



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

Broadcasting Authority of Ireland

Broadcasting Complaint Decisions

September 2015

Broadcasting Complaint Decisions

Broadcasting Complaint Decisions

Under the Broadcasting Act 2009, viewers and listeners can complain about broadcasting content which they believe is not in keeping with broadcasting codes and rules. In line with the complaint process, the viewer or listener should direct their complaint to the broadcaster in the first instance with regard to the broadcaster's *Code of Practice for Handling Complaints*, a 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 by the Executive Complaints Forum 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.

In total, 20 complaints have been considered by the BAI. The Compliance Committee has considered 18 of these complaints and two complaints have been upheld. The Executive Complaints Forum has considered and rejected two complaints. The decisions of the Compliance Committee were reached at meetings held in May and June 2015. The decisions of the Executive Complaints Forum were reached at meetings held in May 2015.

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Upheld by the BAI Compliance Committee

Complaints made by: X

Ref. Nos. 65/15 and 66/15

Station:

98FM

Programme:

Dublin Talks

Date:

1st and 2nd April 2015

1. The Programme

The complaints refer to an edition of *Dublin Talks* and a subsequent promo for the programme. *Dublin Talks* is 98FM's 'phone-in programme broadcast from 10am-midday and from 10pm-midnight. The edition in question was broadcast in the morning. The complaints concern a contribution to the programme by a 13-year old and the subsequent use of an extract from her contribution in a promo for the programme.

2. Complaint Category

The complaint is submitted under the Broadcasting Act, Section 48(1)(b)(offence and harm); the *BAI Code of Programme Standards* – Principles 3 (Protection from Harm) and 7 (Respect for Privacy).

3. Complaint Summary

- **65/15 – 1st April 2015**

The complainant states that her 13-year old daughter phoned into *Dublin Talks* and was placed live on-air. The complainant states that she was unaware of this until she heard the broadcast live. She states that the subject matter was of a sensitive nature and her daughter was encouraged by the presenter to voice opinions. The broadcaster was subsequently phoned and informed of the age of the complainant's daughter. During this call, a researcher for the programme stated that she was not aware of the age of the complainant's daughter and an apology was given.

- **66/15 – 2nd April 2015**

The complainant states her daughter's voice and excerpts of her conversation with the presenter were used as promos for the programme, subsequent to the broadcaster being informed of the age of her daughter.

The complainant further states that on 8th April her daughter received a call from 98FM, informing her that one of the girls at the centre of the topic that was under discussion during the broadcast of the 1st April had died by suicide and the programme asked her daughter for a comment. The complainant states that, thankfully, she declined to comment. She was then asked to phone the show if she "*heard anything*". The complainant states that in her opinion, this approach was contrary to the BAI's *Code of Programme Standards*.

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4. Broadcaster's Response

4.1 Initial response to complainant

- 98FM states it is their policy to ask all callers if they are over 16 years of age and they asked the complainant's daughter when she phoned-in. They state that she confirmed she was over 16 and that it is not possible to be 100% certain of this but 98FM believed her when she told them.
- The broadcaster states that when 98FM have callers on a specific issue that provide an opinion, they log their details to call them if the topic arises again. This is why the complainant's daughter was called and asked to comment on a teen-related story.
- 98FM further states that it is typical for clips of the phone-show to feature as promotional footage and due to the fact that the complainant's daughter was such an engaging and informative contributor, this piece of the show was used as the promotional piece.
- 98FM confirms that they have removed contact details for the complainant's daughter and any recordings of her from their systems. They acknowledge that they had already been informed that the complainant's daughter was only 13 years of age and they apologised that she was unfortunately and, in error, contacted after this call. They state this was a genuine mistake on their part.

4.2 Response to BAI

98FM respond with the following:

Principle 3: Protection from Harm

- 98FM rejects that they are in breach of this principle of the Code. They state that a caller 'phoned in to the 98FM talk show *Dublin Talks* to discuss one of the topics for debate that day which was about young people sending inappropriate pictures of themselves via text message & social networks, how common it is and the implications of that. Naturally, the callers were mostly young and when this particular caller telephoned in to request that she be part of the show she was asked whether she was she over 16. She confirmed that she was over 16.
- The broadcaster states that *Dublin Talks* is a live and fast-paced talk show and this makes it almost impossible to get parental consents or verification of a person's age. They state that they rely on the honesty of their callers. They state that they understand that this is standard practice in the industry and they state that they have never had an issue with it before.

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- 98FM does not accept that they exposed this girl to any harm or danger and it is clear from listening to the audio that she had much to say about the topic and was, in fact, informative and enlightening. In circumstances where the nature of the topic was something she was very familiar with and comfortable talking about they cannot see how she was exposed to harmful content or caused to be distressed or upset.

Principle 7: Respect for Privacy

- Principle 7 recognises that individuals have a right to privacy and that right should not be unreasonably encroached upon by broadcasters.
- 98FM submits that in these particular circumstances they acted as a reasonable broadcaster and did not unreasonably encroach on the privacy of this individual. They state that the caller made the initial contact to the station and confirmed that she was over 16. As explained to her mother, when a caller has been on-air their details are recorded for future use as the station may want to contact them again.

The broadcaster states that, unfortunately, due to a genuine human oversight, the name of the complainant's daughter was not deleted in their systems after they had been notified that she was only 13 years of age, and she was called again by 98FM. On that occasion she was simply asked if she would comment on another teen-related story and she refused. It was a very brief call and could not, in the view of the broadcaster, be reasonably categorised as exploitation or an unreasonable breach of privacy. 98FM also apologised for the error in using the clip from the show featuring the complainant's daughter as a promotional clip that day.

- 98FM also notes that the Code provides that when a child is under 16 there are occasions when parental consent is not required, i.e. if the subject matter is trivial or the participation is minor.
- On receipt of the initial complaint 98FM confirmed to the complainant that they had removed her daughter's contact details from their systems and apologised for the errors but in all the circumstances they cannot agree that the above interactions and circumstances amount to a breach of privacy such that it was unreasonable or constituted exploitation of her daughter.

To conclude, 98FM does not accept that they breached Principles 3 and 7 of the Code. The complainant's daughter telephoned in to the radio station. They engaged in the standard practice and protocol for radio talk shows and relied on her honesty when she confirmed that she was over 16.

5. Decision of the Compliance Committee: Uphold (Unanimous)

The Committee considered the broadcasts and the submissions from the broadcaster and the complainant. Following a review of the material the Committee has decided to uphold the complaints.

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In reaching this view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(b) (offence and harm); the *BAI Code of Programme Standards* (Principle 3 Protection from Harm & Principle 7 - Privacy). As the *BAI Code of Programme Standards* requires broadcasters to ensure that programmes comply with all of the principles, the Committee also had regard to other relevant principles contained in this code as part of the decision making process, in particular, Principle 2 (Importance of Context) and Principle 4 (Protection of Children).

In this regard: -

- The broadcaster is obliged under the *BAI Code of Programme Standards* to take additional steps to ensure that children who participate in programmes or who are likely to be part of the audience are afforded protection. This includes the obligation to show due care by taking into account a range of contextual factors which can influence the degree of offence or harm that can arise from a broadcast. These contextual factors include the nature of the programme material, audience expectations, the type of service and the time of day, including where children are likely to be part of the audience. The Code also requires broadcasters to ensure that some members of the audience are protected since they may, by virtue of their age (and for other reasons), be in need of special consideration. In this regard, particular care is required to ensure that children are not harmed by programme content with broadcasters under an obligation to ensure that children are protected from content that is unsuitable for them.
- The Committee noted that the topic of the debate was adult in nature and dealt with, amongst a range of issues, the issue of 'sexting', child pornography and the role of children in the dissemination of such content to their peers using social media. The Committee also noted that the target audience for the broadcaster is those over the age of 25 but that as the programme was broadcast during a morning when schools were closed due to the Easter holiday period and on a topic about which teenagers would have been involved, teenagers would have more likely to have been part of the audience and more likely to want to contribute. As such, the approach to the programme required additional care in view of the requirements of the *BAI Code of Programme Standards*.
- The Committee found that there was no apparent evidence of the additional care required and that the programme production measures stated by the broadcaster to protect audiences were wholly inadequate in the case of the programme and the promo that are the subject of the complaint. This view was reached having had regard to a range of issues, in particular the following:
 - The broadcaster stated that it has in place procedures to ensure that, in the case of the inclusion of callers under 16 who are contributing on a topic of a serious nature, they ask callers to identify their age. The broadcaster also states that they accept the caller's word in terms of the age stated and that the fast paced nature of the programme "*makes it almost impossible to get parental consents or verification of a person's age*".

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However, the Committee found from its review of the programme that these procedures were clearly not applied adequately in this instance. In particular, the Committee noted that during the programme, the presenter was heard to ask a caller her age. When the caller stated her age - 14 - the presenter continued to speak to her about the topic, which the presenter stated was at its core about the issue of child pornography. In view of this, the programme included at least two individuals, aged 14 and 13 (the complainant's daughter) who were placed on-air, and in the case of the 14-year old, one of whom would appear to have been placed on air and remained on-air even after she confirmed her age as "14".

The Committee also noted from its review of the programme that a number of the callers were clearly the peers of the teenagers whose images were being circulated via social media and it is reasonable to conclude that some of the other callers were also less than 16 years of age. It is not evident from the broadcast or from the broadcaster's response as to the measures that were taken in respect of other programme contributors.

- The programme discussion included a 13-year old girl (the complainant's daughter) being placed on-air at the same time as another older caller whose contributions were abusive. The Committee noted that this caller referred to teenagers who sent naked pictures of themselves by text or social media. This caller described these teenagers variously as "filthy dirt bags", "vermin", "sick", "disgusting, vile filthy people", "clowns" and commented that their heads should be chopped-off. When the complainant's daughter challenged these remarks on-air, the older caller ascribed these terms to her and to those that she said had also sent texts of a sexual nature. The Committee considered it unacceptable that the broadcaster had permitted a young girl to be placed in this position and to be subject to abusive language of a strong nature and that the application of editorial procedures for this programme did not avoid such an interaction.
- The Principle of Privacy included in the *BAI Code of Programme Standards* requires the broadcaster to obtain consent where programme material, or the means of making programme material, directly involves a child less than 16 years of age. This consent should be sought from the child, if possible, and from a parent, guardian, nominated representative or person responsible for his/her primary care. An exception in this regard is where the subject matter is trivial and where, given the topic and the individual, consent is not required from a parent or guardian.

From its review of the programme and the response provided by the broadcaster, it was clear to the Committee that the broadcaster took no apparent steps to seek the consent of the parents, guardians or other relevant parties before placing the complainant's daughter or the identified 14-year old girl on-air. It is of particular concern to the Committee that the broadcaster is of the view, as stated in its response to the BAI, that it is "*almost impossible*" to get parental consent due to the "*fast paced*" nature of the programme.

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While issues may not arise with consent where a topic is trivial in nature, the Committee would expect that the interests of those under-16 would supersede the editorial imperative of the programme in circumstances where there is in place a statutory code which places specific obligations on broadcasters in respect of those under-16 years of age.

It is therefore a matter of some concern that the broadcaster's response in respect of parental consent would seem to suggest that the programme makers do not have in place a robust procedure to ensure that those under-16 years of age will not be placed on-air to discuss a matter such as child pornography. The Committee is also concerned that a number of individual callers, including the complainant's daughter, were named on-air and made comments that people they knew were amongst those teenagers whose images had been circulated via social media. The Committee considered it likely that these callers would have been recognised by any of their peers listening to the programme and that this was not appropriate or in the interest of the callers given their age and the subject matter under discussion.

- The subsequent inclusion of the complainant's daughter in the promo for the programme and the subsequent contact between the programme makers and the complainant's daughter (despite having been made aware of the age of the complainant's daughter), would, in the view of the Committee, have compounded the issues set out above. The Committee was also of the view that these were evidence of further issues with the editorial controls in place for this programme and their inadequacy.
- In view of the above, it was the opinion of the Committee that the programme content infringed the requirements of the Broadcasting Act 2009, Section 48(1)(b) (offence and harm) and the *BAI Code of Programme Standards* (Principle 2 - Important of Context, Principle 3 - Protection from harm, Principle 4 - Protection of Children & Principle 7 - Privacy). Accordingly, the complaints have been upheld.

Further Determination

Having had regard to the above, it is the view of the Committee that there were significant problems with the production and conduct of this programme which raise broader issues about the programme that merit further consideration. In view of this, the broadcaster will be issued with a Warning Notice, further to the provisions of *The BAI Compliance and Enforcement Policy*. The BAI issues a Warning Notice in circumstances where it considers the compliance issue to be of a serious nature.

On foot of such a notice, the broadcaster is asked to provide to, and agree with, the BAI a plan for remedying compliance issues arising with a view to ensuring there is no re-occurrence of it. If the matter is not remedied to the BAI's satisfaction, the BAI may refer the matter to the Compliance Committee which may ultimately result in an investigation and formal sanctions.

The Committee further agreed that the name of the complainant will be anonymised for the purposes of publication.

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Rejected by the BAI Compliance Committee

Complaint made by: Mr. Paul Connors On behalf of the Health Service Executive (HSE)
Ref. No. 149/14

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ One	Prime Time	22 nd September 2014

1. The Programme

The complaint concerns a broadcast of RTÉ's *Prime Time* programme. *Prime Time* is a news and current affairs programme broadcast on weekdays on RTÉ One television. The complaint concerns an item on this programme that deals with circumstances surrounding the pregnancy of a teenage asylum seeker including her interactions with a range of agencies and services based in the Irish State.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity & impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 2, 17, 19 and 20).

3. Complaint Summary

The complainant states that in August 2014, a young woman received treatment from the *HSE* and as part of this treatment certain decisions in relation to her case had to be made by the *HSE*. The complainant states that her story was covered extensively by the media. In order to give a clear picture of the decision-making process of the *HSE* in this case, the Director General of the *HSE* commissioned a report into the process. This report is to be presented to the *Minister for Health* once it is completed.

The complainant states that in the early stages of working on a draft of this report, the *HSE* circulated a draft of the report to those who had already been interviewed. This was to allow the interviewees the opportunity to verify what was in the draft report and ensure that it represented their statements accurately.

To indicate that the draft report was at very early stages of development, likely to undergo considerable change, a caveat was prominently printed on each page stating:

"This is a draft document and can only be considered as such. This document can be expected to contain factual/clinical inaccuracies and/or information that may require additional clarification".

The complainant states that RTÉ made the decision to broadcast information contained in this draft report on *Prime Time*.

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In this context, the *HSE* states that the broadcaster infringed its obligations in the following manner:-

- **Section 48(1)(b)** – The complainant states that the programme was not “*fair to all interests concerned*” because it misled the public in relation to the nature of the draft report. The complainant states that when the programme was broadcast, although it did reference the fact that the report was a draft, the information was provided in a misleading fashion that did not convey to the viewer that this was an early draft that was made before the fact gathering process had been completed and had not been fact checked by its contributors. The complainant states that at no point in the programme is the caveat (quoted above) mentioned. The complainant states that the broadcast did not make reference to the fact that it was a very early draft of the report, the key interviews and facts had not yet been considered and that the information contained in it had not yet been verified. The complainant states that this was unfair to the parties concerned.

The complainant states that neither the *HSE* nor the woman at the centre of their report were contacted by RTÉ prior to the broadcast and were not given the opportunity to object to the broadcast or to contribute to it. In a subsequent telephone conversation, the *HSE* was informed by an editor of *Prime Time* that the decision was made not to inform the *HSE* of what would be broadcast in advance in order to eliminate the possibility that the *HSE* would obtain an injunction prohibiting the broadcast of the programme. The complainant states that, as a result of not contacting those involved, the programme was one-sided. The *HSE* was not given the opportunity to provide context to the draft report.

- **Section 48(1)(c)** – The *HSE* believe this section was breached because RTÉ did not seek the consent of the person at the centre of the draft report or inform that person that it was about to broadcast and that the programme unreasonably encroached upon the privacy of the young woman concerned.

The complainant states that, given the sensitive nature of the information, there does not appear to be a reasonable editorial justification for the decision not to contact her or at least to give her notice that the programme would be broadcast.

- **Rule 17** – The complainant states that RTÉ failed to comply with this rule because it broadcast information from a document that it knew was incomplete and stated on its face that it was likely to contain inaccuracies and information lacking context.
- **Rule 19** – The complainant states that RTÉ failed to comply with this rule by misrepresenting the reliability of the information it was broadcasting and thereby misleading its audience. The early draft document that was the subject of *Prime Time* was incomplete and had not been checked for inaccuracies. This was clearly evident from the caveat stamped on each page of the early draft document. The complainant states that neither the *Prime Time* presenter nor the reporter conveyed this important message to its viewers. The programme failed to emphasise that it was a draft report. The programme directly refers to ‘the report’ or the findings of the ‘report’ twenty-six times. It only refers to the report being in draft form on six occasions.

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The complainant states that the programme did not provide sufficient context to allow the viewers to ascertain whether it was an early draft or a late draft. This information would have been available to RTÉ if it had contacted the HSE to provide context. Without the clear warning that appeared on each page of the draft report, the viewer could have formed an opinion that the information contained therein is likely to be very similar to the final report. This is supported by much of the reportage and commentary on this matter that appeared in the days following the offending broadcast.

Rule 20 – The complainant states that RTÉ compounded the damage done by failing to provide a clarification to its viewers about the draft report. This amounts to a failure to comply with Rule 20. It is clear from the resulting press coverage that there was a misconception that the report in question was a final or near final draft.

