



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

Broadcasting Authority of Ireland

Broadcasting Complaints Decisions

January 2014

Broadcasting Complaints 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. 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 detailed in this document.

At its meeting held in December 2013, the Compliance Committee upheld in part one complaint and rejected six.

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Upheld in Part by BAI Compliance Committee

Complaint made by: Mr. Brendan Cafferty

Ref. No. 93/13

Station:

Newstalk 106-108fm

Programme:

Breakfast

Date:

30 September 2013

Complaint Summary:

Mr. Cafferty's complaint is submitted 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, 4.17, 4.19 and 4.27.

The complainant states that on the Breakfast Show, both presenters "attacked" An Taoiseach Enda Kenny for his decision not to participate in a public debate on the referendum proposal to abolish Seanad Éireann. The complainant states that one presenter compared in a negative manner An Taoiseach Enda Kenny to the Chairman of the Communist Party of China, Mao Zedong, while the other presenter agreed and did not give an alternative view based on facts. The complainant states that the presenters knew or should have known that no Taoiseach ever takes part in such debates outside of general election time and, in fact, there is much precedent for this stand by An Taoiseach.

The complainant states the presenters' approach to this topic lacked impartiality and balance and that this was problematic as the discussion took place in the run-up to the referendum on the abolition of Seanad Éireann when the station is "bound by law to be objective, fair and balanced".

Broadcaster's Response:

Initial response to complainant:

Newstalk 106-108fm states that An Taoiseach Enda Kenny refused an offer to take part in the RTÉ Primetime debate. This debate was a key communication opportunity for An Taoiseach to outline his proposals to the electorate and to rebut the opposing views. Furthermore, the Taoiseach refused opportunities from other broadcast media, including Newstalk, to be interviewed one-on-one in relation to the Seanad referendum.

Newstalk 106-108fm does not believe their commentary on the Taoiseach were "attacks" as suggested by the complainant. The presenters were making clear points of information on a matter of public importance. These points were also put to Fine Gael T.D.s, Charlie Flanagan and Simon Harris, over the course of many programmes.

Response to BAI:

Newstalk 106-108fm states the claim by the complainant that Taoisigh do not debate matters outside elections is not the case. The previous Fine Gael Taoiseach, John Bruton, did in fact debate the 1996 divorce referendum on RTÉ's 'This Week' programme and in a series of local radio interviews over two days and on RTÉ television. Mr. Bruton's media appearances were seen as a defining factor in the 'Yes' side narrowly carrying the referendum.

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Garret Fitzgerald, while he was Taoiseach in 1986, also debated a previous divorce referendum on numerous episodes on RTÉ's 'Today Tonight'.

Newstalk 106-108fm also states that the presenters did not mention which way people should vote in the referendum. They were providing analysis of the decision of the Taoiseach not to debate and a similar level of analysis that would have been heard on current affairs programmes. This was a matter of public interest and for a current affairs programme not to give analysis of Mr. Kenny's decision not to debate would be negligent. The fact that RTÉ journalist, Fergal Keane, was told he was not permitted to broadcast audio footage of the Taoiseach from a public event, attended by 200 people in late September, is most unusual. This incident was reported with due accuracy (rule 4.17) on Newstalk Breakfast. It is an unusual precedent for recordings not to be permitted at a public event in Ireland.

Newstalk 106-108fm further states that both Newstalk presenters are aware that the period leading up to a referendum is a sensitive one. They merely, in political discourse, highlighted the control of media in relation to An Taoiseach, not in relation to how people should vote. The Chinese regime is known for the control of its message to the media. The presenters were merely highlighting the similarity of one controlling decision in Ireland to actions that frequently occur in China.

