into account and taking the aforementioned points into account, the Committee agreed that the complaint would be rejected.

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Complaint made by: Mr. Brian J. More

Ref. No. 6/13

Station:

TV3

Teleshopping:

Psychic Readings Live

Date:

3 December 2012

Complaint Summary:

Mr. More's complaint is submitted under the Broadcasting Act 2009, section 48(1)(d)(*General Commercial Communications Code*): sections 3.1.1, 3.1.4 and 3.1.6 (protecting the individual and society and compliance). The complainant states that the cost of calls to the programme was provided in a quick, mumbled manner and/or masked by the 'background' sounds. The complainant believes this to be an attempt to comply but at the same time to have call cost information pass-by viewers unnoticed. He believes this is not very honest. The complainant further states that the call cost information is visible but in a smaller size than the phone number and has a low-contrast background so that the much larger phone number, with a high-contrast background, controls the viewers' area of focus. The complainant states that the call costs, when verbally given, are not stated in a manner that is clearly audible.

The complainant cites Section 3.1.6 of the General Commercial Code and notes that this requires that "*particular care shall be taken when including sound effects ...*" The complainant states that background music is a sound effect and their use in the broadcast is therefore subject to this rule. He states that if care had been taken, announcements could have been heard.

Broadcaster's Response:

Initial response to complainant:

TV3 states that the spoken information was clearly discernible and was neither obscured by music nor sound effects. The presenter was clearly audible at all times. Furthermore, TV3 claims that the information relating to an "invitation to purchase" was available on-screen at all times for viewers.

Response to BAI:

TV3 in their response to the BAI reiterated that which they had already stated in their response to Mr. More (above).

Decision of the Compliance Committee:

The Committee considered the broadcast and the submissions from the complainant and the broadcaster. Following consideration of this material, the Committee has decided to **reject** the complaint. In reaching this decision, the Committee took into account the following:

- Regarding the use of background music/sound effects, the presentation style of the host of the broadcast and the impact of both on the clarity of information provided on-screen for viewers, the Committee noted that information on the cost of calls was provided both verbally and visually. While noting that the verbal presentation was not always clear, viewers were not solely reliant on the verbal presentation of call costs information. The Committee was also of the view that the background music and sound effects would not have interfered with the clarity of information provided even when the verbal presentation was not always clear.

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On this basis the Committee's view was that the content did not infringe sections 3.1.1 or 3.1.4 of the BAI General Commercial Communications Code in the manner specified by the complainant.

- The Committee also noted that section 3.1.6 of the Commercial Communications Code deals with the use of sound effects in commercial communications, including advertising and teleshopping. However, this rule is intended to avoid the potentially hazardous distractions that can be caused by the use of sound effects at the beginning of a commercial communication (such as the use of a car horn sound effect) when their use could cause confusion, for example to those driving vehicles. In this context, this rule was not considered relevant to the broadcast content about which the complaint was made.
- The Committee did not consider matters that related to the font size and visual presentation of the call cost information and whether this was adequate in the context of regulations governing the presentation of such information. Such issues are within the purview of the communications regulator, ComReg. This approach is taken so as to avoid dual regulation. In this context, the Committee considered this element of the complaint resolved. It has also decided to forward the complaint decision to ComReg for their information.

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Complaint made by: Mrs. Annie Cleare

Ref. No. 08/13

Station:

RTÉ One

Programme:

6.01 News

Date:

1 December 2012

Complaint Summary:

Mrs. Cleare's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a) objectivity and impartiality in news. The complainant objects to the coverage of an opinion poll from the Sunday Business Post whereby the reporter, Brian Dowling, suggested that Fine Gael's six-point drop in support from the public as reported in the poll was due to the handling of the case in University College Hospital Galway regarding Ms. Savita Halappanavar. The complainant states that this suggestion is without basis and it is her view that there were many possibilities for this reported drop in public support e.g. cut in carers' allowance, suggestions of cuts to child benefit in the upcoming budget and downgrading of hospitals etc.

The complainant further states that given The Labour party's sharp drop in support following senior Labour politicians voicing support for abortion legislation, it is also possible that some members of Fine Gael expressing similar views in the weeks prior to the opinion poll has contributed to or caused the reported drop in public support. This complainant states that this possibility is not mentioned by the report and only his view regarding the drop was presented. The complainant states that she watches the news for factual reporting of current affairs, not for the reporter's opinions.

