



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

**Broadcasting Authority of Ireland**

**Broadcasting Complaint Decisions**

**May 2014**

### Broadcasting Complaint Decisions

Under the Broadcasting Act 2009, viewers and listeners can complain about broadcasting content which they believe is not in keeping with broadcasting codes and rules. In line with the complaint process, the viewer or listener should direct their complaint to the broadcaster in the first instance with regard to the broadcaster's *Code of Practice for Handling Complaints*, a policy which each broadcaster has available on its website. If a viewer or listener is not satisfied with the response from the broadcaster or if the broadcaster does not respond within the timeframe provided in their *Code of Practice* (usually 21 days), then the viewer or listener can refer the complaint to the BAI for consideration.

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

At its meeting held on March 25<sup>th</sup> 2014, the Compliance Committee upheld one complaint in part and rejected five complaints. The Executive Complaints Forum resolved one complaint at a meeting held in March 2014.

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### Upheld in Part by BAI Compliance Committee

**Complaint made by: Mr. James Bowen on behalf of Ireland Palestine Solidarity Campaign - Cork Branch** **Ref. No. 113/13**

**Station:** Cork City Community Radio      **Programme:** Rebel Radio      **Date:** 16 November 2013

#### **Complaint Summary:**

Mr. Bowen's complaint, on behalf of Ireland Palestine Solidarity Campaign – Cork Branch, is submitted under the *Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Rules 19, 21 and 22 of the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs.*

The complaint concerns an edition of the programme, 'Rebel Radio', during which a representative from the organisation, Irish4Israel, was interviewed. The complainants state that the programme was partial in tone and content. The complainants set out the complaint in two points:

- Firstly, the complainants state that the programme provided no inputs that counterbalanced what is described as the pro-Israeli views, either via the inclusion of alternative voices or via the presenter.
- Secondly, the complainants state that the presenter's own contributions, when coupled with his failure to challenge the contributions of his interviewee, would have reasonably left listeners with the impression that the presenter endorsed the perspectives of the representative of Irish4Israel.

The complainants cite the single presentation of an opposing view (reading out an account of an attack on Gaza) and notes that this was followed by a strident response from the Irish4Israel representative, which the complainants' state was ended with a succession of affirmative noises from the presenter.

For these reasons, the complainants believe that the broadcaster has not acted to protect the interests of citizens in their right to access fair, objective and impartial current affairs content.

#### **Broadcaster's Response:**

##### **Initial response to complainant:**

Cork City Community Radio responded to the complainants, as follows:

Point 1: In its response to the complainants, the broadcaster cites the *BAI's Code of Fairness, Objectivity and Impartiality in News and Current Affairs* and notes that the principle of fairness, as contained in this Code, does not necessarily require that all possible opinions on a subject are addressed or that they should receive equal air-time.

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Point 2: In its response to the second element of the complaint, the broadcaster also cites the BAI's *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, in particular the requirement that news and current affairs content be presented in an objective and impartial manner (in the case of news content) and in a fair, objective and impartial manner (in the case of current affairs content).

The broadcaster states that, in view of the above, the programme met the requirements of the BAI and the Broadcasting Act.

A third element of the complaint concerned the inclusion of a discussion of the other side of the debate in a future programme. This element of the complaint was resolved between the broadcaster and the complainants.

### **Response to BAI:**

Cork City Community Radio states that they felt that the programme in question, while only having a representative of a pro-Israel organisation, never set out to create a programme on Israel versus Palestine. The broadcaster states that it was a programme that was investigating the attitudes that surround the pro-Israel position. They state that the premise of this is similar to having an individual on from the anti-smoking organisations, Ash, talking about the effects of smoking without having someone on from the pro-smoking lobby or having a Cork City Councillor on talking about Rates without having someone else on from the many anti-Rates groups.

The broadcaster states that the presenter at no time endorsed the pro-Israel group or acted in any way that may be considered to be one-sided or pro-Israel. The presenter asked the questions and attempted to extract as much information as possible from the programme guest. The broadcaster states that the presenter did not contradict the guest and acted in a neutral way throughout.

### **Decision of the Compliance Committee**

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

- The Committee noted that the programme involved an interview with a representative from the organisation - Irish4Israel. This organisation's stated role is, among other matters, to support an understanding of the security needs of the State of Israel and to ensure fair and impartial coverage of Israel in the Irish media. In this context, the discussion on the programme addressed a wide range of topics and the views of this organisation on the dispute between Israel and Palestine. These topics included: living conditions in Gaza and the West Bank, Israeli settlements in Palestine, the role of Hamas, the Palestinian Liberation Organisation (PLO) and the State of Israel, Irish media coverage of the dispute between Israel and Palestine, the role of non-governmental agencies, negotiations and peace accords between Palestine and Israel, boycotts of Israeli produce and services, and other related matters.

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- Broadcasters have discretion as to the approach to be taken by a programme and the style of presentation to be adopted, in respect of the treatment of news and current affairs. This discretion must be accompanied by proper compliance with the requirements, as set down in the Broadcasting Act 2009, that the treatment of news and current affairs, including matters of public controversy or debate, be handled in a fair, objective and impartial manner.

In view of this, a critical examination of the relationships between Palestine and State of Israel and the impact and consequences of the manner in which the Palestinian governments and their political and military leaders relate to Israel is a legitimate subject for critical examination during a programme. However, upon review of the broadcast, it was the Committee's view that the requirement for fairness, objectivity and impartiality in news and current affairs had not been met.

- In particular, the Committee noted that the interviewee representing the organisation, Irish4Israel, made a range of detailed criticisms of the governments in the West Bank and Gaza that were not examined or questioned in any critical manner either by interjections from the presenter or via the inclusion of other perspectives that may have been available. For example, the Committee noted that the guest gave his honest opinion that, for the most part, the failure to progress peace accords between Israel and Palestine was the consequence of the actions of Hamas and the PLO towards Israel. However, other views on this aspect of the dispute exist but were not reflected in the programme.

Further, the Committee also noted that the guest made a number of strong criticisms of named organisations that either provide aid to the people of Palestine or which advocate for the people of Palestine and where, in the absence of any representative from the organisations, these criticisms should have been tested and examined by the programme presenter but which were not.

- Upon a review of the programme, the Committee found that the programme had not met the requirements of the Broadcasting Act 2009 that news and current affairs be fair, objective and impartial. Regarding compliance with the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, the Committee found that the programme did not infringe Rules 19, 21 or 22 of that Code nor would it have reasonably left listeners with the impression that the presenter endorsed the perspectives of the representative of Irish4Israel.

### Rejected by BAI Compliance Committee

**Complaint made by: Mr. Kevin Flanagan**

**Ref. No.**

**01/14**

**Station:**

RTÉ One

**Programme:**

Prime Time (A Breach of Trust)

**Date:**

24 October 2013

**Complaint Summary:**

Mr. Flanagan's complaint is submitted under the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs: Sections 2, 3 and 4* (Rules 1, 2, 3, 5, 9, 10, 17, 21, 23, 28 and 29), Broadcasting Act 2009, Section 48(1)(b)(*Code of Programme Standards: section 3.4.1* (persons and groups in society) and Section 48(1)(c)(privacy of an individual). The complaint refers to an episode of Prime Time about the 'Freeman Movement'.

The complainant, the founder of Tír na Saor, states this piece was in his opinion 'grossly biased' and used what he describes as fear mongering which he states was intended to demonise the ideas of the Freeman Movement and the people expressing them. He states that discussion on the actual substance of the Freeman 'philosophy' was severely lacking in this programme; a philosophy that he states is not a 'new' concept but is, in fact, centuries old and fills many chapters of books on jurisprudence. He states that it cannot therefore be considered radical. The complainant states that the programme infringed the Broadcasting Act and related Codes and Rules for the following reasons:-

1. The opening of the segment on Prime Time showed clips of a people's protest known as 'the 'Dáil Lockout' while a voice-over narrated information about the 'Freeman Movement'. He states that the imagery was fast moving and had images of Gardaí, republican flags and what could be perceived as violent scenes involving protesters and Gardaí by a security barrier. The complainant states that this approach was a total misrepresentation that might cause a reasonable observer to believe that:
  - a. The people at that protest were all freemen/sovereigns.
  - b. That freemen/sovereigns protest.
  - c. That freemen/sovereigns have affiliation to republican groups.
  - d. The people at that protest were all republicans.
  - e. That the protest was organised by a group of freemen/sovereigns.
  - f. That freemen/sovereigns are to be feared as a civilly disobedient group with a propensity for violence.