4. Broadcaster's Response

4.1 Initial response to complainant

RTÉ states that the case at the centre of the HSE report is a matter of immense public interest. The HSE appointed a senior team to carry out an investigation into the case and compiled a draft report into same. Part or all of the final report may or may not be published in due course. In common with any serious endeavour, an aspect of the brief of *Prime Time* is the revealing of information that large and powerful organisations may not want to be exposed. Once RTÉ establishes the information is what they state it to be, and is neither defamatory nor unfair to any particular party, it is their duty to reveal it.

The broadcaster states that the report in question is an internal HSE Report, commissioned by the Director General and carried out by senior personnel, largely into the HSE's own actions. As the material contained in the report represented the findings of the HSE itself, in draft form, there was no onus on *Prime Time* to offer the organisation what would have been an essentially redundant 'right of reply' to itself.

The broadcaster states that *Prime Time* received a copy of the draft report, was satisfied it was genuine and carefully examined the report to ensure that anything they intended to broadcast from it was not unfair or potentially defamatory to any particular party to the case. The thrust of the draft report involves 'systematic failures' arising from the case rather than focussing on any particular individual or organisation.

The broadcaster states that the programme stated repeatedly that the report was a draft report. From the first moment of the programme there was a graphic behind the presenter stating in large letters the words '*Draft Report*'. No viewer could fail to notice it. The presenter at the very start of the in-studio interview stated '*this is a first draft report*' which made it even clearer that its contents may change. Also later in the interview the guest said 'it's important to stress again that this is a draft report'. The meaning of the word '*draft*' is that the document to which it refers may very well change. It was not necessary to read out the disclaimer printed in small letters at the top of each page, which was, in essence, an explanation of the word '*draft*'.

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The broadcaster states that the case was covered extensively by the media. *Prime Time* did not give any identifying information in relation to woman at the centre of the case. Despite the fact that no indication whatsoever was given in relation to the woman's identity, the programme was also careful not to reveal any significant additional personal information in relation to her.

4.2 Response to BAI

The broadcaster states that the reporter's introduction to the video report included the statement:

"Prime Time has seen a draft report into the case of Ms. Y."

Following the video report, the studio presenter immediately made the statement:

"And of course it's worth saying that this is a first draft report."

The broadcaster states that as the presenter emphasised the draft nature of the report as above, the words 'DRAFT REPORT', in capital letters, were prominently displayed on the large screen between the presenter and the interviewee. The broadcaster states that during the studio interview, the presenter's further references to the draft nature of the report included:

- *"You've read that draft report for us tonight."*
- *"What Tanya also made clear from this draft report . . ."*
- *"But the draft report also does seem to show . . ."*

In addition, during the interview, the interviewee underlined the draft nature of the report, as follows:

- *"It's important to stress again it's a draft report. It's not clear, for example, whether all the findings of fact are accepted or contested by the parties involved."*

The broadcaster states that viewers could have been in no doubt as to the draft nature of the report. In addition, the statement above by the interviewee made it clear that the draft nature of the report signified that statements of fact in the report were not necessarily definitive.

The complaint alleges unfairness in not giving the complainant the opportunity to contribute to the broadcast. The broadcaster states that a viewing of the broadcast will confirm that neither the video report's outline of this draft report by the organisation itself nor the subsequent studio interview contained any statements in relation to the *HSE* which would have required in fairness that the *HSE* be given the opportunity to respond to the organisation's own report into its own actions. Furthermore, no such statements are identified in the complaint.

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The broadcaster states that the complaint includes no evidence or documentation whatsoever to support the claim that the draft report was unfairly or inaccurately presented or that it was presented in anything other than an objective and impartial manner. The broadcast contained no matters relating to the *HSE* other than those contained in the *HSE*'s own draft report which would have required that the *HSE* be given an opportunity to respond to views or facts broadcast.

The complaint alleges that: “*The HSE was not given the opportunity to provide context to the draft report.*” In response, the broadcaster states that no indication whatsoever is given as to what that ‘context’ might have been and therefore how its provision might have been required for fairness. (If ‘to provide context’ is a reference to the draft nature of the report, as indicated above the audience was well informed of such context).

RTÉ wishes also to point out that media organisations publishing material that organisations would prefer not to be published can of its nature be disruptive of the work of those organisations. This does not mean that the public interest is not best served by the publication or that any action which might subsequently be taken by a third party, for example a solicitor, means that the broadcast was unfair. Considerable precedent exists in this area arising from the publication by print and broadcast media organisations of confidential material. It is well-established that the primary responsibility of journalism is to serve the public interest, which may include revealing matters which such organisations wish to remain confidential.

The complaint alleges a breach of section 48(1)(c) of the Broadcasting Act 2009 in relation to the privacy of ‘Ms. Y’. The broadcaster states that an allegation of unwarranted invasion of privacy must concern the complainant directly and/or be made by a person nominated by such an individual. The broadcaster states that it should be noted that the broadcast did not centre, as alleged, on details pertaining to the young woman at the centre of the *HSE* report. It centred on the actions and/or inactions and procedures of the *HSE* and other agencies in relation to her case, as outlined in the *HSE* draft report.

The broadcaster states that coverage of cases such as the one at the centre of the programme is strongly in the public interest and such editorially independent coverage by broadcasters is an essential contribution to the public good.

5. Decision of the Compliance Committee: Reject (Majority)

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 view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity & impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 2, 17, 19 and 20).

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In this regard:

- The Committee noted that one of the key functions of journalism is to serve the public interest. In doing so, broadcasters may choose to bring into the public domain documents that it has received and that this may on occasion be done against the expressed views of the creators of said documents. In the case of the current complaint, it was the view of the Committee that the report and its contents were of significant public interest and that the decision to feature the report and its contents was reasonable in this context.
- Having reviewed the programme, the Committee concluded that the broadcaster had taken adequate steps to ensure that viewers to the programme would be very clear about the status of the H.S.E. report as a draft document. In particular, the Committee noted that during the introduction to the programme segment and at other points in the segment, a prominent screen display that showed an image with the words '*Draft Report*' was visible. In addition, the programme included several references to the draft nature of the report. This included the following:
 - *"Prime Time has seen a draft report."*
 - *"It is worth saying that this is a draft report."*
 - *"Again, you've read the draft report for us tonight."*
 - *"From this draft report."*
 - *"It's important again to state that this is a draft report. It's not clear, for example, whether all the findings of fact are accepted or contested by the parties involved."*
 - *"What the draft report also seems to show".*
- In view of this, the Committee did not agree with the complainant that viewers would have been misled by the nature of the report and that it was a draft report. The Committee was of the view that it is reasonable to assume that viewers would have understood that a draft report is, by its very nature, unfinished and may be subject to change. This was clearly stated by the guest interviewed following the pre-recorded segment on the content of the report when the guest stated that the report is a draft and that the parties referenced and involved may contest the findings of the report, as set out in the draft. In this context, the absence in the programme of a reference to the written caveat on the report was not considered misleading.
- On the issue of privacy, the Committee noted that complaints in respect of privacy must be made by the individual concerned or their representative and that the HSE cannot make the case on the behalf of the person whom they allege had their privacy encroached upon in an unreasonable manner. More generally, the Committee's review of the programme provided no evidence to support the view that young woman at the centre of the HSE report would be identifiable from any content of the programme, which was general in nature.

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- In reaching its decision, the Committee also noted that the complainant did not contest the accuracy of any of the content of the programme item in terms of its summary of the draft report. In addition, as the draft report was commissioned and produced by the *HSE*, the Committee did not believe any unfairness arose from the decision of the broadcaster not to include a contribution from the *HSE*.
- Having considered the complaint, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity & impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 2, 17, 19 and 20), in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: His Excellency Ambassador Boaz Modai

Ref. No. 152/14

Station:

RTÉ Radio One

Programme:

This Week

Date:

9th November 2014

1. The Programme

The complaint concerns a broadcast of RTÉ's *This Week* programme, a news and current affairs programme broadcast on Sundays on RTÉ Radio 1. The complaint concerns a discussion on the programme dealing with tensions in Israel arising in part from issues surrounding the Al-Aqsa mosque in East Jerusalem.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 17, 19, 21 and 22).

3. Complaint Summary

The complainant states that, in his opinion, the introduction to the item by the presenter, the choice of interviewee, and the conduct of the interview with a Palestinian Arab woman, skewed the coverage of this topic heavily in favour of one side of this conflict. The complainant also states that in his opinion:-

- The presenter introduced the item by referring to the Al-Aqsa mosque compound as '*home to Islam's third holiest site*'. He states that the presenter did not add that it is also known to Jews as the Temple Mount, the site of the Jewish First and Second Temples and since many hundreds of years before Islam was introduced to the world, has been the holiest site in Judaism. The complainant states that the listener was left with the impression that Israeli policy is to encourage Jews to wilfully and provocatively invade a site sacred only to Muslims.
- The complainant states that the presenter followed this by quoting Palestinian religious affairs Minister, Sheikh Yusuf Adeis as accusing Israel of '*aggressive acts which are pushing people towards religious warfare*'. The complainant states that the presenter made no effort to subject this statement to critical scrutiny, nor did he solicit any statement from a Jewish or official Israeli spokesperson that might have offered the listener a balancing point of view.
- The presenter then announced that, in order to assess '*the mood among ordinary Palestinians*', he would interview Ms. Terry Balata, whom he described as '*a civil rights organiser and a school principal in East Jerusalem*'. The complainant states that Ms. Balata's partisan views immediately became evident when she described the current situation at the Temple Mount/Al-Aqsa compound.

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The complainant states that in referring to Al-Aqsa mosque as '*the most holy sanctuary of the Muslims*', she failed to acknowledge any religious basis for a right of Jews to visit the Temple Mount site, as well as failing to tell the truth that the mosque is actually the third holiest site for Muslims, after Mecca and Medina in Saudi Arabia.

- The complainant states that Ms. Balata alleged that the 'spark' of the current violence at the site is that it is '*becoming an even bigger issue for Muslims to access their holy areas like the Al-Aqsa*' and further alleged that Christians find it 'not easy' to access their churches at their holy seasons.
- The complainant states that these statements, which went unchallenged, distort the reality that it has been the policy of every Israeli government since 1967 to facilitate the access of all three monotheistic faiths to their holy sites.
- The complainant states that it is true that, from time to time for security reasons, access to Muslim worshippers has been limited temporarily to older age groups. The complainant states that it is also true that, in years such as 2014 when the Passover and Christian Holy Week festivals coincide, pilgrims can experience severe crowd congestion in the tiny streets of the Old City, which the complainant states was handled very successfully this year by the security forces. The complainant states that none of this changes the reality that Israel's government is determined to maintain the status quo on the Temple Mount/Al-Aqsa and that allegations to the contrary serve only to incite violence.
- The complainant states that Ms. Balata's views were further in evidence when she was asked by the presenter if she thought a third intifada was imminent. She replied that the last intifada had never stopped '*especially after the kidnapping and burning alive of the kid from Shuafat, Muhammad Abu Khdeir in June – since then East Jerusalem has been really at the boiling level*'. The complainant states that the omission from her comments here was that the horrific murder of this boy – condemned by every responsible Israeli leader and the vast majority of Israeli citizens – was preceded by what he describes as the kidnap and murder by Hamas operatives of three Israeli teenage boys, an act accompanied by the firing of a barrage of rockets into Israel and the precipitation of war in Gaza.
- The complainant further states all of the above distortions could have been avoided either by the presenter taking a different approach or by the inclusion of a balancing point of view from an official Israeli spokesperson.

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4. Broadcaster's Response

4.1 Initial response to complainant

RTÉ states the item was introduced by the presenter with the following:

"In Israel occupied East Jerusalem - tension are high after several days of violence - sparked by the row over demands by some Jewish groups that they be allowed pray at the site of the Al-Aqsa compound.

The Israeli Government has attempted to reassure Muslims that it will not yield to the demands by the hardliners - but many Palestinians don't believe these promises and the Palestinian Minister for Religious Affairs - Sheik Yusef Adeis has accused Israel of aggressive acts which are pushing people towards religious warfare.

For a sense of the mood among ordinary Palestinians - we've been talking to Terry Balata – a civil rights organiser and a school principal in East Jerusalem".

RTÉ further states that early in the introduction to the piece they outlined the position of the Israeli Government. The quote from Sheik Yusef Adeis is quoted as a subjective accusation by him, not as fact. The quote is included to give an insight into the contrasting official positions. This piece does not purpose to be an analysis by a dispassionate observer, but rather a Palestinian perspective on events.

The news value of this is clear: to give listeners an insight into what was motivating some of those involved in disturbances in East Jerusalem. Questions about the imminence or otherwise of an intifada were legitimate – this very issue is the subject of much commentary online. The purpose of the item was to get an insight into the emotional drivers behind the disturbances not a forensic dismantling of the interviewee's position.

RTÉ accepts that the Middle East is a very controversial subject where views on both sides are passionately and deeply held. They state items will be done in the future, as in the past, featuring a stand-alone Israeli voice for a perspective on a particular aspect of life in Israel.

4.2 Response to BAI

RTÉ states the purpose of this broadcast was to bring to the audience a Palestinian perspective on recent events in Jerusalem, a valid editorial angle for the benefit of informing the audience. The news value of this is clear: to give listeners an insight into the motivations of some of those involved in disturbances in East Jerusalem.

The broadcaster states that the item was explicitly identified to listeners as being a local view of the motivating factors behind the disturbances in East Jerusalem. It would therefore have been clear to all listeners that this was an insight into the feeling 'on the ground' in East Jerusalem from a Palestinian viewpoint, not a discussion of different perspectives.

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The broadcaster states that the complainant alleges a breach of Rule 4.17 of the Code, claiming that to characterise the Al-Aqsa compound as a holy site to Islam without referring to its significance to Judaism was inaccurate. In the editorial context, already established at that point in the presenter's introduction, of tensions amongst the Arab inhabitants of East Jerusalem, accuracy was in fact served by the relevant characterisation of the site for Muslims.

The broadcaster states that it was also entirely accurate to state that Jewish groups were seeking to be allowed pray within the compound of the Al-Aqsa mosque, not an established practice or one acceptable to Muslims. The broadcaster states that these groups were accurately characterised as 'hardliners', distinguishing them from the Israeli government which, it was stated, had said it would not yield to their demands. The introduction also fairly noted the Israeli government's attempts to reassure Muslims on this score, absolutely not leaving the impression, as stated in the complaint, that the Israeli government encouraged Jewish groups to enter the mosque.

The broadcaster states that the complainant appears also to allege a breach of Rule 4.19 of the Code because the introduction did not include details of attacks on Israelis. No instances of specific violence by any of the protagonists were given in the introduction which was therefore fair in this respect also.

The broadcaster states that the complaint alleges a breach of Rule 21 but does not indicate where in the introduction or interview the presenter allegedly expressed a personal view. Listening to the broadcast will confirm that no such personal view was expressed at any time. Likewise, listening will confirm that the presenter in no way expressed his own views such that a partisan position was advocated, as defined in Rule 22. Also in relation to Rule 22, the topic of the item was clearly that of the Palestinian perspective on events; the item was not structured or presented as a wider discussion requiring the contribution of a participant with an opposing point of view. The broadcaster states that there seems to be an expectation on the part of the complainant that fairness always requires an interrogation of the interviewee's position: this is to misinterpret the editorial purpose of the item, which was to bring listeners an insight into the emotional drivers behind the disturbances.

5. Decision of the Compliance Committee: Reject (Unanimous)

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 view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 17, 19, 21 and 22).

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In this regard:

- The Committee noted that the context for the programme item was provided in the presenter's introduction. This context was the tensions arising in respect of access by Muslims to the Al-Aqsa mosque in East Jerusalem. The Committee noted that the views of both the Israeli and Palestinian governments on this issue were provided via extracts from statements that their representatives had made about access to the mosque and that these were provided so as to contextualise the subsequent interview with Ms. Balata and to illustrate the differing political views on the issue of access to the mosque.
- It was the Committee's opinion that the comment made by the Palestinian Minister, included in the introduction, was therefore not presented in isolation but in response to assurances provided by the Israeli Government to Muslims about continued access to the mosque. Given this and given that the views of the Israeli government were also provided, it was the view of the Committee that the comments from the Palestinian Minister could not be understood as the programme conveying the message that it is Israeli policy to encourage Jews to wilfully and provocatively invade a site sacred only to Muslims.
- On that aspect of the complaint concerning the interview with Ms. Terry Balata, listeners were provided with a clear context for this interview. Namely, it was introduced as one intended to illustrate *'the mood among ordinary Palestinians'* in the context of the tensions highlighted in the introduction to the programme. The focus of the interview was not on an examination of the history of mosque or the broader Israeli/Palestinian conflict and it was therefore not necessary to elaborate in any detail about the genesis of the dispute (other than with reference to recent events set out in the introduction). In view of this, it was the Committee's view that listeners would have clearly understood that the opinions proffered were subjective and were those of one of the two parties involved in the dispute around the mosque and access to it.
- For this reason, it was the Committee's view that providing airtime to an interview such as the one undertaken with Ms. Balata was a legitimate editorial decision. While listeners may have benefited, in editorial terms, from content setting out in more detail the views of Israelis, the item was about the community views of Palestinians. Therefore, it was not necessary to counterpoint, either via the inclusion of another interviewee or questioning by the presenter, the lived experience of Palestinians as set out by Ms. Balata.
- Having considered the complaint, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 17, 19, 21 and 22), in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Ms. Jinger MacGhiollaphoil

Ref. No. 12/15

Station:
KCLR FM

Programme:
Sue Nunn Show

Date:
25th September 2014

1. The Programme

The complaint concerns an edition of *The Sue Nunn Show*, broadcast weekdays on KCLR FM from 10am to Noon. The programme is a news and current affairs programme. The complaint concerns a competition for a hamper of food broadcast during this programme.