Broadcaster's Response:

Initial response to complainant:

RTÉ states that this poll asked four questions on the abortion issue. Because of the usual time constraints of a news programme, RTÉ concentrated on the question that had the most news value. That was the question of legislation because it is the only issue the Government has committed to consider. The Expert Group Report, commissioned by the Government, is concerned only with the legal/regulatory options on this. The other questions were interesting but they did not refer to anything that was under active consideration by the Government. Both sides of the abortion debate could take comfort from answers to other questions which show confusion among the respondents. Against that background RTÉ felt the fairest way to deal with this was to focus only on the one question that was directly related to the actual proposal under consideration by the Government.

Response to BAI:

RTÉ states that RTÉ News normally carries a report on the Saturday evening before publication of the month-on-month *Sunday Business Post/Red C* polls which for the most part are political polls on party support; in some instances they ask topical questions and these may also be included alongside the party results. The RTÉ News report on Saturday 1 December covered the subjects of the poll due to be published in the newspaper on the following day – on approval ratings as usual and also in this instance on abortion and on the Budget.

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The report led on the approval ratings for the various political parties; Fine Gael's rating had fallen by 6% since the previous poll, the lowest rating in the Red C poll since 2008 for Fine Gael. In relation to that decline in support, Political Reporter Brian Dowling commented that: *"The drop in support for Fine Gael may well reflect some public dissatisfaction with the way the Taoiseach and the Minister for Health handled the death of Savita Halappanavar."*

Frequently with polls, pollsters and political reporters offer an analysis and/or interpretation of what events may have impacted upon a particular poll result, especially one that shows a sudden drop in party support. This is a legitimate and expected element of impartial political reporting. In this instance, the interpretation offered, as a possibility ("may well") rather than a certainty, by the RTÉ reporter was not unique. It was also the view of the *Sunday Business Post* in their reportage that the 6% fall in Fine Gael support may have reflected on the Taoiseach and Health Minister's handling of the Galway tragedy. In their reporter's analysis he wrote: "The data does not explicitly make the link (nor can it) between the abortion/Halappanavar controversies and Fine Gael's sharp drop to their lowest poll rating since 2008. But rarely has causation in these matters seemed clearer." It is also worth noting that Fine Gael did not object to that interpretation, nor did it make any complaint about it. Political parties are rarely slow to respond if they dispute a particular interpretation or analysis, especially in relation to polls and polling as they have an impact on the party membership.

Decision of the Compliance Committee:

The Committee considered the broadcast and the submissions from the complainant and the broadcaster. Following consideration of this material the Committee has decided to **reject** the complaint. In reaching this decision the Committee took into account the following:

- Opinion polls commonly deal with a wide range of issues. Whereas a newspaper publication that has commissioned such research will often have both the space and the interest in covering the results of such polls in detail, radio or television reports of third party opinion polls require broadcasters, on account of time, to make necessary editorial judgements as to what aspects of an opinion poll are of the most news value to their audiences. In this regard, a broadcaster has the discretion as an independent media organisation to make decisions as to what is covered or not covered during programming that it broadcasts and different broadcasters will focus on different aspects of an opinion poll taking into account the type of programme being produced and the audience likely to view. Such editorial decisions are a matter for each broadcaster to make. The role of the Compliance Committee is to adjudicate where complaints have been made about whether the content that the Broadcaster has chosen to transmit complies with relevant broadcasting legislation.
- Upon its review of the broadcast material, it was the view of the Committee that the emphasis of the broadcaster on certain aspects of the opinion poll commissioned by the *Sunday Business Post* did not demonstrate a lack of objectivity or impartiality. It was also the view of the Committee that it is common and acceptable practice in the reporting of such polls, or indeed any news item, that a programme presenter or reporter would comment upon and evaluate the information being discussed. Analysis of this nature is important in circumstances where the reasons for trends in opinion polls or decisions by Government are not immediately evident.

Broadcasting Complaint Decisions

- In the case of the programme about which the complaint has been made, the Committee agreed that there may have been a range of reasons to explain the drop in public support for Fine Gael as evidenced by the opinion poll. Notwithstanding this, the Committee was also of the view that the link by the reporter between the data in the poll in respect of Fine Gael and the handling of by the Government of the fallout from the death of Ms. Savita Halappanavar was not unreasonable.
- It was also of the view that an emphasis on one possible cause for the decline in public support for Fine Gael did not imply that there was no other possible cause and in this regard the Committee also noted that the reporter's comments were evidently speculative and based on his analysis of recent events rather than a definitive statement of the kind that the complainant suggests.