The complainant states that none of this is accurate. He states that the programme item therefore portrays a false-image of the Freeman Movement which is likely to confuse the reasonable observer who has no prior knowledge of the matters.

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2. The complainant notes that the programme segment stated that the process by which 'money is created out of nothing' is a simple 'belief' held by Freeman/Sovereigns; yet, the complainant states that by not reporting *how* money is actually created RTÉ/Prime Time fails to debunk the claim.
3. The complainant states that Prime Time claims 'Freemen believe' they are second only to God. He states that this ignores the facts and that such a belief merely correlates with the idea that *'all men are created equally'*. He states that Tír na Saor (a Freeman organisation) contains members of all faiths, including atheism and those of varying political persuasions. The complainant states that having neglected to disclose this in their exposé, it appears to him that RTÉ/Prime Time intentionally set out to portray 'the Freeman' as being connected by some sort of religious or spiritual belief in an effort to further discredit them.
4. To the complainant's knowledge, there is no 'common-feature' among 'the Freeman' except for a desire to live in a free, just and better society. The complainant states that the programme made the mistake of attempting to label Freeman and place them in a certain 'box'. He states that it appears to him that this was done in an intentional manner with a view to portraying 'the Freeman' as a socially undesirable group and a menace to society at large.
5. The complainant states that the segment during the Prime Time programme referred to a company called the 'People of Éire' as a 'scheme', a description which he states implied illegitimacy. He also states that it is asserted in the programme that the company was not registered with the Companies Registration Office (CRO) and in his opinion this also implies illegality which he states is a completely false claim. The complainant states that the website of the People of Éire contains a photo of the CRO receipt which he states is evidence of registration. The complainant is surprised that a program with a budget like Prime Time and which prides itself on investigative journalism would overlook what he describes as an easily verifiable piece of information. He states that this mistake has been detrimental to the interests of the People of Éire.
6. The complainant states that Prime Time contained still/moving images, audio narration and information from an educational pamphlet issued freely by Tír na Saor called the 'Freeman Guide'. The complainant states that RTÉ/Prime Time did not have the permission to use this content. He further states that RTÉ has indirectly generated revenue from what he describes as its unauthorised use insofar as the programme in which it was broadcast secures revenue from advertising.
7. The complainant states that Prime Time links Ben Gilroy to the Freeman Guide by cutting between clips of Mr. Gilroy and references from the Freeman Guide. This, according to the complainant, created the image/idea that Ben Gilroy was affiliated to the Freeman Guide and as such Tír na Saor. To the complainant's knowledge, Ben Gilroy is not and never was a member of Tír na Saor and there is no association other than the one that the complainant states has been fabricated by Prime Time.

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8. The complainant also states that the programme makers did not have permission to use the video called 'Debtoptions Ireland - August 2013' as part of the content of the programme. He states that RTÉ has indirectly generated revenue from what he describes as its unauthorised use insofar as the programme in which it was broadcast secures revenue from advertising.
9. The complainant states that at approximately 32:38 minutes in, Prime Time showed a moving video image of a republican poster. Given that the theme of the segment was 'the Freeman Movement', the complainant states that the use of this image is likely to have caused reasonable observers to think that Freeman/Sovereigns have links to republican movements. Given the earlier reference to Tír na Saor and the Freeman Guide, the complainant states that there is a serious risk that reasonable observers have been misdirected into thinking that Tír na Saor has affiliations with republican groups. In addition to point 1 (c) above, the complainant states that there is a likelihood that the reputation, image, and good name of Tír na Saor has accordingly been damaged in the mind of the common-public.
10. The complainant states that Prime Time made several assertions about what 'Freemen believe' by referencing Tír na Saor's Freeman Guide but he also states that they neglected to air any content about its Mission Statement, located on the homepage of the website. The complainant is of the view that it appears that RTÉ/Prime Time has either failed to diligently research the facts or has purposefully chosen not to present them accurately. According to the complainant, this gives rise to a real and serious apprehension of bias.
11. The complainant states that in the mission statement the word 'Free' is used as an adjective which is describing the condition of the object(s) i.e. 'Men and Women'. By suggesting that people are not free; and that those who 'believe' they are free are wrong, ill-informed, dangerous and not to be trusted, the complainant asks whether RTÉ/Prime Time is implying that the citizens of Ireland are in fact slaves to the State who are bound to suffer whatever hardships it mandates and who are violently forced to comply with this system against their will?
12. Finally, the complainant states that RTÉ/Prime Time neglected to fully disclose key information which has no doubt caused damage to the reputation of several organisations and individuals who simply happen to hold a different point of view than the mainstream. He states that this demonization of peaceful people should not be tolerated in a just society. The complainant states that, as RTÉ's patrons, the public are entitled to fair and impartial reporting of researched and substantiated information. RTÉ/Prime Time has clearly abandoned their duty to exercise due diligence in favour of what he describes as a reckless disregard and over-sensationalisation of the truth. He states that this is likely to incite hatred, cause hysteria or moral-panic and is likely to create or exacerbate prejudices about/towards a particular group of people, namely: the Freeman/Sovereigns.

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### Broadcaster's Response:

#### Initial response to complainant:

RTÉ states Prime Time had been aware of the phenomenon of individuals appearing in the courts and espousing a belief system broadly associated with the 'Freeman' philosophy for some time. This seemed to take various forms, claims that the law did not apply to them, a demand for a quasi-ancient form of address, claims that the individual was 'sovereign' and therefore above the law etc. RTÉ noted that none of these claims seemed to achieve any form of success in the courts.

At the time of the Meath East by-election, the broadcaster states that 'Prime Time' became aware that one candidate, Mr. Ben Gilroy, seemed to be espousing a Freeman-type philosophy in various clips posted on the internet, and questioned him in relation to it, live in studio.

Subsequently, the broadcaster states that 'Prime Time' became aware of two organisations which seemed to have connections to this 'Freeman' philosophy and which were purporting to assist distressed debtors. Both of these organisations suggested that if a distressed debtor placed his or her asset in a trust, that asset would somehow be placed beyond the reach of his/her creditors. The broadcaster states that few, if any reputable legal professionals seemed to believe that this strategy had any chance of success in the courts. Furthermore, there were concerns that vulnerable debtors making such claims might be held in contempt of court, or have costs awarded against them, thereby considerably worsening their positions. Perhaps most importantly of all, there was a concern that the strategy of these organisations flew in the face of the basic advice of the professionals in this area, which is, almost universally: 'engage with your creditor' either personally, or using the systems established by the State to help you do so.

RTÉ does not accept that the piece was either biased or scaremongering. If a substantial number of people are engaging in an activity which may be detrimental to their own interests, any item that 'Prime Time' broadcasts on the subject should examine this.

In relation to bias, the broadcaster states that throughout the programme-making process, the editing of material was carried out scrupulously fairly, and every significant criticism of the strategy of the organisations covered, or of Ben Gilroy, or Claire Cullinane, was put to them, to allow them a full right of reply. The details of Freeman philosophy were of interest to the programme only insofar as they influenced the organisations involved, and may have caused individuals unaware of this philosophy to act in a way which may be detrimental to their own interests.

1. The broadcaster states that the opening segment of the programme showed a montage of a protest, which, as is generally the case at these events, included a range of different political organisations. There was one image of a barrier being shaken; there was no suggestion that the protest was violent. There was one shot of what appeared to be a Republican group, shots of a sign saying 'People's Referendum', another of a map of Ireland with an attached 'unauthorised entry is prohibited' sign, another of Ben Gilroy ripping up a document, another stating that those holding it 'declare the right of the people to the ownership of Ireland', another an anti-eviction banner, and so on.