Decision of the Compliance Committee

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following its consideration, the Committee has decided to uphold the complaint in part. In reaching this view the Committee had regard to the following:

- The Committee noted that the segment of the programme about which the complaint was made is a regular feature of the programme and involves a discussion between the presenters about the news of the day. As such, the issue under discussion was topical and regular audiences would have been familiar with the format of the item.
- In addition, it was the view of the Committee that the decision of An Taoiseach Enda Kenny not to participate in media debates in the run-up to the referenda to be held in November 2013 was a legitimate focus of discussion and debate in the context of a news and current affairs programme such as the Breakfast programme on Newstalk 106-108FM.
- Notwithstanding these considerations, the requirements of the *BAI Code of Fairness, Objectivity and Impartiality in News and Currents Affairs* apply to a discussion such as this and the attainment of these requirements involves the inclusion of other perspectives where necessary to ensure fairness, objectivity and impartiality in the treatment of a news and current affairs topic. Alternative perspectives can be provided either via the inclusion of contributions from interviewees or through contributions made by the programme presenter.
- Following its review of the programme, the Committee was of the opinion that other perspectives on the decision of An Taoiseach Enda Kenny not to participate in media debates were not provided. Further, the Committee found that the presenters made a number of comments that should have rightly been balanced by other perspectives.

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These included comments on the decision of An Taoiseach not to participate in a television debate, as well as the broader media communications decisions of An Taoiseach, as being akin to those of Mao Zedong.

- In view of the above, the Committee found that the programme discussion failed to meet the requirements of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* and the complaint has been upheld in part further to Section 4.1 of this Code.

While the context for the discussion was the run-up to the then forthcoming referenda, it was the Committee's view that the discussion did not relate to the substance of the referenda and that element of the complaint relating to an infringement of the *BAI Guidelines on Election and Referenda Coverage* was rejected. Those elements of the complaint relating to accuracy (4.17) and tone (4.19) were also rejected.

Rejected by BAI Compliance Committee

Complaint made by: Mr. Joe Kenny on behalf of Bus Éireann - Complaint Ref. Nos. 86-89/13

Station:
Kfm

Programme:
Kildare Today

Date:
16, 19, 21 and 23 August
2013

Complaint Summary:

Mr. Kenny's complaints are submitted on behalf of Bus Éireann together with two of the company's employees (named during the programme), under the Broadcasting Act 2009, section 48(1)(a)(fairness, objectivity and impartiality in current affairs), section 48(1)(b)(harm and offence), Section 48(1)(c)(privacy of an individual) and the *BAI Code of Programme Standards* - 2.1 general community standards, 2.2 due care, 2.3 protection of children, 2.4 assessment and 3.5 factual programming.

The complaint refers to the termination of employment of a driver (identified in the programme using the pseudonym 'John') who worked for a company engaged by Bus Éireann to provide services under contract, for the School Transport Scheme, and who, upon dismissal aired his grievances with Bus Éireann on Kfm. The complainant states that the driver had received a letter from the Bus Éireann Vetting Office advising him that due to the possible offences revealed by the Garda Vetting Unit, his position as a driver was being terminated with immediate effect. The complainant states that the letter also stated that he should contact Bus Éireann if the details supplied did not relate to him. They also state that 'John' was also advised of the vetting appeals process and note that he did not contact the company. The complainant states that the broadcaster's treatment of this matter lacked fairness, objectivity and impartiality. In particular, they state that:

- During the programme the presenter disclosed personal and confidential information regarding the offences outlined in Bus Éireann's letter and stated the date, area and the nature of the offences and made reference to a specified Garda Station and Court House that they state would assist listeners in identifying personal and confidential information.
- The presenter undermined the Garda vetting process when he mockingly asked '*now that's not the vet as in the animal vet but as in the Garda Vet.*'
- The complainant states that the programme included a range of comments that were indicative of the failure to be fair, objective and impartial. For example, the presenter asked 'John' '*in other words [Bus Éireann are suggesting that] you're lying*' by indicating on his vetting form that he had no criminal conviction, to which he replied, '*I think so*' and the presenter proceeded to provoke the situation further when he stated '*well it's most certainly what they're saying*'.
- The complainant further states that the presenter further encouraged 'John' to breach confidentiality when he asked him if '*there was another bus driver or is there anybody else in the area with the same name as you – yes or no?*'

