



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

**Broadcasting Authority of Ireland**

**Broadcasting Complaints Decisions**

**June 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 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 document 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 for 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 meetings held in May 2014, the Compliance Committee upheld two complaints, while five complaints were upheld in part and 10 complaints were rejected. In addition, 3 complaints were resolved by the Executive Complaints Forum at its meetings, also held in May

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# Upheld by BAI Compliance Committee

**Complaint made by: Ms. Barbara Smith**

**Ref. No. 40/14**

**Station:**

RTÉ Radio 1

**Programme:**

The Business

**Date:**

1 February 2014

**Complaint Summary:**

Ms. Smith's complaint is submitted under the Broadcasting Act 2009, section 48(1)(b) *Code of Programme Standards- Section 2.2 and 3.3.2.*

The complaint refers to comments made by Irish designer, Mr. Paul Costelloe when discussing young Irish people now living and working in London. The complainant claims that during this interview Mr. Costelloe stated that young Irish men were in Britain "*damaging young virgins... and more power to them*". The complainant believes the presenter should have challenged Mr. Costelloe about this remark; however, the complainant states that he did not do so. The complainant states that when a listener sent in a text that was critical of Mr. Costelloe's remarks, this was laughed-off. The complainant states that Mr. Costelloe's remarks were repugnant to women and dangerous.

**Broadcaster's Response:**

**Initial response to complainant:**

RTÉ state that Mr. Costelloe's remark that "*these guys are doing great and damaging a lot of young English virgins*" was found to be offensive by a number of listeners. While it could be construed as a flamboyant and hyperbolic description of young Irish men living in London, a heavy-handed, somewhat jocular way of saying that young Irish men in London are making lives for themselves, RTÉ does not quarrel with the entitlement of those listeners to their response.

RTÉ asserts strongly that this throwaway comment on a sidebar issue to the main purpose of the interview does not indicate any lack of due care for the protection of listeners "from undue offence and from harm" (section 2.2). The exercise of such care is underlined by the fact that, having been alerted to Mr. Costelloe's perspective on such topics, later in the programme, the presenter challenged the interviewee, quoting a listener's text comment and asking the direct question "*does that mean you are a chauvinist?*" Mr. Costelloe then averred that he was not. The Business is a very busy, fast moving live radio programme and the object is to provide business news, views and interviews and discussion of a wide ranging nature. To have lingered any further on a passing remark by a guest would have fundamentally moved the programme away from its core mission. RTÉ believe that they and The Business, exercised the sensitivity to listeners which could reasonably be expected in the context of an unanticipated remark completely outside the editorial context of a live interview.

### **Response to BAI:**

During the course of the interview, when discussing the increasing presence and success of young Irish people in London, the interviewee made the following remark:

*"The English, they love us and they hate us, you know, you just have to put up with that. Certainly the Irish are never short of chatting up and, you know, we have that skill and I'm sure these young guys are doing great and damaging a lot of young English virgins, so there you are, and good luck to them."*

Mr. Costelloe's remark was found to be offensive by a number of listeners, who e-mailed the programme. While it could be construed as a flamboyant and hyperbolic description of young Irish men living in London, a heavy-handed, somewhat jocose way of saying that young Irish men in London are making lives for themselves, RTÉ does not quarrel with the entitlement of those listeners to their response.

RTÉ Radio 1 exercises due diligence at all times to *"be alert and guard against the use of coarse and/or offensive language in live programmes,"* as required by the *BAI Code of Programme Standards* (Content Rule 3.3.2). Exercising such diligence, however, did not on this occasion prevent a completely unexpected remark in an interview, whose topic was the fashion industry, in the context of a business programme.

RTÉ asserts strongly that this throwaway comment on a sidebar issue to the main purpose of the interview does not indicate any lack of due care for the protection of listeners *"from undue offence and from harm"* (Content Principle 2.2, *BAI Code of Programme Standards*). The exercise of such care is underlined by the fact that later in the programme the presenter challenged the interviewee in a manner appropriate to the editorial tone of the programme and item, quoting a listener's text comment and asking the direct question: *"Does that mean you're a chauvinist?"* Mr Costelloe replied that he was not, saying *"On the contrary, I just have a sense of humour."*

The Business is a very busy, fast-moving, live radio programme whose editorial remit is to provide news, views, interviews and discussions of a varied nature, all related to business and enterprise. To have lingered any further on a passing remark by a guest would have fundamentally diverted the programme away from its core mission.

RTÉ believes that the broadcast of this completely unforeseeable remark, unrelated to the editorial context of a live interview, does not indicate any lack of alertness to offensive language or of due care for listeners.

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### 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 uphold the complaint. In reaching this view, the Committee had regard to the following:-

- The Committee noted that *The Business* is a live programme and as such, a broadcaster will not have complete control over the nature or detail of the contributions made by the guests to the programme. In this context, the *BAI Code of Programme Standards* includes a specific requirement in respect of the use of coarse and offensive language during live programming and broadcasters are expected to manage the additional risks that arise from live programming, for example via the use of a mechanism such as a Broadcast Delay. The role of the presenter is also a key one for managing on-air risks. More generally, this code places an obligation on broadcasters to ensure due care.
- It was the opinion of the Committee, following its review of the material, that the manner in which sexual relationships were described by the guest would cause undue offence and that the programme makers had not taken due care in the way in which the comments were handled during the programme. In particular, it was the view of the Committee that the presenter's tone and his answer to his own question in respect of whether his guest had displayed chauvinism ("*I presume not*") did not display due care in respect of the sensitivity of listeners who, in the opinion of the Committee, might reasonably view the comment as offensive. Accordingly, the complaint has been upheld.

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**Complaint made by: Mr. Glenn Campbell**

**Ref. No. 48/14**

**Station:**

Newstalk 106-108

**Programme:**

Competition – Newstalk Breakfast

**Date:**

28 February 2014

**Complaint Summary:**

Mr. Campbell's complaint is submitted under the Broadcasting Act 2009; section 48(1)(d) *General Commercial Communications Code* – sections 3.1.1. and 3.1.3 (persons and groups in society).

The complaint refers to a competition whereby listeners were asked to download a new Irish app on their phone called 'Boast'. The complainant states that as part of the competition Newstalk Breakfast would 'Boast' an audio clip of a famous celebrity or public figure. Listeners then had to go on and 'Boast' their impression of the celebrity or public figure and each morning a winner would be announced. The complainant states that Monday's winner was announced on Tuesday, Tuesday's winner was announced on Wednesday etc. The complainant states that on Friday 28<sup>th</sup> February the complainant downloaded the app and entered the competition. He states that he realised the winner would be announced the following Monday as Newstalk Breakfast is a Monday to Friday show. At the end of Friday's show, one of the presenters announced that Newstalk would be in contact with the winner at the end of the show, but would announce it publicly on Monday's show, giving the impression that all entries had to be submitted by the end of Friday's programme. The complainant believes this made sense as Monday/Tuesday/Wednesday and Thursday's entries only had a small window to enter as the winner was announced the following morning.

The complainant states that when a person 'Boasts' on the app, it leaves a log of the time the entry was submitted and at 10am on Friday 28<sup>th</sup> only 14 people including the complainant, had entered.

On Monday 3<sup>rd</sup> March, the complainant contacted the show to find out who had won the competition. He received an email from Newstalk advising him that a woman had won the competition. The complainant states that the winner entered the competition on Saturday (according to the log on the 'Boast' app) and the complainant feels this was unfair. The complainant contacted Newstalk to ask for the closing date and time for entries for Friday's competition and for the terms and conditions. He received a reply that there were no terms and conditions listed. The complainant states that to run a competition open to the nation, there must be terms and conditions.

The complainant feels this competition was run very badly, was misleading, not transparent and unfair.

**Broadcaster's Response:**

**Initial response to complainant:**

Newstalk state that throughout the competition, it was always the case that a winner would be announced on the following morning's programme to give listeners time to enter across their entire schedule. Newstalk announced Monday's winner on Tuesday, Tuesday's winner on Wednesday etc., Friday's mystery voice gave listeners an extra chance to enter over the weekend.

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There were no terms and conditions listed as such, however, Newstalk state that the selection of the winner was outlined in their online post on Saturday 1<sup>st</sup> March at [www.newstalk.ie](http://www.newstalk.ie) and all that week. The Breakfast team had access to all brags from Friday's mystery voice, to choose their final winner.

### **Reason for Non-Response to BAI:**

Newstalk did not supply a response within the agreed timeframe. However, after several requests from the BAI, a reply was submitted as follows:

- Newstalk apologised for the delay in responding. Newstalk puts this down to the fact that the staff member with responsibility for this competition no longer works for the broadcaster and this has delayed their follow-up to the BAI on this complaint.

### **Response to BAI**

Newstalk claim that there were clear terms and conditions listed on its website and there was no intention to mislead listeners on competition entry times. The winning entry was based on the decision of the Breakfast Show producer. This decision is final in line with the station's Terms and Conditions listed on their website.

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

The Committee considered the broadcast of the 28<sup>th</sup> February and broadcasts of the competition during the week that it was held. The Committee also considered the submissions from the broadcaster and from the complainant. Following consideration of the complaint, the Committee has decided to uphold the complaint.

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

- The Committee noted that it was clear, from the description by the programme presenters of the competition and of the competition mechanism, that the procedure for the competition was that cited by the complainant: namely, that a listener makes their entry on the day of the programme with the announcement of the winner for any given day being made on the following day's programme. So, for instance, the winner of the competition on Thursday 27<sup>th</sup> March was announced on the following days programme. This interpretation of the competition mechanism was not contradicted by the broadcaster in its response to the complaint.
- In view of this, listeners, including the complainant, had a reasonable expectation that the winner of the prize on the day that he entered (Friday 28<sup>th</sup> March) would be chosen from those who had entered on the day of that programme. This understanding was also underlined by comments by the presenters that "*today's winner will be announced on Monday*" and that "*we will be in touch with Friday's winner later on today*".
- The Committee also noted that the broadcaster states that it had in place terms and conditions for this programme. However, it found that these terms were not easily accessible, did not appear to have been referenced on-air and seemed to be general in nature, in that they applied to all competitions.

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Further, recourse to terms and conditions does not absolve the broadcaster from the obligation to ensure that on-air content complies with the *BAI General Commercial Communications Code*. In this regard, it was clear from the complaint submissions that the broadcaster chose to run the competition over the weekend rather than conclude it on Friday (as stated on-air). It was not evident from the broadcast that listeners were informed of this change in the competition mechanism and for this reason, the Compliance Committee concluded that the competition was not operated in compliance with section 3.1.1 and 3.1.3. of the *BAI General Commercial Communications Code*.

- In reviewing the complaint, the Committee noted with concern the failure of the broadcaster to initially respond to the BAI on foot of the complaint. The Committee regards this failure as unacceptable and this matter will now be raised with the broadcaster.

# Upheld in Part by BAI Compliance Committee

**Complaint made by: Mr. Anthony Sheridan**

**Ref. No. 43/14**

**Station:**

Newstalk 106-108

**Programme:**

The Right Hook

**Date:**

27 January 2014

**Complaint Summary:**

Mr. Sheridan'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 21 and 22.

The complaint refers to a discussion on the teaching of religion in schools. George Hook expressed the following opinion '*you now have a Labour Party in Ireland which is essentially opposed to organised religion. They support, certainly they're heading towards abortion on demand, absolutely.*' The complainant states George Hook is expressing a strong personal opinion on a matter that is publicly controversial and of current public debate and this is, therefore, an infringement of the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

**Broadcaster's Response:**

**Initial response to complainant:**

Newstalk 106-108 acknowledged Mr. Sheridan's email and stated they would investigate the matter and would revert back to him in due course. No further correspondence was received by the complainant. In response to the BAI's query as to why no reply was sent to the complainant, Newstalk stated that details of the complaint were forwarded to the producer of The Right Hook, on 3<sup>rd</sup> February instructing him to investigate the matter and revert with a response to Mr. Harte, Station Editor. However, this producer subsequently left The Right Hook show and as a result the response to the complainant was not delivered.

**Response to BAI:**

Newstalk 106-108 replied by stating that the matter relates to a wide-ranging discussion with former Minister for Education, Gemma Hussey, which started on the issue of the teaching of religion in state schools. This was in the context of a current Labour-led initiative to divest the patronage and influence of the Catholic Church from a significant number of schools around the country. It was a provocative discussion and debate on various issues with both sides represented and expressed. The language that is regularly used in the area of abortion, which came up in the discussion, can often be subjective or 'loaded' given the long-running debate on what is a divisive issue.

The context of the piece and what was said; would have been informed by comments attributed to Labour TDs in recent months which expressed the long-term objective to further liberalise abortion laws beyond any legislation for the X case. The broadcaster states that Labour has positioned itself as a pro-choice party. Any view expressed on the show was well challenged and adequately opposed at the time in the interest of balance and robust debate.

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### Decision of the Compliance Committee:

The Compliance Committee has considered the broadcast and the submissions from the broadcaster and the complainant. Following its 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 topic of the discussion was potential proposals emerging from the Department of Education concerning the teaching of religious education. Former Minister for Education, Ms. Gemma Hussey, was interviewed on this topic and the discussion included consideration of the merits or otherwise of proposed changes, the various ways in which religion is, and could be, taught in the home, in schools and parishes as well as the role of the teacher in communicating faith education.
- The Committee found, upon reviewing the programme, that the presenter made a number of observations about what he believed was the direction of the Labour Party in terms of its policies, including comments that this party is opposed to organised religion and is heading towards abortion on demand. The Committee did consider whether the comments were rhetorical in nature and provided with a view to driving debate. However, it also noted that when his views were challenged by the guest in question, a former Fine Gael T.D., it was evident from his affirmations - '*absolutely...absolutely*' - that these views were his own.
- The *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* recognises that presenters of current affairs programmes play a critical role in informing audiences about matters of importance. Furthermore, it also recognises that presenters bring value to audiences by offering their expert opinions. However, the Committee found that in the case of this programme, the presenter made a number of claims about the policy positions of The Labour Party that amounted to partisan assertions that were not supported by the presenter's contribution and in circumstances where a member of that party, or their perspective, was not afforded to listeners in order to counter these remarks. While his comments were challenged by a former Fine Gael Minister, these were not considered adequate to address the presenter's remarks. Furthermore, the remarks were considered by the Committee to have little context given the topic of discussion, religious education.
- Accordingly the complaint has been upheld further to Rule 22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. The Committee did not uphold the complaint further to Rule 21 as this applies only to news programming and the programme item about which the complaint was made was considered by the Committee to constitute current affairs.
- In reviewing the complaint, the Committee noted with concern, the failure of the broadcaster to initially respond to the complainant. The Committee regards this failure as unacceptable and this matter will now be raised with the broadcaster.