Broadcasting Complaint Decisions

Complaint made by: Ms. Evelyn Fennelly

Ref. No. 09/13

Station:
RTÉ One

Programme:
Scannal

Date:
10 December 2012

Complaint Summary:

Ms Fennelly's complaint submitted under the Broadcasting Act 2009, 48(1)(a)(fairness, objectivity and impartiality in current affairs). The complainant states that there was a lack of balance and a string of inaccuracies in the programme. The complainant states the show portrayed the 'pro-choice' position as the 'pro-woman' one and portrayed the 'pro-life' campaign as an archaic religious belief. She further states the pigeon-holing of 'pro-life' people belied a bias on the part on the producers of the programme. The complainant also states that facts and material were overlooked, or omitted, during the programme and that this contributed even more to what she states was the bias of the programme than the unbalanced material that was included. The complainant also states that at no point did any of the programme's contributors raise negative aspects to legislation or, critically, negative aspects to abortion itself. For example, she states that the Supreme Court in its judgment in respect of the X case did not set any time limits for abortion.

Broadcaster's Response:

Initial response to complainant:

RTÉ states that the programme 'Scannal: X-Case' is not a programme about abortion. The episode is a programme about a 14-year old rape victim called X. It describes what happened to her as she was caught in the middle of the various legal, moral and political forces that have debated the 'pro-life/pro-choice' issue in recent decades. Further, the programme examines the legal and political fallout arising from the X-Case and the subsequent Supreme Court judgment on foot of an appeal against the High Court judgment upholding the Attorney General's injunction against X travelling to England for an abortion. The programme is about X and the X-Case. RTÉ rejects the accusation of a 'lack of balance' and a 'string of inaccuracies'. They also reject the statement that 'the show portrayed the pro-choice position as the pro-woman one and portrayed the pro-life position as an archaic religious one'. RTÉ states the programme simply showed people from both positions giving their opinions as they appeared on television at the time of the X-Case.

Scannal tells its stories from the perspective of the time in which the story occurred. This includes using archive footage, newspaper headlines, letters to the papers and other contemporary material. Using contemporary satire such as a Nighthawks sketch is completely legitimate in this context and adds to our understanding of how the story was perceived from a variety of angles.

Response to BAI:

RTÉ states this programme in the *Scannal* series did not address the substantive issue of abortion; it was concerned with the legal, social and political events and arguments which arose around and as a consequence of the 1992 'X Case'. In doing so, it took an impartial approach, using archive footage to show the range of opinions and perspectives on the 'X Case' and its aftermath.

Broadcasting Complaint Decisions

The programme and its makers took no view whatever, through voiceover narration, by juxtaposition in editing, or in any other way, of the different arguments and viewpoints presented. It was not a programme about abortion as it is carried out internationally, nor about the mental or physical effects of an abortion on those who have had one.

RTÉ strongly asserts that there were no inaccuracies in this programme – and there are none detailed by Miss Fennelly in her complaint. The programme did not examine the respective positions of those who took a “pro-life” or “pro-choice” view of the ‘X Case’. Drawing from archive footage and other contemporary material, it presented an even-handed, objective and impartial account of the legal and political events and the reactions to them. Many of the opinions were forcefully expressed, including satire – but these central elements of the discourse of the time were presented impartially by *Scannal* without comment on their merit.

Speakers who supported the view of Pro-Life campaigners included the writer and broadcaster Des Fennel, Dr. Mary Lucey and Marie Vernon of the Society for the Protection of the Unborn Child, Fr. Michael Cleary, and law professor and Legal Advisor to the Pro-Life Campaign William Binchy.

No viewer could have been in doubt that this edition of *Scannal* focussed on specific events and gave a fair account of the divergent points of view around these events, without favouring any.

Decision of the Compliance Committee:

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following consideration of the material the Committee has decided to **reject** the complainant. In reaching this decision, the Committee took into account the following:

- The programme is a strand of RTÉ television’s Irish language programming that deals with matters of controversy in Ireland’s recent and not-so-recent past. The focus of the programme was the X case which dealt with, among other issues, the legality of abortion in the Irish State.
- Upon review of the programme content, it was the view of the Committee that the programme focused on the events surrounding the X case, the consequences of the case on law applying in Ireland to the legal termination of a pregnancy. It also addressed the background to the X case, including the 1980’s referendum on abortion, the unexpected consequences of that change to the constitution and the circumstances that gave rise to the X case itself. The programme included a range of interviews from those who were centrally involved in the legal and Government response to the X case including the then Attorney General and the Government Press Secretary. Footage was also used to illustrate the response by Irish society in general, ‘pro-choice’ and ‘pro-life’ groups, the Catholic Church, politicians and citizens to the issues arising. The programme concluded with a reference to the ABC court case where the European Court of Human Rights (ECHR) found against Ireland in the case of one of the litigants.