2. Complaint Category

The complaint is submitted under: the Broadcasting Act 2009, Section 48(1)(d)(broadcasting codes); the *BAI General Commercial Communications Code* (Principles 3.1.1 and 3.1.3 - Protecting the Individual and Society).

3. Complaint Summary

- The complainant states that she was one of the winners who won what was described by the programme presenter as '*a large hamper of food with produce from approximately 20 suppliers involved, it's an absolutely gorgeous prize so get your recipes in to us*'. The complainant states that the sponsor of the competition was '*Town of Foods*', a community-led food initiative.
- The complainant states that when she collected her hamper, she was very disappointed with the contents, she states that she found that some of the items had expired or were due to expire in the coming days and that the contents did not live up to the '*large hamper of food*' that she states was announced on air. The complainant states that when she complained to KCLR – as they had announced the prize, she was told to refer the complaint to the supplier of the prize, the '*Town of Foods*' project who was responsible for delivery of the prize. The complainant states that she contacted the sponsor of the prize but this did not resolve her concerns.

The BAI invited the sponsor to make a submission in respect of the complaint but no submission was subsequently received.

- The complainant states she has been made to feel ungrateful, guilty and like a beggar requesting the prize that was offered to be honoured. She states it is like being told you won a car, getting a bicycle and being told '*on yer bike*'. She was also offered a €25 restaurant voucher by the broadcaster but this was never received.
- The complainant was also disappointed with the delay in response from the broadcaster.

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4. Broadcaster's Response

4.1 Initial response to complainant

KCLR initially responded to the complainant by acknowledging her complaint and stating they had highlighted it with the *Town of Food* organisers and hoped *Town of Food* could find a satisfactory resolution for the complainant. When no resolution was found, KCLR responded by stating that they did not accept the contention that the promotion of the original competition was "false advertising".

They state that though they did not see the hamper themselves, it was indeed what sounds like a fairly generous hamper of local produce. The broadcaster stated that the delivery of the hamper is an issue between the complainant and the *Town of Foods* organisation. KCLR apologised for the delay in responding to the complainant and offered a voucher of €25 for a local restaurant as a good will gesture.

4.2 Response to BAI

KCLR states in September/October 2014 *The Sue Nunn Show* undertook a series of programme features on the Thomastown *Town of Food* project. This is a community led initiative seeking to develop this town in County Kilkenny as a hub for artisan type food production. As part of the activity, there was a competition on air with a prize of a hamper of produce from local producers provided by the Thomastown *Town of Food* organisers. The broadcaster states that it undertook the promotion in question in good faith, on the understanding that the prize would be delivered to the woman as stated by the *Town of Food*.

The broadcaster states that this competition was mentioned on one occasion on air by Sue Nunn and on the Sue Nunn Facebook page. The complainant was announced as the winner on the Facebook Page of the *Town of Food* organisation. The broadcaster states that it is apparent that the complainant was disappointed with the volume of goods supplied in the hamper, its presentation and the range of products and their provenance.

The complainant further claimed that KCLR was engaged in false advertising/promotion as she understood a large hamper of products from 20 suppliers to be 2-3 products from each supplier amounting to 40 – 50 products. KCLR does not accept that it gave the impression that the prize on offer would consist of 40 – 50 products. Further, they do not feel that the description of what was received as "*an absolutely gorgeous prize*" was inaccurate.

The broadcaster states that it went to considerable lengths to engage with the complainant in relation to her initial complaint and engaged in consultation with the organisation providing the prize of the hamper. Unfortunately, it appears that communication between the complainant and the *Town of Food* organisation was not able to resolve the issue. This was outside the control of KCLR and is a source of regret to the station.

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KCLR admits that the response to the formal complaint lodged with the station in November 2014 by the complainant was not dealt with in a timely manner. This falls short of their standards. KCLR accepts that the complainant had grounds for disappointment in that the hamper she received contained 17 items. While it is arguable that this may fall within the “*approximately 20 suppliers involved*”, KCLR recognised her disappointment and communicated this to the *Town of Food* organisers. For their part, the *Town of Food* organisers maintain that the hamper provided by them to the complainant was within the scope of the prize as described. In the context, KCLR felt the offer of a €25 voucher by the station was a reasonable gesture to recognise her disappointment and make amends. However, this was not acceptable to the complainant. It is regrettable that the dispatch of the promised voucher by KCLR was delayed.

In conclusion, KCLR believes that apart from the contention that the complainant could have reasonably expected 40 – 50 items which they dispute, her experience with the competition and the drawn out nature of its resolution was unsatisfactory. KCLR regrets that. They unreservedly apologise to the complainant for the delay in addressing her formal complaint lodged in November and believe that the gesture of providing the €25 voucher, though regrettably delayed, was a reasonable attempt to make amends.

5. Decision of the Compliance Committee: Reject (Unanimous)

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 view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(d)(broadcasting codes) and the *BAI General Commercial Communications Code* (Principles 3.1.1 and 3.1.3 - Protecting the Individual and Society).

In this regard:

- The Committee agreed with the assessment of the broadcaster that the complaint had not been dealt with in a timely manner. It was the view of the Committee that this fell short of the standards that audiences would expect from a broadcaster when they take steps to make a complaint. It would be expected that the broadcaster’s approach would be improved in light of the current complaint and the manner of its handling. Further, in view of this the broadcaster may wish to consider providing the €25 voucher to the complainant, if it has not already done so.
- On the issue of the competition and the prize described and offered, the Committee noted that the broadcaster had stated that the prize would entail a hamper of food from approximately 20 suppliers and that the produce would be local produce. The broadcaster also set out the mechanism by which the prize could be won and described it as “*an absolutely gorgeous prize*”.
- While acknowledging the disappointment of the complainant in terms of what she perceived as the gap between what she had expected and what was provided, the Committee was of the view that the description of the prize as promoted on-air was in keeping with a hamper of local produce with products from approximately 20 suppliers.

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The Committee noted that the short on-air item did not elaborate on the prize other than as set out above.

- The Committee also noted that there is nothing to suggest, from the broadcast or the response provided to the BAI, that the view of the presenter, as stated on-air, that the prize was “*an absolutely gorgeous prize*” was a claim made other than in good faith.
- Having considered the complaint, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(d)(broadcasting codes) or the *BAI General Commercial Communications Code* (Principles 3.1.1 and 3.1.3 - Protecting the Individual and Society), in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mrs. Patricia Kavanagh

Ref. No. 15/15

Station:

TV3

Programme:

The 5.30 News

Date:

22nd January 2015

1. The Programme

The complaint concerns an edition of TV3's daily news programme broadcast at 5.30pm. In particular, the complaint concerns coverage of the trial of Mr. Graham Dwyer during the news programme that is the subject of the complaint.

2. Complaint Category

The complaint is submitted under: the Broadcasting Act 2009, Section 48(1)(b)(harm and offence); the *Code of Programme Standards* (Principles 2.2 - Due Care, 2.3 - Protection for Children, 2.4 – Assessment and Rules 3.1 - Violent Programme Material, 3.2 – Sexual Conduct, 3.5 - Factual Programming and 3.6 - Children's Programming).

3. Complaint Summary

The complainant states the following:

- That she watched coverage of the trial of Mr. Graham Dwyer on this programme with her twelve year old son and elderly mother and that she was shocked and disturbed at the way in which the details of the case were portrayed.
- In particular, she cites what she describes as the graphic illustration of the text message sent to Ms. O'Hara, which read ... *'my urge to rape, stab or kill is huge. You have to help me control or satisfy it'*, followed by other equally shocking texts.
- That it was not acceptable that her twelve year old son, had, at 5.30pm, to not only listen to texts but also to read them on the television. She found the coverage both salacious and offensive.
- That the portrayal of violence and sexual conduct was, in her opinion, clearly not presented with due sensitivity to the convictions or feelings of an audience or with due regard to the impact of such programming on the physical, mental or moral development of children.

4. Broadcaster's Response

4.1 Initial response to complainant

TV3 states that while the report was preceded by a warning as to its content, they accept that in the unique circumstances of this trial, a more forthright warning might be required on certain days.

Broadcasting Complaint Decisions

To that end, the following warnings will in future be broadcast where appropriate:

- Where there is exceptionally graphic material – *‘Viewers are advised that the following report contains very graphic material and its contents are not suitable for younger viewers’*.
- Where material is less graphic – *‘Viewers are advised that the following report contains violent and explicit depictions which some viewers may find disturbing’*.

4.2 Response to BAI

TV3 fully accepts that a programme containing material of a graphically violent and sexual nature has no place in a television schedule at 5.30pm, regardless of what warnings are given. TV3 have never considered scheduling adult programming at such a time. However, the point at issue here is that the 5.30 news programme is not a ‘programme’ in the normal sense of the word.

TV3 can and does exercise its editorial discretion in news programming but, ultimately, they are obliged, statutorily and ethically to report the news of the day as it is. Unfortunately, the news of the day frequently involves stories of violence and/or sexual assault/rape. The trial of Mr. Graham Dwyer has undoubtedly been exceptional in the graphic nature of the evidence that has been heard but, ultimately, it is a decision for parents to decide whether the news of the day is something they want their children to watch.

Under the various sections, TV3 states:-

- Section 2.2 – having regard to the steps taken in the original broadcast to alert viewers to the distressing nature of the report, and to delay the most graphic details until later into that report, TV3 believes they fulfilled its obligations in this regard;
- Section 2.3 – in addition to the warning that is read out to viewers, TV3 has on other occasions edited the more explicit content – e.g. the testimony of an American woman who met Mr. Dwyer online. The broadcaster states that much of the more graphic material was omitted altogether and instead the line ‘too explicit/graphic for broadcast’ was included in the report. However, it is not the duty of broadcasters to censor news stories. There are children’s news programmes on other channels but TV3’s 5.30 News is not one of them and they reject the claim that they should have to tailor the news for younger viewers;
- Section 3.1 and 3.2 – TV3 states it is not open to them to determine what the news is, they can only report it with appropriate safeguards in place. It is noteworthy that on subsequent occasions the trial judge has cleared the Court when he believes material is of such a graphic and obscene nature that it was not appropriate for general members of the public but he made no such ruling on the opening day of the trial. The inclusion of references to violence and sexual conduct amounted to no more than fair and accurate reporting of contemporary court proceedings and was plainly editorially justified;

Broadcasting Complaint Decisions

- Section 3.5 – TV3 submits they are in full compliance with their obligations in circumstances where they simply reported in a fair and accurate manner the court proceedings of the day, namely the prosecution’s opening statement in a national murder trial.

TV3 further states, in this instance, the broadcast was preceded by a warning and the narrative was deliberately structured so that the most graphic material did not feature until later in the segment. They have subsequently strengthened the wordings of their warning(s) having regard to the complainant’s concerns.

5. Decision of the Compliance Committee: Reject (Unanimous)

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 view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(b)(harm and offence) and the *Programme Standards* (Principles 2.2 - Due Care, 2.3 - Protection for Children, 2.4 – Assessment and Rules 3.1 - Violent Programme Material, 3.2 - Sexual Conduct, 3.5 - Factual Programming and 3.6 - Children’s Programming).

In this regard:

- In its consideration of the complaint, the Committee took account of a number of contextual factors, including the programme and channel type and the likely audience. The Committee also took account of the requirement for broadcasters to show due care so as to avoid undue offence and harm.
- In particular, the Committee noted that the programme that is the focus of the complaint was a news programme, the content of which is informed by the events of the day. News programmes will therefore feature a broad range of topics ranging from the trivial to the tragic and, as news programmes, the content will not always be suitable for children of all ages and there is a responsibility on parents and guardians to take care in terms of permitting children to view all news content. Given the nature of the crime under investigation, coverage of the trial of Mr. Graham Dwyer would include content that would not be suitable for children of all ages.
- Having said this, the nature of news content does not absolve broadcasters from the responsibility that they share with parents and guardians in respect of the protection of children. For this reason they are expected to show due care when content that is more violent or graphic will be broadcast. Due care can be demonstrated by providing prior warnings about content, by scheduling after the ‘watershed’ and by the editorial choices made by the programme makers in terms of how such content will be treated on air in terms of images, interviews and scripts.

Broadcasting Complaint Decisions

- In this context, the Committee had regard to the fact that TV3 is a channel that is not aimed at children and audience expectations of content will accordingly be different. Furthermore, the Committee found that the broadcaster provided the audience with a prior warning before the report on the trial with the programme presenter stating “*some viewers may find the content of this report distressing*”. Given the nature of the content, the Committee was of the view that audiences may have benefited from additional notice of the content and the Committee welcomes the commitment from the broadcaster to strengthen the wordings of their warning(s) having regard to the complainant’s concerns.
- Notwithstanding this, the Committee was satisfied that, having regard to the fact that the programme was a news programme, broadcast on a channel aimed predominantly at an adult audience and having regard to the prior warning provided, the item did not, on balance, infringe the requirements of the Broadcasting Act 2009, Section 48(1)(b)(harm and offence) or the *Code of Programme Standards* (Principles 2.2 - Due Care, 2.3 - Protection for Children, 2.4 – Assessment and Rules 3.1 - Violent Programme Material, 3.2 - Sexual Conduct, 3.5 - Factual Programming and 3.6 - Children’s Programming), in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Dónal O’Sullivan-Latchford (on behalf of the Family and Media Association) **Ref. No. 18/15**

Station:
RTÉ Radio 1

Programme:
Morning Ireland

Date:
22nd January 2015

1. The Programme

The complaint concerns an edition of the RTÉ Radio 1 news and current affairs programme, *Morning Ireland*. In particular, the complaint concerns a discussion on this programme dealing with the then forthcoming referendum on marriage.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Principle 2 and Section 4: Rules 4.1,4.2,4.3, 4.21 and 4.22).

3. Complaint Summary

The complaint concerns a discussion on the then upcoming same-sex marriage referendum between Deputy Dominic Hannigan, T.D. and Ms. Breda O’Brien of *The Iona Institute*. The complainant states that the question of whether or not the same-sex marriage referendum has anything to do with the following is precisely what was at issue in this debate:

- The right to found a family;
- Adoption law;
- Assisted human reproduction;
- Children’s right to a mother and a father.

The complainant states that the ‘Yes’ side believes that this is primarily a referendum about who should be able to get married. He states that the ‘No’ side believes it’s a referendum primarily about ‘what marriage is?’

In relation to this programme, the complainant states that Ms. O’Brien had more time than Mr. Hannigan: she had 6 minutes of speaking time compared to his 4 minutes. However, the complainant states that this initial metric conceals the extent to which much of Ms. O’Brien’s time was spent trying to fend off aggressive questioning, while Deputy Hannigan was allowed, in the opinion of the complainant, to make his case almost entirely uninterrupted.

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The complainant states that having a reasonable length of time in which to make one's point without being interrupted gives one a substantial advantage in debates like this and in this context, the complainant states that it's interesting to note that Ms. O'Brien's time was divided up by interruptions into 23 segments while Mr. Hannigan's was divided into only 8.

The complainant states that, in his opinion, the presenter seemed determined that the debate be conducted within the Government's frame, and that of the 'Yes' side. At 1:18 the presenter says that "*we are not changing (Article 41). The Article remains as-is. This wording will be added*". The complainant then states that the presenter then points out that the Constitution does not define marriage. The complainant states that to say that an addition is not a change is a spurious point, and again it's reinforcing what he describes as the "nothing to see here" frame of the Government in respect of this referendum. The complainant states that while the constitution may not explicitly define marriage, countless Supreme Court judgements have found that it is implicitly defined as being between a man and a woman and not to recognise this seems to be leaving important information out.

The complainant states that at 4:57 the presenter repeats the 'Yes' side viewpoint and then asks Ms. O'Brien if the 'No' Campaign is sowing "*fear and confusion*". The complainant states that this in itself is fine: the presenter says that "*this is a point that a lot of people are making*" rather than stating it as fact. The complainant states that, however, this pattern does not continue. In this regard, he states that at 6:22, after Ms. O'Brien has been talking about the *Children and Family Relationships Bill* and about family structure, the presenter says "*we're getting – I do not want to move away from the marriage referendum*". Ms. O'Brien states her view that one cannot talk about the referendum as though it has no connection with the *Children and Family Relationships Bill*.

The complainant states that the presenter then responds – and this is the core of the complaint - "*But it doesn't. We're being asked to vote to allow people – two people – to get married if they want*". The complainant states that the presenter is again repeating the 'Yes' side's viewpoint: but this time without any "*people say*" qualifiers.

The complainant believes that the presenter was completely remiss to present the 'Yes' side's viewpoint as fact in this case. These questions are very much up for debate, and a presenter's role is to facilitate debate, not engage in advocacy.

4. Broadcaster's Response

4.1 Initial response to complainant

RTÉ responded with an acknowledgement only of the complaint. They state a number of complaints were received in respect of this broadcast and they regret due to an oversight the complainant did not receive a reply alongside others. This, they say, was purely an administrative error.

4.2 Response to BAI

RTÉ states that there were aspects of the facilitation of the debate between Ms. O'Brien and Deputy Hannigan which were not well handled in terms of tone. RTÉ stands over that acknowledgement but is of the strong view that these flaws in presentation did not affect the substance of the debate and did not impede the contributors' articulation of their views on the topic.

The broadcaster states that listening to the broadcast will confirm that while the hasty manner of some of the presenter's interventions might have given listeners the impression that Ms. O'Brien was denied the opportunity to convey her point of view, in fact those challenges resulted in Ms. O'Brien getting her meaning across very fully to listeners, including in several clear passages without interruption.