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- a) There was no implication that all people at the protest were Freeman/Sovereigns.
- b) There was an implication that, certainly some, Freeman protest, and there were shots of Mr. Gilroy (whom the programme suggested espoused a Freeman-like philosophy) and of an individual associated with Tír na Saor, which is an avowedly Freeman organisation (indeed which advertises the Freeman guide on its website).
- c) There was no suggestion that Freeman are affiliated to Republican groups, the impression was quite the opposite, that this was a protest composed of disparate groups. There was no suggestion that those at the protest were all republicans, or that it was organised by a group of Freeman sovereigns.
- d) There was no suggestion that Freeman were to be feared, or had a propensity towards violence.
- e) The broadcaster states that Mr. Flanagan's general points in relation to Freeman philosophy and Irish political institutions may be interesting, but would not seem to be relevant to this programme, the purpose of which was to examine that philosophy only insofar as it might cause unwitting members of the public to act in a way which might be detrimental to their own best interests.
- f) The broadcaster states that it would seem strange, if 'there is no 'common feature among "the Freeman" ' that the website can advertise a Freeman Guide.
- g) In relation to the CRO receipt, the broadcaster states that in the meeting of October 2<sup>nd</sup> which 'Prime Time' secretly-filmed - having established that it was necessary to do so, and gone through RTÉ's detailed procedures to get permission to do so - Ms. Cullinane repeatedly told those attending that a company had already been formed and that everyone signing up to the trust would become a shareholder in it. On October 14<sup>th</sup>, Ms. Cullinane made similar comments to the media on the steps of the Four Courts. In her interview with 'Prime Time' Ms. Cullinane responded to RTÉ questions by again saying that the company had been formed, and that its name was the People of Éire.

The broadcaster states that the day after the programme was broadcast Ms. Cullinane posted online a photo of a receipt, dated October 22<sup>nd</sup>, relating to a submission for an application to register a company called POE LIMITED. The name was not the People of Éire, as had been stated on camera. The Companies Registration Office has confirmed after the broadcast that no such company, POE LIMITED, had been registered or pending. The CRO confirms that a submission to register such a company was received on October 22<sup>nd</sup>, but was rejected for various reasons, including that the proposed company name was not 'sufficiently distinctive'.

The broadcaster states that subsequent posting by Ms. Cullinane of an email from an internet company selling Irish company registrations does not confirm that any company was formed, much less give it a name.

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- 6 & 8) The broadcaster states that the organisation makes information freely-available on the internet for the, entirely legitimate, purpose of advocating for Tír na Saor's political and philosophical point of view, and seeking as wide an audience as possible for that material. In instances where important questions arise about organisations which make such material freely available, RTÉ feels that it is in the public interest that this material be made available to viewers.
- 7) The broadcaster states that 'Prime Time' did not link Mr. Ben Gilroy to the Freeman Guide or to Tír na Saor, but suggested that he seemed to espouse a Freeman-like philosophy, and utilised the Guide to show similarities between his philosophy and that outlined in the Guide.

### **Response to BAI:**

RTÉ states an 18-minute item on *Prime Time* looked at the actions of organisations and individuals who espouse at least in part the Freeman philosophy, and their approach to the issue of financial debt. In addition to their response to the complainant set out above. In particular:

#### *BAI Code of Programme Standards, Content Rule 3.4*

The programme contained no inappropriate or unjustifiable presentation of any person or group, no discriminatory material or any other contravention of this Rule. The Freeman movement was not characterised as a group but as a political philosophy.

#### *BAI Code of Programme Standards, Content Rule 3.5*

There was no material in the programme which prejudiced respect for human dignity or could cause undue distress or offence.

#### *BAI Code of Fairness, Objectivity & Impartiality, Section 3*

This broadcast complied with all principles and rules of the Code.

#### *BAI Code of Fairness, Objectivity & Impartiality, Rule 4.1*

The broadcast was fully compliant with Section 39(1)(a) & (b) and Section 39(5) & (6) of the Broadcasting Act 2009.

#### *BAI Code of Fairness, Objectivity & Impartiality, Rule 4.2*

The broadcast was fully compliant with the principles articulated in the Code.

#### *BAI Code of Fairness, Objectivity & Impartiality, Rule 4.3*

All contributors to this item were dealt with fairly.

#### *BAI Code of Fairness, Objectivity & Impartiality, Rule 4.5*

No interview was broadcast without consent.

#### *BAI Code of Fairness, Objectivity & Impartiality, Rule 4.9*

The editing of all interviews was fair and did not distort the context or meaning of the original interview.

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*BAI Code of Fairness, Objectivity & Impartiality, Rule 4.10*

The re-use of material did not create any unfairness or inaccuracy and the complaint does not indicate any such unfairness or inaccuracy.

*BAI Code of Fairness, Objectivity & Impartiality, Rule 4.17*

The item was accurately reported and presented. No inaccuracies have been indicated by the complainant.

*BAI Code of Fairness, Objectivity & Impartiality, Rule 4.21*

No personal views were expressed by the reporter or the presenter who introduced the item.

*BAI Code of Fairness, Objectivity & Impartiality, Rule 4.23*

The item was not an 'authored' or 'personal view' current affairs segment. It was a fair, objective and impartial current affairs report.

*BAI Code of Fairness, Objectivity & Impartiality, Rule 4.28*

The broadcast adhered to all legislative requirements.

*BAI Code of Fairness, Objectivity & Impartiality, Rule 4.29*

In making this programme, there was due regard to guidance issued in respect of this Code.

*Broadcasting Act 2009, Section 48(1)(c)*

There was no reference to the complainant in the broadcast and his privacy was not infringed upon.

### **Decision of the Compliance Committee**

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

- The programme item was concerned predominantly with an examination of the relationship between aspects of the Freeman philosophy and the specific application of this philosophy to the management and resolution of property debt. By way of context, the programme provided information on aspects of the Freeman philosophy and then proceeded to examine how these aspects have been used by individuals and organisations in attempts to resolve mortgage debt. The programme also noted that the Freeman Movement was not homogenous. As such, the Committee found that the programme was not a detailed examination of the substance of the Freeman philosophy per se and it was not therefore necessary, given the focus of the programme on property debt, to examine in detail the question of how money was created or to examine in detail other core concepts of the Freeman philosophy.
- In view of this context, the Committee found that the programme focused in detail on different and specific legal and policy measures proposed by Ben Gilroy, Claire Cullinane, "Debt Options Ireland" and others as a means to resolve property debt.

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In this regard, Mr. Gilroy and Ms. Cullinane were given the opportunity to set out in detail the rationale and value of these legal and policy measures. Their views were counter-pointed by inputs from legal and mortgage professionals. The Committee found that both Mr. Gilroy and Ms. Cullinane were afforded the opportunity to respond to the key criticisms of the programme-makers in terms of the legal and policy measures proposed by them.

- The Committee further noted that the programme took a critical view of the legal and policy measures proposed by Mr. Gilroy and Ms. Cullinane in terms of the potential outcomes of the measures, having had regard to the success of these measures to date in the Irish courts and in other jurisdictions. The Committee also noted that the programme clearly stated that a test case was before the Irish court system and the outcome remained uncertain at the time the programme was aired. However, a critical examination of an issue is not, in of itself, evidence of a lack of objectivity and impartiality, where the treatment of the subject matter is fair, objective and impartial. As noted above, the Committee was satisfied that the individuals and organisation that were the primary focus of the programme were afforded the opportunity to rebut criticisms against their legal and policy proposals.
- Regarding on-screen references to the Freeman Movement and philosophy, it was the Committee's view that no issues arose in the context of the complaint. Upon its review of the content included at the beginning of the report, it was the Committee's view that the scenes of protests included images of a broad range of groups and organisations of different political, ethical and philosophical persuasion. The Committee did not agree with the complainant that the images indicated that all those attending were Freemen, that all had an affiliation to republican groups, that the protest was organised by Freemen or that those affiliated with the Freeman philosophy and movement are to be feared or have a propensity to protest of violence. Rather, the footage reflected the range of protestors in attendance.