Broadcasting Complaint Decisions

- It was the Committee's view that the programme dealt objectively in its description of the events and debate at the time of the X case as well as the impact of the court case on Irish law. The Committee noted that the breadth and strength of views were examined during the programme. The Committee did not agree with the complainant that the programme should have addressed the negative impact of abortion per se or the current views of 'pro-life' or other similar parties on the contemporary consequences arising as a result of the X case.
- In terms of the accuracy of the programme, the Committee noted that the view that the decision of the Supreme Court judgment placed no time-limits on when an abortion can occur was, contrary to the complainant's view, detailed in an archive interview with Mr. William Binchy.
- In conclusion, the Committee agreed that the focus of the programme was the X case and its content was accordingly limited to that issue. There was therefore no need to include broader issues of abortion and its consequences, as suggested by the complainant, in order to ensure that the programme was fair, objective or impartial.

Broadcasting Complaint Decisions

Complaint made by: Mr. Patrick Garvey

Ref. No. 10/13

Station:
RTÉ One

Programme:
6.01 News

Date:
1 December 2012

Complaint Summary:

Mr. Garvey's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a)(fairness, objectivity and impartiality in current affairs). The complainant refers to an item on a Red C Poll for the Sunday Business Post dealing with abortion which the complainant believes was flawed. The complainant states that RTÉ should have been aware of the difference between what abortion is and what it is not. He claims that it is not the case that the life of a child in the womb should be preferred to that of the life of the mother. He states that by virtue of their common humanity, a mother and her unborn have an equal right to life. Where a seriously ill pregnant woman needs medical treatment which may put the life of her baby at risk, such treatment is permissible with every effort being made to save the life of both mother and baby. In such circumstances, it is not abortion where the baby dies as a result of treatment. He states that abortion is the direct and intentional destruction of an unborn baby and that this is different from medical treatments which do not directly and intentionally seek to end the life of the unborn baby. He states that current law and medical guidelines allow nurses and doctors to apply this vital distinction, in practice, while upholding the equal right to life of both a mother and her unborn baby. The complainant claims the facts are long established and widely known. He further claims that this significant flaw in the Sunday Business Post Opinion Poll seriously undermined the results and quality of the Poll and therefore the result of this poll should not have been broadcast in the news item.

The complainant maintains that apart from the flaw outlined above, RTÉ was selective in its transmission as it gave prominence to what he characterises as a 'pro-abortion' aspect of the poll results while failing to mention a 'pro-life' aspect. The complainant further states that supporting evidence was not quoted to explain the reasons for the drop in Fine Gael's support. He claims that the reasons given by the news reporter for this drop could be reasonably interpreted as an expressed opinion rather than a solid fact.

Broadcaster's Response:

Initial response to complainant:

RTÉ states that the poll asked four questions on the abortion issue but because of the usual time constraints of a news programme, RTÉ concentrated on the question that had most news value. That was the question of legislation as it is the only issue the Government has committed to consider. The Expert Group Report, commissioned by the government, is concerned only with the legal/regulatory options on this. The other questions were of course, interesting, but they do not refer to anything that is under active consideration by the government. Both sides of the abortion debate could take comfort from answers to the other questions. Against that background RTÉ felt the fairest way to deal with this was to focus only on the one question that is directly related to the actual proposal under consideration by the government.

Broadcasting Complaint Decisions

RTÉ states that it has no agenda in reporting on and facilitating debate on abortion. In recent weeks, the abortion law in Ireland has generated enormous interest and widespread debate. RTÉ believes that it reported accurately and factually and has chaired discussions and debates in an even-handed manner. Both sides of the debate have been extensively represented in these discussions.

Response to BAI:

RTÉ states that RTÉ News normally carries a report on the Saturday evening before publication of the month-on-month *Sunday Business Post*/Red C polls which for the most part are political polls on party support; in some instances they ask topical questions and these may also be included alongside the party results. The RTÉ News report on Saturday 1st December covered the subjects of the poll due to be published in the newspaper on the following day – on approval ratings as usual and also in this instance on abortion and on the Budget. The report led on the approval ratings for the various political parties; Fine Gael's rating had fallen by 6% since the previous poll, the lowest rating for Fine Gael in the Red C poll since 2008.