The broadcaster states that Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, cited as being infringed, in fact recognises the role of forceful questioning in facilitating the expression of contributors' opinions. The complaint alleges that the debate was unfair in being "*conducted within the government's frame, and that of the Yes side.*" The broadcaster states that this is an inaccurate and unfair characterisation of what it describes as the presenting to a proponent of a 'No' vote, in a fair manner, the arguments which challenged her point of view. The broadcaster states she was allowed the opportunity, which she took, to refute them.

The broadcaster cites a number of examples. These include arguments that the proposed constitutional change would not redefine marriage; would not change the definition of the family; and would not be detrimental to the interests of children.

To all of these arguments, Ms. O'Brien made articulate and clear replies, which included stating that marriage has been defined in "hundreds of cases" as being between a man and a woman; that the constitutional change would result in same-sex couples having "all the rights that accrue to families under article 41, which is on the family"; that "the key difference between civil partnership and marriage are rights to children"; and that "if we change the constitution, we are changing [the] mother-father model." The broadcaster states that to suggest that the debate was conducted "within the government's frame" is to ignore completely the broadcast's inclusion of such responses by Ms. O'Brien.

In respect of Rule 4.3, the broadcaster states that there was no unfairness in dealing with contributors, who were aware of the topic of the debate and its format and of the presence and point of view of the other contributor.

The complaint alleges that "there was no sustained questioning" of Deputy Hannigan. The broadcaster states that this is an inaccurate characterisation of the presenter's properly allowing Deputy Hannigan the opportunity to address the arguments clearly articulated in some detail by Ms. O'Brien. The presentation to listeners of a fair debate does not require that contributors be treated identically; where one contributor has had the opportunity to deliver a clear position, fair debate is well served by an invitation to the other contributor to reply.

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The broadcaster states that at several key junctures after Ms. O'Brien delivered an important point, the momentum was with her argument and the presenter felt that no re-formulation of a question to Deputy Hannigan was necessary, the challenge to his position being in the point that Ms. O'Brien had just made. And, as acknowledged in the complaint, the broadcaster states that Deputy Hannigan was challenged about the coincidence of the Referendum campaign and the debate on the *Children and Family Relationships Bill* legislation, which Ms. O'Brien had the opportunity to claim had been planned, in spite of Deputy Hannigan's protestations.

The broadcaster states that there was in the broadcast no expression whatsoever of the presenter's own views on the subject of debate and therefore no breach of Rule 4.21. All questions put to the contributors were done so objectively and impartially with the editorial goal of exploring positions on the topic and furthering the debate in the interests of listeners.

5. Decision of the Compliance Committee: Reject (Unanimous)

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 view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Principle 2 and Section 4: Rules 4.1,4.2,4.3, 4.21 and 4.22).

In this regard:-

- The Committee had regard to the fact that current affairs interviews may, by necessity, be robust on occasions. However, while there is a clear acknowledgement in the BAI's news and current affairs code that the presentation of current affairs can often involve robust and heated exchanges, the code also requires that the tone of an interview or a programme must respect the dignity of an individual regardless of their viewpoint or public standing.
- In view of the above and in the context of the current complaint, the Committee agreed with the broadcaster's view that there were some aspects of the interview that were not well-handled in terms of tone. However, the Committee did not agree that the tone of the interview was sufficient to amount to an infringement of *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

In particular, it was the view of the Committee that in the context of the segment as a whole, which was 11 minutes in duration, Ms. Breda O'Brien was afforded the opportunity to set out her views on the wording of the then forthcoming referendum on marriage. While noting that the approach of the presenter interfered with the flow of Ms. O'Brien's contribution, the Committee found that over the course of the segment she clearly and ably set out her views on the referendum.

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- In addition, the Committee found that the item as a whole examined issues pertaining to the referendum from a range of perspectives with both interviewees offered the opportunity to challenge and critique each other's views and positions. For this reason, the item was, on balance, deemed to meet the requirements for fairness, objectivity and impartiality in news and current affairs.
- Having considered the complaint, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Principle 2 and Section 4: Rules 4.1,4.2,4.3, 4.21 and 4.22), in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. X

Ref. No. 20/15

Station:

RTÉ Radio 1

Programme:

Sunday with Miriam

Date:

1st February 2015

1. The Programme

The complaint concerns a broadcast of RTÉ's *Sunday with Miriam*. The programme, broadcast weekly between 10am and 11am, involves a series of personal, human interest interviews. The complaint concerns interviews on the topic of adoption with three Irish politicians, a Senator and two T.D.s.

2. Complainant Category

The complaint is submitted under the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs) and 48(1)(b)(offence and harm); the *Code of Programme Standards* (Principles 2.1 - General Community Standards and 2.2 - Due Care and Rule 3.4 -Persons and Groups in Society).

3. Complaint Summary

- The complainant feels that the discussion on adoption was, most of the time, devoted to the 'natural/birth' mums and dads and failed to mention (except towards the end) the adoptive parents.
- As an adoptive parent, the complainant found the programme very upsetting as though the 20+ years of loving, caring, worrying and general upbringing and being there for their adoptive children as being of nil value and irrelevant.
- Towards the end, the complainant states that the presenter brought up the subject of adoptive parents, but it quickly moved on again from that. The complainant states that the focus of the programme was completely unbalanced, due to the failure of the presenter to hone-in/question throughout the programme the perception of the adoptees to the contribution of the adoptive parents to each adoptee – not as some 'afterthought' – but as an integral part of the adoptee and their experience and as a counterpoint to the total focus on the 'natural/birth' parents only.
- The complainant states that balance could have achieved by asking the following questions:
 - how their adoptive parents coped with the 'natural/birth' mothers and fathers coming back into their lives;
 - how the adoptees felt about their adopted parents having met their 'natural/birth' mothers and fathers;

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- how they helped their adoptive parents to cope (or not) with the trauma; and
- how the adoptees viewed the contribution of the adoptive parents to their lives.

The complainant states the programme was very hurtful and upsetting. It was as if the adoptive parents had been ‘airbrushed’ from the interviewed adoptees’ histories and lives.

4. Broadcaster’s Response

4.1 Initial response to complainant

RTÉ acknowledged the complaint but no reply was provided within the timeframe specified in the broadcaster *Code of Practice for Complaints Handling*.

4.2 Response to BAI

RTÉ states that the broadcast was a very personal discussion focused on the guests’ experience of being taken from their natural mothers and the effect of this on their lives.

Although the discussion touched on the social circumstances in which their adoptions took place, editorially speaking it was – and was presented to listeners as – a ‘human interest’ item and not a current affairs topic under section 48 of the Broadcasting Act 2009 or any section of BAI code, and not requiring or presenting itself as requiring comprehensive treatment.

Although, as the complainant says, the emphasis of the discussion was not on this occasion on life in adopted families, it may be noted that all such references were wholeheartedly positive, affectionate and appreciative.

In respect of Section 2.1 of the Code, the broadcaster states that there was no breach of community standards. For example, there was no offensive material in the broadcast (notably in this context nothing offensive whatsoever towards the concept of adoption or towards any particular adoptive parents); no descriptions of violence or sexual content; and no coarse or offensive language.

In respect of Section 2.2 of the Code, the broadcaster states that there was no breach. Nothing in the broadcast was inappropriate for the time of broadcast, for the channel or for the audience, or warranted any warning to listeners of such inappropriate content.

In respect of Section 3.4 of the Code, the broadcaster states that listening to the programme will confirm that not a single word spoken in it could be thought to stigmatise, support or condone discrimination or incite hatred against any person or any group in society.

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5. Decision of the Compliance Committee: Reject (Unanimous)

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 view, the Committee had regard to the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs) and 48(1)(b)(offence and harm) and the *Code of Programme Standards* (Principles 2.1 - General Community Standards and 2.2 - Due Care and Rule 3.4 - Persons and Groups in Society).

In this regard:

- The Committee found from its review of the programme content that it focused on the personal stories and experiences of the three guests, in particular, their experiences as children who had been adopted, the impact of this experience on their lives and their search for their original parents, siblings and relations. Given the personal focus of the programme and its contributions, the Committee was of the view that the content could not be considered news and current affairs and the requirements of the Broadcasting Act in respect of such content did not apply. Accordingly, issues of balance, articulated by the complainant, were not relevant.
- The Committee also found that, while the programme did touch on the issue of the guests' experiences of living in an adopted family, the focus was predominantly on their interest in their family origins, their experiences of discovering the identity of their birth parents, their brothers, sisters and other relations.
- While noting that information on the role of adoptive parents may have made the programme more meaningful for some listeners, it is a matter for broadcasters to frame the editorial focus of a programme and to exclude other aspects of a topic that may be of interest to audiences. These editorial decisions are a normal part of programme making and they are made for a range of reasons, for example, due to restrictions on time or because an issue is topical and the programme makers wish to give it due prominence. The exclusion of content from a programme will only cause issues where the exclusion results in an infringement of the Broadcasting Act or the BAI's codes and rules.
- In this context, the Committee found that the programme did not include any comments about adoptive parents that could be considered to have caused undue offence or harm and the focus on birth parents was a legitimate editorial decision on the part of the broadcaster and one which they are free to make.
- Given the sensitive nature of the complaint, the Committee noted its disappointment that the broadcaster had failed to provide a response to the complainant in the first instance. This matter will be raised separately with the broadcaster.

Broadcasting Complaint Decisions

- Having considered the complaint, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs) and 48(1)(b)(offence and harm) or the *Code of Programme Standards* (Principles 2.1 - General Community Standards and 2.2 - Due Care and Rule 3.4 - Persons and Groups in Society), in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. John Ferriter

Ref. No. 26/15

Station:

Newstalk 106-108FM

Programme:

The Pat Kenny Show

Date:

2nd March 2015

1. The Programme

The complaint concerns an edition of *The Pat Kenny Show*, broadcast weekday mornings on Newstalk. The programme is predominantly news and current affairs with human interest and entertainment elements. The complaint in question deals with a discussion following the death of the Russian politician, Mr. Boris Nemstov.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs), 48(1)(b)(offence and harm) and 48 (1)(d) (law and order); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rule 22); the *BAI Code of Programme Standards* (Principles 5 – Respect for groups in Society and 6 – Protection from Harm).

3. Complaint Summary

- The complaint concerns an interview between the programme presenter and Mr. Ben Judah, the author of the book '*Fragile Empire, how Russia fell in and out of love with Vladimir Putin*'. The complainant states that the interview amounted to 'Russophobia' and 'Russia-bashing'. He states that no attempt was made to give a balanced view on the death of Mr. Boris Nemtsov. The complainant states that the presenter actively pursued the demonization of Russia and Mr. Vladimir Putin with Mr. Judah.
- The complainant states that no mention was made about the part that other parties played in this tragedy and no mention was made of comments by Ms. Irina Khakhamada, a colleague of and founding member of a liberal party in Russia with Mr. Nemtsov. The complainant states that Ms. Khakhamada said Mr. Putin in her belief had no part to play in the assassination and the complainant states that it must be remembered that she is a critic of Mr. Putin.
- The complainant states that this programme was not a discussion as no counter view was given. The complainant states that the presenter, over a series of programmes, culminating in this one, seems to have a policy of vilifying Russia and Mr. Putin.

4. Broadcaster's Response

4.1 Initial response to complainant

Newstalk 106-108FM states that this interview was largely about the shooting of Mr. Boris Nemtsov. The broadcaster stated that allies of Mr. Nemtsov claim the Russian President, Mr. Vladimir Putin was responsible.

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The broadcaster states that the presenter pointed out, in his introduction, that Mr. Putin condemned the shooting and had vowed to find those responsible. Furthermore, the presenter suggested that it would not benefit Mr. Putin to have Mr. Nemtsov shot, as it would awaken a 'sleeping giant' – i.e. the protests on the streets in support of Mr. Nemtsov, which happened at the weekend.

Newstalk is happy that, on the substantive point of the interview, the presenter provided counterpoint and balance. Furthermore, the interview was entirely about the ruling political establishment of Russia, and not about Russia or Russian culture, so Newstalk thinks it is unfair to characterise the interview as 'Russophobic'.

4.2 Response to BAI

In respect of Section 4.22, Newstalk 106-108 states that the background to the piece was introduced by the presenter as being the recent marches through Moscow to honour the recently murdered Russian politician, Mr. Boris Nemtsov. The broadcaster states that the listener was told within the first minute of the item of how allies of Mr. Nemtsov believe that the Kremlin is behind the murder but that President Putin described the murder as vile and promised to find those responsible. Mr. Ben Judah, the author of the book *'Fragile Empire, how Russia fell in and out of love with Vladimir Putin'*, was then introduced.

The broadcaster states that what was widely reported around the time of the killing, and the main thrust of the various media and other reports, was the suggestion that President Putin/the Kremlin were involved in the shooting of Mr. Nemtsov. These media reports were severely critical of Mr. Putin and the Russian establishment. In an effort to be fair to all parties, the presenter noted that Mr. Putin condemned the shooting of Mr. Nemtsov. He further made it very clear that Mr. Putin had specifically commented that he would himself become personally responsible for an investigation into the murder of Mr. Nemtsov.

The broadcaster states that the programme presenter then spent much of the interview putting the proposition to the interviewee that the murder of Mr. Nemtsov would actually not be to his/the Kremlin's advantage as it would cause massive protests on the street in support of Mr. Nemtsov – which is what happened.

In respect of Principle 5, Newstalk rejects that this programme stigmatised, supported or condoned discrimination or incited hatred. This piece was an interview in the light of recent developments in Russia and, in particular, of Mr. Ben Judah in relation to his book. Newstalk are satisfied that this in no way amounted to incitement of hatred against Russia nor do they accept that the presenter or Newstalk are guilty of 'Russiaphobia or Russia bashing'. The broadcaster states that the content of this interview was similar to many news reports that featured around the time of the murder of Mr. Nemtsov. The broadcaster states that the presenter was careful to present the position of the Kremlin/President Putin to balance the interview.

In respect of Principle 6, Newstalk rejects any allegation that this item of broadcasting promoted or incited crime or any undermining of the State. They believe it was in the protection of the public interest and, again, that Newstalk fulfilled its duties under this Section.

5. Decision of the Compliance Committee: Reject (Unanimous)

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 view, the Committee had regard to the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs), 48(1)(b)(offence and harm) and 48 (1)(d) (law and order), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rule 22) and the *BAI Code of Programme Standards* (Principles 5 – Respect for Groups in Society and 6 – Protection from Harm).

In this regard:

- The Committee noted that the programme was broadcast on the week following the killing of Mr. Boris Nemstov. At that time, and as discussed during the programme, there was speculation about the identity of those who were responsible for his killing and the motives and intentions behind the killing, including whether the killing was politically motivated.
- One theory, as examined in the programme, was that Mr. Nemstov had been killed either directly or at the direct request of the Russian State or on account of inaction by the Russian State in the face of knowledge of a threat to Mr. Nemstov's life which, it was argued, they gave tacit approval to, and which some believe was evidenced by this inaction. The programme examined this theory in the wider context of the politics of Russia and the role and power of its president, Mr. Vladimir Putin. In particular, this theory was examined via an interview with an expert on Russian affairs, Mr. Ben Judah.
- Having reviewed the programme, the Committee found that, while the guest was critical of the Russian State in terms of the manner in which it operates as a functioning democracy, it is editorially legitimate to examine a news and current affairs topic from a particular angle. In this regard, criticisms of democracy in Russia are part of the wider debate on the political environment in Russia and its impact on the region surrounding Russia and its impact internationally. The Committee did not believe that an airing of these criticisms could be considered demonization of either the Russian State or its president but rather the free expression of a particular perspective on Russia that may be of interest to listeners and which, some listeners, like the complainant, may disagree.
- On the topic of the killing of Mr. Nemstov, the Committee found that the programme presenter set out a range of possibilities in terms of who might have been responsible and also what their motives might have been.

In doing so, he also questioned the view that President Putin or the Russian State were responsible for the killing of Mr. Nemstov and set out why such an action might be counterproductive to the interests of President Putin and the Russian State, and hence, for this reason, not credible.

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Having regard to the discussion as a whole, including the contributions by the presenter and his guest, and having also regard to the context for the discussion, the Committee found the discussion to be fair, objective and impartial. The Committee did not find any evidence in the programme to support the view that the criticism of President Putin or the Russian Government stigmatised, supported or condoned discrimination or incited hatred or that it would promote or incite crime or undermine the State.

- Having considered the complaint, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs), 48(1)(b)(offence and harm) and 48 (1)(d) (law and order), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rule 22) or the *BAI Code of Programme Standards* (Principles 5 – Respect for Groups in Society and 6 – Protection from Harm), in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Anthony Sheridan

Ref. No. 28/15

Station:

Newstalk 106-108FM

Programme:

The Right Hook

Date:

19th February 2015

1. The Programme

The complaint concerns, The Right Hook, Newstalk 106-108's evening news and current affairs programme broadcast weekdays from 4.30am-7pm. The complaint concerns comments made by the programme presenter, Mr. George Hook, in respect of the issue of water charges. The comments were made in the context of the jailing of four protestors, opposed to the introduction of water charges, for failing to abide by court orders.

2. Complaint Category

The complaint is submitted under the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 21 and 22).

3. Complaint Summary

The complainant states that on two occasions, during the broadcast, the programme presenter made the following comments:-

- *“One of the great virtual videos of all time is now available; you can have a look at it on Newstalk.com. There’s a water protester blocking a truck and a policeman comes over to him and touches him on the arm and your man goes down like Ronaldo seeking a penalty in the European Champions Cup final. It is outrageous. Naturally, you’ll be delighted to hear, supporters will march this evening from the G.P.O. to Mountjoy prison. Naturally, they’re paranoid about political policing; naturally they’re paranoid about political broadcasting, now they’re probably paranoid about political judges. The whole world is against them, all led by Leinster House”.*
- *“They are now, interestingly, reaching the stage; it seems to me, where they actually want to bring the country down. It seems that there is no rule of law that is sacred to the anti-water charge protesters. They believe now, led by people who should know better, that they can actually do what they like”.*

The complainant states that the programme presenter is clearly expressing his own views on a matter that is publicly controversial and of current public debate, contrary to the BAI's Code.