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**Complaint made by: Ms. Marie Mac Sweeney**

**Ref. No. 05/14**

**Station:**

Newstalk 106-108

**Programme:**

The Right Hook

**Date:**

3 January 2014

**Complaint Summary:**

Ms. MacSweeney's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a) fairness, objectivity and impartiality in current affairs and Rules 4.1 and 4.2 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

The complaint refers to a discussion on friendships between gay men and straight women on The Right Hook and broader issues about being gay in Ireland, presented by Bobby Kerr, with panellists Brian Merriman (founder of the Dublin International Gay Theatre Festival), Tara Duggan and Dr. Ciara Kelly. The complainant states that the presenter began by quoting from 'some recent scientific research' which demonstrated that friendships between gay men and straight women '*might represent the most natural, mutually beneficial, rewarding, helpful and equal human relationships that can be achieved*'. The complainant states no one asked the source of this research and no one enquired as to whether it was the only study of this kind or where it was conducted. Rather, the complainant states that this view was accepted as an evident truth by the presenter and by the panellists.

The complainant states that, one guest, Brian Merriman, made a range of statements that she describes as sweeping and generalised in nature. This included comments that she states questioned the motivation of heterosexual men vis-a-vis their pursuit of friendships with heterosexual women and the supposed advantages of friendships between gay men and heterosexual women compared to friendships between heterosexual men and women. She states that Mr. Merriman's comments were not challenged nor was there any perspective provided about both the reality of, and the benefits of, long-term friendships between heterosexual men and women that are healthy and are not defined by a sexual motivation. The complainant states that the presenter did try to steer the discussion towards the positive improvements in attitudes to homosexuals but she states that it was a half-hearted attempt.

On the prospect of same-sex marriage, the complainant states that Mr. Merriman characterised the opposition to this as coming entirely from 'right wing extremists'. The complainant states that there was no view offered in respect of marriage as a heterosexual commitment. She noted that one text message was read out on-air and which came from a man who said he did not 'hate' gay people but did not favour gay marriage because he was 'traditional'. However, the complainant states that the view of this texter was dismissed in trenchant terms by Dr. Kelly, a member of the panel.

On the possible referendum on same-sex marriage, the complainant states that Mr. Merriman was allowed to supply his own question for Irish citizens. That was "do we believe that every adult above the age of consent has the right to marry the person of their choice?" Again, the complainant states that this view went unchallenged and there was no one presenter to represent the view that, for a range of reasons, a person cannot necessarily marry the person of their choice, for example, if we are marrying someone in order to secure Irish citizenship for them.

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The complainant states that the discussion of a matter of current public debate and controversy was not impartial and fair to all interests as required nor did it represent any other range of opinions on the topic under discussion.

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

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

Newstalk states as is the style of the Friday Right Hook, this was a panel discussion involving regular contributors to the programme. The piece was based on a report about friendships between gay men and heterosexual women, and the stereotypes which exist in popular culture. Brian Merriman was invited to participate in the programme to give his view. The panellists also expressed their views on the story. The piece also covered the issue of the referendum on same-sex marriage and the experiences of gay people in Ireland.

The broadcaster states that the panel expressed their honest opinions and views, text messages were used to pepper the debate and add context and the conversation was chaired by the stand-in presenter of the programme, Bobby Kerr.

Newstalk is happy this was an honest, open and fair discussion.

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

Newstalk states on Fridays the programme invites regular panellists to contribute to a round-table discussion about the stories of the day. The style on a Friday is more conversational and sometimes guests are invited to contribute in a similar style. This was the context of the piece with Brian Merriman who was invited on the programme as founder of the Dublin International Gay Theatre Festival. The subject of the discussion was an article in The Daily Mail which talked about the stereotype of 'the gay best friend' in popular culture. This was a topic Brian Merriman felt strongly about, and was happy to comment on. He was able to give his personal view on the matter, as a gay man, and the conversation consisted mostly of anecdotes from his own personal experience. The conversation then naturally moved on to other issues facing the gay community in Ireland.

The broadcaster states that Brian Merriman gave his personal views on the upcoming referendum, which were challenged in part by the presenter Bobby Kerr and by a texter to the programme.

The broadcaster further states that Dr. Ciara Kelly responded to the texter with her personal view on the matter and the texter's viewpoint was defended by the presenter, Bobby Kerr, to allow for a more balanced discussion on the issue. As Ireland is not yet in referendum territory, the piece was not set up as a debate, and the issue formed a small part of a larger discussion about issues affecting the LGBT community.

Newstalk further states this was a casual conversation about many issues which have affected Brian Merriman living in Ireland. He talked about violence against gay people of which he too has been a victim, but the programme also highlighted the progressive attitude of Irish society in terms of equality for all.

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Newstalk maintains that this piece was offered in a fair and balanced manner in that the guest, contributors and texters gave their honest views on an issue, which was, in essence, a human interest piece which looked at the experiences of someone in the gay community, responding to issues which affect that community with a wider societal outlook.

The programme endeavours to feature people of different walks of life, with different viewpoints on a daily basis, and across the week, giving people the freedom to express their views on issues that matter to them, and to the listener, in a manner which is fair to all.

### **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 uphold the complaint *in part*. In reaching this view, the Committee had regard to the following:

- The Committee noted that much of the conversation was dealing with human interest issues rather than matters of news and current affairs. This included discussions about the dynamics of relationships between heterosexual men and women and between homosexual men and heterosexual women. The Committee noted that the tone of this conversation was both causal and humorous and included what could be described as a range of general and sweeping statements about such relationships. The programme also examined personal experiences of being gay in Ireland today and how Irish attitudes had changed towards homosexuality and towards the LGBT community.
- While noting that the complainant objected to that element of the programme discussion on relationships, the Committee did not consider these parts of the programme discussion to constitute news and current affairs and the obligation to ensure fairness, objectivity and impartiality did not apply.
- It was, however, the view of the Committee that that element of the programme discussion dealing with same-sex marriage did not meet the requirements placed on news and current affairs programme. While noting that the issue is not currently before the citizens of Ireland in the context of a referendum, the programme did directly address the issue of a referendum on same-sex marriage, the reasons why a change in the constitution was considered by the programme guests to be necessary and desirable in terms of the rights of children and the perceived inequality of Civil Partnership law. Further, the topic of same-sex marriage is clearly a matter of current public debate and controversy and the requirement for fairness, objectivity and impartiality accordingly applies.
- The Committee noted that the contributors made a number of comments that were critical of the view that opposes a change in the Irish Constitution to permit same-sex marriage. This also included the description as 'bigoted', the view of a contributor by text that opposition to same-sex marriage is not a manifestation of hatred but rather a view that some people in Irish society hold. It was the Committee's views that the comments on the referendum and in particular comments on the contribution by text should have been more robustly challenged by the presenter and listeners would have benefited from a wider discussion of the issues in a context where the presenter had introduced the topic of the referendum.

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While programme contributors should be free to express their opinions on matters of current public debate and controversy and to express them robustly, it is the role of the broadcaster to ensure that an adequate range of perspectives are presented, particularly where comments made are dismissive of the views of other contributions on a matter where there are other perspectives and where the topic is contested. Accordingly, the complaint has been upheld in part.

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Complaints made by: Councillor Bríd Smith, Ms Patricia McKenna, Mr. Paul Murphy  
Ref. Nos. 74/14, 75/14, 76/14

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ One	The Nine O'Clock News	03 May 2014

### Complaint Summary:

The complaints are submitted by Messrs. MacGeehin Toale, Solicitors, on behalf of the above named complainants, under the Broadcasting Act 2009, 48(1)(a) (*fairness, objectivity & impartiality in current affairs and the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs – Rule 4.1. Councillor Smith's complaint is also made under Rule 19 and under Rule 27 (BAI Guidelines in Respect of Coverage of Local and European Elections).*

Two of the complainants, Cllr. Smith and Mr. Murphy M.E.P. are candidates for the Dublin Constituency in the forthcoming European Elections. All three complainants refer to a report on the RTÉ Nine O' Clock News regarding Sunday Business Post/Red C opinion poll findings and believe the coverage of this poll by RTÉ on this programme failed to be fair, objective and impartial.

MacGeehin Toale Solicitors, on behalf of all three complainants, state that in this broadcast, RTÉ only highlighted candidates with over 10% of support in the poll. They state that this led to the exclusion of both Cllr. Smith (with 9%) and Mr. Murphy M.E.P. (with 7%). They state that given the increase in support, the transfer pact between these candidates, Mr. Murphy's status as a sitting M.E.P., and the fact that the last edition of the Sunday Business Post indicated that (at least) either Mr. Murphy M.E.P. or Cllr. Smith could get elected, the exclusion of these two candidates was irrational. MacGeehin Toale Solicitors state that on the basis that one only needs 25% of a quota to recover election expenses (in the case of Dublin that would be 6.25% of the vote), the approach adopted by RTÉ was unreasonable and unlawful. They further state that the effect of this report was to exclude Mr. Murphy M.E.P. and Cllr. Smith and to damage their credibility as candidates for the European Parliament Elections.

It is the view of the complainants that what they describe as the selective reporting on the opinion poll and other election coverage sends a message to the electorate about which candidates are the real contenders for election and which are not. They state that by excluding candidates below 10%, RTÉ are giving voters an impression that certain candidates are not being covered and therefore are not credible.

MacGeehin Toale Solicitors state that Cllr. Smith brought her concerns to the attention of RTÉ, who initially replied by way of letter which stated that the report "*sought to show which of the thirty-seven candidates stood the best chance of winning a seat at this point in the campaign*". MacGeehin Toale Solicitors submit that it is not for RTÉ, its servants or agents to second guess the voters' decision and give a definitive view on which candidates are likely to be elected. All of the complainants firmly believe that opinion polls are not always correct and RTÉ acted in breach of its statutory duty by adopting what the complainant's state was an arbitrary process in reporting on opinion poll data. The notion, which they state was evident from the report, that the complainants going forward for election, particularly where one is a sitting M.E.P., are unlikely to get elected merely on foot of a particular poll, is clearly unfair, imbalanced and irrational.

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In adopting such a position, MacGeehin Toale Solicitors submits that RTÉ acted in breach of its statutory duties pursuant to the Act and in violation of the complainants' constitutional rights.

In her complaint, Ms. McKenna states that she has not lent her support to any election campaign and her complaint is strictly in relation to the democratic process and RTÉ's obligation to abide by the legislative restrictions placed upon it. Ms. McKenna states that her main concern, as a voter, is the right to a fair campaign and to have reasonable access to impartial information that is presented in a non-biased manner. A further stated concern of Ms. McKenna's is the possibility that RTÉ, in its approach to presenting the findings of opinion polls, may influence the outcome of the vote in a manner that breaches their statutory duty and the broadcasting codes. In Ms. McKenna's view, the approach taken to the coverage of this report was an attempt by RTÉ to influence public opinion.

### Broadcaster's Response (response from RTÉ's Solicitors' Office)

#### Initial response to complainant:

In its reply to MacGeehin Toale Solicitors, RTÉ state that the poll was introduced as showing that Sinn Féin was "*still in contention in each constituency*" despite the fact of the arrest of Mr. Gerry Adams T.D., which was an item reported earlier in the news broadcast. The broadcaster states that the introductory section also indicated that the poll of 500 people demonstrated that Fine Gael support was "*holding steady*". Following this, a summary of what the poll showed was then provided in respect of each constituency.

In its response to the complainants, RTÉ states that it does not consider it was required to recite every result shown by the poll and was entitled to report on who was shown to be leading in the polls. They state that for this reason, that element of the report on the Dublin Constituency indicated that Mr. Brian Hayes T.D., Minister of State for Public Service Reform and the Office of Public Works, was in front at 18% and then outlined that a number of candidates were "*closely bunched*" together. It was observed that the poll showed that it would be a "*closely run contest*".

RTÉ claim that it is not irrational, in a thirty-second summary, to identify the candidates the poll showed to be leading and to confine the report to the top six in a three-seat constituency. They state that the report is confined to identifying what the poll demonstrates. They state that the result of a poll of 500 persons is not conclusive on the issue of whether the complainants "*could get elected*". Furthermore, RTÉ state that it does not consider that the fact that reference was not made to every candidate serves to damage the credibility of those candidates.

They state that the report adopted a consistent editorial approach as it did not mention several other candidates on similar levels of support. RTÉ believe that this was an objective and valid editorial approach to the reporting of a news item.

The broadcaster states that there were six or seven candidates ahead of the complainants and given that there are just three seats in the Dublin Constituency and that the quota will be 25%, their not featuring in this 30-second news overview was a valid and impartial decision in keeping with the editorial brief to look at the frontrunners in each constituency.

## Broadcasting Complaints Decisions

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The broadcaster states that a similar approach was applied in respect of other candidates. For example, no reference was made to the sitting Fine Gael M.E.P., Jim Higgins (10%), Senator Deirdre Clune, Fine Gael (8%), and Independent, Senator Rónán Mullen (6%). These candidates are running in constituencies where there is one seat more than in Dublin and accordingly, they potentially need less support to win a seat than do Cllr. Smith or Mr. Murphy M.E.P.