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- The complainant also states that the presenter was not impartial when he commented that *'what we have here undoubtedly...is a man whose reputation is now smeared and an innocent man as John pointed out'*. The complainant states that at no stage did Bus Éireann smear 'John's reputation. The complainant states that had the presenter and the reporter read the letter from Bus Éireann in its entirety, they would have known that 'John' could have addressed the issue using Bus Éireann's processes. They query whether the decision to ignore this information was deliberate as it assisted a news angle that was more sensational but which was also, in the complainant's view, misleading and unfair to Bus Éireann and the professionalism of their staff and processes.
- Bus Éireann claims it never issued a statement declaring that *'individuals cannot ring their vetting department but must conduct enquiries through their press office'*.
- The presenter should not have disclosed the names of the two Bus Éireann employees and by doing so they unreasonably encroached upon the privacy of these individuals.
- Bus Éireann Vetting Office did not receive any verbal or written communication from Deputy Martin Hayden TD in connection with this matter.

Broadcaster's Response:

Initial response to complainant:

Kfm rejects the view of the complainant that the programme item was unfair, or lacked objectivity and impartiality. They state that 'John' presented himself in a very upset state at Kfm reception on August 15th requesting the attention of the Kildare Today team. 'John' outlined the contents of a letter he received from Bus Éireann informing him that following the results they received from the Garda Vetting Unit, he would not longer be engaged to drive for the company.

Kfm emailed both the Garda Press Office and Bus Éireann seeking comment. An email was received from Bus Éireann and this was read out on air on the 16th August. Kfm claim that during the course of the interview with 'John', Kfm maintained the confidentiality of the gentleman in question, including not revealing his real name or where in the county he lives. Therefore, no one could infer either identity or abode.

Kfm's response to Bus Éireann's bullet points are as follows:

- **Point 1:** *...Presenter disclosed personal and confidential information regarding the offences outlined:* Kfm rejects this absolutely. Other than a general description for listener awareness, there was absolutely not a scintilla of information broadcast which was personally identifiable. In regards to Bus Éireann's view that the letter to 'John' was confidential: the recipient made this letter freely available to Kfm for information and broadcast purposes.

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- **Point 2:** *Presentermockingly asked “now that’s not the vet as in the animal vet, but as in Garda Vet”. Under no circumstances could the presenter’s clarification of the word “vet” be interpreted as “mockingly”. The word vet was used in the Bus Éireann letter of July 30th to ‘John’. When read on air, the use of the word “vet” in the letter needed to be clarified, thus the analogy used. No offence or derision was conveyed or intended.*
- **Point 3:** *Presenter asked ‘John’: “in other words you’re lying”, to which he replied: “I think so”. Kfm acknowledges that this could have been phrased differently. However, the use of the words were meant to convey that Bus Éireann did not accept ‘John’s’ explanation when he told them (Bus Éireann) that the information provided by the Garda Vetting Unit was wrong, in that it did not apply to him, as he has no record of any criminal conviction whatsoever. Kfm accepts that it was not a case of whether Bus Éireann believed ‘John’ or not, but that Bus Éireann was following its proper procedures relating to vetting. This should have been pointed out on air.*
- **Point 4:** *Presenter asked ‘John’ “if there was another bus driver or is there anybody else in the area with the same name as you...” ... that this was “encouraging ‘John’ to breach confidential details.....demonstrating total lack of respect afforded to the person who committed the offence or their family who continue to reside in these communities”. Kfm fails to understand how one could make such an assertion, given that at no stage was ‘John’ identified or even the slightest allusion to which part of the county he lived in. In the context of trying to ascertain how ‘John’ had a conviction wrongly attributed to him, this was a very fair and understandable question.*
- **Point 5:** *Presenter was not impartial when he commented; “what we have here undoubtedly...is a man whose reputation is now smeared and an innocent man, as John has pointed out”: Is this not a fact? His reputation was smeared (not by Bus Éireann), but by the incorrect Garda vetting result. Kfm completely rejects any allegation that any “conscious” decision to this effect was taken.*
- **Point 6:** *Bus Éireann never issued a statement declaring that “individuals cannot ring their vetting department, but must conduct enquiries through their press office”. Kfm never said such a statement was issued. What they actually said was that Kfm, like any other media, had to make enquiries through the press office and not through vetting office.*

Kfm contacted Bus Éireann Press Office as the gentleman was concerned that the Garda vetting result had taken 6 months to come through (since February 26th); he was concerned that the incorrect vetting result would not be corrected in time for him to take up employment as a school bus driver with Bus Éireann by start of September (only three weeks away at that time).