4. Broadcaster's Response

4.1 Initial response to complainant

Newstalk acknowledged the complaint and stated they would examine the matter and get back to the complainant with a response in due course. This did not happen.

4.2 Response to BAI

Newstalk 106-108FM states on the date of the programme four Dublin water charge protestors were jailed for breaching court orders not to interfere with the installation of water meters or harass workers installing them. Two of them were sentenced to 28 days in prison while the other two were ordered to serve 56 days. The Judge in his summation acknowledged that protests do represent a bedrock of democratic society but concluded that the protests in question were cowardly and unfair to the workers of GMC Sierra, the company responsible for installing water meters.

The broadcaster states that the presenter's comments were made and clearly put in the context of these guilty verdicts, the comments by the Judge about them and the resulting protest in the capital that evening. They state that he gave the views of the protestors airtime but also reflected views alternative to those of the protestors that would not otherwise have been represented by the programme. His description of the video referenced at the start of the programme was accurate and he read comments from listeners that were both supportive and non supportive of the protestors. They state that his commentary was fair and objective and did not in any way amount to the expression of his own view '*such that a partisan position is advocated*'.

5. Decision of the Compliance Committee: Reject (Majority)

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following a review of the material the Committee has decided to reject the complaint. In reaching this view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.21 and 4.22).

In this regard:

- The Committee noted that the context for the programme segment was two-fold. Firstly, on the day of the broadcast a number of individuals had been found guilty of breaching a court order. The court order was linked to protests surrounding the installation of water meters. Secondly, on foot of the decision of the courts, protests had been arranged and elements of these protests had blocked traffic in Dublin City Centre leading to delays for traffic and commuters.
- From its review of the segment, the Committee found that the focus of the presenter's comments was on issues relating to the rule of law. In particular, questions relating to the role and function of the Irish courts system and the political system and the issue of protesting and the point at which legitimate protests become contrary to the rule of law and the rights of other citizens, such as those installing water meters and commuters. These issues were discussed in the context of contributions during the programme by those opposing the jailing of the protestors, who argued that the decision to jail the protestors was politically motivated and undermined the legitimate and democratic right to protest.

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- The Committee found that the presenter did express his personal views but the Committee was of the opinion that, on balance, these comments did not amount to the articulation of a partisan position, contrary to Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. In this regard, the Committee noted that the programme item included contributions that supported the protestors and opposed their jailing and these were provided via extracts from interviews by those against the jailing of the protestors and contributions by text message (a number of which were critical of the programme presenter). The Committee also found that the segment included an outline of different perspectives on the topic. This included a quote from the Judge overseeing the court case in question and his statement that the ability to protest was part of the 'bedrock' of a democratic society. The large support for the anti-water charges campaign was also highlighted by the presenter and this was coupled with a comment that the disruption to traffic by protestors on the day of the programme might alienate those minded to agree with the broad objectives of the anti-water charges campaign.
- More generally, it was evident to the Committee that the topic that is the subject of the complaint was a breaking news story which dealt predominantly with the jailing of water charges protestors and the subsequent protests rather than the substantive issue of the water charges. The segment gave voice to the frustration experienced by commuters delayed by the disruption to traffic caused by protests in Dublin city centre while also providing context for the protests.
- The programme format and the style of the presenter were also taken into account by the Committee. The programme is driven by the personality of the presenter who articulates his own perspective and other perspectives on news stories of the day and where these views are counterpointed by other elements of the programme, such as those provided by guests, interview clips and texts and emails. The presenter's contributions can be robust and controversial and, while noting that the presenter was setting out the views of those other than the protestors, the Committee was of the view that compliance issues may have arisen in the absence of the airing of other perspectives. The Committee was of the view that the airing of other views to those stated by the presenter were minimal but just sufficient to ensure that his contribution could not be considered an articulation of a partisan position. In this context, the broadcaster is advised to give consideration to the manner in which segments such as this on the programme are handled so as to avoid a potential future infringement of the Broadcasting Act 2009 and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.
- The Committee also noted that the complainant had not received a response to his initial complaint to the broadcaster. This is a matter of concern to the Committee and the matter will be raised with the broadcaster in the context of the *BAI Compliance and Enforcement Policy*.

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- In view of the above, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) or Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected. As Rule 4.21 relates only to news presenters and not current affairs presenters, this aspect of the complaint was not considered relevant.

Broadcasting Complaint Decisions

Complaint made by: Mr. Anthony Sheridan

Ref No 29/15

Station:

Newstalk 106-108FM

Programme:

The Right Hook

Date:

9th February 2015

1. The Programme

The complaint concerns The Right Hook, the evening news and current affairs programme broadcast on Newstalk 106-108 FM from 4.30pm – 7pm. The programme included three references made by the programme presenter Mr. George Hook in respect of Socialist Party T.D. Mr. Paul Murphy and his participation in protests.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 21 and 22).

3. Complaint Summary

The complainant states that on three occasions, during the broadcast, the presenter expressed his personal opinion in respect of three news clips, as follows:

- Clip One: Mr. Paul Murphy T.D. stated that he had a democratic right to participate in a peaceful protest.

The complainant states that the presenter then said: *“Peaceful? How deputy Murphy could possibly use the word peaceful in relation to what happened in Jobstown and later in relation to the verbal assault of the President of this country, to actually use the word ‘peaceful’ is a joke”*.

- Clip Two: The reaction of Mr. Paul Murphy’s partner to his arrest.

The complainant states that the presenter then said: *“I mean it’s absolutely horse manure of deputy Murphy’s partner to suggest that they were going to take him to jail in his pyjamas, give me a break”*.

- Clip Three: Ms. Ruth Coppinger, T.D., suggesting that perhaps there was a political instruction behind the decision of the Gardaí to make the arrests.

The complainant states that the presenter said: *“Oh yeah, the cops now arrest people on the instructions of the Taoiseach or the Tánaiste. You have to be particularly paranoid, and nobody is more paranoid than the Left in this regard, that somehow there is a secret society running this country in which the police are the lackeys who go out and simply arrest people on the say so of them”*.

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The complainant states the presenter is expressing his own views, in response to all three clips, on a matter that is publicly controversial and of current public debate and is therefore in breach of the code.

4. Broadcaster's Response

4.1 Initial response to complainant

Newstalk 106-108 states that they do not agree that the presenter, George Hook, was in breach of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

The broadcaster states that Section 21 clearly refers to '*a news presenter and/or a reporter in a news programme*'. They state that the presenter is neither and his role is as the presenter of a current affairs programme. Within that context he does have obligations under Section 22 of the Code which requires current affairs presenters to avoid expressing '*his or her own views on matters that are either of public controversy or the subject of current public debate such that a partisan position is advocated*'. The broadcaster states that to suggest that, in guiding the audience through the audio clips as outlined in this complaint, he was advocating a partisan position is not credible.

4.2 Response to BAI

Newstalk 106-108FM states that the basis of Mr. Sheridan's argument is that George Hook, the presenter, expressed his own views on a matter that was of public controversy or the subject of public debate at the time in response to three audio clips. They further state:

- In the segment referred to, Mr. Hook gave a comprehensive run down of events of the day on which Mr. Paul Murphy T.D. was arrested with regard to the alleged false imprisonment of An Tánaiste Joan Burton T.D. at a protest in Jobstown.
- He used clips of Deputy Murphy, his partner, his colleague Ms. Ruth Coppinger T.D. and Garda whistleblower, Mr. John Wilson, all of whom supported the view of Mr. Murphy that his arrest was heavy handed and politically motivated.
- Mr. Hook gave a critical analysis of their accounts in the interest of providing the audience with a wider variety of views on the subject and to reflect other views in the public domain at a time that would otherwise not have been represented in the programme. This, as the Code clearly states, is an important part of the role of a presenter of a current affairs programme and did not amount to the expression of Mr. Hook's own view and certainly not '*such that a partisan position is advocated*' as stated in the Code.

Broadcasting Complaint Decisions

5. Decision of the Compliance Committee: Reject (Unanimous)

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following a review of the material the Committee has decided to reject the complaint. In reaching this view, the Committee had regard to the Broadcasting Act 2009, Section 48(1) (a) (fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.21 and 4.22).

In this regard:

- The Committee noted that the context for the programme segment was the arrest on the day in question of a number of individuals, including Socialist T.D. Mr. Paul Murphy in respect of a protest held in Jobstown in Dublin at which it has been claimed that the Tánaiste, Ms. Joan Burton, was falsely imprisoned. The programme had two elements. The first included the playing of a number of interview extracts from those opposing the arrests and during which the contributors set out their views that the arrests were politically driven, a waste of Garda resources and an abuse of process. This included comments from Mr. Murphy's partner who was present at the time of his arrest, Ms. Ruth Coppinger T.D., and Mr. John Wilson, a former member of An Garda Síochána. The second element included an interview with Deputy Murphy.
- From its review of the segment, the Committee found that the presenter did express his personal views but the Committee was of the opinion that these comments did not amount, on balance, to the articulation of a partisan position, contrary to Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. In this regard, the Committee noted that the programme item included contributions from those who held the view that the arrest of Mr. Murphy and other protestors on the day of the programme was politically motivated. The programme also included contributions by text and later in the programme in the interview with Deputy Murphy which were directly critical of the presenter.
- More generally, it was evident to the Committee that the topic that is the subject of the complaint was a breaking news story which dealt predominantly with the arrest of Deputy Murphy and the other protestors rather than the substantive issue of the water charges. The segment examined issues dealing with the rule of law, including the role and function of An Garda Síochána and the Irish courts system and that this issue was examined from different perspectives with the presenter providing one perspective and the other perspectives provided by Deputy Murphy in his interview on the programme, as well as the contributions by text and the extracts from interviews with individuals supportive of Mr. Murphy's position.
- The programme format and the style of the presenter were also taken into account by the Committee. The programme is driven by the personality of the presenter who articulates his own perspective and gives voices to other perspectives on news stories of the day and where these views are counterpointed by other elements of the programme, such as those provided by guests, interview clips and texts and emails.

Broadcasting Complaint Decisions

The presenter's contributions can be robust and controversial and, while noting that the presenter was setting out the views of those other than those who opposed the arrests of Deputy Murphy and other protestors, the Committee was of the view that compliance issues may have arisen in the absence of the airing of other perspectives. The Committee was of the view that the interview with Deputy Murphy, the airing of extracts of interviews with those who support his view on the arrests as well as text contributions were, on balance, sufficient to ensure that the presenter's contribution could not be considered an articulation of a partisan position. The Committee noted that Deputy Murphy was given adequate opportunity to set out his views that his arrest and the arrest of other protestors was politically motivated, heavy handed, a waste of Garda resources and was in his opinion an unhealthy development in Irish democracy.

- In view of the above, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) or Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected. As Rule 4.21 relates only to news presenters and not current affairs presenters, this aspect of the complaint was not considered relevant.

Broadcasting Complaint Decisions

Complaint made by: Ervia

Ref. No. 39/15

Station:

RTÉ One

Programme:

This Week

Date:

15th February 2015

1. The Programme:

The complaint concerns a broadcast of *This Week*, the weekly news and current affair programme broadcast on Sunday afternoons from 1pm -2pm. The programme in question dealt with matters pertaining to the calculation of performance related awards at Ervia.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.3, 4.17, 4.19 and 4.20).

3. Complaint Summary

The complainant is made by Ervia, the commercial semi-state body responsible for delivering water infrastructure and services. The complainant states that a broadcast of the This Week programme infringed the Act and the BAI's news and current affairs code for a number of reasons. In summary, the complainant states that the report included inaccurate information about the mechanism by which Ervia calculates performance related awards. The complainant states that this is despite Ervia providing the programme makers with detailed information which they state made it clear that the application of this mechanism had impacted negatively, rather than positively, on pay for staff. The complainant states that on Friday 13th February, Mr. John Burke, a This Week reporter, contacted Ervia in relation to an element of the calculation of performance related awards at the company. The complainant states that Mr. Burke raised a series of questions relating to the use of a 'multiplier' in the calculation of performance related pay. The complainant states that Mr. Mark Brennock, acting on behalf of Ervia sent a text to Mr. Burke acknowledging receipt of his queries and informed him, by text on Saturday morning, that he would have responses to his questions by 2pm that day.

The complainant further states:

- The Head of Human resources provided answers to the queries, which showed that the multiplier for each commercial unit and the overall company since the performance award model has been in operation, was less than 1, such that performance related pay had consistently been impacted upon negatively (reduced), rather than positively (increased) by this factor. In addition, Mr. Brennock spoke to Mr. Burke on a number of occasions before and after emailing the response on 14th February and explained this point to him in detail. The complainant states that Mr. Burke was very sceptical of this and appeared to have wished to run a story that the multiplier meant there had been an added layer of bonuses which had not previously been disclosed by Ervia.

Broadcasting Complaint Decisions

- The complainant states that, despite being provided with this information, This Week ran with Mr. Burke's original, and wholly inaccurate, interpretation of the 'multiplier' at length on Sunday 15th February. The 20 second promotional advertisements for This Week, announced that they would reveal 'further details of another layer of bonus payments' at Irish Water. The complainant states that this was not accurate.
- The complainant states that after the 8am promotional advertisement for the programme, Mr. Brennock emailed Mr. Burke and the programme presenter/producer, Mr. Colm O'Mongáin and said the promotional advertisement was a distortion and was an unfair portrayal of the facts. Mr. Brennock then emailed the director of news at RTÉ, Mr. Kevin Bakhurst, and complained about the inaccurate spin being placed on the story.
- The complainant states that ninety minutes later, Mr. Brennock advised the Ervia Group Chief Executive that there was no option but for Mr. McNicholas to travel to RTÉ and give a live interview to the programme to seek to correct the unfair and grossly misleading report that was to be broadcast.
- The complainant states that, prior to that interview, This Week broadcast an introduction that vigorously pursued Mr. Burke's 'another layer of bonus payments' angle. They state that it used pejorative language such as 'top-ups' to describe this "revelation" and gave the impression that the information had been deliberately suppressed and concealed up until that point when This Week was revealing it. The complainant states that the report contained a very brief reference towards the end of the report that the multiplier could in fact reduce performance awards and had in fact done so.
- It also contained a very brief reference to the fact that the performance award payments in Irish Water had never been paid and had been suspended pending a review. The majority of the broadcast was however overwhelmingly taken up with the "story" that there was a secret layer of bonus payments.
- The complainant state that Mr. Michael McNicholas, Chief Executive of Ervira was then interviewed for 10 minutes but was not given any opportunity to challenge RTE's theory in respect of the 'topups'. Any listener would have been left with the clear, and grossly misleading, impression from this broadcast that Ervia concealed the fact that it had a secret layer of extra bonus payments from which its staff was benefitting.

4. Broadcaster's Response

4.1 Initial response to complainant

RTÉ states in This Week's dealings with Ervia, the latter took issue with the accuracy of the programme, primarily, on the use of the word 'bonus'. The broadcaster states that both Irish Water's C.E.O. and press spokesman, Mr. Mark Brennock, had repeatedly objected to the term 'bonus' being applied to performance-related pay at the company.

Broadcasting Complaint Decisions

Mr. Brennock had particular concerns in an email to This Week that an attempt was being made to paint a picture of a 'fat cat culture', as he termed it, at Irish Water as a result of the use of the word 'bonus'. RTÉ rejects this and state they have been fair in their dealings with Irish Water, offering them the right to reply at all times in their dealings with them.

The broadcaster further states that the word 'bonus' has been used by Bord Gáis/Irish Water personnel, the Communications and energy Regulator and the Ministers of Government. While latterly a public relations concern may have arisen in the company about the implications of this terminology, RTÉ fails to see how it is inaccurate to term performance related pay a bonus when the company has done so itself.

With regard to contact being made with Irish Water on Friday 13th, This Week, like any of the media working to a Sunday deadline, often comes into possession of relevant material late in the week. Whilst taking all due care to ensure the stories they cover are checked for accuracy and fairness, they then broadcast them at the earliest opportunity once due care has been taken.

RTÉ initiated contact with Mr. Mark Brennock with a series of questions referring to the multiplier element of Ervia and Irish Water performance awards, at which time Mr. Brennock made no comment, observation or objection of any sort in relation to the reasonableness of the time available to deal with the query.

On 15th February, This Week facilitated the company in putting forward a spokesman in the form of Ervia C.E.O., Mr. Michael McNicholas. They were given very short notice of this, having being told previously they would not make someone available for comment. RTÉ had to drop other content to allow for this, which they were happy to do.

The broadcaster states that its reporter, Mr. John Burke asked Mr. Brennock to confirm that a multiplier of 1.1 existed under the Ervia pay structure if a worker exceeded their targets. He did so, but then he subsequently stated that 'the multiplier has always been below 1'. John felt this created the potential for some confusion and was eager to make sure that Mr. Brennock and he understood precisely what was at issue i.e. whether Mr. Brennock was referring to the applied use of the multiplier, over the two years since its inception at Ervia, rather than its theoretical use into the future; or whether Mr. Brennock was saying that the full 1.1 multiplier could never be achieved, for some unexplained reason.

4.2 Response to BAI

RTÉ notes in the context of fairness that in a broadcast of 16 minutes, 5 minutes was devoted to the report of information on the Ervia pay structure which had become available to the programme and the remaining 11 minutes to an interview with the CEO of the company.

The broadcaster states that the report was accurate and it may be noted that there is no challenge in the complaint to the essential facts of the report.