The Committee also found that the footage in the programme did not raise any issues regarding the privacy of individuals given that the broadcasting of footage of individuals and organisations protesting in a public space could not be considered an unreasonable encroachment of an individual's privacy as protected by the Broadcasting Act 2009.

- Regarding the other elements of the complaint, the Committee did not agree with the complainant that the programme makers indicated that Mr. Gilroy was a member of Tír na Saor. In this regard, the question of Mr. Gilroy's and Ms. Cullinane's affiliation to the Freeman Movement and philosophy was directly posed to both and each denied that they were members of the Freeman Movement, while also stating that they saw value in the ambitions of this movement and its associated philosophy.

The Committee also found that the complainant did not substantiate the view that the examination of the company structure for the 'People of Éire' was unfair. In this regard, the Committee also noted that Ms. Cullinane was afforded ample opportunity to address the issues examined in respect of this company and that information regarding the status of this company was provided by the Companies Registration Office.

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Regarding whether the Freeman Movement had any religious element, the Committee noted that one of the videos included in the programme made reference to 'God'. However, the Committee did not find from its review of the programme that the limited references in the programme to religion were intended to discredit the Freeman Movement or philosophy.

- On the issue of the use in the programme of printed, website and video material produced by members of the Freeman Movement and other organisations, the Committee noted that it is legitimate to use material in the public domain as part of programme making. However, as issues of copyright fall outside of the statutory complaints process, the Committee did not consider whether the inclusion of material was an infringement of copyright as contended by the complainant.
- In summary, having reviewed the programme, the Committee found that it did not infringe the requirements of the *Code of Programme Standards*, the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* or the requirements in respect of privacy as set out by the complainant. Accordingly, the complaint has been rejected.

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**Complaint made by: Mr. Martin Collins**

**Ref. No. 6/14**

**Station:**

RTÉ One

**Programme:**

The Late Late Show

**Date:**

6 December 2013

**Complaint Summary:**

Mr. Collins' complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b) *Code of Programme Standards*: sections 3.3.2 (*coarse and offensive language*) and 3.4.2 (*persons and groups in society*).

The complainant refers to comments made by Jason Byrne on The Late Late Show. The complainant states that during Mr. Byrne's interview, Mr. Byrne referred to the audience as 'knackers' and 'tramps', wanting everything for free. In the complainant's opinion, this was a clear reference to the Traveller community. He states it is a well-established fact that the word 'knacker' is a racist term used to denigrate and humiliate his community. He further states that Travellers are one of the most discriminated groups in society. The complainant states that it is shameful enough to hear the word 'knacker' on a daily basis, but the complainant states that for the national broadcaster to allow this is even more shameful.

The complainant appreciates that one cannot always pre-empt what a guest might say, but in this context the complainant believes there was a duty of care requiring the presenter to point out that his guest's comments were unacceptable. The complainant states that, in not doing this, the presenter created a culture of acceptability.

The complainant also states that it is also a fact that the term 'knacker' is a highly offensive and insulting word and is invariably used as a put down and that its adoption into popular culture has led to the normalisation of its use and has in his opinion fuelled racism.

**Broadcaster's Response:**

**Initial response to complainant:**

RTÉ states that they appreciate the complainant's sense of frustration and outrage at the term which Jason Byrne used and are aware of its pejorative and damaging use in relation to the Traveller community. RTÉ further states it is regrettable that he chose to use the term 'knacker' but RTÉ does not believe that in the context he was specifically referring to members of the Traveller community.

RTÉ further states that Jason Byrne has appeared on The Late Late Show numerous times over the last ten years and does not have a track record in using such language. As pointed out, when it comes to live television it is hard to pre-empt what a guest might say, but RTÉ agrees that it was inappropriate language and they will inform Jason Byrne of their views on this matter before any future appearances.

## Broadcasting Complaint Decisions

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### Response to BAI:

RTÉ states Jason Byrne appeared on the show in an interview which focussed on his recent career experiences, including his appearance at the Royal Variety Performance in Britain. In that context he used the term which is the subject of complaint, as below:-

**Ryan Tubridy:** *I want to talk to you about the Royal Variety Performance which you performed quite recently. It's a big thing to do in the UK, nerve wracking I suppose.*

**Jason Byrne:** *Yeah, it's the hardest gig you'll ever do because when they say "My Lords, Ladies and Gentlemen please welcome," they mean it. There's like – you know the way this [referring to the Late Late audience] is full of knackers and tramps here. I mean that's a how'ya audience. Tickets and free stuff, deadly, give me more free stuff. You don't get it at the Royal Variety Show.*

RTÉ acknowledges, without question, that in Ireland the word 'knacker' is often used in a pejorative, insulting way in respect of members of the Traveller community. Such use is not to be condoned or supported.

It is also true however that the word has another, distinct and much more general meaning in everyday Irish speech which is not directed toward or signifying Travellers, as common Irish slang for people who are uncouth, gougers, ne'er-do-wells. In this sense, it is jocular and not generally a cause for offence – as instanced by the laughter of the audience on this occasion. It is RTÉ's conviction and honest understanding that Jason Byrne's use of the word on this occasion was of the latter type and not used in respect of Travellers. RTÉ does not believe that it supported or condoned discrimination against any person or section of the community, nor would the programme have accepted such a use.

Jason Byrne is a successful Dublin comedian whose verbal delivery is fast and informal and often colloquial. Within his particular comedic style his language might be described as energetic rather than precise, and he frequently makes use of the 'slagging' which is typical of Dublin and Irish humour. Like many comedians, he uses language and terms from time to time which might cause offence if received or interpreted in particular ways, but which equally may not have any offensive intention or which could also be fairly interpreted as not being offensive. Notwithstanding this, and acknowledging that the term can carry an offensive meaning, we accept that the use of the term could have caused upset to viewers who are members of the Travelling community.

### Decision of the Compliance Committee

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

- The BAI has, as part of the development and review of its *Code of Programme Standards*, identified a range of words which have the potential to cause offence, and the word 'knacker' has been identified as such a word. Notwithstanding this, the *Code of Programme Standards* does not proscribe the use of any words. This approach recognises that a word may be used in a particular context where its use is intended to dramatise a particular fictional scene or character or where it is used in a factual context so as to explain an issue under discussion.

## Broadcasting Complaint Decisions

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As such, a primary consideration for the Committee, when assessing complaints about the use of words that may cause offence, is whether their use is appropriate and justified in the context of the programme and against the requirements of its codes.

- Having had regard to this, the Committee notes that the broadcaster recognises that the word that is the subject of the complaint is one that is sometimes used in a pejorative sense to describe members of the Irish Traveller community. The Committee is of the view that great care should be taken to avoid the use of pejorative words, particularly in a live context. The Committee is also of the view that the use of this word in a live context to describe members of the Traveller community is very likely to cause offence and should be used with great care.

However, having reviewed the programme in question, it was the Committee's view that the word, which has a wider meaning than as a pejorative word used to describe the Traveller community, was on this occasion directed at the audience rather than at the Traveller community. It was done so with a view to counterpointing, in a humorous manner, the difference between an audience attending The Royal Variety Show and those who would attend The Late Late Show, who were described in a tongue and cheek manner as less socially sophisticated by comparison. Given this, the Committee did not agree with the complainant that the word was used to describe members of the Traveller community and would not accordingly cause undue offence or inappropriately portray members of that community.

## Broadcasting Complaint Decisions

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**Complaint made by: Mr. Derek Brunell**

**Ref. No. 14/14**

**Station:**

RTÉ One

**Programme:**

The Saturday Night Show

**Date:**

25 January 2014

**Complaint Summary:**

Mr. Brunell's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a) *fairness, objectivity & impartiality, Code of Fairness, Objectivity and Impartiality in News and Current Affairs, Rules 4.1 & 4.2; section 48(1)(b) Code of Programme Standards, sections 2.2, 3.4, 3.5.*

The complainant refers to the apology made by the presenter of this programme to individuals and an organisation, arising from references to homophobia made by a guest, Mr. Rory O' Neill, on a previous edition of the show. The complainant believes it is ludicrous that the presenter should apologise for other people's comments in the first instance. Secondly, the complainant believes that the comments made by Mr. O' Neill were not problematic having had regard to what he describes as the published views of the individuals and the public position of the organisation to whom the apology was directed, in particular on the topic of gay equality. The complainant claims that by apologising for any distress caused to the individuals and the organisation in question, RTÉ was in breach of its own broadcasting Code of Practice. He also believes that the apology was a clear indication that the programme sided with those individuals and the organisation and their beliefs, contrary to requirements for fairness, objectivity and impartiality.