- **Point 7:** *Presenter should not have disclosed the names of the two Bus Éireann employees (whose names were attached to letter to ‘John’ informing him of Garda vetting result and declaration that he was not eligible to drive with Bus Éireann). Kfm state that it mentioned these names as a matter of fact. No comment was made relating to these staff members and certainly there was no encroachment on their privacy.*

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They issued correspondence on behalf of Bus Éireann which had serious implications for 'John's' reputation. The letter was willingly provided to Kfm by 'John'. Kfm considers it prudent and reasonable and in the public interest to indicate to listeners the contents of the letter, including senders of such information.

- **Point 8:** *Bus Éireann Vetting Office did not receive any verbal or written communication from Deputy Martin Hayden TD in connection with this matter.* Kfm state this is not relevant to them. However, Deputy Hayden's live contribution to the programme indicated that he was going to take up the matter with Bus Éireann, the Minister for Justice and The Garda Commissioner (because of the concerns raised of how any individual could be the victim of incorrect Garda vetting results).

Kfm claims that this item was covered to ascertain and highlight how an individual could have been a victim of incorrect results provided by the Garda Vetting Unit and the consequences, personal and career wise, for the person concerned. The intention of the item was also to ascertain what avenues of resolution were available to a person so wronged.

Kfm noted that following/during their coverage of this item, Bus Éireann wrote to 'John' stating that the company "*decision to stand you down as a driver was being withdrawn with immediate effect*", pending further enquiries with the Garda Vetting Unit. It is Kfm's view that this decision was, at least, expedited more speedily as a result of its coverage. Kfm offered Mr. Kenny or another spokesperson, the right of on-air reply during which Kfm would go through each of the points in their letter. Alternatively, Kfm would be happy to read the entire contents of Bus Éireann's letter on air to which Kfm would add their own responses/clarifications as set out above, verbatim.

Response to BAI:

Kfm position is as set out above in their initial reply to Bus Éireann.

Kfm states that they went to considerable effort to deal promptly with every point raised by Mr. Kenny in his original complaint directly to the broadcaster. Kfm believes they acted fairly and impartially at all times. Their only purpose was to ascertain how the Garda Vetting Unit had incorrectly attributed a conviction to the gentleman in question. In doing so Kfm state that they were conscious that such an incorrect Garda vetting could, in effect, happen to any citizen and as such, were trying to ascertain what avenues are open to any person wronged in this context, as well as trying to convey to both Bus Éireann and the Garda Vetting Unit that a serious error had been made. Kfm claim they contacted Bus Éireann in an ongoing manner at each stage of the relevant broadcast.

Decision of Compliance Committee

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

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In reaching this decision, the Committee had regard to the following:

- Upon its review of the programmes, the Committee was of the opinion that the predominant focus of the discussions concerned the vetting process and procedures operated by An Garda Síochána, the manner in which this process is undertaken, the potential consequences arising for an individual when a mistake occurs and the remedies open to such an individual to vindicate their rights in a timely manner.
- In this regard, the Committee noted that the programmes highlighted a number of issues. This included: the lengthy time-period between the submission of the vetting form and the issuing of a vetting report; the difficulties encountered by 'John', the programme-makers and a local T.D. when trying to contact the Garda Vetting Unit to discuss the vetting report concerning 'John'; the apparent lack of a process for quickly remedying mistakes in the vetting process, and; the impact of such mistakes on individuals and their employment, including on 'John'.
- As such, while the role of Bus Éireann in the situation experienced by 'John' was examined in each programme, the Committee found that the examination of their role was secondary to that of the role of the Garda Vetting Unit and its processes and procedures. In this regard, the programme highlighted the impact of the report of the Garda Vetting Unit for the employment of 'John' as a contractor with Bus Éireann and read extracts from a letter from Bus Éireann to 'John' to illustrate this impact. The Committee also noted that on a number of occasions it was stated that the decision of Bus Éireann was guided by the outcome of the vetting review undertaken by An Garda Síochána. Further, the process by which 'John' could appeal the decision was outlined during the programme in the context of a statement provided by Bus Éireann. The Committee also noted that Bus Éireann chose not to participate in the programme, other than via the supply of a statement, on the basis that it does not discuss individual cases. This decision undoubtedly impacted on the extent to which the perspective of Bus Éireann could be articulated during each of the programmes.
- In view of the above and having had regard to each of the programmes, the Committee did not agree with the complainant that the manner in which the programme-makers handled the discussion of 'John's' predicament infringed the requirements of the BAI's Codes or the Broadcasting Act in the manner specified by the complainant. In particular, the Committee was satisfied that the information provided about 'John' would not have readily identified him to listeners. While reference was made to the court case that was apparently mistakenly linked to 'John', it was stated in the programme that the individual involved in this case did not have the same name as 'John' and it was the Committee's view that there was no information available to it to suggest otherwise or that the reference to this case could identify 'John'.
- On the issues of confidentiality and reputation, it was the view of the Committee that 'John' was entitled to make publicly available confidential information that concerned him and his employment and the Committee was not satisfied that the complainant had made any argument that would convince it that confidentiality had been breached. Further, the Committee did not agree that the comments by the presenter implying that the 'smearing' of 'John's' reputation could be interpreted as suggesting that Bus Éireann was responsible, particularly in a context where the programme focused predominantly on the impact of a decision made by the Garda Vetting Unit and not Bus Éireann.

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- Regarding the issue of privacy, it was the Committee's view that simply providing the names on-air of two individuals in the context of their employment with Bus Éireann could not be considered an unreasonable encroachment on their privacy. In reaching this view, the Committee took into account that no other information, other than statements of fact concerning their names, office and employer, was aired by the broadcaster.
- The Committee found that the presenter was, on occasion, off-handed in his comments about Bus Éireann. For example, the Committee noted his observations about an unnamed female staff member dealing with vetting issues in Bus Éireann who had, according to 'John', criticised his decision to make his concerns public by appearing on Kfm. The Committee was also of the view that listeners would have benefited had the presenter examined the decision of 'John' not to follow in the first instance the procedures of appeal set out in the letter from Bus Éireann when he had received the letter.

Notwithstanding this, it was the view of the Committee, having regard to the discussions as a whole, that they were handled by the programme makers in a manner that was in line with the requirements of the Broadcasting Act.

- The Committee did not consider that element of the complaint relating to correspondence between Deputy Hayden and Bus Éireann as it did not consider it relevant to its adjudication on the programmes as broadcast.
- In view of the above, the Committee also found no basis to uphold that element of the complaint relating to the *BAI Code of Programme Standards*.

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Complaint made by: Mr. John McDermott

Ref. No. 91/13

Station:

RTÉ Radio 1

Programme:

Morning Ireland

Date:

13 September 2013

Complaint Summary:

Mr. McDermott's complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs), Section 48(1)(b) (harm and offence), the *BAI Code of Fairness, Objectivity and Impartiality in news and current affairs* - sections 4.1, 4.17, 4.19 and the *BAI Code of Programme Standards* - section 2.2; 2.2.1; 3.4 and 3.5.

The complainant refers to an interview with a guest regarding a recent Health Information and Quality Authority (HIQA) report into hygiene standards at Beaumont Hospital. The complainant states that the HIQA report found that 50% of doctors, when observed, did not take the opportunity to wash their hands after patient contact. The complainant claims that the facts from the report were not correctly represented by the interviewee in a number of ways:

- The complainant states that the interviewee spoke on the basis that the HIQA report was an audit of medical consultants. He states that it was in fact an audit of all medical staff - the majority of medical staff in hospitals are non-consultant hospital doctors.
- The complainant states that the interviewee also spoke on the basis that the report applied to all consultants nationwide. Even if the HIQA report had been an audit of consultants only, it was an audit of one hospital only - Beaumont. Other hospitals achieved higher compliance scores in HIQA and other audits.