Broadcasting Complaint Decisions

The broadcaster states that the complaint focuses on terminology used to describe the performance-related elements of the pay structure; in the report, these terms included 'awards', 'top-up', 'bonus payments' and 'multiplier'. It states that all terms used are reasonable and fair in relation to a pay structure in which an element is related to the achievement of performance targets.

The broadcaster states that while only one term – 'multiplier' – appears to be acceptable to the complainant, this is not in itself an indication of unfairness or lack of impartiality. Neither are any of the other terms used inherently pejorative, even if they are not the preference of the complainant.

The broadcaster states that editorial independence of broadcasters includes the entitlement to use terminology which is fair, accurate and comprehensible to its listeners. The attempt to impose only that language which an organisation wishes to be used is an unwarranted inhibition on journalism in the public interest.

The complaint alleges that *This Week* sought to portray Ervia as having deceived the public. The broadcaster states that the reference to the information being new was a simple statement of fact and was done without any "sensationalism" as claimed in the complaint referral. It is a fact also that this aspect of the pay structure in Irish Water was not known before it was revealed by *This Week*.

RTÉ notes also the complaint and complaint referral's use of impressionistic and rhetorical terms such as "[the programme] slipped in a very brief reference to the fact that that the multiplier could and did reduce performance awards". The broadcaster states that the reference was not "slipped in": it was stated as part of the report, as a matter of fair reporting.

Other rhetorical and unsubstantiated elements of the complaint and referral include "the reporter's determination to pursue an angle" and the extraordinary allegation that devoting two-thirds of an item to an interview with the C.E.O. of the company represented "contrived fairness and impartiality". As part of the report which preceded the interview, *This Week* pointed out, as informed by Ervia, that bonuses had not been paid to date but were a part of the company's pay structure. Not only was this information included in the report but the interviewee was given the opportunity to underline this point.

The broadcaster states that the audience heard the interviewee explain that in his view the company had instituted a pay structure which was cost-saving and firmly based on measurable, bench-marked factors. Questioning was appropriately, fairly and impartially challenging in the interests of listeners in relation to the pay structure of a public company and facilitated the interviewee's explanation of his organisation's point of view.

The broadcaster states that, as a news programme on a public sector broadcaster with a record of breaking stories, it clearly falls within the remit of *This Week* to examine the establishment of a new public utility on which hundreds of millions have been spent in a time of limited public resources. The item of 15.02.15 was consistent with the editorial remit of the programme, well understood and expected by its audience.

Broadcasting Complaint Decisions

The broadcaster states that the pay structure of Ervia was reported fairly under Rule 3 of the BAI Code and without any misleading or misrepresentative language or tone which would have been in breach of Rule 19. The language and tone throughout was professional, objective and impartial. Further, the contributor to the item, the CEO of Ervia, was dealt with fairly.

In respect of Rule 17, the item was presented with due accuracy and RTÉ notes that nowhere in the complaint or referral is any factual inaccuracy in the broadcast indicated or substantiated. There was therefore, in respect of Rule 20, no mistake to be acknowledged, rectified or clarified, and no breach of this Rule.

5. Decision of the Compliance Committee: Reject (Unanimous)

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following a review of the material the Committee has decided to reject the complaint. In reaching this view, the Committee had regard to the Broadcasting Act 2009, Section 48(1) (a) (fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.3, 4.17, 4.19, 4.20).

In this regard:

- The Committee had regard to the programme segment as a whole and noted that the item included a contribution from an RTÉ reporter who set out the structure of the performance related pay scheme at the centre of the programme segment and that this was followed by an interview with the C.E.O. of Ervia.
- In terms of the contribution by the RTÉ reporter, the Committee found that this set out, in factual terms, the performance related pay scheme and noted how it worked and could work to the financial benefit of those who performed and to the detriment of those who did not. The segment also included reference to the fact that performance related pay awards had not been paid to date and that the performance scheme was subject to review.
- While the complainant would appear to object to the characterisation of performance related pay awards as 'bonuses', the Committee was of the view that this word was accurate and reasonable given the commonly understood meaning of the word, namely, the issuing of a payment linked to good performance. The Committee was also satisfied that the details of the performance scheme were accurate and that the submission from the complainant did not include any information which would lead it to conclude otherwise.
- While airtime afforded to a contributor is not the only factor of relevance when the Committee determines whether a programme has been fair, objective and impartial, the Committee noted that the programme afforded the C.E.O. of Ervia with the opportunity to engage in a lengthy interview on the programme (in the context of the overall duration of the programme).

Broadcasting Complaint Decisions

- The Committee also noted that the style of the interview afforded the C.E.O. the full opportunity to set out the company's own view on the performance related pay scheme in question and that he was given uninterrupted opportunity to do so on a number of occasions. In this interview, listeners would have been clear about the intent of the pay scheme from the perspective of Ervia, namely to save money and the view of the company that it had achieved its objectives and its view that the payments were not 'bonuses' but a type of pay model where staff voluntarily agreed to put a proportion of their salary 'at risk' which would only be paid based on performance. The nuances of the performance scheme, including how it applied to those who had performed but whose performance needed improvement and the manner in which it applied depending on core salary and seniority, were also clearly articulated by the C.E.O. of Evira. Given this, the Committee did not agree with the view of the complainant that its C.E.O. was not given any opportunity to challenge RTÉ's theory in respect of 'top-ups' or that the segment as a whole lacked fairness, objectivity and impartiality.
- The Committee was also of the view that the programme segment dealt with a matter of public interest and that pay issues at Ervia had been the subject of public controversy and were a legitimate subject for further investigation. The Committee found that the information provided by the broadcaster was new and that the examination of this information in the initial report and the subsequent interview with the C.E.O. of Ervia ensured that a wide range of perspectives on the issue were aired.
- In view of the above, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.3, 4.17, 4.19, 4.20) in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Mark Dennehy

Ref. No. 44/15

Station:
RTÉ One

Programme:
Prime Time

Date:
10th March 2015

1. The Programme

The complaint concerns a broadcast of RTÉ's One TV's *Prime Time* programme, its evening current affairs programme broadcast twice weekly at 9.30pm. The programme in question included an item dealing with the current review of firearms legislation and a live studio discussion on the topic of gun licensing legislation in Ireland.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.3, 4.9, 4.17, 4.19 and 4.20).

3. Complaint Summary

The complainant states the following:

- That the report failed to present to the public the current state of the firearms licensing laws, including any coverage of the basic requirements for obtaining a firearms license or the powers granted to the Gardaí and the duties placed on the Gardaí by the law in relation to firearms licensing and public safety.
- That the report failed to present to the public the actual proposals on firearms licensing which have been made by the Department of Justice Working Group and which the Joint Oireachtas Committee is considering.
- That the report failed to make clear that these proposals will only affect firearms which are solely used for target shooting and that no proposals have been made regarding the criminal abuse of firearms or regarding the minimum security standards for firearms ownership.
- That the report failed to permit equal time and equal opportunity for both interviewed guests to make their case, with Deputy McGrath being allowed to ignore the host and speak over Mr. Egan, the nominated spokesperson for the Association of Regional Game Councils, on several occasions for a significant period of time.

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- That the report failed to present the evidence which had been sent to its producer regarding significant flaws in the Garda statistics which Deputy McGrath mentioned regarding stolen firearms; i.e. that approximately 1,700 firearms had been stolen between 2010 and 2014, a number which transpired upon the release of the raw data by the Minister in the Dáil on March 3 to include hundreds of items which are not legally firearms in Ireland and which no reasonable person would count as a firearm, e.g. 12 toy guns, 26 gun safes and so forth.
- That the report failed to question the Garda statistics from PULSE given the flaws in the data regarding stolen firearms which the producer of the report was informed of by email the week prior to the report, and which Deputy McGrath was informed of by Oireachtas correspondence the week prior to the report.
- That the report contrived, with both sinister sounding music and graphics, to portray the legal ownership of firearms in a negative light despite a perfect safety record for the firearms under discussion.
- That the report on several occasions displayed air soft replicas which are not firearms in a way which unfairly portrayed legal firearms ownership.
- That on several occasions, the report showed footage of firearms which cannot be legally licensed anywhere in the EU under EU directive 91/477/EEC Section 6 while discussing proposals that only affect the legal licensing of firearms, thus creating an impression that such firearms are under discussion when they are not.
- That the report presented figures without any form of context in a manner which created fear in the audience, such as listing the statistic of approximately 1,800 licensed handguns in Ireland without the context that this represented a 30% reduction in handgun ownership compared to the ownership levels before the Gardaí refused to license pistols in 1972.
- That on several occasions it was alleged or implied that firearms stolen from licensed firearms owners were used in crime, but at no time was it made clear that despite repeated requests in the Dáil, had any confirmed case of a stolen handgun being used in crime been recorded.
- That the report completely failed to discuss the current powers and obligations on the Gardaí with respect to the issuing of firearms and public safety as laid forth in Section 4(2)(b) of the Firearms Act as amended and Section 5 of the same act.
- That Olympic pistol shooting was misrepresented by the report as having a defined standard pistol, which it does not; indeed many of the firearms the proposals would affect may be used in the Olympics.
- That the report used unfair editing and voiceover narration to portray deer stalking in a very negative light and failed to present the reasons for deer stalking, the legislation governing it, the effects that banning it would have and portraying it as a casual activity undertaken without significant reason.

Broadcasting Complaint Decisions

- That the report introduced and discussed mass shootings in Hungerford and Dunblane without discussing their context or details, ignoring the many issue that the Cullen Inquiry raised with the Scottish Police in Dunblane and the documented incidents preceding Hungerford.
- That blatant editing was used by the report to cut off an interviewee while he was attempting to explain the many safeguards present in existing firearms licensing law, thus giving the impression to the audience of a less regulated situation than exists in reality.
- That the interview permitted the use of unsubstantiated and incorrect statistics without challenge despite the producer having been informed of the problems with these statistics over a week beforehand.
- That the host of the interview in the report deliberately prevented Mr. Egan from correcting Deputy McGrath's use of an incorrect statistic relating to stolen firearms by saying Mr. Egan would "bamboozle us with statistics" even though the producer of the report had been informed a week earlier of the flaws in that statistic as related by the Minister in the Dáil.
- That at no point in the report was it presented that firearms owners played an enormous role in drafting the current legislation through the Firearms Consultation Panel.
- That at no point in the report was any mention made or footage shown of the Joint Oireachtas Committee hearings on the current proposals.

4. Broadcaster's Response

4.1 Initial response to complainant

RTÉ states the following:

- The report examined proposals from the *Department of Justice and Equality / An Garda Síochána Working Group on Review of Firearms Licensing*, in particular the proposals to ban most handguns and semi-automatic rifles and shotguns which are capable of holding more than three rounds. The broadcaster states that this was made clear in the introduction to the report and in the report itself.
- The report included an interview with Mr. Des Crofton, *National Director of the National Association of Regional Game Councils*, who stated "People who hold firearm certificates in this country go through a very rigorous vetting which includes not only the character of the applicant, whether they have criminal records, it includes also for example we have to provide details of our medical practitioners, give access to the Gardaí to contact them just in case there's any doubt or any query about mental state". The complainant recognises himself in his complaint that this was included in the report when he claims "blatant editing was used". The broadcaster states that in any report there is only so much time that can be given to someone to explain their position.

Broadcasting Complaint Decisions

RTÉ is satisfied the excerpt included of Mr. Crofton adequately highlighted what he himself described as the rigorous vetting regime already in place.

- In respect of balance, the broadcaster states that both Deputy McGrath and Mr. William Egan spoke for almost exactly the same amount of time during the debate. The presenter challenged both guests on what they were saying and in fact at one stage repeatedly interrupted Deputy McGrath and warned him to let Mr Egan speak.
- In relation to the statistics regarding firearms, the broadcaster states that the report included the number of licensed firearms in Ireland and the breakdown of the type of firearms certificates have been issued for. The disputed figures relate to the number of firearms stolen between 2010 and 2014.

This was not included in the report but was raised by Deputy McGrath during the studio debate. Mr. Egan immediately responded by saying “You’re misrepresenting the statistics – the statistics in fact that have been published – there’s a problem – they’re unreliable in essence – at the end of February statistics were published which suggested that 1,710 firearms had been stolen – that in fact was contested by the sporting associations I’m associated with and within ten days the Minister for Justice had qualified those statistics reducing them by 600”.

- The broadcaster states that the context in which the replica guns were shown is in fact the opposite of what the complainant claims. The report stated that anyone can walk into a shop and buy these replica guns which look the part – and that is an issue the Justice committee will have to take into account when it’s deciding if there is merit in proposals to ban certain firearms. The replica firearms were also shown in the introduction of the report. The script read “Let’s talk about guns. From long rifles to small pistols and everything in between”. The replicas guns were shown as the words “and everything in between” were being said.
- The broadcaster states that, as with all figures and statistics, each side can interpret them differently. The report set out the facts and the arguments of both sides. Each side also had an opportunity to put forward its arguments in studio. Mr. William Egan was suggested to the programme by *Association of Regional Game Councils* as a spokesperson and as I have already explained he had fair opportunity to raise any arguments he wished.

4.2 Response to BAI

RTÉ states the complaint to the broadcaster states that: *“the report failed completely to present the current state of firearms licensing laws, including basic requirements for obtaining a firearms licence”* and *“completely failed to discuss the current powers and obligations on the Gardaí with respect to the issuing of firearms and public safety.”* The broadcaster states that this is incorrect.

Broadcasting Complaint Decisions

The report included an interview with Mr. Des Crofton, *National Director of the National Association of Regional Game Councils*, who stated: “*People who hold firearm certificates in this country go through a very rigorous vetting which includes not only the character of the applicant, whether they have criminal records, it includes also for example we have to provide details of our medical practitioners, give access to the Gardaí to contact them just in case there’s any doubt or any query about mental state*”. This excerpt from Mr Crofton’s interview adequately highlighted what he himself described as the rigorous vetting regime already in place.

They further state:

- The report and the subsequent studio discussion stated that guns used by target shooters would be affected and that, for instance, the firearms generally used by deerstalkers and many shotguns used by farmers would be unaffected by the proposals. The report focussed on proposals that have actually been put forward, rather than ones which haven’t, such as the ones mentioned in the complaint. However, Deputy McGrath was questioned on whether An Garda Síochána should target illegally held guns and not guns used safely by most people.
- Disputed figures in relation to the number of firearms stolen between 2010 and 2014 were emphatically not included in the *Prime Time* report but were raised by Deputy McGrath during the studio debate. In a nutshell, the contended statistics were not reported by RTÉ and were challenged (and therefore not “permitted”) when put forward by a contributor. Mr. Egan was given fair opportunity to refute the statistic put forward by Deputy McGrath before the discussion was moved on by the presenter in the interests of full debate.
- The music and graphics used in the report were entirely appropriate to the sombre aspects of the topic of gun abuse. RTÉ notes that music was used only in relation to those aspects of the topic, to underline their serious consequences.
- The context in which these replica guns were shown is in fact the opposite of that claimed in the complaint. The report stated that anyone can walk into a shop and buy these replica guns which look the part – and that this is an issue which the Justice Committee will have to take into account when deciding if there is merit in proposals to ban certain firearms.
- The visit of the Oireachtas Justice Committee to the range in Nurney was accurately presented, including stating and showing that three members of the committee attended. It also stated they are among those currently drafting the recommendations on future gun policy. There was no editorial necessity to report the other matters referred to in the complaint and no unfairness or inaccuracy arising from not doing so.
- All interviews in the report were edited (and therefore of course not “interrupted”), including those of the relatives of the victims and contributors such as Mr. Crofton. All were edited fairly to reflect the views of the participants, adequately and accurately within the time available.

Broadcasting Complaint Decisions

RTÉ notes that no complaint in respect of the editing of their contributions by any of the participants in the video report has been received by the broadcaster.

- All figures used in the report were official figures, were accredited, and were not used out of context. As with all figures and statistics, they can be interpreted differently. The report set out the facts and the arguments of both sides. Each side also had an opportunity to put forward its arguments in studio.
- The complaint alleges that deer stalking was portrayed in a negative light and without presenting the reasons for deer stalking. Viewing will confirm that in fact the report made it clear that the hunting shown was “part of a long standing tradition.” The very first mention of deer stalking in the report describes it as a “valuable tradition”.

5. Decision of the Compliance Committee: Reject (Unanimous)

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following a review of the material the Committee has decided to reject the complaint. In reaching this view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.3, 4.9 4.19, 4.20).

In this regard: -

- The Committee noted that the issues highlighted by the complainant were not borne out by a review of the programme in question.
- The Committee found that the current framework for the licensing of firearms was broadly outlined, as were some of the requirements for the obtaining of a firearms licence and the safeguards in place. It was also evident that the main impact of the proposals from An Garda Síochána which were to be considered by a government Joint Committee would be on sport and target shooters. This was clearly stated in the programme itself and it was juxtaposed by reference to the impact on deer hunting, an activity which the programme makers said would not be impacted by proposals being made by An Garda Síochána in respect of changes to the firearms licensing framework. In terms of deer hunting, the Committee did not agree with the complainant that deer hunting was portrayed in a negative light. The reasons for deer hunting were set out and the activity was factually described and displayed. In addition, the economic and recreational benefits were also highlighted during the programme.
- In terms of how the studio debate was handled, the Committee noted that it was handled in the usual manner for such debates with the presenter managing the discussion so that each party was afforded the opportunity to set out their views. There is no requirement for equal time in a programme discussion, rather, the requirement is for fairness, objectivity and impartiality.