Mr. Garvey states that the term 'abortion' signifies the "direct and intentional destruction of an unborn baby" and that its use in the Red C poll and RTÉ News report represented a significant flaw in the poll. In fact, the term was used in the poll as generally understood, to indicate the medical process of ending a pregnancy so that it does not result in the birth of a baby. In relation to the decline in Fine Gael support, Political Reporter Brian Dowling commented that: "The drop in support for Fine Gael may well reflect some public dissatisfaction with the way the Taoiseach and the Minister for Health handled the death of Savita Halappanavar."

Frequently with polls, pollsters and political reporters offer an analysis and/or interpretation of what events may have impacted upon a particular poll result, especially one that shows a sudden drop in party support. This is a legitimate and expected element of impartial political reporting.

Brian Dowling's analysis – offered as a possibility ("may well") rather than a fact, as Mr. Garvey says it was – was based on his view as an experienced political journalist covering the events which supplied the context for the poll. They were not simply drawn, as Mr Garvey appears to think they should have been, from within the poll responses. Brian Dowling's interpretation was not unique. It was also the view of the *Sunday Business Post* in their reportage that the 6% fall in Fine Gael support may have reflected on the Taoiseach and Health Minister's handling of the Galway tragedy. In their reporter's analysis he wrote: "*The data does not explicitly make the link (nor can it) between the abortion/Halappanavar controversies and Fine Gael's sharp drop to their lowest poll rating since 2008. But rarely has causation in these matters seemed clearer.*" It is also worth noting that Fine Gael did not object to that interpretation, nor make any complaint about it. In the experience of political journalists, parties are rarely slow to respond if they dispute a particular interpretation or analysis, especially in relation to polls and polling as they have an impact on the party membership.

Broadcasting Complaint Decisions

Mr. Garvey is correct that the report included the response to one of four poll questions on abortion (alongside those on party support and on the upcoming budget). In making the necessary choices for a short, concise report the opinion poll response of most immediate political significance to the one proposal under active consideration by the Government, that of legislation for the 'X case', was selected.

Other responses in the poll indicated a significant minority in favour of abortion on request, a majority in favour of removing the threat of suicide as grounds for abortion, and a larger majority in favour of specifically including rape as grounds for abortion. RTÉ claim that there was no impartiality whatsoever in not reporting responses to these questions, which all suggested constitutional amendment to clarify the circumstances in which abortion could be allowed (detailed below). As stated above, the reported poll response on abortion was the only one directly related to the option being pursued by the Government and therefore would have been reported irrespective of the actual poll result. It was not selected because of the result but as the only response immediately relevant to stated Government policy – to legislate for the 'X case'.

RTÉ strongly maintains that the meaning of the term 'abortion' as used in the report was as generally accepted, that the reporting of the poll findings was impartial and that the analysis offered was professionally informed and objective.

Decision of the Compliance Committee:

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following consideration of the material, the Committee has decided to **reject** the complaint. In reaching this view, the Committee took into account the following:

- Opinion polls commonly deal with a wide range of issues. Whereas a newspaper publication that has commissioned such research will often have both the space and the interest in covering the results of such polls in detail, radio or television reports of third party opinion polls require broadcasters, on account of time, to make necessary editorial judgements as to what aspects of an opinion poll are of the most news value to their audiences. In this regard, a broadcaster has the discretion as an independent media organisation to make decisions as to what is covered or not covered during programming that it broadcasts and different broadcasters will focus on different aspects of an opinion poll taking into account the type of programme being produced and the audience likely to view. Such editorial decisions are a matter for each broadcaster to make. The role of the Compliance Committee is to adjudicate where complaints have been made about whether the content that the Broadcaster has chosen to transmit complies with relevant broadcasting legislation.
- Upon its review of the broadcast material, it was the view of the Committee that the emphasis of the broadcaster on certain aspects of the opinion poll commissioned by the Sunday Business Post did not demonstrate a lack of objectivity or impartiality. It was also the view of the Committee that it is common and acceptable practice in the reporting of such polls, or indeed any news item, that a programme presenter or reporter would comment upon and evaluate the information being discussed. Analysis of this nature is important in circumstances where the reasons for trends in opinion polls or decisions by Government are not immediately evident.

Broadcasting Complaint Decisions

- In the case of the programme about which the complaint has been made, the Committee agreed that there may have been a range of reasons to explain the drop in public support for Fine Gael as evidenced by the poll. Notwithstanding this, the Committee was also of the view that the link by the reporter between the data in the poll in respect of Fine Gael and the handling of by the Government of the fallout from the death of Ms. Savita Halappanavar was not unreasonable.
- Regarding the complainant's contention that the definition of abortion used in the poll itself was incorrect, as this issue related to the methodology of the poll conducted on behalf of the Sunday Business Post, rather than the broadcast on RTÉ, it was not considered relevant as the broadcaster has no role in determining the content of the poll.