The complainant further claims that the interviewee made statements to the effect that '*consultants are too powerful to be challenged, do you think a nurse will challenge a powerful consultant*' and mentioned '*the arrogance of consultants who think the rules only apply to the little people*' and '*the God complex that the very radiance of their being will zap all the viruses within a 10 yard radius*'. The complainant believes that applying such sweeping statements to any group of professionals causes offence. He states that these statements went unchallenged on-air. The complainant emphasises that his complaint centres around this reference to consultants - he has no issue with any comments about doctors in general as these were fair based on the contents of the HIQA audit.

The complainant acknowledges that the interviewee had personal experience of the fatal consequences of a hospital acquired infection and he can accordingly understand her perspective. However, he states that the interviewer has an obligation to ensure factual, fair and balanced broadcasting which will not cause offence.

Finally, the complainant draws attention to the failure of RTÉ to respond to his original complaint which in turn, he believes, has led to the dragging out of the complaint process. He further states that the excuse provided by the broadcaster is less than satisfactory.

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Broadcaster's Response:

Initial response to complainant:

RTÉ apologised for the failure to respond to the complainant's initial letter of complaint. RTÉ state that this was *"due to an oversight in the context of varying team responsibilities during an annual leave period"*. RTÉ apologises *"to both the complainant and the BAI for this lapse in respect of the Complaints Code of Practice"*.

Response to BAI:

RTÉ state that the Report of the unannounced monitoring assessment at Beaumont Hospital, Dublin published by HIQA on 4 September 2013 found that:

"While a few doctors were compliant with hand hygiene best practice, most were not. Doctors neither changed their protective aprons nor undertook hand hygiene when moving from patient to patient."

This is in a context in which, as the report points out:

"Hand hygiene is recognised internationally as the single most important preventative measure in the transmission of HCAs [Healthcare Associated Infections] in healthcare services."

The doctors described in the findings above would include consultants, who as seniors have a leadership role in hospitals.

RTÉ state that *Morning Ireland* interviewed a representative of the 'Stop Infections Now Campaign', who had lost her own husband to an MRSA infection and then launched a campaign on the issue. RTÉ states that this interviewee is an appropriate and knowledgeable interviewee, well informed on the recent history of reports on hospital hygiene.

In her remarks, the interviewee consistently used the term "doctors," as in the HIQA findings. She once referred to "consultants," as did the interviewer on one occasion only. RTÉ argues that in a context in which consultants have a leading role in hospital rounds and were therefore included as doctors in the report findings, this was not unfair. RTÉ state that as might be expected of a campaigner who had lost her own husband to MRSA, the interviewee's observations – including her views on the impact of hospital hierarchy on hygiene – were trenchantly expressed; however on such a serious matter, literally of life or death, they could not reasonably be construed as offensive.

RTÉ states that the interviewee's remarks were almost entirely in reference to the report on Beaumont; while referring also to other reports on hospital hygiene and to the picture of nationwide practice given by such reports, RTÉ believe she did not give the impression that the Beaumont report was a national one.

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Later in the same edition of *Morning Ireland*, the Head of Transplantation at Beaumont Hospital was interviewed and purposely given the opportunity to respond to the earlier comments made by the representative of the 'Stop Infections Now Campaign'. In this latter interview the Head of Transplantation forcefully challenged some of assertions made earlier in the programme.

RTÉ claim that in this way, on the topic of this HIQA report, the programme achieved objectivity and impartiality in these news items.