### **Response to BAI:**

RTÉ states that the opinion poll which was the subject of this brief news report, looked at the then current view by voters of thirty-seven candidates across the three European constituencies. The broadcaster states that radio and television reports of such third-party polls require that broadcasters, due to the constraints of time, make necessary editorial judgements as to what aspects of an opinion poll are of the most news value to their audiences.

RTÉ state that according to the BAI's Guidelines in Respect of Coverage of Local and European Elections "*decisions in respect of editorial content rest with broadcasters*". RTÉ submits that as an independent media organisation, it has the editorial discretion to focus on the aspects of an opinion poll which it believes to be of most interest to its viewers or listeners.

The broadcaster states that this news report, of slightly less than two minutes, identified the candidates constituency by constituency, who, according to the opinions of the voters polled by Red C at that particular time, appeared to be leading. RTÉ believes that this was a valid and objective editorial decision which was applied fairly and impartially in its reporting of the poll results in three constituencies.

The broadcaster states that there was no "*arbitrary decision*", as claimed by one of the complainants, to exclude the complainant or any other candidate. Rather, they state that there was a consistent and objective editorial approach to reporting of the poll; and it was this editorial approach, applied impartially, which resulted in the complainant, in common with the majority of candidates, not being cited in the report.

RTÉ also states that they did not make, as is claimed in the complaint BAI Ref 75/14, "*an arbitrary decision to cut of [sic] any candidate polling less than 10% from its news item on this issue.*" The view that the report "*was only highlighting candidates over 10%*" is also expressed in the letter of 08.05.14 to RTÉ from MacGeehin Toale Solrs, cited in the complaint BAI Ref 76/14. The broadcaster states that this view is inaccurate. Candidates with less than 10% were not excluded from the report; for example it was noted of Labour's Phil Prendergast M.E.P. that, alongside her criticisms of her party's leader, she received a higher rating in this poll than a survey a week earlier, another newsworthy point validly brought to the audience's attention.

RTÉ claim that the report did not state, imply or suggest that any candidate(s) would win the election; it did not offer any view, whether of the broadcaster's or of the reporter's, in relation to the outcome of the election. It reported on a third-party poll of voter intentions at a particular point in the campaign, three weeks before Election Day.

## Broadcasting Complaints Decisions

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One of the complainants (BAI Ref 75/14) submits that RTÉ erred in this report “*by presenting to the voters those [candidates] which it thought had the best chance.*” RTÉ state that it did not “*present*” any candidates and neither did it report the poll in a biased manner as is stated by the complainant. Rather, RTÉ claims it reported the outcome of the poll in terms of its indication of the then-current preferences of those polled. Neither did the broadcaster “*give a definitive view on which candidates are likely to be elected*” as is stated in correspondence from MacGeehin Toale Solicitors.

RTÉ claim that the broadcaster offered no view whatsoever on this issue. Neither did the report suggest that any candidate whatsoever, whether complainants or others, were “*unlikely to get elected*”, as is also claimed in the letter from MacGeehin Toale Solicitors.

### Decision of the Compliance Committee

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

- As independent media organisations, broadcasters have editorial discretion in terms of how they choose to cover news and current affairs content. This includes discretion in terms of the angle taken on such content, the contributors chosen to participate on-air and the duration of the item. Nevertheless, this discretion does not abnegate the obligation, placed on broadcasters by the Broadcasting Act 2009 and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, to ensure that its coverage is fair, objective and impartial. These requirements are particularly important in the case of coverage of elections and in this context, the *BAI's Guidelines in Respect of Coverage of Local and European Elections* require that “*Broadcasters that cover elections must ensure fairness, objectivity and impartiality in the exposure given to candidates and/or political parties fielding candidates in an election*”.
- In this regard, the Committee noted that the majority of the report in question focused on the results of the Sunday Business Post/Red C poll in each of the constituencies where voting would take place in the forthcoming European Elections, and that the report examined in particular the poll results in respect of those candidates which the broadcaster interpreted as those leading the poll at the time that the survey was undertaken.
- Having considered the broadcast in this context, the Committee did not agree with the complainant that the approach taken to the reporting of the poll was undertaken on the basis of an arbitrary 10% cut-off in terms of poll results. In addition, the Committee agreed with the broadcaster that coverage of every element of the poll is not an obligation, in principle, so as to ensure compliance with the requirement for fair, objective and impartial coverage of news and current affairs.

## Broadcasting Complaints Decisions

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- However, it was the view of the Committee that the exclusion in the reports of poll results in respect of Councillor Bríd Smith and Mr. Paul Murphy M.E.P. was unfair to these two candidates. The Committee has reached this view having had regard to the approach taken to the analysis of the poll results in the broadcast, in particular the decision to report on the prospects of Fianna Fáil's Pat 'The Cope' Gallagher M.E.P. and Senator Thomas Byrne in the Midlands North West Constituency.
- In this respect, the Committee noted that in examining those candidates in the lead in this Midlands North West Constituency, the report included reference to the combined results of the aforementioned Fianna Fáil candidates and had implicit regard to vote transfers between these two candidates and the consequence of these transfers on their party's potential electoral performance in the Constituency. The Committee also noted that a formal transfer pact is in place in respect of Cllr. Bríd Smith and Mr. Paul Murphy M.E.P.
- Having had regard to this transfer pact, to the fact that the Sunday Business Post/Red C poll results indicated that the combined potential level of electoral support for Cllr. Bríd Smith and Mr. Paul Murphy M.E.P. was higher than a number of those Dublin candidates that were featured in the report, it was the Committee's view that their exclusion in the report was unfair to these two candidates in circumstances where similar results in respect of the Midland's North West Constituency were included and considered relevant to the focus of the report on those candidates identified in the broadcast as leading in terms of voter choice at the time of the poll.

Furthermore, it was the Committee's view that the context for the broadcaster's analysis of the results of the poll was insufficiently transparent for viewers, contrary to the requirement of the *BAI's Guidelines in Respect of Coverage of Local and European Elections*. This was evident to the Committee from the handling of transfers as set out above and their impact as well as the analysis of the report with reference to a range of other seemingly unrelated factors, including political party performance in some constituencies and individual and party performances based on external factors in the case of other constituencies (such as the impact of the arrest of Gerry Adam's T.D. and comments made by Phil Prendergast M.E.P. in respect of her party leader).

- Accordingly, in excluding the poll results in respect of the above candidates, the broadcast was found to infringe the requirement for fairness in current affairs (including that element of Rule 4.1 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* pertaining to fairness in current affairs). The broadcast was also found, in respect of coverage of these two candidates, to infringe Rule 27 of this Code (requirement to comply with the *BAI Guidelines in Respect of Coverage of Local and European Elections*).
- The Committee found no evidence, on the basis of this report, that would support those elements of the complaint which argued that the approach taken to the report was an attempt to influence public opinion in respect of these two candidates or that the approach taken by the broadcaster to the report lacked objectivity or impartiality in terms of news or current affairs content and these elements of the complaint were rejected by the Committee.

# Rejected by BAI Compliance Committee

**Complaint made by: Mr. David O'Callaghan**

**Ref. No. 7/14**

**Station:**

RTÉ One

**Programme:**

The Saturday Night Show

**Date:**

25 January 2014

**Complaint Summary:**

Mr. O'Callaghan'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 4.2 4.3, 4.9, 4.17, 4.19, 4.20 & 4.22.*

The complaint concerns the apology broadcast by RTÉ during The Saturday Night Show on foot of an interview aired earlier in January with Mr. Rory O' Neill. The complainant believes that RTÉ should not have aired the apology as it is his opinion that the views expressed by Mr. O'Neill were reasonable in circumstances where those to whom the apology had been made were, according to the complainant, as being on the record in their opposition to same-sex marriage.

The complainant states that when reading the apology the programme presenter stated that *"it's an important part of democratic debate that people must be able to hold dissenting views on controversial issues"*. However, the complainant states that RTÉ's decision to issue the apology and edit the online version of the programme contradicts these words.

The complainant states that these actions on the part of RTÉ amounted to censorship as well as a failure to critically challenge the views of those who he states are opposed to same-sex marriage. The complainant states that it would seem that the apology and other actions around this incident shows that RTÉ is mistaken in its view as to how to promote free and open debate and that the broadcaster has difficulty in withstanding pressure from individuals and organisations.

The complainant also states that the response provided by RTÉ to this complaint does not address his concerns and amongst other matters, doesn't state whether the online version of the programme will be reinstated in full or whether it intends to apologise to Mr. O'Neill or the audience for the airing of the apology on the 25<sup>th</sup> January.

**Broadcaster's Response:**

**Initial response to complainant:**

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

## Broadcasting Complaints Decisions

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### Response to BAI:

RTÉ states that on *The Saturday Night Show* of 25<sup>th</sup> January, 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 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.

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 that 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.

## Broadcasting Complaints Decisions

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RTÉ asserts that the statement, far from being in breach of the above section was in fact in keeping with the principles of fairness, objectivity and impartiality, and transparency and accountability which it articulates.

Rule 4.3: A broadcaster shall deal fairly with contributors to current affairs content or with persons or organisations referred to in that content.

RTÉ believes 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.

Rule 4.9: The editing process shall not distort the context or meaning of the original interview.

The statement of 25<sup>th</sup> January was broadcast live and unedited.

Rule 4.17: News and current affairs content shall be presented with due accuracy, having regard to the circumstances and the facts known at the time of preparing and broadcasting the content.

RTÉ asserts that there were no inaccuracies in the statement of 25<sup>th</sup> January; and no such inaccuracies have been indicated in the complaint.

Rule 4.19: Views and facts shall not be misrepresented or presented in such a way as to render them misleading. Presenters should be sensitive to the impact of their language and tone in reporting news and current affairs so as to avoid misunderstanding of the matters covered.

RTÉ believes there was no misrepresentation of views or facts in the statement of 25<sup>th</sup> January. The language and tone of delivery were neutral and impartial.

Rule 4.20: A significant mistake shall be acknowledged and rectified as speedily as possible, in an appropriate and proportionate manner. A broadcast correction or clarification shall have regard to the time and circumstances of the original broadcast.

The clarification represented by the statement of 25<sup>th</sup> January was broadcast two weeks after the original broadcast of this weekly programme, in time both to give appropriate consideration to editorial and other concerns and to allow discussion with the parties concerned.

Rule 4.22: It is an important part of the role of a presenter of a current affairs programme to ensure that the audience has access to a wide variety of views on the subject of the programme or item; to facilitate the expression of contributors' opinions – sometimes by forceful questioning; and to reflect the views of those who cannot, or choose not to, participate in content. This being so, a presenter and/or a reporter on a current affairs programme shall not express his or her own views on matters that are either of public controversy or the subject of current public debate such that a partisan position is advocated.

## Broadcasting Complaints Decisions

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RTÉ 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 statement contained no expression of the presenter's own views.

RTÉ 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, in view of the disposition towards same-sex marriage of those to whom the apology was directed. In addition, the Committee did not consider the decision of RTÉ to alter the online version of the programme in response to a potential legal challenge or the issue of whether the full interview would be reinstated on its website since the BAI does not regulate online content.
- 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 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

## Broadcasting Complaints Decisions

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Following its review of the apology, the Committee noted that the apology was factual and editorial in nature but it did not hold the view that, on the basis of a single broadcast item, it could be concluded that the apology amounted to censorship on the part of the broadcaster in respect of discussion and debate on the issue of same-sex marriage or homophobia, contrary to the requirement for fairness, objectivity and impartiality in news and current affairs.

- While reviewing this complaint, the Committee noted the complainant's view that the apology was evidence of a critical failure to challenge the views of those who oppose same-sex marriage and that it suggested that the broadcaster had self-censored its own content in an unwarranted manner.

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.

Further, audiences expect honest analysis and the Committee is of the view that there may be circumstances where it is appropriate and necessary to challenge comments that are considered to support or condone discrimination against any group in society, including the LGBT community. However, any such challenge must be accurate, fair, objective and impartial and 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 the broadcaster or the presenter dealing unfairly with contributors, taking a partisan position on a matter of current public debate or that the complainant had demonstrated that the content was inaccurate or misleading contrary to the rules of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. The Committee also noted that the apology gave effect to Rule 4.20 of the aforementioned Code and that Rule 4.19 was not relevant as the editing in this regard related to online content. Accordingly, the complaint has been rejected.

## Broadcasting Complaints Decisions

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**Complaint made by: Ms. Jennifer Daly**

**Ref. No. 32/14**

**Station:**

RTÉ One

**Programme:**

The Saturday Night Show

**Date:**

25 January 2014

### Complaint Summary:

Ms. Daly's complaint is submitted under the Broadcasting Act 2009, *section 48(1)(b) Code of Programme Standards, section 3.4.2.*

The complainant refers to the apology that was broadcast on the show which, she states, claimed dissenting views had to be respected in a democratic society. The complainant believes that this apology was insulting to most right-minded people. The complainant states that the Iona Institute promotes a view of society that she characterises as dogmatic and rigidly Catholic, in respect of a range of issues from "traditional" marriage to a woman's right to choose what to do with her own body. The complainant states that the wording of the apology suggested that the Iona Institute and other likeminded organisations have to be allowed express their opinions without challenge. The complainant believes that the apology reinforces the idea that an organisation, such as the Iona Institute, can speak negatively about same-sex relationships but that criticisms of their views will be censored by the broadcaster. This amounts, in the view of the complainant, to a staggering contradiction in that the "apology" suggests that only those she describes as "conservative reactionaries" have the right of reply.

The complainant states that the apology has set a dangerous precedent that will have a chilling effect on the discussion of an issue of national importance and the broadcaster's decision calls into question, in her opinion, their ability to provide fair and balanced programming on this issue.

### 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 a legal complaint. RTÉ regrets that for this reason it is not in a position to respond substantively to this complaint. They further assured that the complaint would be circulated to senior editorial management and that RTÉ takes audience feedback very seriously.

#### 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."*

## Broadcasting Complaints Decisions

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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. 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 broadcaster states that 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 2014 was a profile interview on the life and experiences of the interviewee. 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 broadcast of the statement of 25<sup>th</sup> January breached Content Rule 3.4.2 of the *BAI Code of Programme Standards*.