**Broadcaster's Response:**

**Initial response to complainant:**

RTÉ state that the interview about which a statement was made on The Saturday Night Show is the subject of legal complaints. RTÉ regrets that for this reason it is not in a position to respond substantively to this complaint.

**Response to BAI:**

On *The Saturday Night Show* of 25<sup>th</sup> January 2014, the following statement was delivered on-air by the presenter:

*"On The Saturday Night Show two weeks ago, comments were made by a guest suggesting that the journalist and broadcaster John Waters, Breda O'Brien and some members of The Iona Institute are homophobic. These are not the views of RTÉ and we would like to apologise for any upset or distress caused to the individuals named or identified. It's an important part of democratic debate that people must be able to hold dissenting views on controversial issues."*

The broadcaster states that the statement of 25<sup>th</sup> January 2014 arose from an exchange during an interview on *The Saturday Night Show* of 11<sup>th</sup> January 2014. The broadcaster states that the individuals named and those referred to in the programme by implication as 'The Iona Institute crowd' were not present on the occasion of the broadcast of the 11<sup>th</sup> January and therefore not in a position to counter the interviewee's responses to the presenter's questions. The broadcaster states that a right of reply was offered to the individuals in question but that this offer was not taken up.

## Broadcasting Complaint Decisions

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The broadcaster also states that the individuals named in the interview on the 11<sup>th</sup> January and a number of individuals associated with The Iona Institute took the view that the use of the word 'homophobic' in relation to their views on homosexuality was defamatory and sought redress through legal representatives.

The broadcaster states that the legitimate objective and purpose of the statement and apology on the programme of the 25<sup>th</sup> January was twofold: to convey the expression of a point of view in an equitable and proportionate way which would, with a view to fairness, counter the assertion of homophobia; and to mitigate the cost of a series of defamation proceedings.

The broadcaster states that the language of the statement was reasoned and balanced. It included an acknowledgement *that: "It is an important part of democratic debate that people must be able to hold dissenting views on controversial issues."* Insofar as this statement applies to all sides of the debate at issue, the apology was directed at restoring the balance as regards the subject matter of the debate.

The broadcaster states that *The Saturday Night Show* is primarily an entertainment programme and the greater part of the interview of 11<sup>th</sup> January was a profile interview on the life and experiences of the interviewee, Mr. Rory O' Neill. However, RTÉ accepts that the section of the interview relevant to this complaint concerned matters of current public debate and controversy and is therefore subject to the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

The broadcaster asserts that the statement of 25<sup>th</sup> January was a remedial action in response to complaints of offence by the original broadcast and that, particularly in its inclusion of the statement that *"It's an important part of democratic debate that people must be able to hold dissenting views on controversial issues,"* it was equitable and offered no offence or harm to viewers.

In relation to the complaint made under 3.4 of the *Code of Programme Standards*, the broadcaster asserts that the statement of 25<sup>th</sup> January did not represent any person or group in an inappropriate or unjustified way or support or condone discrimination of any kind, and no such misrepresentation or discrimination is indicated in the complaint. (The assumption is that the sections of Rule 3.4 dealing with disability, mental health and religious views are not germane.)

With regard to 3.5 of the aforementioned Code, the broadcaster states that insofar as this Rule in relation to Factual Programming applies to *The Saturday Night Show*, the statement of 25<sup>th</sup> January did not prejudice respect for human dignity, was equitable and contained no offensive material, and placed no emphasis on any of the social characteristics referred to in Rule 3.5.3; no such infringements are indicated in the complaint. (The assumption is that the section of Rule 3.5 dealing with death is not germane.)

The complaint alleges that the statement of the 25<sup>th</sup> breached Rules 4.1 and 4.2 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. The broadcaster asserts that the statement dealt fairly with all parties mentioned, articulating the point of view of those individuals unable to respond to the assertions made about them in the original interview.

## Broadcasting Complaint Decisions

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The broadcaster states that the statement was in keeping with the principles of fairness, objectivity, impartiality, accuracy, responsiveness, transparency and accountability, in taking remedial action in relation to material broadcast in an earlier programme.

The broadcaster believes that the statement of 25<sup>th</sup> January was an equitable and proportionate clarification of the original broadcast and that there was no breach of statutory requirements in the broadcast of this statement. RTÉ asserts that the broadcaster's editorial independence includes responsibility for the material it broadcasts and therefore the entitlement to appropriate remedial action on foot of complaints received.

### Decision of the Compliance Committee

The Committee considered the broadcast and the submissions from the broadcaster and from 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:

- A broadcaster has editorial independence and has primary responsibility for its programming content. This independence is coupled with legal responsibilities arising from the requirements of the Broadcasting Act 2009, laws pertaining to defamation as well as other legislation. For this reason, it is the Committee's view that broadcasters must be free to take measures to ameliorate the impact of a broadcast that it believes has infringed its legal obligations, including the airing of apologies as a legal remedy to claims of defamation.

Further, having regard to the statutory requirement that the BAI provide a regulatory environment that will sustain independent and impartial journalism, it is the view of the Compliance Committee that it would be neither appropriate nor suitable for it to interfere with the editorial independence of a broadcaster.

- In this context, the Committee did not consider it apt to make a determination on those aspects of the complaint dealing with the question of whether the decision by RTÉ to air the apology was appropriate or inappropriate, including whether the comments broadcast on an earlier edition of the programme in question necessitated an apology.
- Notwithstanding this, it is appropriate for the Committee to consider whether content as aired infringes the requirements of the Broadcasting Act 2009 and the codes and rules of the BAI. Accordingly, the Committee considered whether the wording of the apology as aired complied with the requirements for fairness, objectivity and impartiality in news and current affairs as set out in the Broadcasting Act 2009 and with the requirements contained in the *Code of Programme Standards*. Following its review of the content of the apology, the Committee found that it contained both factual and editorial content and the Committee was of the view that the content could not be considered an endorsement of the views of those in receipt of the apology or that the apology meant that RTÉ had sided with the views of those to whom the apology was directed.

## Broadcasting Complaint Decisions

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**Complaint made by: Mr. Mark Murphy**

**Ref. No. 18/14**

**Station:**

RTÉ One

**Programme:**

The Saturday Night Show

**Date:**

25 January 2014

### Complaint Summary:

Mr. Murphy's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a) *fairness, objectivity & impartiality; Code of Fairness, Objectivity and Impartiality in News and Current Affairs, Rules 4.1, 4.2, 4.22.*

The complainant refers to the apology made by the presenter of the programme on foot of a comment made by a guest, Mr. Rory O'Neill, on a previous edition of the programme. The complainant states that in the edition of *The Saturday Night Show* broadcast on the 11<sup>th</sup> January, this guest had spoken about the issue of homophobia and how it manifests itself in Irish society. The complainant claims that the apology aired on the programme of the 25<sup>th</sup> of January (in response to the comments by the guest on the 11<sup>th</sup> January) implied that one is impeding free and fair debate if one describes opposition to equal marriage rights for LGBT persons as 'homophobic'. The complainant states that RTÉ's apology effectively appropriates that language and deprives those arguing for marriage equality from articulating what is an accurate and honestly held opinion on a matter of public interest. He notes that it is legitimate to describe views as 'sexist' or 'racist' and for RTÉ to prohibit the use of the term 'homophobic' is akin to restricting the legitimate use of the aforementioned terms.

The complainant states that the parameters of the use of the word 'homophobic' as used in the original programme broadcast on the 11<sup>th</sup> January were very clear. Namely, the opinion expressed was that homophobia does not consist simply in thuggery or offering violence to the gay community. The complainant states that the opinion was expressed that homophobia consist also in the propagation of discrimination against gay people such as seeking to ensure that they cannot access the same civil marriage rights as heterosexual couples simply because they are gay.