Decision of the Compliance Committee

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following a review of the material, the Committee has decided to reject the complaint. In reaching this decision, the Committee had regard to the following:

- The Committee considered the programme as a whole. In this regard, the Committee had regard to the fact that the programme included two separate interviews about the findings of the report produced by the Health Information and Quality Authority (HIQA) into hygiene standards at Beaumont Hospital. The Committee noted that the HIQA report was critical of the hygiene standards at the hospital and that the findings of the report were not disputed by either interviewee. Rather, the interviewees were afforded the opportunity to express their opinions regarding the findings and the measures that might be taken to address problems concerning hygiene standards.
- The Committee noted that the first interview with a representative of 'Stop Infections Now Campaign' was critical of the approach taken to the maintenance of hygiene standards and the interviewee expressed her frustration that doctors, including consultants, were not taking what she considered to be simple steps to ensure good hygiene practices, such as hand washing. She queried whether this was as a result of a problem arising from the work culture of doctors and consultants and identified a shift in the approach previously taken by nurses to address this issue amongst their cohort. The Committee found that it was in this context that the interviewee made remarks about consultants and that these comments were in the form of a query rather than a statement of fact. It was also noted that the interviewee made reference to a number of different staff members, including hospital management.

The second interviewee, the Head of Transplantation Services at Beaumont hospital was afforded the opportunity to discuss the findings of the report in general and in relation to the transplantation service that he oversees. In this regard, he set out his view that the issues arising related not to the culture amongst doctors and consultants but could rather be attributed to the poor physical environment in which the transplantation service was located, as well as pressures arising from staffing levels. He also noted that the issues highlighted in the report were not unique to Beaumont Hospital or Irish hospitals in general. The Committee also noted that extracts from the first interview were aired again with a view to providing the Head of Transplantation Services with the opportunity to directly address the criticisms of the 'Stop Infections Now Campaign' aired earlier in the programme.

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- It was the view of the Committee that, having regard to the programme as a whole, a range of views on this issue was provided to listeners on the subject. The Committee also noted that a right of reply was provided to Beaumont Hospital in respect of both the findings of the HIQA report and the criticisms of the 'Stop Infections Now Campaign'. The Committee noted that both interviewees expressed strong views on the topic under discussion but considered such views unsurprising given the seriousness of the topic.
- In summary, the Committee was of the view that the handling of the topic by the programme makers did not amount to a lack of fairness, objectivity and impartiality in the manner identified by the complainant. The Committee also found no basis for upholding the complaints made in respect of the *BAI Code of Programme Standards* and was of the view that the content would not cause undue offence, did not require the use of audience notification measures, raised no issues concerning the portrayal of groups in society and did not infringe the requirement of this Code pertaining to factual programming.

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Complaint made by: Mr. Gearóid Ó Dubhthaigh

Ref. No. 95/13

Station:
RTÉ One

Programme:
Drivetime

Date:
16 July 2013

Complaint Summary:

Mr. O' Dubhthaigh's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs), section 48 (1) (d) (harm and offence), the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* - Rules 1, 2, 8 & 22 and the *BAI Code of Programme Standards* - section 3.5.

The complainant states that the subject matter was that four congregations of religious sisters were not going to contribute towards compensation for those who availed of shelter (willingly or under duress) at their premises in the past. The complainant states that the reporting of this matter on this programme lacked balance. The complainant further states that one of the people interviewed was allowed to repeatedly say, without being challenged, that crimes had been committed.

The complainant states that the impression given in this programme was that these religious congregations were outside faceless agents inflicting this criminality upon the community with these women being the sufferers. He states that it was not said that the members of these congregations were also women and that the membership of these congregations had also been drawn from this society and far from being outsiders (external to this society), two of the congregations in question were founded in this country.

The complainant also states that the broadcaster could have secured other suitable contributors in the absence of the participation in the programme of the religious congregations.

Broadcaster's Response:

Initial response to complainant:

RTÉ states that in this broadcast Philip Boucher-Hayes interviewed Steven O'Riordan, spokesman for Magdalene Survivors Together and Mairéad Enright, Lecturer in Law at the University of Kent and an expert in the legal regulation of culture and religion.

The item arose out of the refusal by four congregations involved in operating Magdalene Laundries to contribute to a compensation scheme announced by Government. This, in turn, arose out of the Government's apology to those women who were sent to the Laundries, following a report on state involvement in the Laundry system by Senator Martin McAleese.

RTÉ also states that the four congregations involved had refused all requests for interview on Drivetime, including on this occasion. Furthermore, the congregations (through their spokespersons) have refused to release statements or answer questions, referring back at all times to one-off written statements released at the time of the McAleese Report's publication.