### 3.4 Persons and Groups in Society

3.4.2 Programme material shall not support or condone discrimination against any person or section of the community, in particular on the basis of age, gender, marital status, membership of the Traveller community, family status, sexual orientation, disability, race or religion.

RTÉ asserts that the statement of 25<sup>th</sup> January did not support or condone discrimination of any kind; nothing in the statement contributed to the silencing of a group in society and the value of dissenting views in democratic debate was emphasised.

RTÉ 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.

## Broadcasting Complaints Decisions

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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 of the *BAI Code of Programme Standards*. Following its review of the apology, the Committee was of the view that it could not be considered to either support or condone discrimination on the basis of sexual orientation since the wording of the apology did not directly address issues pertaining to sexual orientation but instead dealt with the broadcaster's views about the standards applying to the programme of the 11<sup>th</sup> in respect of a number of named individuals and an organisation.
- While reviewing this complaint, the Committee noted the complainant's view that the apology will, in her opinion, have a chilling effect on any future discussions about gay marriage and homophobia. 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.

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.

## Broadcasting Complaints Decisions

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- Having had regard to these considerations, the Committee did not agree with the complainant that the apology, in and of itself, was evidence of censorship on the part of the broadcaster or implied that the way in which it would handle future discussions on homophobia was, on the basis of one broadcast, compromised in advance. Accordingly, the complaint has been rejected.

## Broadcasting Complaints Decisions

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**Complaint made by: Mr. Barry Kelly**

**Ref. No. 35/14**

**Station:**

RTÉ One

**Programme:**

The Saturday Night Show

**Date:**

25 January 2014

**Complaint Summary:**

Mr. Kelly'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 - Rule 4.1.*

The complaint concerns the apology broadcast on 25<sup>th</sup> January regarding an earlier interview with Mr. Rory O'Neill, broadcast on 11<sup>th</sup> January. The complainant states that when reading the apology the presenter stated "*it is an important part of democratic debate that people must be able to hold dissenting views on controversial issues*". The complainant claims this statement is ambiguous at best and it is not clear as to which party, either Mr. O'Neill or the other individuals/groups mentioned, this statement was aimed at. The complainant states that, interpreted from either point of view, this statement contradicts the removal and editing of the initial interview undertaken by RTÉ after the first broadcast on the 11<sup>th</sup> January. The complainant states that this statement indicates that either Mr. O'Neill's comments regarding homophobia or the views held by the individuals and groups mentioned during the interview are "dissenting views on controversial issues" and therefore the removal and editing of such view would seem counterproductive to proper and fair democratic debate.

The complainant states that he believes Mr. O'Neill's comments were unfairly censored and the removal and editing of his interview and subsequent apology issued by RTÉ, distorted the nature and intent of Mr. O'Neill's comments. The complainant states that this prevented freedom of expression and real and necessary debate. He further states that the actions taken by RTÉ could be read as biased in favour of the individuals and groups referred to during the interview on Saturday 11<sup>th</sup> January, 2014.

The complainant also notes that contrary views to that of Mr. O'Neill as aired on the 11<sup>th</sup> January have previously been broadcast by RTÉ which, the complainant claims, went uncensored, unedited and did not result in an apology despite probably causing offense to some viewers.

**Broadcaster's Response:**

**Initial response to complainant:**

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

A further reply was sent to the complainant expressing the understanding that the initial response was not to the complainant's satisfaction. However, given the legal constraints, RTÉ was not in a position to expand further.

## Broadcasting Complaints Decisions

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### 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.

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 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. 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 broadcast of the statement of 25<sup>th</sup> January breached Rule 4.1 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. RTÉ 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 Complaints Decisions

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RTÉ 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. In addition, the Committee did not consider the decision of RTÉ to alter the online version of the programme in response to a potential legal challenge since the BAI does not regulate online content.
- 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 could not be considered to favour the position of any of the parties involved in the programme and subsequent issues arising. Instead, it was the Committee's view that the apology dealt with the broadcaster's views about the standards applying to the programme of the 11<sup>th</sup> in respect of a number of named individuals and an organisation. Accordingly, the complaint has been rejected.

## Broadcasting Complaints Decisions

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**Complaint made by: Ms. Sarah Cantwell**

**Ref. No. 36/14**

**Station:**

RTÉ One

**Programme:**

The Saturday Night Show

**Date:**

25 January 2014

**Complaint Summary:**

Ms. Cantwell's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a) *fairness, objectivity & impartiality in current affairs, Code of Fairness, Objectivity and Impartiality in News and Current Affairs - Rule 4.1 and 48(1)(b) Code of Programme Standards - Sections 2.2.2 (due care), 3.4.1, 3.4.2 (persons and groups in society) and 3.5.2 (factual programming)*.

The complainant claims that the apology on this programme failed to live up to the ideal which was ironically referred to in the wording of the apology thus– *“it’s an important part of democratic debate that people must be able to hold dissenting views on controversial issues”*.

The complainant states that RTÉ, as our national public broadcaster, has the responsibility to enable all sides of the debate to be heard. She states that RTÉ, in refusing to reply in full to her complaint, has done several things which in her opinion led to unfulfilled responsibilities on the part of the broadcaster, which include:

- Editing or censoring out Rory O’Neill’s nuanced and reasonable argument as to why everyone is a bit homophobic;
- Failing to take responsibility for the role of the programme presenter who asked Rory O’Neill to specify individuals and instead implicitly blaming O’Neill in its apology;
- Airing an apology which the complaint states was not necessary and which in her opinion vindicated one side of the debate on same-sex marriage. The complainant believes RTÉ should have defended itself in the courts using the right to free speech, especially when it concerned a member of a minority group claiming that another group is being oppressive (i.e. homophobic) no matter the cost to the taxpayer. The complainant states that free speech needs to be prioritised over cost-cutting.

The complainant states that with RTÉ’s apology, it would seem that the Irish LGBT Community has effectively been silenced and authoritatively prohibited from highlighting instances of oppression as they see it on the forum provided by the national public service broadcaster. The complainant believes this can only add to the daily oppression of LGBT people in Ireland.

**Broadcaster’s Response:**

**Initial response to complainant:**

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

## Broadcasting Complaints Decisions

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### Response to BAI:

RTÉ states that on *The Saturday Night Show* of 25<sup>th</sup> January, 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.

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”*.

The broadcaster states that, 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 that the greater part of the interview of 11<sup>th</sup> January was a profile interview on the life and experiences of the interviewee. 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 states that the complaint alleges that the broadcast of the statement of 25<sup>th</sup> January breached Rule 4.1 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, and Content Principle 2.2.2 and Content Rules 3.4.1, 3.4.2 and 3.5.2 of the *BAI Code of Programme Standards*.

## Broadcasting Complaints Decisions

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Regarding Rule 4.1, RTÉ 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.

Regarding section 2.2.2 of *The Code of Programme Standards* (Identification with Characters, Actions and Personal Circumstances), RTÉ states that insofar as this Principle may be applicable to the statement of 25<sup>th</sup> January, RTÉ asserts that no harm was caused to any section of the community. Nor indeed did the statement result in any impediment to discussion of the experience of the LGBT community as evidenced on RTÉ alone by coverage of the topic of homophobia on *The Late Debate* of 29<sup>th</sup> January, on *Today with Sean O'Rourke* of 4<sup>th</sup> February and on *The Saturday Night Show* of 1<sup>st</sup> February, as well as in the *Sunday with Miriam* interview with Rory O'Neill of 9<sup>th</sup> February.

Referring to section 3.4 of *The Code of Programme Standards* (Persons and Groups in Society), RTÉ 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. RTÉ states that insofar as section 3.5 of *The Code of Programme Standards* (Factual Programming) applies to *The Saturday Night Show*, the statement of 25<sup>th</sup> January contained no offensive or unduly distressing material; nor did it suggest that discrimination against any group of people could not be a matter of public debate.

RTÉ 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.

## Broadcasting Complaints Decisions

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- 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 or matters pertaining to who was responsible for the content that RTÉ deemed was such that an apology was necessary. In addition, the Committee did not consider the decision of RTÉ to alter the online version of the programme in response to a potential legal challenge since the BAI does not regulate online content.
- 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 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* and the *BAI Code of Programme Standards*. Following its review of the apology, the Committee was of the view that it could not be considered to either support or condone discrimination on the basis of sexual orientation or that it would prejudice the interests of the LGBT community. While noting that the complainant was offended by the content, the Committee did not consider the content likely to cause undue offence or to cause harm contrary to the requirements of the *Code of Programme Standards*.

In reaching this view, the Committee noted that the wording of the apology did not directly address issues pertaining to sexual orientation but instead dealt with the broadcaster's views about the standards applying to the programme of the 11<sup>th</sup> in respect of a number of named individuals and an organisation.

- While considering this complaint, the Committee noted the complainant's view that the apology will limit members of the LGBT community from challenging broadcast content that the complainant describes as oppressive. 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. Further, audiences expect honest analysis and the Committee is of the view that there may be circumstances where it is appropriate and necessary to challenge comments that are considered to support or condone discrimination against the LGBT community once any such challenge is accurate, fair, objective and impartial. 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 the broadcaster taking a position a matter of current public debate or controversy that was contrary to rules on fairness, objectivity and impartiality or that opinions that challenge homophobia will be inappropriately curtailed by the broadcaster in future discussions on matters such as same-sex marriage. Accordingly, the complaint has been rejected.

## Broadcasting Complaints Decisions

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**Complaint made by: Ms. Áine Ní Chonail**

**Ref. Nos. 37/14 and 38/14**

**Station:**

RTÉ One

**Programme:**

Six One News & Nine O'Clock News

**Date:**

3 January 2014

**Complaint Summary:**

Ms. Ní Chonail'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* - Rules 4.9, 4.10, 4.17 and 4.19.

The complaint centres on an item carried on the 6.01 news and 9pm news relating to the release of British Government Papers from 1984. The complainant states that it was accompanied by the showing of a portion of a Margaret Thatcher press conference during which she enumerated the three political proposals of the New Ireland Forum and indicated that none of them was acceptable to her and her government.

The complainant states that it has been common for journalists to refer to this as her "out, out, out" speech which she states is, in itself, a lack of journalistic integrity. However, she states that never before has anyone presented it in the manner that RTÉ did on this occasion. The complainant states that the piece was spliced/edited so as to have Mrs. Thatcher say "out, out, out" with all intervening material excised. The complainant states that anyone with an understanding of the English language knows that there is a huge difference between the impact of "out" and "out, out, out".

The complainant states that this editing was conducive to twisting recent political fact and damaging friendly relations between Ireland and the UK, particularly in the area of relations on Northern Ireland, as last summer's troubles and the recent Haass effort show, is still a sensitive area. The complainant states that there is a new generation which does not have a personal recollection of the facts and could be affected by such a misleading presentation.

**Broadcaster's Response:**

**Initial response to complainant:**

RTÉ states the television report on the release of the British State Papers from 1984 necessarily had to condense a lot of complex material into a relatively short script. After explaining the lead-up to the summit, the voice-over continued: "*Despite their disagreement, they agreed to keep working on a possible deal – but then at her post-summit press conference the Prime Minister reacted negatively to the proposals of the New Ireland Forum*". The broadcaster states that there then followed an edit of Mrs. Thatcher's remarks, as she used the word "out" three times to dismiss in turn each of the Forum proposals. RTÉ believes it was quite clear that this was an edited version of her remarks, which conveyed the essence of what she said – a united Ireland, a federal or confederal solution or joint authority, were all "out".

## Broadcasting Complaints Decisions

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RTÉ states it is quite clear from the political and media reaction at the time that Mrs. Thatcher's remarks were viewed as dismissive and insulting. Dr. Fitzgerald described them in private at the time as "gratuitously offensive", while the then Irish Ambassador to the United Kingdom, Noel Dorr, told British officials that Anglo-Irish relations had been "profoundly...altered for the worse".

The report was done by RTÉ's former political correspondent, David McCullagh, who is himself a historian and who has studied the Irish and British State Papers for RTÉ for many years, with particular reference to Northern Ireland.

### **Response to BAI:**

RTÉ states the complaint refers to the editing of remarks made by the then British Prime Minister, Margaret Thatcher, at the press conference following a November 1984 Anglo-Irish Summit meeting between the Prime Minister and the then Taoiseach, Dr Garret Fitzgerald. When asked at the press conference about the New Ireland Forum Report, she dismissed each of the potential solutions outlined in it – unity, federation, joint authority – one by one, ruling out each one and repeating the word "out" three times in all.

RTÉ responds to the alleged infringements as below:

#### *4.9 The editing process shall not distort the context or meaning of the original interview.*

There was no distortion of the context or meaning of the original material. All the words heard were spoken, separately, by the British Prime Minister. (To put it another way, the editing did not create the repetition of a word which she had only spoken once.)

The editing, which was made very obvious through the use of jump cutting which did not include cutaway shots to disguise an edit, conveyed the impact of the British Prime Minister's remarks on the press conference and on Anglo-Irish relations. At the time, the Irish Taoiseach described in private those remarks – subsequently referred to as the 'Out, out, out' statement – as "gratuitously offensive." The then Irish Ambassador to the United Kingdom told the British Cabinet Secretary that "it may not be understood in Britain how profoundly the Anglo-Irish relationship has been altered for the worse" by the press conference. The editing of the Prime Minister's remarks accurately conveyed their significance as reflected in reactions such as those.

#### *4.10 A broadcaster shall ensure that the re-use of any material in a news and current affairs context, including the use of archive material, does not create unfairness or result in inaccuracies.*

The entire report on the release of British State Papers in relation to these events, in which the edited archive footage of the British Prime Minister's press conference was included, was an objective and impartial account of a particular historical passage in Anglo-Irish relations, using conventional broadcast techniques including editing. See also the response to Rule 4.9 above.

#### *4.17 News and current affairs content shall be presented with due accuracy, having regard to the circumstances and the facts known at the time of preparing and broadcasting the content.*

## Broadcasting Complaints Decisions

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This report by former RTÉ News Political Correspondent and historian David McCullagh was an accurate account of the facts and circumstances of the events. The editing of the British Prime Minister's remarks accurately conveyed their significance. See also the response to Rule 4.9 above.