Broadcasting Complaint Decisions

In this context, the Committee noted that Deputy McGrath, in comparison to Mr. Egan, was more forthright in terms of the tone and manner of his contributions but also noted that Mr. Egan was also afforded adequate opportunity to answer the questions of the presenter and rebut comments by Deputy McGrath that Mr. Egan felt were incorrect. While the presenter requested Mr. Egan to avoid 'bamboozling' the audience with statistics, the Committee found that this was an editorial decision for the presenter to make in circumstances where she felt that too many statistics would confuse the audience.

Notwithstanding this, Mr. Egan clearly made his point that the statistics quoted by Deputy McGrath in terms of firearms were, in his opinion, incorrect. While the presenter did not question the statistics presented by Deputy McGrath, listeners would have been informed, on account of Mr. Egan's contribution, of a view on the statistics that was different to that presented by Deputy McGrath.

- In terms of the music and graphics; such matters are editorial decisions for broadcasters. Approaches to music and graphics are intended to make a programme more engaging and interesting. The programme set out to examine a particular question, namely - "*Do we need to tighten up our gun laws to prevent further tragedies?*" In this context, the Committee saw no issue with the graphics or music, given the seriousness of the topic.
- Further, from its review of the programme, the Committee did not agree with the complainant that the programme would create a negative view of those who legally held firearms. Rather, its focus was on whether there were any risks to public safety arising from the current licensing regime for firearms. It was clearly stated by one contributor, representing those who use firearms legally, that the issue is not the weapons but rather the individuals who hold them and went on to state that Ireland has a very rigorous licensing regime which ensures that legally held firearms are held by those who are responsible and do not pose a threat to society. The risk highlighted in the programme was that legal gun ownership does present potential risks in terms of theft for criminal activity and also from the fact that there is always the potential that someone certified to hold a firearm legally may use it to kill. A number of examples were used to highlight these various risks, including the killings in Dunblane and Hungerford in Britain as well as deaths caused in Ireland. The Committee did not agree that the highlighting of these risks could be taken to mean that those who hold firearms legally are generally a risk to society.
- The complainant states that the programme did not include certain content. This included the absence of information on the role that owners of legal firearms have played in the development of current legislation, the inclusion of footage of Joint Oireachtas hearings on the proposals for changes to licensing that were the focus of the programme, or a more detailed analysis of the Hungerford or Dunblane killings. However, no programme will include, or is required to include, all information relevant to a topic since to do so may be neither practical nor necessary. The Committee did not take the view that the information presented or information not included resulted in unfairness or a lack of objectivity and impartiality.

Broadcasting Complaint Decisions

- In view of the above, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.3, 4.9, 4.19, 4.20) in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Garrett O' Doherty

Ref. No. 48/15

Station:
RTÉ One

Programme:
Prime Time

Date:
10th March 2015

1. The Programme

The complaint concerns a broadcast of RTÉ's One TV's *Prime Time* programme, its evening current affairs programme broadcast twice weekly at 9.30pm. The programme in question included an item dealing with the current review of firearms legislation and a live studio discussion on the topic of gun licensing legislation in Ireland.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, section 48(1)(a) (fairness, objectivity and impartiality in current affairs).

3. Complaint Summary

- The complainant states he considers the music put to segments of the item entirely inappropriate. He states that it was sinister and more suited to a horror film than a current affairs programme. The complainant claims that some of the images and/or graphics used during the segment were inappropriate. In particular, RTÉ specifically used images of certain firearms which are entirely illegal in this country and yet by presentation during this programme, RTÉ implied that they had been licensed and legally held – specifically a pistol with silencer. He states that other images and snippets were shown from a woman who had lost her son without reference to the background to how his death came about. He states that this almost implied that he was murdered by a licensed firearm holder.
- The complainant believes that the programme failed to accurately introduce the subject matter, with no clear history as to how the current review on firearms licensing had come about or the history in Ireland relating to legally held firearms. He states that, likewise, no details was provided as to the current legal requirements or process for applying for a firearms license, with particular reference to Garda vetting along with medical and personal reference required as part of the application process.

He states that a viewer might therefore believe a firearm license may be obtained as easily as a dog or television license.

- The complainant claims that the programme came across as entirely biased. He states that the presenter regularly interrupted one of the parties being interviewed (Mr. Egan), while allowing Mr. Finian McGrath T.D. what he states was more than ample uninterrupted time to speak his mind. The presenter also interrupted Mr. Egan mid-sentence when he was responding to a question stating he would “*bamboozle them with figures*”.

Broadcasting Complaint Decisions

- The complainant believes that the programme was not accurately and correctly researched to the extent that Mr. McGrath was permitted to state that approximately 1,700 guns were stolen between 2010 and 2014 inclusive. He states that this was despite the fact that Mr. McGrath and his colleagues on the Justice Committee were made aware by official sources that this 1,700 stolen firearms report was grossly inaccurate and misleading.
- The complainant states that reference was made to over 150,000 illegal firearms being held in Ireland with no information source provided. Likewise, specific figures were provided in terms of the number of firearms license holder in Ireland and the number of firearms held by those licensed holders. The complainant states that, again, no source was provided for this information.
- The complainant states that regular mention was made directly and indirectly to criminals and illegal activities. Firearms licensed holders are upstanding members of the community entrusted by the Gardai to hold specific firearms following careful vetting. The programme wrongly linked these law abiding citizens to criminal or illegal elements.

4. Broadcaster's Response

4.1 Initial response to complainant

No response was received apart from the automated reply from the broadcaster.

RTÉ state that *Prime Time* received a number of complaints about this item, all of which received detailed responses from the Deputy Editor of 'Prime Time'. Due to an administrative error, Mr O' Doherty's complaint was overlooked. It is similar in content to many of those which were answered and it was a simple oversight which led to Mr O' Doherty not receiving a reply, an error for which RTÉ wishes to apologise.

4.2 Response to BAI

- RTÉ state that the video report examined proposals from the *Department of Justice and Equality / An Garda Síochána Working Group on Review of Firearms Licensing*, in particular the proposals by the Working Group to ban most handguns and semi-automatic rifles and shotguns which are capable of holding more than three rounds. This was made clear in the introduction to the report and in the report itself.
- The broadcaster states that the music and graphics used in the report were entirely appropriate to the sombre aspects of the topic of gun abuse. RTÉ notes that music was used only in relation to those aspects of the topic, to underline their serious consequences.

Broadcasting Complaint Decisions

- The complainant takes issue with an image of an illegally held firearm used in the report. The broadcaster states that the pistol with a silencer is shown among a number of weapons seized by Gardaí investigating criminality. The broadcaster states that the reporter had just mentioned that it was not known if a weapon used to murder someone was licensed or illegally imported into Ireland.

The gun in question is shown as Chief Superintendent Fergus Healy is saying *“there is a pool of twenty-five guns out there that have been used in the shootings over the last number of years.”* He goes on to say *“the greater success we have in dealing with the illegal importation of these guns, it basically turns the criminal’s attention to the people who have the guns legally.”* It was not stated or implied that all the guns shown by Gardaí were either legally or illegally held.

- The complainant also criticises the inclusion of a woman whose son was shot dead in 2006. The broadcaster states that this guest was included without reference to the background to how her son’s death came about and that it was *“almost implying that he was murdered by a licensed firearm holder.”* The broadcaster states that, in fact, the report set out in detail how the guest’s nineteen-year-old son was shot dead. It pointed out that a major criminal was sleeping upstairs in the house. The reporter stated, *“It’s not known if the gun used ...was a once licensed firearm or one of the many handguns illegally imported into Ireland.”* The broadcaster states that there was no implication whatsoever that a licensed firearm holder was responsible for the murder.
- In relation to the inclusion in the report of an interview with the contributor whose son was murdered, the broadcaster states that senior Gardaí are on record as saying that one of the reasons they have proposed stricter firearms laws is because legally held firearms have been stolen and used to kill people. The views of people such as those whose loved ones have been killed by guns are therefore very relevant to this debate. In this regard, the woman interviewed about her son’s death made it clear in the report that she supports stricter gun controls.
- Another element of the complaint relates to the inclusion of footage from a murder which had occurred in the weeks before the report was broadcast. The broadcaster states that the reporter made it clear in his voiceover that this image was included in the context of the wider problems with gun crime in Ireland. At no point was it implied that a licensed firearm holder was involved.
- The complainant states that *“no detail was provided as to the current legal requirements or process for applying for firearms licence...”*, RTÉ state that this is not correct. The report included an interview with Mr. Des Crofton, *National Director of the National Association of Regional Game Councils*, who outlined clearly the rigorous Garda vetting which the applicant must undergo.
- The broadcaster states that while the safety record of gun clubs in Ireland was not referenced (either negatively or positively), a number of contributors had the opportunity in the report to characterise sport shooting as a responsible, inclusive pursuit.

Broadcasting Complaint Decisions

- The complainant also takes issue with the presenter's handling of the studio debate following the report, claiming there was not equal treatment for both parties. The broadcaster states that the debate involved Deputy Finian McGrath, a member of the *Oireachtas Justice, Defence and Equality Committee* (which was examining the proposals) and solicitor Mr. William Egan, who was suggested to the programme by the *Association of Regional Game Councils* as a spokesperson. The broadcaster states that during the debate both contributors were given fair opportunity to put forward their arguments. In fact, Deputy McGrath and Mr. Egan spoke for almost exactly the same amount of time. The presenter impartially challenged both guests on their statements and, in the context of claimed interruptions, it may be noted that at one point the presenter insisted emphatically that Deputy McGrath allow Mr Egan speak.
- The broadcaster states that the statistic quoted by Deputy McGrath during the debate about the number of firearms stolen between 2010 and 2014, did not go unchallenged. Mr Egan immediately responded by saying, *"You're misrepresenting the statistics – the statistics in fact that have been published – there's a problem – they're unreliable in essence – at the end of February statistics were published which suggested that 1,710 firearms had been stolen – that in fact was contested by the sporting associations I'm associated with and within ten days the Minister for Justice had qualified those statistics reducing them by 600."*
- The broadcaster states that Deputy McGrath also quoted during the studio discussion a figure of 150,000 illegally held firearms, a statistic with which the complainant takes issue. As was actually pointed out by Deputy McGrath, that figure was not included in the *Prime Time* report but was quoted by the Deputy. The quoted figure of 150,000 illegally held firearms in Ireland, is one that was included in submissions to the Justice, Defence and Equality Committee by those opposing the stricter gun controls as part of their argument against the proposals. The programme presenter immediately challenged Mr. McGrath, asking him if An Garda Síochána shouldn't then be targeting illegally held firearms rather than those that are legally held.
- It is also stated by the complainant that no source was given for the statistics included in the report about the number of firearms license holders in Ireland and the number of firearms held by them. The broadcaster states that this is incorrect. The onscreen graphic ('5 March 2015, An Garda Síochána') clearly cited An Garda Síochána as the source of the statistics.
- The complainant alleges that by referencing criminals or illegal activities the programme wrongly linked law-abiding firearms licence-holders to criminal elements. The broadcaster states that, in fact, the broadcast examined the issues surrounding gun ownership in Ireland and the concerns of Gardaí about the current licensing regime.
- The broadcaster states that, as mentioned above, senior Gardaí are on record as saying that one of the reasons they have proposed more strict firearms legislation is because legally held firearms have been stolen and used to kill people.

Broadcasting Complaint Decisions

This is the context in which the proposals have been put forward, and for *Prime Time* to examine the proposals it was of course necessary to include the view of An Garda Síochána. Not to have done so would have meant discussing the issue without allowing one side to articulate one of its main arguments.

- The complainant alleges that the presenter, in moving on the discussion from an over-detailed elaboration of statistics, “insulted” viewers. The broadcaster states that, in fact, by moving on the discussion to cover the key points under debate, the presenter was serving the interests of the audience.

RTÉ state that the programme had no “agenda” such as alleged by the complainant and there was in the programme no expression whatsoever of the broadcaster’s own views. The programme, both in its accurate and impartial report based on reliable sources and in its impartial and fair conduct of the studio debate, allowed different perspectives in the debate the opportunity to put forward their arguments while also appropriately.

5. Decision of the Compliance Committee: Reject (Unanimous)

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following a review of the material the Committee has decided to reject the complaint. In reaching this view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs).

In this regard: -

- The Committee noted that the issues highlighted by the complainant were not borne out by a review of the programme in question.
- The Committee found that the current framework for the licensing of firearms was broadly outlined, as were some of the requirements for the obtaining of a firearms licence and the safeguards in place. In this respect a representative of users of legally held firearms stated that the licensing process was rigorous, extending not just to assessing the character of the individual but also medical issues and rights of Gardaí to request information to help assessments in respect of medical issues.
- In terms of the music and graphics; such matters are editorial decisions for broadcasters. Approaches to music and graphics are intended to make a programme more engaging and interesting. The programme set out to examine a particular question, namely - "*Do we need to tighten up our gun laws to prevent further tragedies?*" In this context, the Committee saw no issue with the graphics or music, given the seriousness of the topic.
- In terms of how the studio debate was handled, the Committee noted that it was handled in the usual manner for such debates with the presenter managing the discussion so that each party was afforded the opportunity to set out their views.

Broadcasting Complaint Decisions

There is no requirement for equal time in a programme discussion, rather, the requirement is for fairness, objectivity and impartiality. The Committee noted that Deputy McGrath, in comparison to Mr. Egan was more forthright in terms of the tone and manner of his contributions but also noted that Mr. Egan was also afforded adequate opportunity to answer the questions of the presenter and rebut comments by Deputy McGrath that Mr. Egan felt were incorrect. While the presenter requested Mr. Egan to avoid 'bamboozling' the audience with statistics, the Committee found that this was an editorial decision for the presenter to make in circumstances where she felt that too many statistics would confuse listeners. Notwithstanding this, Mr. Egan clearly made his point which was that it was his view and the view of those that he represented that the statistics quoted by Deputy McGrath in terms of firearms were incorrect. While the presenter did not question the statistics presented by Deputy McGrath, audiences would have been informed, on account of Mr. Egan's contribution, of a view on the statistics that was different to that presented by Deputy McGrath.

- In terms of the programmes portrayals of those who legally hold a firearm, the Committee found that the programme examined the different facets of Irish society where legal firearms play a role. This included the deer hunting sector where the recreational and economic benefits of hunting were set out. Further, on two occasions, the inclusive nature of target shooting as well as the good character of target shooters (and their responsible approach to firearm ownership) were set out. The programme examined broader issues in terms of Ireland's gun culture, including crimes which involved firearms, held legally and illegally. The Committee did not agree with the complainant that the portrayal of these crimes would cause viewers to link holders of legal firearms with criminality. Rather, the programme set out the role of legally held guns in Irish culture, the risks arising in terms of theft and misuse and posed the question of whether the Gardaí's proposal to ban handguns and high-powered rifles should be adopted and how this might impact on those legally holding firearms.
- The complainant states that the programme did not include certain content. This included the absence of any detail on the history of firearms licensing, context for the murder of a young man or more detail about the licensing regime. The Committee noted that the item was approximately twenty minutes in duration. Given that any programme segment may be time bound, it will not include, nor is it required to include, all information relevant to a topic and to do so may be neither practical nor necessary.

The Broadcasting Act 2009 and the BAI's code on news and current affairs require the content that is broadcast to be fair, objective and impartial. Following review of the compliant and broadcast material, the Committee did not take the view that the information presented or not included resulted in a lack of fairness, objectivity or impartiality.

- In view of the above, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Gerald Fitzgibbon

Ref. No. 52/15

Station:

RTÉ One

Programme:

Prime Time

Date:

10th March 2015

1. The Programme

The complaint concerns a broadcast of RTÉ's One TV's *Prime Time* programme, its evening current affairs programme broadcast twice weekly at 9.30pm. The programme in question included an item dealing with the current review of firearms legislation and a live studio discussion on the topic of gun licensing legislation in Ireland.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009 Section 48(1)(a)(fairness, objectivity and impartiality in current affairs), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2).

3. Complaint Summary

- The complainant states that he was very upset by the report on proposed new firearms legislation, which he states portrayed people like him – licensed firearm holders – as potential rampage murderers. This is despite the fact that he has no criminal record and has undergone substantial background checks, provided character referees, provided access to his personal medical record and agreed to access to my home at any time by Gardaí.
- The complainant states that the programme contained a piece with a Garda Superintendent, who was allowed mention his fear of a gun culture emerging, while demonstrating handguns which can no longer be licensed by new applicants under 2008 legislation. The complainant states that the only handgun in the piece which can be licensed today by a new applicant was the one the Superintendent “approved”. The complainant believes that this clearly presented a biased impression of gun ownership.
- The complainant claims that the report also failed to mention the origination of the proposed ban on certain types of firearms, which came only after a large number of court cases were lost by Gardaí regarding firearms licensing following 2009 legislation. He states that this legislation was born out of round table agreement between stakeholders and which greatly strengthened applicant suitability and firearms storage regulation.
- The complaint claims that the report indulged in scaremongering around gun murders which he states is in dispute. In this regard, he notes a multiple-year falls in gun crime and gun seizures and a 50% reduction in thefts of legal firearms between 2010 and 2013, according to CSO statistics.

Broadcasting Complaint Decisions

- Referring to the figures mentioned in the programme about the number of firearms licensed in this country, the complainant states that RTÉ was made aware of the dispute around said official statistics, which were officially corrected prior to the programme's airing. He states that it was incumbent on RTÉ therefore, to ensure clarity around the figures quoted. Further, the disputed statistics were used by sports shooters to question the basis and the credibility of the Department of Justice and Equality / An Garda Síochána proposals, which was not reflected in the programme. The complainant states that he believes RTÉ placed more emphasis on reflecting Garda/Department of Justice and Equality arguments, failed to recognise its lack of proportionality –evidenced by the reply to his complaint – and failed in its duty of care to report the issue in a fair, objective, accurate and dispassionate manner.