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There was no intention to incite hatred or to present an imbalanced picture of the reality of this discussion. The ongoing refusal of the congregations to be interviewed, allied with their unwillingness to answer specific questions or rebut allegations of survivors, makes it difficult to represent their opinions. Their faces and voices are absent from the public airwaves through choice, not through any endeavour by the programme. However, public interest allied with Government policy and statements, rendered it imperative that they cover this story.

Response to BAI:

RTÉ states the item complained of was an amplification of the news report that day of criticism by the Minister for Justice of the decision by the religious orders, who owned the Magdalene Laundries, not to contribute to the compensation scheme for former residents of the institutions.

The broadcaster states that the item was not an examination or discussion of the phenomenon of these institutions but focused entirely on the topic of the compensation scheme, prompted by emerging news.

In respect of Rule 22 of the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, the broadcaster states that the religious orders declined the invitation to participate in the item, as they declined all such media requests. Their brief statement on the matter, that they were unable to pay, was conveyed by the presenter. In the absence of any further statement, a speculative elaboration of their point of view would have been impractical as well as inappropriate. While RTÉ producers, editors and journalists are aware of the necessity to reflect the views of non-participants, this does not allow the invention of such views on sparse grounds.

The broadcaster states that the law lecturer Mairéad Enright gave a legal perspective on the situation of the survivors. This included analysis of the Government's role and responsibility in respect of the compensation scheme, which was also raised by the presenter. While sympathetic to the former residents of the laundries, her analysis was expert and impartial. Steven O' Riordan of Magdalene Survivors Together forcefully represented the response of that organisation to this news. The presenter facilitated the expression of Mr. O' Riordan's opinions in an objective manner, which included pointing out to him that nothing had been proven against the orders and that they had no legal liability. In doing so, he countered Mr. O' Riordan's use of the word 'crimes', albeit that use was in the broad sense of the term as indicating reprehensible acts not necessarily proven in a court of law.

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 had regard to the following:-

- The Committee noted that the discussion focused on the decision by four religious congregations who had operated Magdalene Laundries not to contribute to the compensation scheme established for the women who had worked in the laundries. The religious congregations had cited an inability to pay as the reason for their decision.

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As such, while noting that there are many stories that could be told about the experiences of the women who worked in the laundries and of the congregations who operated them, the focus of the discussion, and the Committee's deliberations, was limited to the decision of the congregations not to contribute to the compensation scheme and not to some of the wider issues highlighted by the complainant.

- The Committee also noted the comments from the broadcaster that the congregations had been offered, but declined, the opportunity to participate in the programme. In the absence of any information indicating otherwise, the Committee was satisfied that the broadcaster had not been unfair to the congregations in the handling of the discussion. *The Code of Fairness, Objectivity and Impartiality in News and Current Affairs* does not absolve the broadcaster from its statutory obligations in circumstances where a person or group declines to be interviewed. However, this requirement is circumscribed by a test of practicability and it was the view of the Committee that the presenter could not reasonably be expected, in the absence of the participation by the congregations, to articulate their viewpoint given that it related to their stated inability to make a payment to the compensation scheme, a view that only they were in a position to articulate.
- The Committee noted the description by one of the interviewees of the treatment of the women in the laundries as being akin to crimes. This perspective was countered by the presenter's clear comment that nothing had been proven legally against the congregations as well as the views of another contributor concerning the broader legal issues arising from the decision of the congregation and the legal options open to the Government and the women who had worked in the laundry. The Committee also noted criticisms by one of the interviewees of the McAleese Report on the operation of the Magdalene Laundries.

It was the view of the Committee that listeners would have benefited had the presenter more robustly challenged comments concerning criminality and the comments concerning the McAleese Report. However, it was also the Committee's view that on balance and having regard to the programme segment as a whole, these elements of the discussion did not amount to a lack of fairness, objectivity and impartiality in the manner suggested by the complainant.

- In view of the above, the Committee also found no basis to uphold that element of the complaint relating to the *BAI Code of Programme Standards*.