*4.19 Views and facts shall not be misrepresented or presented in such a way as to render them misleading. Presenters should be sensitive to the impact of their language and tone in reporting news and current affairs so as to avoid misunderstanding of the matters covered.*

The facts of the British Prime Minister's remarks were not misrepresented or conveyed in a misleading manner. The editing of her remarks was obvious and the use of jump cutting avoided any possible misleading of the audience as to the manner of their original delivery. See also the response to Rule 4.9 above.

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

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

- The context for the item was the release of British Government papers and it focused in particular on behind the scenes negotiations between the Irish and British Governments and on the request by the Irish Government for a role in governing Northern Ireland.
- The Committee found, from its review of the broadcast, that the clear rejection of proposals from the New Ireland Forum by then British Prime Minister, Margaret Thatcher, was presented in an edited version of a press conference given by her at that time. However, it was the view of the Committee that the edits were clearly evident and would not have misled or deceived viewers as to her opinion on these proposals.
- The Committee also noted that this section of the broadcast was clearly contextualised, as was the impact of Mrs. Thatcher's rejection of the proposals on the Irish Government and on the negotiations between the Irish and British Governments. It was also noted that this particular speech is commonly referred to by historians as the "out, out, out" speech, and is referred as such in the archive of the Margaret Thatcher Foundation. While the edits provided a dramatic tone to Mrs. Thatcher's comments, the Committee did not agree with the view of the complainant that the edits had resulted in an unfair, inaccurate and misleading broadcast. Accordingly, the complaint has been rejected.

## Broadcasting Complaints Decisions

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**Complaint made by: Mr. Séamus Ó Mathúna**

**Ref. No. 39/14**

**Station:**

RTÉ One

**Programme:**

Prime Time

**Date:**

5 December 2013

### **Complaint Summary:**

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

The complaint refers to a remark made by Fine Gael T.D. Charlie Flanagan, when discussing the Smithwick Tribunal's Report and Sinn Féin President Gerry Adams' initial comment on the report as broadcast on a radio station earlier in the day. The Tribunal was responsible for investigating the deaths of two R.U.C. officers. The complainant claims that Deputy Flanagan stated, during this edition of Prime Time, that Sinn Féin had been responsible for over 3,000 deaths and for destruction during the conflict in Northern Ireland. The complainant claims this is blatantly untrue and, to the best of his knowledge, Sinn Féin never killed anyone nor has it engaged in the mass destruction of property. The complainant further states that many armed groups were responsible for the death and destruction that occurred during this conflict.

The complainant queries why no Sinn Féin spokesperson was invited onto the programme whereas Charlie Flanagan T.D. Fine Gael and Irish Independent columnist Martina Devlin were given free rein to give what he describes as misleading information about the deaths of the two R.U.C. men. He states the treatment of the topic lacked context and was unfair to the facts and to Gerry Adams T.D.

The complainant accepts that live television can be problematic; however, he states that this does not excuse the broadcaster from the requirement to air correct information and to avoid falsehoods, such as the one he cites in his complaint in respect of Sinn Féin. He also underlines that his main criticism about the role of Sinn Féin as stated by Charlie Flanagan T.D. was accepted by RTÉ, however, to date, he is not aware that it has been corrected in any subsequent programme.

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

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

RTÉ state that this programme was focussed on Sinn Féin future electoral prospects in the Republic and the challenges the party faces attracting new voters while maintaining its support base in Northern Ireland. It was a discussion prompted by Deputy Gerry Adams' comments about the Smithwick Tribunal but not focussed exclusively on those comments.

RTÉ state that Gerry Adams T.D. was invited on to the programme; however, he declined the invitation. A Sinn Féin spokesperson was sought but the party was unable to provide anyone – a decision it only communicated to RTÉ late in the afternoon leaving very little time to find an alternative voice.

The broadcaster further states that Charlie Flanagan T.D. was put forward by Fine Gael to discuss both Gerry Adams' comments and Sinn Fein's electoral prospects in the Republic. RTÉ does not accept that Mr. Flanagan was given "free rein" by the presenter.

## Broadcasting Complaints Decisions

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She put to him the question of allegations of collusion in the murders of 120 Catholics, in a similar manner to the way she challenged what Jude Collins was saying. Martina Devlin was invited on as an independent commentator to discuss the remark made by Gerry Adams and the future for Sinn Féin in the Republic.

In relation to the comment by Charlie Flanagan T.D., that Catholics had been “murdered by Sinn Féin”, RTÉ regret that comment slipped by during the live programme. Normally, a contributor would have been questioned about this. This was a simple oversight and, bearing in mind that the death of Nelson Mandela had just been announced and the programme was preparing to switch to that subject, this was perhaps understandable.

### **Response to BAI:**

RTÉ states that during the discussion on this programme of remarks made by Sinn Féin President Gerry Adams T.D. in relation to the deaths of two RUC officers, which had been the subject of the Smithwick Tribunal report, one of the studio panellists, Deputy Charlie Flanagan, made the following remark:

Deputy Flanagan: *“This [Sinn Féin] was a group of people whose associates carried out murder and mayhem and perpetrated murder on over 3,000 people in the North over a long period of time.*

Presenter: *“What about –“*

Deputy Flanagan: *“And then we’re supposed to take the view that that’s all in the past and it’s changed”.*

The broadcaster states that Deputy Flanagan, speaking in a live studio discussion, appears to have confused the total number of deaths recorded in the Northern Ireland Troubles (3,598; ref CAIN/University of Ulster), with those attributed to the IRA, the “associates” of Sinn Féin to whom Deputy Flanagan is undoubtedly referring.

The presenter countered Deputy Flanagan’s statement above with:

Presenter: *“What about Tim Pat Coogan’s point and I suppose Anne Cadwallader’s book, that there are the hundred and twenty Catholics who were murdered, they would say, by the forces of the State?”*

The broadcaster states that the putting to Deputy Flanagan of this view in counterpoint to that which he had just expressed was a far more pertinent fulfilment of a presenter’s responsibilities than a pursuit of the deputy on the accuracy of his figures, where the core of his viewpoint was moral responsibility, not statistics. Had Sinn Féin accepted the programme’s invitation to participate, this could well be a point which a spokesperson for the party would have made in response to Deputy Flanagan. The presenter was properly reflecting the views of parties who had chosen not to participate in the discussion, in keeping with Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

## Broadcasting Complaints Decisions

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Deputy Flanagan replied as follows:

Deputy Flanagan: *“I would respond by saying that as far as Catholics were concerned and Nationalists in Northern Ireland, that more Catholics were murdered by Sinn Féin than by any other group during the course of the terror over thirty years”.*

The broadcaster states that this assertion conflated the Sinn Féin party with the previously mentioned “associates” and referenced a view held by some statisticians that the IRA were responsible for the deaths of more members of the Catholic community than any other single organisation or group. The broadcaster states that it was the rhetorical assertion of a politician promoting his point of view on another political party, not presented as a factual statement, accurate or inaccurate, by an independent observer. Viewers would be well aware of Deputy Flanagan’s perspective when merging Sinn Féin and the IRA and, whether or not they agreed with his entitlement to do so, would not hear his statement as one of objective fact demanding correction.

The broadcaster states that, at this point, the presenter chose to move on the discussion, putting to another panellist remarks made by Deputy Adams in his statement earlier that day on the Smithwick Tribunal Report’s reference to the refusal by RUC officers of additional security on their journeys to the Republic. In doing so, the presenter was again facilitating the expression of views of those who had chosen not to participate in the discussion.

RTÉ believes that this moving on of the debate was a fair, objective and impartial choice which did not leave on the record a factual misstatement by a disinterested party.

The broadcaster states that, as was pointed out by the Deputy Editor of *Prime Time* in response to the original complaint, and can be seen from a review of the programme in its entirety, the discussion of this topic was brought to an unforeseen conclusion by breaking news of the death of former South African President Nelson Mandela. This event curtailed any further discussion, whether of the number of deaths which could accurately be attributed to “associates” of Sinn Féin, or any other aspect of the topic arising from the Smithwick Tribunal Report.

RTÉ also wishes to point out that in terms of the overall fairness of the discussion; writer and broadcaster Jude Collins represented a point of view on Sinn Féin and its place in contemporary Irish politics which strongly countered that of Deputy Flanagan.

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

The Committee has considered the broadcast and the submission from the complainant and the broadcaster. 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 programme discussion examined the relationship between the conflict in Northern Ireland and the electoral prospects of Sinn Féin. The context for the discussion was the publication of the report of The Smithwick Tribunal, and remarks by Gerry Adams T.D. on the findings of the report.

## Broadcasting Complaints Decisions

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- The Committee noted that Sinn Féin had been asked to participate in the programme, but had declined to do so. While the Committee was of the view that audiences would have benefited from being informed of the decision by Sinn Féin to decline to participate, it also noted that the requirement for fairness, objectivity and impartiality can be met via the nature of the contributions provided during a programme and is not dependent on participation in a programme of all organisations referenced in a programme, in this case Sinn Féin.
- Upon its review of the programme, the Committee noted that Deputy Flanagan had made a remark that directly linked the political party, Sinn Féin, with the deaths of individuals during the conflict in Northern Ireland. While noting that there are a range of views concerning the relationship between Sinn Féin and the I.R.A. and the nature of that relationship, it was the view of the Committee that the unequivocal association made by Deputy Flanagan between Sinn Féin and killings in Northern Ireland should have been corrected by the programme presenter.
- However, having had regard to the discussion as a whole, and in particular to the contribution by Mr. Jude Collins in respect of the comments by Deputy Adams and the views of Deputy Flanagan and Ms. Martina Devlin as articulated during the programme discussion, it was the Committee's opinion that the remarks by Deputy Flanagan were not sufficient grounds to deem the discussion as a whole to have lacked fairness, objectivity and impartiality. Accordingly, the complaint has been rejected.

## Broadcasting Complaints Decisions

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**Complaint made by: Mr. Mark Murphy on behalf of the Irish Kidney Association Ref 41/14**

**Station:**

RTÉ One

**Programme:**

Joe Brolly – The Perfect Match

**Date:**

18 November 2013

**Complaint Summary:**

The Irish Kidney Association's complaint is submitted on their behalf by the Chief Executive, Mark Murphy under the Broadcasting Act 2009 *Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and the Code of Fairness, Objectivity and Impartiality in News and Current Affairs-Rules 4.1, 4.2, 4.3, 4.9, 4.10, 4.19, 4.22 and 4.23.*

The complaint centres on the handling during the programme of the matter of 'public consent for organ donation'. The Irish Kidney Association (IKA) Board believe that the subject was not dealt with impartially and claim the selection of interview clips was chosen to isolate and disparage the IKA and its position on the current public debate on ways to improve organ donation rates.

The complainant states that the programme makers had conducted extensive interviews with Mark Murphy of the IKA and had complete access to all the recordings of the hearings in the Oireachtas Health Committee at their disposal, but chose particular clips to distort the public's view in favour of Joe Brolly's public campaign on the matter. The complainant claims that the resulting public and IKA members' reaction to the programme dealing with the consent matter has had a serious impact on the public goodwill upon which the IKA rely to support organ donation for transplantation.

The complainant states that Joe Brolly has a campaign intended to convince the Government to change the system of consent for organ donation to a 'soft opt-out' system. The system is commonly called presumed consent. The complainant states that Mr. Brolly publically claims this will make a huge difference to organ donation rates in Ireland.

The IKA position on consent is that the Informed Consent System, which is current practice, should be retained. The complainant claims that the programme did not deal with this current debate aspect impartially or fairly. The complainant states that the subject was not properly explained and the IKA was portrayed incorrectly, as alone in arguing against the soft-opt-out proposal. The complainant believes the programme producers had plenty of material at their disposal to put the IKA counter argument fairly and impartially. However, it decided not to and thereby succeeded in disparaging the IKA in the clips it chose to use.

**Broadcaster's Response:**

**Initial response to complainant:**

In its response to the complainant, the broadcaster states that the programme was an observational documentary presented as a personal story from the point of view of two men who had, in very moving circumstances, become close friends and campaigning colleagues. The broadcaster states that the documentary included discussion on the most effective means to increase donation rates and the position of the Irish Kidney Association (IKA) was presented. None of its views was paraphrased and the entitlement and bona fides of the IKA in holding their views was not questioned or undermined.

## Broadcasting Complaints Decisions

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The broadcaster notes that the majority of those responding to a consultation on the 'soft opt-out' donation policy were in favour of this approach as was the Joint Oireachtas Committee on Health. Nevertheless, the views of the IKA were included in the interest of ensuring impartiality and objectivity in the programme.

The broadcaster states that the documentary clearly explained that there were different opinions about the consent issue and these were examined in fair and objective manner. The broadcaster states that, whatever the sincerely held disagreement on the issue of consent between different parties, they all share the common goal of saving lives.

### **Response to BAI:**

*RTÉ informed the BAI that Loosehorse Ltd, the production company involved in the programme, was made aware of the complaint referral to the BAI and, in consultation with the RTÉ Executive Producer responsible for the commission, contributed substantially to the RTÉ response to the BAI.*

RTÉ state that in following the campaign by Joe Brolly and Shane Finnegan to change laws in respect of organ donation in Northern Ireland and the Republic, *Joe Brolly – Perfect Match* covered the discussion amongst stakeholders of the most effective means whereby organ donation rates can be increased.

The broadcaster states that the discussion centres around the question of whether opt-in or soft opt-out consent to donation is the more effective strategy. Although the documentary never suggested or implied that the Irish Kidney Association (IKA) were alone or isolated in their position of supporting opt-in consent, it did accurately and objectively reflect the fact that the IKA is in a minority amongst stakeholders.