The complainant further states that it is not for RTÉ to counter the assertion of homophobia at all. He states that to do so involves RTÉ establishing its position on a substantive issue of current affairs, namely whether active opposition to equal marriage rights for homosexuals can qualify as, or deserves to be described as, "homophobia".

The complainant states that it is true that the individuals who were described as homophobic due to their well-known opposition to same-sex marriage were not present at the original broadcast. In those circumstances, he states that there can of course be no difficulty with RTÉ offering them a right of reply in order to "restore the balance as regards the subject matter of the debate", a right of reply which the complainant states they declined. Equally, he states that there would be no problem with RTÉ broadcasting any statement prepared by those persons on the 25<sup>th</sup> January explaining that they are not homophobic or do not consider themselves homophobic, and setting out the reasons why not.

## Broadcasting Complaint Decisions

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The complainant states that the problem lies in RTÉ as a broadcaster itself taking the view that opposition to marriage equality is 'not' homophobia, which is the only reasonable interpretation of the statement of 25<sup>th</sup> January. He states that that decision by RTÉ is not an example of the broadcaster reflecting "the views of those unable to participate in the original broadcast": rather it involves the broadcaster in expressing its own concluded view that such a standpoint cannot reasonably be described as constituting homophobia. The complainant believes this constitutes an infringement of the Broadcasting Act and the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

### **Broadcaster's Response:**

#### **Initial response to complainant:**

RTÉ state that it remains committed to providing coverage and debate that is fair, impartial and accurate. The subsequent debate relating to this topic on *The Saturday Night Show* of 1<sup>st</sup> February, which featured a diverse range of views, is evidence of that. RTÉ further state that it is not in a position to comment on the monetary terms of any settlement reached. However, the decision to mitigate was the result of detailed discussion of the legal, financial, editorial and broadcasting compliance issues.

*The Saturday Night Show* remains the subject of legal complaint and RTÉ regrets that for this reason it is not in a position to comment any further on the programme or on issues relating to it.

#### **Response to BAI:**

On *The Saturday Night Show* of 25<sup>th</sup> January 2014, the following statement was delivered on-air by the presenter:

*"On The Saturday Night Show two weeks ago, comments were made by a guest suggesting that the journalist and broadcaster John Waters, Breda O'Brien and some members of The Iona Institute are homophobic. These are not the views of RTÉ and we would like to apologise for any upset or distress caused to the individuals named or identified. It's an important part of democratic debate that people must be able to hold dissenting views on controversial issues."*

The broadcaster states that the statement of 25<sup>th</sup> January arose from an exchange during an interview on *The Saturday Night Show* of 11<sup>th</sup> January. The broadcaster states that the individuals named and those referred to in the programme by implication as 'The Iona Institute crowd' were not present on the occasion of the broadcast of the 11<sup>th</sup> January and therefore not in a position to counter the interviewee's responses to the presenter's questions. The broadcaster states that a right of reply was offered to the individuals in question but that this offer was not taken up.

The broadcaster states that the individuals named in the interview and a number of individuals associated with The Iona Institute took the view that the use of the word 'homophobic' in relation to their views on homosexuality was defamatory and sought redress through legal representatives. The broadcaster states that the legitimate objective and purpose of the statement and apology was twofold: to convey the expression of a point of view in an equitable and proportionate way which would, with a view to fairness, counter the assertion of homophobia; and to mitigate the cost of a series of defamation proceedings.

## Broadcasting Complaint Decisions

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The broadcaster states that the language of the statement was reasoned and balanced. It included an acknowledgement *that: "It is an important part of democratic debate that people must be able to hold dissenting views on controversial issues."* Insofar as this statement applies to all sides of the debate at issue, the apology was directed at restoring the balance as regards the subject matter of the debate.

The broadcaster states that *The Saturday Night Show* is primarily an entertainment programme and in this context, the greater part of the interview of 11<sup>th</sup> January was a profile interview on the life and experiences of the interviewee, Mr. Rory O'Neill. However, RTÉ accepts that the section of the interview relevant to this complaint concerned matters of current public debate and controversy and is therefore subject to the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

The complaint alleges that the statement of 25<sup>th</sup> January breached Rules 4.1, 4.2 and 4.22 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs. With regard to 4.1, the broadcaster asserts that the statement dealt fairly with all parties mentioned, articulating the point of view of those individuals unable to respond to the assertions made about them in the original interview.

Referring to 4.2, the broadcaster states that the statement of 25<sup>th</sup> January was in keeping with the principles of fairness, objectivity, impartiality, accuracy, responsiveness, transparency and accountability, in taking remedial action in relation to material broadcast in an earlier programme.

In relation to 4.22, the broadcaster states that the purpose of the statement broadcast on 25<sup>th</sup> January was to reflect the views of those unable to participate in the original broadcast, in keeping with this Rule of the Code. The broadcaster states that the statement contained no expression of the presenter's own views.

In conclusion, the broadcaster believes that the statement of 25<sup>th</sup> January was an equitable and proportionate clarification of the original broadcast and that there was no breach of statutory requirements in the broadcast of this statement. RTÉ asserts that the broadcaster's editorial independence includes responsibility for the material it broadcasts and therefore the entitlement to appropriate remedial action on foot of complaints received.

### **Decision of the Compliance Committee**

The Committee considered the broadcast and the submissions from the broadcaster and from 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:-

- A broadcaster has editorial independence and has primary responsibility for its programming content. This independence is coupled with legal responsibilities arising from the requirements of the Broadcasting Act 2009, laws pertaining to defamation as well as other legislation. For this reason, it is the Committee's view that broadcasters must be free to take measures to ameliorate the impact of a broadcast that it believes has infringed its legal obligations, including the airing of apologies as a legal remedy to claims of defamation.

## Broadcasting Complaint Decisions

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Further, having regard to the statutory requirement that the BAI provide a regulatory environment that will sustain independent and impartial journalism, it is the view of the Compliance Committee that it would be neither appropriate nor suitable for it to interfere with the editorial independence of a broadcaster.

- In this context, the Committee did not consider it apt to make a determination on those aspects of the complaint dealing with the question of whether the decision by RTÉ to air the apology was appropriate or inappropriate, including whether the comments broadcast on an earlier edition of the programme in question necessitated an apology.
- Notwithstanding this, it is appropriate for the Committee to consider whether content as aired infringes the requirements of the Broadcasting Act 2009 and the codes and rules of the BAI. Accordingly, the Committee considered whether the wording of the apology as aired complied with the requirements for fairness, objectivity and impartiality in news and current affairs as set out in the Broadcasting Act 2009 and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. Following its review of the apology, the Committee found that it was both factual and editorial in nature and the Committee was of the view that the apology did not amount to the broadcaster taking an editorial position on the issue of homophobia.
- While reviewing this complaint, the Committee noted the complainant's view that the apology will, in his opinion, delimit the acceptable use of the word 'homophobic'. In this regard, broadcasters, when covering matters of current public debate and controversy, are required to ensure that those who are the subject of news and current affairs content, or persons who contribute to news and current affairs programmes or items, are treated fairly and honestly. However, it is the Committee's view that it would be problematic if a broadcaster were to unduly circumscribe debate on issues of current public debate and controversy so as to avoid offending those elements of its audience who may not hold the same views as other members of its audience. Further, audiences expect honest analysis and the Committee is of the view that there may be circumstances where the term 'homophobic' may be applied to describe the views of individuals or groups once the use of the term is accurate, fair, objective and impartial and in circumstances where the broadcaster and its contributors can properly defend the use of such a description. A decision in this regard rests with the broadcaster.
- Having had regard to these considerations, the Committee did not agree with the complainant that the apology, in and of itself, was evidence of a decision of the broadcaster to delimit the use of the word 'homophobic' or that the broadcaster had chosen an editorial position in this regard. Accordingly, the complaint has been rejected.