Broadcasting Complaint Decisions

Complaint made by: Mr. Brendan Cafferty

Ref. No. 11/13

Station:

RTÉ One

Programme:

The Saturday Night Show

Date:

10 November 2012

Complaint Summary:

Mr. Cafferty's complaint is submitted under the Broadcasting Act 2009 section 48(1)(a)(fairness, objectivity and impartiality in current affairs). The complainant states that this item featuring "Four Angry Men" i.e. Shane Ross, Fintan O'Toole, Nick Webb, David McWilliams and chair Olivia O'Leary was a one-sided rant against the Government.

The complainant states that this programme item was a biased rant against efforts of the Government to rescue the country from the disastrous economic situation it found itself in when assuming office. The complainant states that such efforts are working, to a large extent, and are recognised as such at home and abroad. However, the complainant claims that watching this programme, one would never think that was the case. He states that the programme item was heavily influenced by people with an agenda. In this regard, he notes that three of those participating work for The Sunday Independent newspaper, which the complainant claims is an anti-government paper. He also comments on what he describes as guest Olivia O'Leary's bias against Taoiseach Enda Kenny and highlights a comment when she joked she did not know what was going on in his head, if anything goes on in his head.

The complainant noted that the guests were promoting their road show - which is travelling around the country and where a fee is charged to hear them speak. He also noted that the guests also promoted their books.

Broadcaster's Response:

Initial response to complainant:

RTÉ states that the genesis of this item was made very clear: the main protagonists were billed as the 'Rock Stars of Dissent' and what followed was a wide ranging interview with four popular public commentator, Shane Ross, Fintan O'Toole, Nick Webb and Olivia O'Leary (David McWilliams was not present) about their public conversation on tour in theatrical form. Topics covered in the interview included civil servants, accountants, lawyers, property speculators, the powerlessness of the Irish people, the banking sector, the pay and pensions of banking officials and elected representative, the non-payment of promissory notes, a referendum on bankers fees etc., as well as positive messages such as the promotion of active citizenship and a re-evaluation of what it means to be Irish. While it is not practical that each of these topics in a wide ranging interview of this type would feature a counter argument, the host, Brendan O'Connor was fair and impartial and interjected particularly strongly when Oliver O'Leary made a joke at the expense of An Taoiseach.

Broadcasting Complaint Decisions

Interviews with such personalities and commentators have always been and continue to be, the bread and butter of chat shows such as *The Saturday Night Show*. Throughout any given season, a multitude of interviews, theories and views feature on this and other similar programmes. Recent stand alone interviews on this programme include Fine Gael TDs Lucinda Creighton and Michelle Mulhern and former Progressive Democrats TD Michael McDowell, with the issue of balance being achieved over a period of time rather than a debate on each and every topic.

Response to BAI:

RTÉ states this item introduced four panellists as *“the rock stars of dissent”* and *“some of our best-known angry men and the woman who’ll keep them in check as they take their show around the country.”* In the context of an entertainment programme, it was made clear to viewers that the panellists would take a point of view critical of the status quo. They went on to comment on a number of topics.

RTÉ claims that the presenter drew out the panellists to give viewers a sense of what they could expect if they attended ‘The Four Angry Men Tour’. He was impartial in doing so and his questions were not without challenge, asking one panellist why he had not stood for election, another if there was not an element of ‘scape-goating’ in his criticisms, and dissenting firmly when a third panellist criticised the Taoiseach.

In relation to Section 39(1)(b) of the Broadcasting Act 2009 and the requirement for fairness in matters of current public debate, RTÉ claims that this item should be seen in the context of coverage of the issues discussed across a wide range of programmes, offering viewers and listeners a variety of points of view to deliver fair treatment. Every item on every programme cannot be comprehensive and in the framework of *The Saturday Night Show* and of the presentation of this group of panellists, viewers’ expectations would not have been that all points of view would be represented on this particular occasion. RTÉ maintains that this item was presented impartially in a chat-show context as the personal views of a particular group of people embarking on a theatrical tour; that it contributed over time to fair coverage of the issues discussed.

Decision of the Compliance Committee:

The Committee considered the broadcast and the submissions from the complainant and the broadcaster. Following consideration, the Committee has decided to reject the decision. In reaching this decision, the Committee took into account the following:

- As part of its complaint consideration process the Committee has regard to a number of factors. This includes the type of programme about which the complaint has been made and expectations of the audience that watch the programme. In this regard, the Committee was of the view that the programme was in the light entertainment genre and was not a news and current affairs programme. While light entertainment programmes can include current affairs and human interest content with a serious tone, a light tone is a defining characteristic of such programmes. Topics covered in this genre include music, comedy and interviews with individuals promoting various cultural activities including, television programmes, cinema releases and books. Accordingly, audiences would have been familiar with the style of the programme and what to expect from contributors.