The public consultation process regarding the introduction of an opt-out system for consent of organ donation, initiated by the HSE as part of Government planning on the matter, reported in 2013. Of the 17 submissions it received from organisations and representative groups, only the IKA came out against opt-out. (One group, The Intensive Care Society of Ireland, said that "opinions differ" within the society on the issue.) Amongst the organisations in favour of opt-out were:

- Dept of Nephrology and Transplant Nephrology, National Kidney Transplant Centre, Beaumont Hospital
- Forum on End of Life in Ireland
- Irish Heart Foundation
- Irish Hospice Foundation
- Irish Medicines Board
- Irish Nephrology Society
- Irish Thoracic Society
- Alpha One Foundation
- Cystic Fibrosis Ireland
- Irish Heart and Lung Transplant Association
- Irish Lung Fibrosis Association

## Broadcasting Complaints Decisions

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In addition to the stakeholder organisations cited in the report of the consultation process, the broadcaster states that there was also notable support for opt-out consent from Professor Jim Egan and the National Transplant Office in Beaumont, who were strongly in favour, and from Mr. David Hickey, Director of Transplantation at Beaumont Hospital.

The broadcaster states that non-medical, representative or advocacy organisations which have expressed support for opt-out consent include the Northern Ireland Executive and the GAA, while support of this system is also the unanimous position of the Joint Oireachtas Committee on Health and Children.

RTÉ state that notwithstanding the weight of opinion in favour of an opt-out system, in the interests of fairly informing viewers on the topic, the programme makers included objective and impartial coverage of the IKA position on the question, acknowledging the Association's status as the leading dissenting voice and leading advocacy group in the area. The broadcaster states that footage used of IKA CEO Mark Murphy's speech at the IKA Organ Donation Awareness Week press launch, was a clear, concise statement of the IKA position on donation consent, with no internal edits. They state that in the extract from the post-conference interview with the IKA CEO, the programme-makers included his acknowledgement of "ninety per cent" common ground on the issue but also that the ten per cent difference was "a deal-breaker". The broadcaster states that the second appearance in the documentary by the Irish Kidney Association was at the Oireachtas Health Committee hearings on Ireland's organ donation consent laws.

RTÉ maintain that the voiceover script introducing the hearings sequence emphasised the existence of consensus on certain key elements: "*All the stakeholders agree on the need for a dedicated transplant infrastructure*". In its reference to dissent, the language and delivery of the script was objective and impartial: "*Where potential for debate remains is around the law of consent.*"

The broadcaster states that the Irish Kidney Association CEO was the first of the organisation representatives to speak in the Oireachtas hearings sequence. Again, the inclusion of the IKA position on consent was clear and fair:

IKA CEO: "*Creating a consent law that is different in name but in practice will be operated exactly as best practice is foolhardy and will only lead to confusion for the public unnecessarily.*"

The broadcaster states that a spokesperson for Cystic Fibrosis Ireland acknowledged the difference of opinion between stakeholders, and that Cystic Fibrosis Ireland disagreed with "our colleagues in the Irish Kidney Association."

Deputy Billy Kelleher emphasised the importance of the issue of consent not becoming divisive. Senator Jillian van Turnhout asked what difference presumed consent would make if developed measures were introduced. Deputy Mary Mitchell O'Connor expressed the view that a change to opt-out consent would positively affect the ethos around the topic.

## Broadcasting Complaints Decisions

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The broadcaster states that the IKA CEO was then seen to discuss with the Committee Chair Deputy Jerry Buttimer, the IKA position in relation to the terminology of 'presumed consent' and 'soft opt-out'.

IKA CEO: *"Soft opt-out doesn't work because it immediately gets converted, as it did by you all, to presumed consent. And that is what I want to stop."*

Committee Chair: *"Can the language we use in that context help assist in that?"*

IKA CEO: *"You're trying to change the English language by trying to do that."*

Committee Chair: *"No, you're saying that because of confusion of terminology that we should hold the status quo - am I wrong on that?"*

IKA CEO: *"No, the whole trick is in the donor coordination, it's not in what you call the consent."*

Coverage of the Oireachtas hearings ended with Joe Brolly's statement that it was agreed with all parties that the message be clearly given to the public that the opt-out system was based on written, informed family consent.

RTÉ state that the editing of the Oireachtas hearings sequence was designed to give a fair hearing to both sides of the consent debate amongst stakeholders. To achieve this, significant time was given to the IKA position. And to avoid overly placing attention on discord, material which could have had this effect, including interrogation by Committee members of the IKA position, was not included. The overarching purpose of this documentary was to tell an inspirational story which could help to save lives, not to exacerbate division.

The broadcaster states that in the documentary's account of the Organ Donation Awareness Week press launch and of the Oireachtas Committee Hearings, RTÉ claim that the manner in which the Irish Kidney Association's position on consent was portrayed was fair, objective, impartial and accurate. Nowhere in the complaint is there indicated any way in which the context or meaning of that position was misrepresented or distorted. Further, the broadcaster states that the complainant's letter to RTÉ of 2<sup>nd</sup> January 2014 indicates clearly that the IKA does not believe the current consent system should be changed; this is accurately portrayed in the documentary. The broadcaster states that the same letter also states that *"there are many individuals and organisations within the health services that agree with the IKA stance"*; none are named, as are the organisations and individuals cited above who are in favour of a change to an opt-out system.

In conclusion, RTÉ refer to the statement in the initial letter of complaint to RTÉ of 17<sup>th</sup> December 2013 that the programme *"has had a serious impact on the public goodwill upon which we rely on to support organ donation."* RTÉ agrees that there was such an impact: in fact, an overwhelmingly positive one.

The broadcaster states that in the twelve days after the documentary was broadcast, fourteen kidney donations – an unusually high number according to the broadcaster – were gifted, leading to what Beaumont Hospital described as a 'Brolly bonanza'.

## Broadcasting Complaints Decisions

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The broadcaster states that there was also a surge in calls requesting donor cards to the IKA, two hundred calls over the weekend following Joe Brolly's related appearance on *The Saturday Night Show* of 16<sup>th</sup> November 2013 and over four hundred calls following the documentary broadcast. This expression of public goodwill was significant enough to be announced on both the Twitter account and the Facebook page of the Irish Kidney Association:

### **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 Committee noted that the focus of the programme was on the campaign, waged by Mr. Joe Brolly and Mr. Shane Finnegan, on foot of their own experience of kidney transplantation, which was unsuccessful. The programme traced this experience and their personal response to this experience and the programme was framed from this perspective.
- Accordingly, the programme examined the current policy in respect of kidney donations in place on the island of Ireland, North and South. Mr. Brolly and Mr. Finnegan's campaign to change the current policy for organ donations and their attempt to influence politicians in this regard was also examined and it was one of a range of elements examined in this human interest programme. It was in this context that the programme examined the position of the Irish Kidney Association via an extract from a speech and a short interview, both with the organisation's C.E.O., as well as extracts from an appearance by the Irish Kidney Association before an Oireachtas Committee.
- While noting that the details of the issue of presumed consent debate were not examined in detail, the Committee did not consider this to be an issue in the context of a programme that was focused on the personal journeys of Mr. Brolly and Mr. Finnegan, and where the donation system in place was only one element of the programme. In view of this, the Committee considered how the matter was examined in the programme and it found that the perspective of the Irish Kidney Association was clearly articulated, as was the view of the Association that the approach by Mr. Brolly and Mr. Finnegan in respect of consent was not one favoured by them.
- The Committee found no evidence from the programme to support the view of the complainant that the selection of content and the overall portrayal of the Irish Kidney Association was intended to isolate or vilify the Association or that the complainant has substantiated this element of the complaint. Accordingly, the Committee has rejected the decision.

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**Complaint made by: Ms. Angela Morris**

**Ref. No. 42/14**

**Station:**  
RTÉ One

**Programme:**  
6.01 News

**Date:**  
27 November 2013

### **Complaint Summary:**

Ms. Morris' complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a) *fairness, objectivity and impartiality in current affairs*) and under the BAI Code of Fairness, *Objectivity and Impartiality in News and Current Affairs - Rules 4.1 and 4.2.*

The complainant refers to comments made by the presenter during this programme. The complainant states that a number of people supporting a Bill that was being tabled in the Dáil on the day of the broadcast chose to show their banner behind a reporter broadcasting from outside Leinster House.

The complainant claims that it is arguable that editorial bias was shown by RTÉ by not telling the public that an important Bill was being put forward on their behalf that day. The complainant believes, however, that what she describes as the presenter's contempt for the issue and its supporters is clearly in violation of the requirement that news be presented without any expression of his own views. The complainant states that the presenter only needed to say that there was too much distraction in the background for him to continue. The complainant states that the presenter's use of the word "idiots" to describe the protestors was unnecessary, offensive and displayed, in her opinion, the presenter's partiality on the subject.

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

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

RTÉ states that the presenter was interviewing an economist, Ronan Lyons, outside Government buildings when a number of protesters walked into shot behind him during live transmission and began moving about. The studio team believed the result was very distracting and made the interview difficult to follow for the audience. RTÉ state that it is also obliged to consider the welfare of the guest/correspondent and cameraman in situations like this. A decision was taken to conclude the interview earlier than planned and the presenter communicated this. He then made an off-the-cuff remark caused by the frustration of having to cut the interview short. His remark was solely about the interruption to the live broadcast and was not in any way a reference to the subject of the protest or the right of people generally to protest. The comment came in the heat of the moment but RTÉ accepts it would be better if the remark had not been made.

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

RTÉ states that approximately 80 seconds into this live interview, from a position on Merrion Street across the road from Government Buildings, three people, one carrying a cut-out mask of the Taoiseach's face, another a placard saying 'Burn the Bonds not the Billions', walked into the background of the shot, close to the interviewee.

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Two of the individuals moved about, talking to each other. The third person initially held the placard in full vision to one side of the shot and then moved to hold it directly behind the interviewee's head, where its wording was partially obscured. At this point, the presenter said: *"I'll tell you what, Ronan, I'm going to stop that there because the idiots behind you are a bit of a distraction so we'll try and get rid of those and come back to you if we can"*.

The broadcaster states that the production decision to abandon the interview was done in the interests of the safety of the interviewee and crew in a situation which had become unpredictable and potentially uncontrollable and also having judged that the behaviour of the individuals in the background was so distracting as to make the interview valueless to the viewer.

RTÉ states that the interview was being shot by a one-person crew, a cameraperson who is also responsible for sound. There was also a satellite van operator in a van nearby, responsible for the relay of the signal back to the RTÉ studios. There was no reporter; the interviewer was in studio and not on site. So there was no RTÉ staff member onsite not crucially involved in the broadcast, and in a position to monitor the situation. There was no Garda presence as would be normal for an organised protest. The interview was being relayed from the pavement outside the Merrion Hotel on Merrion Street, opposite and slightly up the street from Government Buildings, outside of which there would have been a Garda presence, but not in the immediate vicinity. For clarity, RTÉ states that it is not suggesting that the individuals who had appeared in shot posed a threat but that a conventional, foreseeable, live broadcast was no longer that.

The broadcaster states that in conveying the decision, the presenter's frustration at having to cut short the interview was unfortunately and spontaneously expressed in the use of one word – 'idiots' – in an otherwise factual statement.

The broadcaster states that a viewing of the item makes it clear that:

- The individuals who entered shot were not engaged in an organised protest but were making improvised use of the live broadcast to appear on national television. Their behaviour was therefore unpredictable and, on a busy city street, potentially hazardous. RTÉ news reports, live and otherwise, frequently include in shot organised protests behind reporter and/or interviewees. This was not such a protest.
- While their point of view was conveyed to some extent by the presence of the placard stating 'Burn the Bonds not the Billions', it was the distracting nature of the individuals' movements, including talking to each other and holding the placard behind the interviewee's head, which obliged the abandoning of the interview.
- The presenter's use of the term 'idiots' was in reference to the behaviour of the individuals who had entered the shot and caused the termination of the interview, not to their point of view, insofar as it was discernible. There was no reference to a topic which is the subject of the Broadcasting Act 2009 or of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

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The following day, 28 November, a statement was issued by the Communications Manager of RTÉ News & Current Affairs on behalf of the presenter which stated:

*"I never meant to cause offence with my remarks last night which were in reference to the interruption of interview during a live broadcast rather than the topic of any protest."*

### 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 provided the Committee has decided to reject the complaint. In reaching this decision, the Committee had regard to the following:-

- The interview in question was linked to rises in property prices, in particular in the Dublin area and entailed an interview with a property journalist about the reasons for this price rise. In this context, the Committee noted that the interview was not discussing the issue of the 'bailout' of the Irish economy (the issue that the protesters standing behind the interviewee were focused on). The interview was also not discussing the Bill being discussed in Dáil Éireann on the evening of the interview and was also not intended in any way as coverage of a protest. Hence, the actions of the protestors could not be considered as the matter of news and current affairs that constituted the subject of the broadcast;
- The Committee noted that the protestors entered the camera shot after the interview had commenced, moved during the interview and could be heard talking. Accordingly the presenter/production team was required to react to their presence and make a judgment call as to whether to proceed with the interview in a situation where the protestors were a prominent part of the shot, positioned as they were directly behind the interviewee;
- Editorial decisions taken during live or pre-recorded interviews are a matter for the broadcaster. In this instance, the presenter/production team evidently believed that the presence of the protestors in close proximity to the interview was interfering with the conduct of the interview and chose to end the interview as a result. A decision such as this rests solely and appropriately with the broadcaster. In this regard, the Committee noted that the presenter clearly linked the decision to end the interview with what he considered to be the 'distraction' being caused by the protestors;
- The Committee was of the view that the presenter could have handled the situation in a better manner and avoided the use of the term 'idiots' to describe the protestors. However, on viewing the broadcast, the Committee was of the opinion that the term used arose out of frustration at the distraction that he reasonably believed the protestors were causing and could not be seen as a comment on the message that the protestors wished to communicate;
- In reaching this decision, the Committee had regard to the fact that the presenter's use of the term 'idiots' was clearly linked to his description of the presence of the protestors as a distraction. The Committee also had regard to the fact that the interview in question was unrelated to the message of the protestors and that the presenter was clearly dealing with a technical issue linked to, as he saw it, the disruption in the quality of the interview being broadcast live.