## Broadcasting Complaint Decisions

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**Complaint made by: Mr. Niall Sherry**

**Ref. No. 29/14**

**Station:**

RTÉ One

**Programme:**

The Saturday Night Show

**Date:**

25 January 2014

### Complaint Summary:

Mr. Sherry's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a) *fairness, objectivity & impartiality; Code of Fairness, Objectivity and Impartiality in News and Current Affairs, Rules 4.1, 4.2, and section 48(1)(b) Code of Programme Standards 3.4.2, 3.5.1.*

The complainant refers to the apology made by the presenter of this programme on foot of a comment made by a guest, Rory O'Neil, on a previous edition of the programme. The complainant states that in the earlier edition of the programme, the guest had spoken about homophobia and how it manifests itself in Irish society. The complainant states that the apology ended with the line "*It is an important part of democratic debate that people must be able to hold dissenting views on controversial issues*". The complainant claims that this was not apologising but was instead editorialising. The complainant states that this element of the apology suggests that Rory O'Neill was in some way undermining or impeding democratic debate by using the term 'homophobic' with reference to commentators who have opposed gay marriage. The complainant also states that it also suggests that, in general, RTÉ believes that to call such people 'homophobic' is to undermine debate and to somehow prevent such people from holding their own views. The complainant believes that this is problematic for a number of reasons:

- It suggests that a view that is, for example, disparaging about the motives of gay people who seek marriage equality, is a more legitimate contribution to democratic debate than calling such a view homophobic might be. RTÉ's apology thus condones discrimination on the grounds of sexual orientation (*Code of Programme Standards, section 3.4.2*);
- For the same reason, the complainant states that it prejudices respect for human dignity. The complainant states that it conveys an editorial view by RTÉ to LGBT people that to use the word 'homophobic' is anti-democracy, and thus denies LGBT people the use of an important word in identifying and challenging bigotry and discrimination. In this way, it could be reasonably considered to prejudice respect for human dignity.
- In that it is generally editorialising on the use of the word 'homophobia' and, in this context, it conveys the broadcaster's own views on whether or not the word can be applied to individuals who say, for example, that gay people are destroying marriage, i.e. it expresses the broadcaster's views on 'matters which are either of public controversy or the subject of current public debate'.
- It undermines Mr. O'Neill's credibility and impugns his actions unfairly, in contrast to the Principle of Fairness set out by the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, which states "*persons who contribute to news and current affairs programmes or items [should be] treated fairly and honestly. Viewers and listeners have a legitimate expectation that a broadcaster will demonstrate an even-handed approach to how news and current affairs content is presented and interrogated and how contributors are treated.*"

## Broadcasting Complaint Decisions

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- The complainant states that in implying that the word 'homophobic' is out of bounds on RTÉ, and that RTÉ considers its use to undermine democratic debate, it tells future guests discussing issues of LGBT rights that they are not allowed to use it. He states that this sets RTÉ on one side of a public question, and thus limits the ability of the broadcaster to engage on that question with any real depth or credibility (as demonstrated by the follow-up debate on the next Saturday Night Show where 'homophobia' was discussed in broad generalities). He further states that it prejudices the issue, and so discourages pro-LGBT participants from engaging in public debates through RTÉ. The complainant states that all of this infringes the principle of objectivity and impartiality.
- The complainant states that in doing all of this, the apology undermines RTÉ's capacity to ensure, as per the principle of objectivity and impartiality, "*that production, reporting and questioning on any news or current affairs item is credible, trustworthy and editorially independent.*"

### **Broadcaster's Response:**

#### **Initial response to complainant:**

RTÉ state that The Saturday Night Show in question is the subject of legal complaint and RTÉ regrets that for this reason it is not in a position to comment any further on the programme or on issues relating to it. For this reason RTÉ is not in a position to respond substantively to the correspondence received.

In the context of the mail received RTÉ point out that the complainant may be interested to know that an upcoming edition of The Saturday Night Show will host a debate on homophobia, asking; what constitute homophobia and who gets to define the word?

#### **Response to BAI:**

On *The Saturday Night Show* of 25<sup>th</sup> January 2014, the following statement was delivered on-air by the presenter:

*"On The Saturday Night Show two weeks ago, comments were made by a guest suggesting that the journalist and broadcaster John Waters, Breda O'Brien and some members of The Iona Institute are homophobic. These are not the views of RTÉ and we would like to apologise for any upset or distress caused to the individuals named or identified. It's an important part of democratic debate that people must be able to hold dissenting views on controversial issues."*

The broadcast statement of 25<sup>th</sup> January 2014 arose from an exchange during an interview on *The Saturday Night Show* of 11<sup>th</sup> January 2014. The broadcaster states that the individuals named and those referred to in the programme by implication as 'The Iona Institute crowd' were not present on the occasion of the broadcast of the 11<sup>th</sup> January and therefore not in a position to counter the interviewee's responses to the presenter's questions. The broadcaster states that a right of reply was offered to the individuals in question but that this offer was not taken up.

The broadcaster states that the individuals named in the interview and a number of individuals associated with The Iona Institute took the view that the use of the word 'homophobic' in relation to their views on homosexuality was defamatory and sought redress through legal representatives.

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The broadcaster states that the legitimate objective and purpose of the statement and apology was twofold: to convey the expression of a point of view in an equitable and proportionate way which would, with a view to fairness, counter the assertion of homophobia; and to mitigate the cost of a series of defamation proceedings.

The broadcaster states that the language of the statement was reasoned and balanced. It included an acknowledgement *that*: “It is an important part of democratic debate that people must be able to hold dissenting views on controversial issues.” Insofar as this statement applies to all sides of the debate at issue, the apology was directed at restoring the balance as regards the subject matter of the debate.

*The Saturday Night Show* is primarily an entertainment programme and the greater part of the interview of the 11<sup>th</sup> January was a profile interview on the life and experiences of the interviewee, Mr. Rory O’Neill. However, the broadcaster accepts that the section of the interview relevant to this complaint concerned matters of current public debate and controversy and is therefore subject to the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

The complaint alleges that the broadcast of the above statement breached Rules 4.1 and 4.2 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* and Content Rules 3.4.2 and 3.5.1 of the *BAI Code of Programme Standards*. With regard to 4.1, the broadcaster asserts that the statement dealt fairly with all parties mentioned, articulating the point of view of those individuals unable to respond to the assertions made about them in the original interview.

Referring to 4.2, the broadcaster believes that the statement of 25<sup>th</sup> January was in keeping with the principles of fairness, objectivity, impartiality, accuracy, responsiveness, transparency and accountability, in taking remedial action in relation to material broadcast in an earlier programme.

In relation to 3.4, the broadcaster asserts that the statement of 25<sup>th</sup> January did not support or condone discrimination of any kind, and no such discrimination is indicated in the complaint.

With reference to 3.5, the broadcaster states that insofar as this Rule in relation to Factual Programming applies to *The Saturday Night Show*, the statement of 25<sup>th</sup> January did not prejudice respect for human dignity; no such infringement is indicated in the complaint.

The broadcaster believes that the statement of 25<sup>th</sup> January was an equitable and proportionate clarification of the original broadcast and that there was no breach of statutory requirements in the broadcast of this statement. RTÉ asserts that the broadcaster’s editorial independence includes responsibility for the material it broadcasts and therefore the entitlement to appropriate remedial action on foot of complaints received.

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### Decision of the Compliance Committee

The Committee considered the broadcast and the submissions from the broadcaster and from 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: -

- A broadcaster has editorial independence and has primary responsibility for its programming content. This independence is coupled with legal responsibilities arising from the requirements of the Broadcasting Act 2009, laws pertaining to defamation as well as other legislation. For this reason, it is the Committee's view that broadcasters must be free to take measures to ameliorate the impact of a broadcast that it believes has infringed its legal obligations, including the airing of apologies as a legal remedy to claims of defamation.

Further, having regard to the statutory requirement that the BAI provide a regulatory environment that will sustain independent and impartial journalism, it is the view of the Compliance Committee that it would be neither appropriate nor suitable for it to interfere with the editorial independence of a broadcaster.