Broadcasting Complaint Decisions

- In this context, it was the Committee's view that the interviews with the members of 'The Four Angry Men' tour did not constitute news and current affairs content. Rather, the content was considered to be a promotion for an entertainment event where a flavour of the style and themes of this event was presented to the studio and viewing audience. The event being promoted was linked centrally to the promotion of recently published books by the 'Angry Men'.

While noting that the books and the tour focused on recent events, the piece covered a wide range of topics including social, financial and political issues as well as matters relating to what it means to be a citizen in a republic and what it means to live in a republic. As such, the item was considered by the Committee to be an item on a cultural topic akin to coverage of a music event or book review and was assessed for compliance in this context.

- The Committee also noted that the item was clearly contextualised by the presenter of the programme i.e. he introduced the guests in the context of the 'Angry Men' tour that they were promoting. For this reason, audiences would have been clear that their contribution would be expected to be critical with elements that are characteristic of a polemic or an angry rant. The Committee also noted that Mr. David McWilliams did not participate in the programme, contrary to the complainant's submission.
- The Committee also had regard to the programme as a whole. In this regard, the Committee noted that the programme also included a promotion of another cultural event, not dissimilar to The Four Angry Men tour in terms of its topics and its approach, namely 'Anglo: the Musical'. This musical commented upon and satirised the role of different political and business parties in the Irish economic recession of recent years. When viewed as a whole, it was the Committee's view that the item about which the complaint was made did not infringe on the statutory requirements and accordingly decided that the complaint would be rejected.

Resolved at Executive Complaints Forum

Complaint made by: Ms. Saorlaith Ní Bhroin

Ref. No. 13/13

Station:
RTÉ 2FM

Programme:
Colm Hayes Show

Date:
4 January 2013

Complaint Summary:

Ms. Ní Bhroin's complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(harm and offense), *Code of Programme Standards*- (sections 2.2. due care; 2.3 protection for children; 3.1.1 violent programming material and 3.4.2 persons and groups in society).

The complainant states that she was deeply disturbed by the flippant nature of a comment made by the presenter of this programme, Colm Hayes. During a discussion with reporter, Lottie Ryan, about the showbiz news of 2012, it was mentioned that two American celebrities, Kim Kardashian and Kanye West, were expecting a baby. A discussion followed with suggestions of names for the baby such as *Kit-Kat* followed by "KKK" etc. Then Colm Hayes commented "*lads, clean the white sheets, we've got a party*". The complainant worries that an issue such as racially-motivated murder could be considered amusing. She believes that racially motivated attacks, including serious assault, are a stark reality in 21st century Ireland. The complainant is also concerned that children and teenagers, some of whom may be of African or minority ethnicities, may have heard this comment as the schools were still closed at the time of broadcast. The complainant claims that the comment was dangerous, unprofessional and sloppy presenting and demonstrates a clear misunderstanding of what is deemed humorous.

Broadcaster's Response:

Initial response to complainant:

RTÉ acknowledged receipt of Ms. Ní Bhroin's initial complaint but did not receive a reply within the 21 days.

Response to BAI:

RTÉ states the Colm Hayes Show is a weekday magazine programme on RTÉ 2FM which mixes both light and substantial topics with music, presented by Colm Hayes in a style which, though always in keeping with the station identity, varies appropriately with the tone of the item. The segment of the show complained of is a regular, jovial look at the showbiz news and gossip of the week and the presenter's irreverent view of the activities of celebrities is a characteristic of the slot.

In this instance, the programme's Showbiz Correspondent Lottie Ryan and the presenter were discussing appropriate names for the baby expected by Kim Kardashian and Kanye West. This followed on from Lottie Ryan's jokey assertion that Ms. Kardashian had given her "a quick call" on New Year's Eve to tell her about the pregnancy – a typical example of this item's playful, tongue-in-cheek relationship with its listeners – who of course know that no such call, occurred.

Broadcasting Complaint Decisions

They discuss the name which would be required if the baby is a girl and – as is apparently tradition in the Kardashian family – her name must begin with the letter ‘K’. The suggestions they throw back and forth include ‘Kashmere’, ‘Konda’, ‘Kairo’ (because celebrities “love to name their babies after places”) or, in the same vein, King’s Cross, Kash (“because money is so important to them”) or Krystal.