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The actions of the protestors did not constitute the subject matter of the interview and the presenter's comments upon those actions were therefore not subject to the relevant regulations regarding news and current affairs broadcasting. The Committee found no evidence in the broadcast to suggest editorial bias as set out in the complaint since the comments did not relate the content of a Bill being discussed that evening in Dáil Éireann (and which provided the context for the presence of the protestors).

- In summary, it is the Committee's opinion that the presenter's comments could not be considered to infringe broadcasting rules on fairness, objectivity and impartiality as set out in the Broadcasting Act or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. Accordingly, the complaint has been rejected.

## Broadcasting Complaints Decisions

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**Complaint made by: Mrs. Nora Bennis on behalf of Catholic Democrats**

**Ref 51/14**

**Station:**

RTÉ Radio 1

**Programme:**

Mooney Show

**Date:**

20 January 2014

**Complaint Summary:**

The Catholic Democrats' complaint is submitted on their behalf by their General Secretary, Mrs. Nora Bennis under the Broadcasting Act 2009 48(1)(b) *law and order; Code of Fairness, Objectivity and Impartiality in News and Current Affairs - Rules 3,17,19 & 20 and under the Code of Programme Standards - Sections 2.1, 2.2, 3.4.1, 3.4.2.*

The complainants state that during an interview with RTÉ newsreader, Mr. Michael Murphy, on the subject of marriage equality and gay rights, the programme presenter permitted statements to be made that were misleading and offensive and which the complainants see as an incitement to hatred towards heterosexuals who differ in their opinion to Mr. Murphy. The complainants claim that Mr. Murphy was allowed to label a whole group of people who hold opposing views to him and there was nobody on the programme to bring balance to the discussion.

The complainants cite a number of contributions from Mr. Murphy to support their complaint. This includes what they describe as Mr. Murphy's reference to the *"heterosexual elect and everybody else"* and what the complainants state were untrue and misleading description of the teachings of the Catholic Church in respect of the pastoral care of homosexuals, which the complainants state Mr. Murphy described as follows *"... if I could quote the Church – [homosexual people] are intrinsically disordered with a tendency towards evil."* The complainants state that the position of the Catholic Church is that every human person is noble, dignified, precious and godlike, but certainly not perfect in everything they do, say, think or feel. The complainant states that Church teaching is clear and states: *"homosexual acts are intrinsically disordered [because] they are contrary to the Natural Law"...."men and women who have deep-seated homosexual tendencies...Must be accepted with respect"*

Following what the complainants describes as the first misrepresentations of the facts and without anyone present to put him right, the complainants state that Mr. Murphy then stated - *"supposing I were to say of some other group of people, the Jews or the Muslims, I think that all Jews are intrinsically disordered and I think Jews as a race have a tendency towards evil, you'd be absolutely horrified and you know where that could lead. I have visited Buchenwald and Dachau and all the rest of it, so, you have to be very careful about what you say about labelling a whole group of people"*. The complainants believe this was dangerous in the extreme and could lead to hatred of a whole group of people who support Church teaching. The complainants state that this was grossly irresponsible and was allowed to go unchallenged.

**Broadcaster's Response:**

**Initial response to complainant:**

RTÉ state that the discussion marked the release of figures for the number of civil partnerships which had taken place in the year since legislation was introduced. Michael Murphy was in the studio to tell his story as one of the first people in the country to "tie the knot" and Tiernan Brady from GLEN (Gay and Lesbian Equality Network) was there to give wider perspective.

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RTÉ state that the majority of gay people would contend that it is not possible to make a distinction between “*homosexual acts are intrinsically disordered*” and “*homosexuals are intrinsically disordered*”. Michael Murphy pointed out the reality of the teaching of the Catholic Church and how if labelling the activities of a group of people as “*intrinsically disordered or evil*” was to be applied to other groups i.e. Jews or Muslims – that it could be very dangerous. It was an opinion honestly expressed and founded in historical truth. RTÉ reject that this constitutes an offence or that it equates to incitement to hatred towards people who support Catholic Church teaching.

RTÉ contend that in changing times in a developing society, giving voice to the expression of diverse views is central to a responsible, uncensored media. Discussion around the rights of gay people and exploration of their life experience is part of RTÉ’s duty as a national broadcaster to ensure the proper reflection of the diversity of Ireland and its people. It does not automatically follow that every examination of this area should turn into a debate about the rights and wrongs or otherwise of homosexuality and gay marriage. RTÉ point out that rather than actively promoting gay marriage, Michael Murphy confessed to only recently “*beginning to be persuaded*” that it is a “*civil rights issue*”.

The broadcaster states that Mooney is a personality-driven light entertainment show which deals with all kinds of serious issues with a lightness of touch. As with all personality-driven radio, some of the opinions, views and tastes of the presenter will be aired in the course of the programme. The broadcaster states that the presenter, Derek Mooney, regularly expresses his opinion that people should have the right to believe and to practice whatever they like as long as it does not hurt or interfere with other peoples’ rights.

In the pending period running up to a referendum, broadcasters are bound by strict guidelines as to impartiality and balance. This item was broadcast at least 12-months in advance of the referendum – the date of which has yet to be announced.

### **Response to BAI:**

RTÉ state that the item which is the subject of complaint marked the release of figures (2,600) for the number of civil partnerships which had taken place in Ireland since the first ceremonies in 2011. Michael Murphy was in studio to tell his story as one of the first people in the country to enter into a civil partnership and Tiernan Brady of the Gay and Lesbian Equality Network was there to give the wider perspective. They also discussed the approaching legalisation in England and Wales of same-sex marriage and the possibility of a referendum on the subject in Ireland. (The discussion did not take place in the context of such a referendum, which has not yet been called.)

The broadcaster states that the complainant alleges that the assertion by one of the contributors that the Roman Catholic Church takes the view that homosexuals are intrinsically disordered with a tendency towards evil was inaccurate and went uncorrected, breaching the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in relation to accuracy, the correct presentation of facts and the correction of mistakes.

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RTÉ state that in their Letter to the *Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons* of 1<sup>st</sup> October 1986, the Congregation for the Doctrine of the Faith stated in Section 3:-

*“Although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered toward an intrinsic moral evil; and thus the inclination itself must be seen as an objective disorder.”*

In referring to the position of homosexuals in society, the contributor said:

*“If I can quote the Church, they’re intrinsically disordered with a tendency towards evil.”*

RTÉ believe that the contributor conveyed a fair and accurate understanding of the Roman Catholic Church’s position as stated above by the Congregation for the Doctrine of the Faith and so did not require correction.

The broadcaster states that the complaint alleges also that the item breached the Code of Programme Standards in offending against commonly held standards in Irish society and failing to protect listeners from undue offence and from harm. In a context where civil partnership is supported by legislation and the Irish public has indicated, most recently in a Red C poll of November 2013, majority support for same-sex marriage, RTÉ asserts that there was no such breach of the Code.

RTÉ state that the complaint appears to allege also that the contributor’s statement in relation to the Roman Catholic view of homosexual people infringed the sections of the *Code of Programme Standards* which prohibit the inappropriate or discriminatory representation of persons or groups in society, by incitement to *“hatred of heterosexuals and those of us who embrace Catholic teaching on the dignity of the person.”* Apart from the accuracy of the contributor’s characterisation of Roman Catholic teaching on the subject, RTÉ rejects the logical and linguistic sleight-of-hand which would characterise the contributor’s call for tolerance as being somehow intolerant; and rejects also the allegation that the contribution was in any way discriminatory towards any group. Similarly, RTÉ rejects the allegation that the broadcast could in any way have breached Section 48(1)(b) by any incitement or promotion of criminal activity.

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

The Committee considered the broadcast and the submissions from the complainant and the broadcaster. 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 discussion was undertaken in the context of recent figures released in respect of the number of same-sex couples who had entered Civil Partnerships since the relatively recent introduction of legislation. The Committee found that the discussion focused on broader issues arising from the introduction of the legislation as well as the personal experiences of gay and lesbian couples.

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- This included issues such as the number of same-sex couples that had availed of Civil Partnership, how this was distributed geographically across Ireland, how such partnerships take place in practice in terms of arranging ceremonies, the legal benefits arising for same-sex couples, how Irish law compares with law in Europe and further afield as well as those aspects of law that the contributors stated Civil Partnership legislation did not address, such as the legal status of the children of same-sex couples who had entered into a Civil Partnership. The impact of the legislation on gay and lesbians sense of place in Irish society was also examined.
- Upon its review of the programme, the Committee found that it consisted largely of a factual discussion of Civil Partnership as it relates to same-sex couples. Regarding comments made by Mr. Michael Murphy on guidance provided by the Roman Catholic Church in respect of the pastoral care of homosexuals in the Church, the Committee was of the view that his interpretation of the teachings was reasonable and did not require a counterbalancing perspective.
- The Committee did not agree with the complainant that the comments could be considered as those that would incite hatred towards Catholics insofar as they were limited to a specific aspect of Roman Catholic teaching and its meaning rather than to Catholics as individuals or as a social group.
- In view of this, the Committee did not agree that the programme discussion infringed the requirements of the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* or the *Code of Programme Standards* in the manner specified by the complainant.

# Resolved by Executive Complaints Forum

**Complaint made by: Mr. Donal O'Driscoll**

**Ref. No. 47/14**

**Station:**

RTÉ One

**Programme:**

Six One News

**Date:**

12 February 2014

**Complaint Summary:**

Mr. O'Driscoll's complaint is submitted under the Broadcasting Act 2009, 48(1)(b)(Code Of Programme Standards - sections 2.1, 2.2, 3.5) and the BAI's Code of Fairness, Objectivity and Impartiality in news and current affairs - Rules 4.1 and 4.2 .

The complaint centres on a report carried on the 6.01 news on the exclusion from St. Patrick's Day parades in New York and Boston of marchers under LGBT banners and the attitude to this by the Irish Government and mayors of both of these cities.

The complainant claims that while being interviewed about this matter, the Minister for Transport, Tourism and Sport, Leo Varadkar stated "*we all agree that the rules should be changed*". The complainant believes that the use of the words "*we all agree*" may have referred to all those at the Cabinet table, however, it implies that the "*we all*" refers to all Irish people in Ireland. The complainant states that the term does not include him or many of his acquaintances, nor has any referendum of the people taken place on the subject. Furthermore, no opposing opinion was expressed or implied on the programme or otherwise.

**Broadcaster's Response:**

**Initial response to complainant:**

RTÉ states that in the report, Minister Varadkar said: "*we all agree that the rules of the New York parade are wrong; that they're outdated and they're outmoded, but it is a very important Irish-American event. There'll be fire-fighters who saved people on 9:11 so I think it's right that we attend but I also think it's right that we make it very clear to the organisers of the parade, The Ancient Order of Hibernians, that things are different in modern Ireland now*".

Minister Varadkar's use of 'we' in relation to attendance by Government representatives and in relation to discussing changes in Ireland with the AOH, make it more likely than not, that his use of 'we' in relation to agreement that the parade's rules were wrong, is also a reference to Government. Notwithstanding this, RTÉ believe the report meets the requirements under the Broadcasting Act 2009.

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### Response to BAI:

RTÉ states that in the report complained of, Deputy Leo Varadkar, Minister for Transport, Tourism and Sport, stated:

*“We all agree that the rules of the New York parade are wrong, that they’re outdated, and they’re outmoded but it is a very important Irish-American event, there’ll be firefighters who saved people on 9:11 so I think it’s right that we attend but I also think it’s right that we make it very clear to the organisers of the parade, The Ancient Order of Hibernians, that things are different in modern Ireland now.”*

Minister Varadkar used the word ‘we’ three times in this statement:

1. “. . . I think it’s right that we attend . . .” This is clearly a reference to Government representation.
2. “. . . it’s right that we make it very clear . . .” This is clearly also a reference to engagement by Government representatives with parade organisers.
3. *“We all agree . . .”* In the context of the other two uses of ‘we’ within the same sentence, this is more than likely also a reference to Government attitude towards the topic, as exemplified also in the report by the Tánaiste, Eamonn Gilmore; the similar view of the Minister for Social Protection was also included in the report.

RTÉ contends that notwithstanding Minister Varadkar’s intention, the report meets the requirements of Section 39 of the Broadcasting Act 2009.

RTÉ states that this was an objective and impartial report on the exclusion from St Patrick’s Day parades in New York and Boston of marchers under LGBT banners and the attitude to these exclusions of the Irish Government and of the mayors of those cities. As such, it did not require the reporting of contrary views to that of the Irish Government at political level, should such exist, to achieve the objectivity and impartiality required by the Act. Neither was there any expression whatsoever in the report of any views of the broadcaster on the topic.

RTÉ claims that in relation to Content Principles 2.1 and 2.2, nowhere in the complaint is it indicated how this report offended against *“commonly held standards considered acceptable in contemporary Irish society”* or failed to protect the audience *“from undue offence or from harm.”* Neither is there any indication of the manner in which the report is alleged to breach any section of Content Rule 3.5.

RTÉ states that the complainant appears to disagree with the views expressed by Minister Varadkar and other members of the Government and believes that the broadcaster should not impartially and objectively report those views in the lead-up to the events in question.

### 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)(b)(Code of Programme Standards – sections 2.1, 2.2 and 3.5) and the BAI’s Code of Fairness, Objectivity and Impartiality in News and Current Affairs - Rules 4.1 and 4.2 under which the complaint was submitted.

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The complaint relates to a news item covering the then forthcoming St. Patrick's Day parades in both New York and Boston. The report, that included people marching with LGBT banners, was covering the exclusion of groups from the St Patrick's Day Parade in New York and Boston and the response to this by the Irish Government and mayors of both of these cities. The complainant objected to Minister Leo Varadkar's use of the term "we" in a segment of an interview that included *"we all agree that the rules should be changed"*. The Complainant states that the "we" does not include him or many of his acquaintances, nor has any referendum of the people taken place on the subject.