- In this context, the Committee did not consider it apt to make a determination on those aspects of the complaint dealing with the question of whether the decision by RTÉ to air the apology was appropriate or inappropriate, including whether the comments broadcast on an earlier edition of the programme in question necessitated an apology.
- Notwithstanding this, it is appropriate for the Committee to consider whether content as aired infringes the requirements of the Broadcasting Act 2009 and the codes and rules of the BAI. Accordingly, the Committee considered whether the wording of the apology as aired complied with the requirements for fairness, objectivity and impartiality in news and current affairs as set out in the Broadcasting Act 2009 and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. Following its review of the apology, the Committee found that it was both factual and editorial in nature and the Committee was of the view that the apology did not amount to the broadcaster taking a position on the issue of homophobia.
- While reviewing this complaint, the Committee noted the complainant's view that the apology will, in his opinion, delimit the acceptable use of the word 'homophobic' in future discussions and that the apology implies, in his opinion, that the use of the word is contrary to democratic debate. In this regard, broadcasters, when covering matters of current public debate and controversy, are required to ensure that those who are the subject of news and current affairs content, or persons who contribute to news and current affairs programmes or items, are treated fairly and honestly. However, it is the Committee's view that it would be problematic if a broadcaster unduly circumscribed debate on issues of current public debate and controversy so as to avoid offending those elements of its audience who may not hold the same views as other members of its audience.

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Further, audiences expect honest analysis and the Committee is of the view that there may be circumstances where the term 'homophobic' may be applied to describe the views of individuals or groups once the use of the term is accurate, fair, objective and impartial and in circumstances where the broadcaster and its contributors can properly defend the use of such a description. A decision in this regard rests with the broadcaster.

- Having had regard to these considerations, the Committee did not agree with the complainant that the apology, in and of itself, was evidence of a decision of the broadcaster to delimit the use of the word 'homophobic' or that the broadcaster had chosen an editorial position in this regard. Accordingly, the complaint has been rejected.

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### Resolved at Executive Complaints Forum

**Complaint made by: Mr. Seán Meagher**

**Ref. No. 04/14**

**Station:**

RTÉ One

**Programme:**

Six One News

**Date:**

02 December 2013

**Complaint Summary:**

Mr. Meagher's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a) fairness, objectivity and impartiality in current affairs; Code of Fairness, Objectivity and Impartiality in news and current affairs, sections 4.1; 4.2; 4.3 and under the Code of Programme Standards section 2.1.

The complaint centres on an interview with Ken Murphy, Director General of the Law Society regarding issues arising from actions committed by jailed solicitor Thomas Byrne. The complainant claims that the presenter Bryan Dobson, in his questioning of Mr. Murphy repeatedly interrupted him. This combative, aggressive stance taken by the presenter was totally unwarranted. His reply to each succeeding question was equally candid; yet each time he spoke he was subjected to interruptions by Bryan Dobson. The complainant believes that this style of interview technique was totally at variance with the accepted standard of courtesy between two persons, even when each holds opposing views. No useful purpose on behalf of the viewer for example, was served by its use. The complainant claims it would appear that Bryan Dobson took the view that Ken Murphy was 'fair game' for a verbal 'walloping' and point scoring and that such an approach would constitute 'good' tam rating viewing. Had Ken Murphy engaged in obfuscation, evasion, cover-up, irrelevance, convoluting or long-winded answering, and a clear and if necessary robust style of questioning would have been justified. However, the complainant claims Mr. Murphy's answering was faultless and his demeanour impeccable.

**Broadcaster's Response:**

**Initial response to complainant:**

*RTÉ apologised to Mr. Meagher for the failure to reply to his initial complaint.*

RTÉ state that having reviewed the interview in question and while there were a number of interruptions, it rejects the assertion the Bryan Dobson took the view that Ken Murphy was 'fair game' for a verbal 'walloping' and point-scoring. As there is a limited time allocated to the Six One interview and there were a number of issues to be discussed with Mr. Murphy, Bryan Dobson's interruptions came after Mr. Murphy had answered the question he was asked and were in order to move the interview to the next point.

RTÉ point out that no complaint has been received from Mr. Murphy either in the immediate aftermath of the interview or since that time.

**Response to BAI:**

RTÉ state that the interviewee was present as the spokesperson for the Law Society, whose remit includes the discipline and regulation of the legal profession. A former member of that profession had, that day, been sentenced to a 12-year prison term after being found guilty of 50 offences involving almost €52million and causing devastating losses to individual members of the public.

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In this context, the interviewer had a journalistic responsibility to question the spokesperson for the regulatory organisation and to facilitate, if necessary by forceful questioning, the views of that body on its fulfilment of its remit in respect of the convicted solicitor and his victims.

In doing so, the interviewer gave Mr Murphy the opportunity to say on behalf of the Law Society that:

- The behaviour of Thomas Byrne was disgraceful, abhorrent and disgusting.
- The Society sympathised with Byrne's clients who he said were the victims of a thief who "quite rightly is going to spend a very long time in jail".
- The Law Society Compensation fund is primarily designed to cater for cases where money is entrusted by a client to their solicitor and lost through the dishonesty of that solicitor in the course of their practice and where that happens, as it did in many cases in the Byrne case, those people can receive full repayments of their money.
- The compensation scheme, by statute, does not cover consequential loss as occurred in the case of some of Byrne's clients.
- The €8 million paid out by the profession was more than any other solicitor had cost the profession.
- The convicted solicitor was an extremely devious and deceitful individual who had deceived his own accountant and had created false documents and false records, and who had forged the name of a solicitor.
- Most of the dishonest and fraudulent activity that Byrne had engaged in had occurred during the last year that he was in practice.
- Tribute should be paid to Barbara Cooney, an associate in Byrne's practice, for bringing his activities to the Society's attention.
- The Society had acted very quickly on this information and had closed Byrne's practice down.

The questioning by the interviewer was indeed brisk, as is frequently the case in a News bulletin, and facilitated the addressing of a considerable number of issues, as above, in a short period of time. Any interruptions by the interviewer came after Mr. Murphy had answered the previous question and were in order to move the interview to the next point.

The characterisation of the interviewing technique within the complaint is in the view of RTÉ an expression of a particular subjective opinion, based it would appear on the belief that a broadcast interview with the spokesperson of a regulatory organisation on a matter of public interest should be conducted in the same terms as conversation in 'polite society'.

In the view of RTÉ, this interview dealt fairly, impartially and with objectivity with a matter of very significant public concern. RTÉ would assert that commonly held standards include an expectation that, on the occasion of the conviction of a legal professional in the largest ever fraud trial in this jurisdiction, the spokesperson for that profession's disciplinary and regulatory body would be closely questioned in the public interest.

Finally, RTÉ again apologise to Mr Meagher for the failure to respond to his complaint when originally received.

## Broadcasting Complaint Decisions

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### **Decision of the Executive Complaint Forum:**

When considering the complaint, the members of the Forum reviewed the broadcast, the submissions of the complainant and the broadcaster. The Forum also had regard to the Broadcasting Act 2009, section 48(1)(a) fairness, objectivity and impartiality in current affairs and the Code of Fairness, Objectivity and Impartiality rules 4.1; 4.2; 4.3 and the Code of Programme Standards section 2.1 under which the complaint was submitted.

The complaint relates to an interview between the programme presenter, Bryan Dobson and Ken Murphy, Director General of the Law Society. The complainant stated that the presenter adopted an aggressive style, continually interrupting the interviewee and behaving in an unacceptably rude manner.

The Forum noted that the interview in question was robust. The Forum also noted that the subject being discussed was one of public interest and that the presenter was competing with time pressures as this was a relatively short interview and a range of issues were to be examined.

The Members were also of the view that, although the interview was challenging, the interviewee was very capable and was also given fair time to answer the questions posed. The Forum also noted that the interviewee was a representative from the organisation with a regulatory function in respect of solicitors and that the subject of the discussion was the failure of an individual solicitor to abide with good practice and with the legal obligations incumbent upon solicitors and the consequence of these failures on individuals that he had represented. In this context, a robust interview was deemed appropriate. The Forum was also of the view that it was also highly likely that the interviewee would have been familiar with the presenter's style.

The Forum could not find any grounds for this complaint under the Code of Programme Standards. The Forum was of the view that the complaint did not raise issues that required further consideration and, accordingly, the complaint did not require further investigation.