At this point, having established a tone of irreverent fantasy, the passage complained of occurs. Below is a verbatim transcript to accompany the audio clip referred to:

Colm: People are texting – Korea, after Maria – Killarney, after their trip to Ireland.

Lottie: Actually, that’s what it needs to be – Killarney

Colm: Or Kit-Kat, ‘cause that’s got two ‘K’s.

Lottie: KK?

Colm: KK? Could they be KKKK? Kit-Kat Kardashian.

Lottie: KKK?

Colm: I don’t think KKK would suit somehow — not with Kanye West – there’d be issues there – yeah, do a whole Klu Klux Klan thing – they’d be going, “Yes, yes, now we’ve arrived!”

Lottie: No, that’s not what I was going for at all!

Colm: “Lads, quick, clean the white sheets, we got a party.”

Lottie: No.

Colm: No, I don’t think so.

Lottie: No, no, no, no, no.

Colm: I was thinking of Karen

And they continue on, with no further reference to the Klu Klux Klan or to any matter complained of.

As can be seen from the transcript, the reference to the Klu Klux Klan arose from playful improvisation around a listener’s texted suggestion of ‘Kit-Kat’, which led to the possibility of the baby’s initials being ‘KKK’. Colm Hayes’ response was to immediately dismiss ‘KKK’ as unsuitable – “not with Kanye West” being of course a reference to Mr West being African-American. He then continues on to imagine the possible reaction of the Klu Klux Klan – pleasure that they have somehow “arrived.” Lottie Ryan asserts that she absolutely wasn’t thinking of the Klu Klux Klan, Colm Hayes continues for a sentence to imagine the Klan reaction to their unexpected celebrity connection, and then he and Lottie Ryan agree that ‘KKK’ is clearly unsuitable.

RTÉ state that the complainant has quoted one line from the exchange to characterise it as condoning or supporting racism. When the full exchange is heard or read, it can be seen that, in the context of a frivolous item which has clearly established an improvisatory atmosphere of free association, no support whatsoever of the beliefs or activities of the Klu Klux Klan is expressed. The showbiz correspondent’s reaction to an absurd imagining of the organisation’s welcome to the baby of celebrities (one of whom is African-American) being named ‘KKK’ is: “No, that’s not what I was thinking of at all.” No harm or offence is expressed towards anyone nor is there the slightest incitement to crime of any kind. RTÉ states that there is absolutely no violent content contained in the item nor is any racial or other discrimination expressed.

Broadcasting Complaint Decisions

RTÉ believe that even first-time listeners to this programme, with no prior knowledge of the editorial nature of this item, could not fail to realise instantly from the nature of the exchange that levity, with no serious intent, is the characteristic tone. The Klu Klux Klan is imagined as a redundant organisation which suddenly discovers a possibility for revival – which is almost instantly dismissed as inappropriate. The Klan is portrayed as an object of dismissive humour whose racism makes them unsuitable for connection with a highly regarded African-American. RTÉ believe that listeners, whether adults or children, whatever their ethnicity, can have been in little doubt of the unsympathetic attitude to the Klu Klux Klan of both presenter and correspondent.

Decision of Executive Complaint Forum:

When considering this complaint the Members of the Forum reviewed the broadcast, the submissions of the complainant and the broadcaster. The Forum also had regard to the sections 2.2, 2.3, 3.1.1 and 3.4.2 of the Code of Programme Standards under which Ms. Ní Bhroin submitted her complaint.

It was the view of the Forum that while some listeners may have found the comments to be in poor taste, when heard in the context of the light-hearted conversation as a whole, the Forum believed that it could not be reasonably considered to cause undue offence, contrary to section 2.2 of the Code of Programme Standards. Further, the Forum took the audience expectation into account when assessing the complaint and was of the view that the off-the-cuff comments made during this segment of the programme would be unlikely to cause harm to regular listeners.

The Members of the Forum noted that the programme was aired during school holiday time, when broadcasters are required to take particular care. However, the offending comments only made up a few seconds of a longer conversation and overall it was felt that the comments, taken in the context of the discussion as a whole was unlikely to have been harmful to children and was therefore not considered contrary to the requirements of section 2.3 of the Code.

The Forum also found no evidence that there was any incitement to hatred or condoning of discrimination or any violent content and was therefore not considered contrary to section 3.1.1 and 3.4.1 of the Code of Programme Standards. The Forum feel that the complainant did not raise issues which require further consideration and, as a result, the complaint was deemed resolved.