The Forum noted that the complaint related to a report covering the then forthcoming St. Patrick's Day parades in both New York and Boston. The news report referred to the decisions of the mayors of New York and Boston to not attend the parades due to the exclusion of LGBT groups. The report also highlighted that Irish Ministers would attend and take part in the parades.

The Forum was of the opinion that the news item was a factual report and that Minister Leo Varadkar was acting as a spokesperson for the Government and responding to the issues raised by the reporter. Having reviewed the item and, in particular, the entire insert from the Minister in the report, the Forum was of the view that the inclusion of the word "we" throughout the insert was referring to the Irish Government or Cabinet, and not to the Irish people. The topic under discussion was the parades in New York and Boston and taken as a whole the piece was both impartial and objective. The "we" was just a comment and was not offensive to the entire population. The Forum was of the view that the complaint did not raise issues that required further consideration and, accordingly, the complaint did not require further investigation.

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**Complaint made by: Ms. Elizabeth Buckley**

**Ref. No. 53/14**

**Station:**

RTÉ Two

**Programme:**

Next Week's News

**Date:**

17 February 2014

**Complaint Summary:**

Ms. Buckley's complaint is submitted under the Broadcasting Act 2009, 48(1)(b)(Code Of Programme Standards - section 3.3.3 coarse and offensive language).

The complaint concerns comments made by Neil Delamere regarding Our Lady of Knock whereby, for the purpose of a skit regarding leaking milk, referred to 'Virgin Báinne of Mayo'. The complainant believes this was in very poor taste and refers to God's mother, The Virgin Mary, who appeared in Knock in the 1800's. All Catholics hold the Mother of God to be a holy and sacred person and to hear Our Lady being denigrated and mocked in this manner is unacceptable.

**Broadcaster's Response:**

**Initial response to complainant:**

RTÉ replied to the complainant's initial communication, however, the complainant did not keep a copy of that letter.

**Response to BAI:**

RTÉ states that the item complained of invited the panellists to respond to a videotape showing a man inhaling milk through his nose and then spraying it from under his left eye.

One of the panellists said:

*"We're all going 'that's really horrible' but if a statue did that in Ireland, we'd build an airport. It is The Virgin Báinne of Mayo, look at her – she does full fat out of one eye and low fat out of the other – full of Vitamin A, D and the Holy Spirit."*

RTÉ claim that the comment clearly referred not to the person of the Blessed Virgin Mary or to any of the doctrinal beliefs associated with her, but to the cultural phenomenon of 'moving statues', a topic on which the Church remains reticent. The comment does not poke fun at or denigrate any belief which is an article of faith for Roman Catholics.

In the context of a comedy programme, it is not inappropriate to make humorous comment on a cultural phenomenon such as 'moving statues', even though such comment may not be to everyone's taste, as is the nature of comedy.

The comment is further contextualised by the irreverent tone of this RTÉ Two programme. This tone will have been established, even for a first-time viewer, in the first twelve minutes preceding the comment complained of. That impudent comic voice, and the satirical lampooning of contemporary Irish life and culture are clearly not going to be to everyone's taste, however, RTÉ claims that it does take care to ensure that the nature of the material is well flagged in the promotion of the programme. In addition, the programme was preceded by a continuity announcement warning of "strong language," showing due care for the audience.

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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)(b)(Code of Programme Standards – section 3.3.3 coarse and offensive language).

The complaint concerns comments made by Neil Delamere during which reference was made to the ‘*Virgin Báinne of Mayo*’. This followed a piece of video that included a person who was passing milk out through his eye socket and the panel members were asked to comment on the matter. The complainant was of the view that the “*Virgin Báinne of Mayo*” was referring to Our Lady of Knock. The complainant found this to be in poor taste as it refers to God’s mother, The Virgin Mary.

The Forum noted that the programme “Next Week’s News” is a satirical / comedy programme that is broadcast at 9:30pm on RTE2 television. The continuity announcement referred to the potential for strong language and a visual icon of programme classification was broadcast before the programme commenced. When viewed as part of the overall programme, the Forum was of the view that the reference to “*Virgin Báinne of Mayo*” was relating to previous comments of the panel relating to the phenomenon of moving statues. The Forum was of the view that there was no direct or implicit reference to Our Lady of Knock. Given the nature, time of broadcast, the audience, the likely audience expectation of such a programme, the prior continuity announcement and visual classification, the Forum was of the view that the inclusion of this reference was unlikely to cause undue offence as set out in Section 3.3 of the *BAI Code of Programme Standards*. On the basis of the above, the Forum was of the view that the complaint did not raise issues that required further consideration and, accordingly, the complaint did not require further investigation.

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**Complaint made by: Mr. Alan Curran**

**Ref. No. 58/14**

**Station:**

RTÉ Radio 1

**Programme:**

The Marian Finucane Show

**Date:**

1 March 2014

**Complaint Summary:**

Mr. Curran's complaint is submitted under the Broadcasting Act 2009, 48(1)(a) (*fairness, objectivity & impartiality in current affairs and Code of Fairness - Rule 4.1*).

The complainant states that during a segment of her show about Piers Morgan and Gun Control, Marian Finucane was not fair, objective and impartial in these matters of current public dispute, controversy or debate. The complainant contends that Ms. Finucane failed in her journalistic duty to interrogate, to pursue vigorous lines of questioning, convey critical views or to rigorously challenge the views of her interviewee, Piers Morgan. The complainant also claims that the producer facilitated the presenter by aiding and abetting her to air such biased, partial and personal views. The complainant further claims:-

1. Ms. Finucane disparage one of Morgan's "high profile rivals and detractors," Jeremy Clarkson, by voicing her personal view that his tweet "*was very offensive about Morgan and Nigeria*" then adding "*but never mind*" - a throwaway remark leading the listener to disregard Clarkson's tweet that she had branded "*very offensive*" and, by implied extension, to disregard any "detractor" who opposes Piers Morgan's views.
2. The presenter stated as fact that "*20 children and 6 adults were killed at Sandy Hook Elementary School*" despite no evidence of such carnage at the scene and no bodies seen or any wounded seen to be treated there.
3. Ms. Finucane voiced her view about how amazed she was that his stance "*on tighter gun controls could have alienated his audience*" following that with her personal, unsubstantiated view that there is an alleged "*big gulf in thinking about guns in general between the States and here*".
4. The presenter recounted how, on a previous visit to America, she saw Morgan "*absolutely eat, gobble up and spit out*" an unidentified NRA spokesman. She never mentioned how Jesse Ventura "ate" him.
5. Ms. Finucane played an extract from an earlier interview she did last November with Piers Morgan in which he stated as fact that "*in the biggest school shooting in US history, Adam Lanza shot Sandy Hook schoolchildren with an AR-15 Bushmaster*". She never challenged him in that interview over that statement despite widespread evidence that contradicts his assertions.
6. Ms. Finucane acquiesced with his story about how wrong it was to arm teachers and his anti-NRA remarks and she praised Michael Moore's "famously" anti-gun lobby documentary, 'Bowling for Columbine,' saying it was "terrific, which got respect all around the world".

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7. The presenter prompted Morgan to recount a story about Yoko Ono and John Lennon's blood-spattered glasses and she made a sympathizing noise as he used that story to further his anti-gun argument.
8. In a further expression of her personal pro gun-control views, the presenter firmly repeated Morgan's determination to continue his anti-NRA stance, quoting him emphatically: *"I'm not done with you yet!"* following that with the blatantly partial *"I think, fair play to him for carrying on that campaign"* and she ended the segment with a statement which was said with a note of incredulity or astonishment: *"a substantial number of people in the USA have a passionate belief in the right to bear arms"*. The complainant believes this was a grievous breach of both journalistic impartiality and due diligence as it was clearly meant to leave the impression with her audience that Americans' right to bear arms was somehow perverse. Ms. Finucane compounded her lack of journalistic impartiality by failing to explain the reasons why the Second Amendment was made to the US Constitution, something she should know from - at least - the growing list of sheriffs, associations and police chiefs saying *"No To Gun Control"*.

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

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

RTÉ states that as the subject matter of gun control is not a matter for debate in this country, RTÉ is satisfied with the content of the Marian Finucane Show.

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

RTÉ states the item consisted of an introduction to an excerpt from a previous interview conducted by Marian Finucane with Piers Morgan in November 2013.

The introduction established the context for the replay of the interview, the dropping of Mr. Morgan from his talk-show and the possibility that the decision had been influenced by his vociferous opposition to National Rifle Association policy on gun control.

*"Now it's fair to say we're going to come to somebody who has been making headlines this week, but a fairly disappointing week for him, and it's about Piers Morgan. And papers on both sides of the Atlantic were full of the news that he's been dropped from his flagship CNN programme, 'Piers Morgan Live'. There was great surprise it has to be said – I was absolutely astonished – three years ago when it was announced that he was going to take over from Larry King. I mean King being the appropriate word for Larry King because he had been there for so long.*

*"But anyway – early ratings for his show – this is Piers Morgan now – were over two million viewers. But recently only 270,000 people were tuning in. And even Piers Morgan himself admitted that it has, quote, 'been a painful period and we've taken a bath in the ratings.'*

*"Well as you know Piers Morgan isn't without his detractors. One high-profile rival is the 'Top Gear' presenter Jeremy Clarkson who tweeted on when he heard the news, 'I'm feeling strangely contented this morning, I wonder if something wonderful has happened somewhere. I understand that Nigerian TV is looking for a chat-show host. Anyone got any suggestions?'*

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*To which you can only say 'ouch'. First of all, very offensive about Piers Morgan. Also, very offensive about an entire country called Nigeria – but never mind.*

*“Anyway when the news broke, focus turned on why Piers Morgan just didn't seem to connect with an American audience. And it seems that his repeated calls for tighter gun controls, especially after the deaths of twenty children and six adults in Sandy Hook Elementary School in December 2012 alienated his audience. I mean it's amazing. I just really do think that there is a big gulf, not just three thousand miles, between thinking in the States and thinking here about guns in general.*

*“Anyway Piers Morgan told The New York Times that his stance on gun control had been, quote, 'very polarising and there's no doubt that there are many in the audience who were tired of me banging on about it.'*

*“I was in America about a year and a bit ago and he was on – I was in a restaurant or bar or something – and he was on the television. And he went into the most extraordinary – he just lost the plot – and he was dealing with somebody from the NRA and he ate him, absolutely ate him, gobbled him up and spat him out. But you know those people in the NRA they are very, very powerful.*

*“But anyway – last November I spoke to Piers Morgan from New York and he explained why he felt so strongly about changing gun culture in the U.S.”*

Having played the excerpt from the interview which can be heard on the accompanying audio file, the presenter ended:

*“So there you go. Anyway, whatever he goes on to do, wish him well. But he's not giving up his love of Twitter and he certainly isn't letting up on the NRA – that's the National Rifle Association – because he tweeted, I suppose you could call a warning, to them, saying, 'I wouldn't get too excited, NRA, I'm not done with you yet.' So there you go. I think fair play to him to carry on with that campaign though anyone you talk to there, is just a passionate belief in the right to bear arms among a substantial number of people in the United States of America. Anyway, we'll take a break.”*

The purpose of the original interview from which an excerpt was played was to explore Piers Morgan's experience as a broadcaster in the United States. It was not structured or presented to the audience as a discussion of gun control in another country. The item in March was occasioned by the ending of his talk-show and the excerpt dealing with gun control was broadcast in the context of its ending having been influenced by his pro-gun control views.

Insofar as gun control in the United States is a matter of public discussion in Ireland, it is at a distance from matters of public debate or controversy in this jurisdiction. Gun control is not currently subject to any legislative or similar political process in Ireland; nor is there any international policy position relating to gun control in the United States on the part of the Irish State which is the subject of debate.

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Comments by the presenter – which included recognition of “the passionate belief in the right to bear arms among a substantial number of people in the United States of America” – were made in that context. There was no disservice to any public interest in this country.

The complainant makes a number of assertions about matters of fact relating to the shooting of twenty pupils and six of their teachers at Sandy Hook Elementary School in Newtown, Connecticut, USA, in December 2012. This includes his complaining that the presenter “stated as fact that ‘20 children and 6 adults were killed at Sandy Hook Elementary School’ despite no evidence of such carnage at the scene and no bodies seen or any wounded seen to be treated there.”

His complaint may, as he claims, be “*made without frivolity or vexation*”; however to apparently deny the deaths of children and their teachers and the grief of their families and communities is certainly distasteful.

### **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 BAI’s Code of Fairness - Rule 4.1, under which the complaint was submitted.

The complaint relates to a segment on the Marian Finucane show in which the presenter was reviewing an item that had appeared in a newspaper articles. The topic related to Piers Morgan and the announcement that he would no longer be presenting a chat show on CNN. The complainant states Ms. Finucane was not fair, objective or impartial, especially when discussing Mr. Morgan’s beliefs about gun control in the United States.

The Forum noted that the topic related to Piers Morgan. It covered the decline in viewership to his American chat show, noted that he would no longer present the show, included some comments from a tweet from Jeremy Clarkson and also included a small segment of archive material from a previous interview between Marian Finucane and Piers Morgan. This was provided in context relating to Piers Morgan’s views on the requirement for tighter gun control laws.

The Forum was of the view that this segment was not a current affairs topic but a human interest story. The piece in question was not a debate on gun control, but rather the presenter’s comments were made in the context of Piers Morgan being dropped as presenter of the CNN chat show. The interview was archive material that was presented as such. It was used in the context of the human interest story. The Forum noted that the Complainant queried issues identified in the broadcast and was requesting the BAI to determine whether such issues were facts. The BAI’s role is not to determine the veracity of facts but to assess the complaint as formulated by the complainant and responded to by the broadcaster. The Forum also was not in a position to deal with points relating to omissions as the complaint must relate to the material as broadcast, not what may, in the complainant’s view have been excluded. As the item was human interest in nature, it does not fall for consideration under matters that would be relevant in a news and current affairs situation. The Forum did not concur with any suggestions raised by Mr Curran in relation to the presentation style, production, the presenter or the production team. 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