4. Broadcaster's Response

4.1 Initial response to complainant

RTÉ state it rejects the complainant's allegation that the report portrayed licensed firearm holders "*as potential rampage murderers*". The report examined the issues surrounding gun ownership in Ireland and the concerns of An Garda Síochána about the current licensing regime.

The broadcaster states that An Garda Síochána are on the record (at a hearing of the Oireachtas Justice Committee on December 17th 2014) as stating that they feel stronger regulation and prohibition of certain firearms is required to prevent massacres such as Hungerford in 1987 and Norway in 2011, where the culprits used their legally held firearms.

The broadcaster states that at the Committee, An Garda Síochána stated that firearms designed for use for military and police purposes and currently licensable within the State pose a potentially devastating and lethal risk to the community. This is the context in which the Garda proposals have been put forward, and for the RTÉ report to examine the proposals, it was of course, necessary to reflect the view of An Garda Síochána. Not to have done so would have meant discussing the issue without allowing one side to articulate one of its main arguments. Those who oppose the proposals were of course given a fair opportunity to put forward their case against the new measures being suggested. The complainant's point about the substantial background checks currently required was articulated by Mr. Des Crofton, National Director of the National Association of Regional Game Councils, who outlined the rigorous Garda vetting procedure.

In relation to the complaints about the figures used in the report, the broadcaster state that these were all official figures and served to inform the viewer about the current number of firearms licensed in this country. The broadcaster states that the number of stolen firearms was mentioned by Deputy Finian McGrath during the studio discussion where each side was given fair opportunity to make the arguments they wished.

Broadcasting Complaint Decisions

The broadcaster states that solicitor William Egan, who was suggested to the programme by Association of Regional Game Councils as a spokesperson, responded to Deputy McGrath by saying *“You’re misrepresenting the statistics – the statistics in fact that have been published – there’s a problem – they’re unreliable in essence – at the end of February statistics were published which suggested that 1,710 firearms had been stolen – that in fact was contested by the sporting associations I’m associated with and within ten days the Minister for Justice had qualified those statistics reducing them by 600”*.

Having reviewed the item in great detail RTÉ is entirely satisfied that it was fair and balanced.

4.2 Response to BAI

- RTÉ state that the video report examined proposals from the *Department of Justice and Equality / An Garda Síochána Working Group on Review of Firearms Licensing*, in particular the proposals by the Working Group to ban most handguns and semi-automatic rifles and shotguns which are capable of holding more than three rounds. This was made clear in the introduction to the report and in the report itself.
- The broadcaster states that the music and graphics used in the report were entirely appropriate to the sombre aspects of the topic of gun abuse. RTÉ notes that music was used only in relation to those aspects of the topic, to underline their serious consequences.
- The complainant takes issue with an image of an illegally held firearm used in the report. The broadcaster states that the pistol with a silencer is shown among a number of weapons seized by Gardaí investigating criminality. The reporter had just mentioned that it was not known if a weapon used to murder someone was licensed or illegally imported into Ireland. The gun in question is shown as a Garda Chief Superintendent is saying *“there is a pool of twenty-five guns out there that have been used in the shootings over the last number of years.”* He goes on to say *“the greater success we have in dealing with the illegal importation of these guns, it basically turns the criminal’s attention to the people who have the guns legally.”* It was not stated or implied that all the guns shown by Gardaí were either legally or illegally held.
- The complainant also criticises the inclusion of Christine Campbell whose son Anthony was shot dead in 2006. He states that Ms. Campbell was included without reference to the background to how her son’s death came about and that it was *“almost implying that he was murdered by a licensed firearm holder.”* The broadcaster states that, in fact, the report set out in detail how nineteen-year-old Anthony Campbell was shot dead. It pointed out that a major criminal was sleeping upstairs in the house. The reporter stated, *“It’s not known if the gun used to murder Anthony Campbell was a once licensed firearm or one of the many handguns illegally imported into Ireland.”* There was no implication whatsoever that a licensed firearm holder was responsible for the murder.

Broadcasting Complaint Decisions

- In relation to the inclusion of an interview with Ms. Campbell in the report, the broadcaster states that senior Gardaí are on record as saying that one of the reasons they have proposed stricter firearms laws is because legally held firearms have been stolen and used to kill people. The views of people such as Christine Campbell whose loved ones have been killed by guns are therefore very relevant to this debate. Ms Campbell made it clear in the report that she supports stricter gun controls.
- Another element of the complaint relates to the inclusion of footage from a murder which had occurred in the weeks before the report was broadcast. The broadcaster states that the reporter made it clear in his voiceover that this image was included in the context of the wider problems with gun crime in Ireland. At no point was it implied that a licensed firearm holder was involved.
- The complainant states that *“no detail was provided as to the current legal requirements or process for applying for firearms licence...”*, RTÉ stated that this is simply not correct. The report included an interview with Mr. Des Crofton, *National Director of the National Association of Regional Game Councils*, who outlined clearly the rigorous Garda vetting which the applicant must undergo.
- The broadcaster states that while the safety record of gun clubs in Ireland was not referenced (either negatively or positively), a number of contributors had the opportunity in the report to characterise sport shooting as a responsible, inclusive pursuit.
- The complainant also takes issue with the presenter’s handling of the studio debate following the report, claiming there was not equal treatment for both parties. The broadcaster states that the debate involved Deputy Finian McGrath, a member of the *Oireachtas Justice, Defence and Equality Committee* (which was examining the proposals) and solicitor Mr. William Egan, who was suggested to the programme by the Association of Regional Game Councils as a spokesperson. During the debate, both contributors were given fair opportunity to put forward their arguments. In fact, Deputy McGrath and Mr Egan spoke for almost exactly the same amount of time. The presenter impartially challenged both guests on their statements and, in the context of claimed interruptions, it may be noted that at one point the presenter insisted emphatically that Deputy McGrath allow Mr Egan speak.
- The broadcaster states that the statistic quoted by Deputy McGrath during the debate about the number of firearms stolen between 2010 and 2014, did not go unchallenged. Mr Egan immediately responded by saying, *“You’re misrepresenting the statistics – the statistics in fact that have been published – there’s a problem – they’re unreliable in essence – at the end of February statistics were published which suggested that 1,710 firearms had been stolen – that in fact was contested by the sporting associations I’m associated with and within ten days the Minister for Justice had qualified those statistics reducing them by 600.”*

Broadcasting Complaint Decisions

- The broadcaster states that Deputy McGrath also quoted during the studio discussion a figure of 150,000 illegally held firearms, a statistic with which the complainant takes issue. As was actually pointed out by Deputy McGrath, that figure was not included in the *Prime Time* report but was quoted by the Deputy.

The quoted figure of 150,000 illegally held firearms in Ireland is one that was included in submissions to the Justice, Defence and Equality Committee by those opposing the stricter gun controls as part of their argument against the proposals. The programme presenter immediately challenged Mr. McGrath, asking him if An Garda Síochána shouldn't then be targeting illegally held firearms rather than those that are legally held.

- It is also stated by the complainant that no source was given for the statistics included in the report about the number of firearms license holders in Ireland and the number of firearms held by them. The broadcaster states that this is incorrect. The onscreen graphic ('5 March 2015, An Garda Síochána') clearly cited An Garda Síochána as the source of the statistics.
- The complainant alleges that by referencing criminals or illegal activities the programme wrongly linked law-abiding firearms licence-holders to criminal elements. The broadcaster states that, in fact, the broadcast examined the issues surrounding gun ownership in Ireland and the concerns of Gardaí about the current licensing regime.
- As mentioned above, senior Gardaí are on record as saying that one of the reasons they have proposed more strict firearms legislation is because legally held firearms have been stolen and used to kill people. This is the context in which the proposals have been put forward, and for *Prime Time* to examine the proposals it was of course necessary to include the view of An Garda Síochána. Not to have done so would have meant discussing the issue without allowing one side to articulate one of its main arguments.
- The complainant alleges that the presenter, in moving on the discussion from an over-detailed elaboration of statistics, "insulted" viewers. The broadcaster states that, in fact, by moving on the discussion to cover the key points under debate, the presenter was serving the interests of the audience.

RTÉ state that the programme had no "agenda" such as alleged by the complainant and there was in the programme no expression whatsoever of the broadcaster's own views. The programme, both in its accurate and impartial report based on reliable sources and in its impartial and fair conduct of the studio debate, allowed different perspectives in the debate the opportunity to put forward their arguments while also appropriately.

Broadcasting Complaint Decisions

5. Decision of the Compliance Committee: Reject (Unanimous)

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following a review of the material the Committee has decided to reject the complaint. In reaching this view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs); *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2).

In this regard: -

- The Committee noted that the issues highlighted by the complainant were not borne out by a review of the programme in question.
- The Committee found that the current framework for the licensing of firearms was broadly outlined, as were some of the requirements for the obtaining of a firearms licence and the safeguards in place. In this respect a representative of users of legally held firearms stated that the licensing process was rigorous, extending not just to assessing the character of the individual but also medical issues and rights of Gardaí to request information to help assessments in respect of medical issues. The Committee also noted that the programme included factual descriptions of the different types of legal gun owners, including deer hunters and sport and target shooters. In particular, the programme set out the recreational and economic benefits of deer hunting and on two occasions, the inclusive nature of target shooting as well as the good character of target shooters (and their responsible approach to firearm ownership).
- In terms of the type of guns shown during the programme, the Committee was of the view that the purpose of the inputs in the programme by An Garda Síochána were not focused on legal gun ownership but rather on the range of guns which are circulating in the State and the risks that these posed. The Committee did not agree with the complainant that the displays of guns would amount to the creation of a biased impression of legal gun ownership.
- In terms of how the issue of gun statistics, the Committee noted that this issue was dealt with in the studio debate that followed the pre-recorded segment, in particular via the interaction between Deputy McGrath and Mr. Egan, who was representing the views of legal gun owners.

The Committee noted that Mr. Egan was afforded adequate opportunity to answer the questions of the presenter and rebut comments by Deputy McGrath that Mr. Egan felt were incorrect. Mr. Egan clearly made his point that it was his view that the statistics quoted by Deputy McGrath in terms of firearms were incorrect. While the presenter did not question the statistics presented by Deputy McGrath, audiences would have been informed, on account of Mr. Egan's contribution, of a view on the statistics that was different to that presented by Deputy McGrath.

Broadcasting Complaint Decisions

- In view of the above, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2) in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Dónal O’Sullivan-Latchford (on behalf of the Family and Media Association) **Ref. No. 58/15**

Station:
RTÉ Radio 1

Programme:
The John Murray Show

Date:
11th February 2015

1. The Programme

The complaint refers an edition of *The John Murray Show*. The programme, broadcast weekdays from 9am-10am is a mix of entertainment, human interest and lifestyle programming. In particular, the complaint concerns part of a discussion on this programme with the poet Mr. Pádraig Ó Tuama who is also a theologian and a gay man, in relation to his views on the then forthcoming referendum on marriage.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009 (Section 48 (1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Principle 2 and Rules 4.1, 4.2, 4.3, 4.22).

3. Complaint Summary

The complaint states that towards the end of the interview with Mr. Pádraig Ó Tuama, the presenter asked for his views on the proposed referendum on same sex marriage. The complainant states that the presenter said:

“Presumably you’re taking a lot of interest in the proposed referendum on same sex marriage?”

The complainant states that, while the presenter did, albeit in what he describes as a limited manner, put other views to him on the referendum, the discussion on the referendum amounted to a soft interview in support of changing the constitution to permit same sex marriage. The complainant states that this was greatly strengthened by the previous content of the interview. The complainant believes this part of the interview was not even-handed and fair.

4. Broadcaster’s Response

4.1 Initial response to complainant

RTÉ responded with an acknowledgement only of the complaint.

Broadcasting Complaint Decisions

4.2 Response to BAI

- RTÉ states that this interview of a human interest nature was primarily constructed around Mr. Pádraig Ó Tuama's life as a poet, theologian and gay man who, though having experienced three exorcisms to cure him of his homosexuality, has retained his faith and remained in the Catholic Church, on the occasion of the publication of his most recent book, *In the Shelter*. The broadcaster states that he has an interesting personal story to tell and this is what he was invited to share with the listeners.
- Notwithstanding the essentially human interest nature of the interview, and that the broadcast pre-dated the signing of the Ministerial order fixing a polling date for the marriage referendum and the issuing of BAI guidelines on the coverage of referendums, the broadcaster states that the presenter did not leave the interviewee's opinion unchallenged. When Mr. Ó Tuama stated that he would support a 'Yes' vote in a referendum which would allow gay people to marry, the presenter countered it by putting it to him that those on the other side of the argument would contend that civil partnership is adequate recognition of gay relationships and that the rights of children are being ignored by those who would support constitutional change on marriage. This was a fair and impartial expression of an opposing point of view to that of the interviewee.
- The broadcaster states that Mr. Ó Tuama spoke about how as a gay child he would have been delighted to be part of a society that acknowledged there was a future in which gay people could be "*fully present*" and therefore from his perspective the rights of children would be taken into consideration in a constitutional change on marriage. He made it quite clear that the only credential he had for speaking on behalf of children was "*as a former child myself*", in other words not as the representative of any group or campaign.
- The broadcaster states that at no point did the presenter express support of constitutional change on marriage or any view whatsoever on the topic and in the section of the programme where such change was mentioned, he put forward the views of those who would oppose constitutional change, in keeping with Rule 4.22 of the Code.

5. Decision of the Compliance Committee: Reject (Unanimous)

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following a review of the material the Committee has decided to reject the complaint. In reaching this view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Principle 2 and Rules 4.1, 4.2, 4.3, 4.22).

Broadcasting Complaint Decisions

In this regard: -

- The Committee reviewed the programme in question and noted that it predominantly entailed a discussion of the life and views of the guest, Mr. Padraig Ó Tuama. The large majority of the interview was of a human interest nature rather than a current affairs nature. In this regard, the programme examined Mr. Ó Tuama's experiences of being a gay man, the impact of his sexual orientation on his experience and understanding of what it means to be both a practicing Roman Catholic and a gay man and the issue of how the Roman Catholic Church views homosexuality in practice and theologically. It was the view of the Committee that there was no requirement to challenge the guest's views in this regard given that he was describing his personal experiences.
- The Committee noted that at the end of the segment, the presenter invited the guest to give his views on the forthcoming referendum on marriage which would propose changes to the Irish Constitution to permit same-sex marriages. In line with the right to freely express views, the guest set out his opinion that such a change to the Irish constitution was in his opinion desirable.

The Committee noted that the presenter stated that there were other views on this issue, including the issue of whether Civil Partnerships should be sufficient to address the rights of gay people as well as the issue of the rights of children should a constitutional change in respect of marriage take place. In view of this, and having had regard to the human interest nature of the discussion and the fact that the campaign in respect of the referendum had not commenced, it was the opinion of the Committee that the presenter's comments were sufficient to meet the requirements for fairness, objectivity and impartiality in current affairs.

- Therefore, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(1) (fairness, objectivity and impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Principle 2 and Rules 4.1, 4.2, 4.3, 4.22) in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Seamus Flannery

Ref. No. 59/15

Station:

RTÉ One

Programme:

Prime Time

Date:

10th March 2015

1. The Programme:

The complaint concerns a broadcast of RTÉ's One TV's *Prime Time* programme, its evening current affairs programme broadcast twice weekly at 9.30pm. The programme in question included an item dealing with the current review of firearms legislation and a live studio discussion on the topic of gun licensing legislation in Ireland.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.3, 4.10, 4.17, 4.19 and 4.22).

3. Complaint Summary

The complainant states that in his opinion this programme was poorly researched, lacked any investigative reporting and it was delivered in a biased manner by the reporter and studio anchor. He further states:

- **Reporting:**

The programme was titled "*Guns in Ireland*" and never reported on the fact that Ireland has the strictest gun ownership in the EU. The complainant states that the RTÉ reporter did not mention the licensing process for Target Shooters and the extensive application form that has to be filled out to satisfy An Garda Síochána. He also noted that the reporter did not challenge the contribution by An Garda Síochána Chief Superintendent Healy.

The complainant states that the programme immediately linked licensed firearm ownership by law abiding citizens with criminals and thugs using illegal firearms and individuals using firearms who are not permitted to do so. He states that there is no link between licensed sporting firearms and criminality.

- **Studio:**

The complainant states that the programme presenter's delivery was biased and he says that this is demonstrated by her interaction with Mr. Egan, the spokesperson for the *Association of Regional Game Councils* did not permit equal time and equal opportunity for both interviewed guests to make their case, with Deputy McGrath being allowed to ignore the host and speak over Mr. Egan on several occasions for a significant period of time. The complainant states that Mr. McGrath was allowed to bulldoze both the programme presenter and Mr. Egan with ease and talking incessantly with unfounded statements.

Broadcasting Complaint Decisions

- **Research:**

The complainant wrote to the Deputy Editor of the programme in advance of the broadcast and asked whether he was in possession of critical information supplied on 3rd March by Minister Francis Fitzgerald in reply to Dáil Questions by Deputy Niall Collins, which included a list of firearms stolen between 2010 and 2014. With regard to the figure of approximately 1,700 firearms that were listed by the Gardaí as having been stolen during this period; the breakdown included hundreds of items which are not legally firearms in Ireland. The complainant states that, in other words, the whole basis for the proposed ban is based on these incorrect data figures by *An Garda Síochána*. He states that, despite Mr. Ferris having this critical information, it was not delivered on this leading investigative current affairs programme in the State.

With regard to the 1,700 firearms that were listed, the complainant queries a number of aspects of the list. In this regard, he queries why there is a fully automatic rifle listed, when only Gardaí and the Defence Forces can own them here. He also asks why are there 54 replicas listed as real firearms when they cannot actually shoot live rounds? Further, he wonders why there are 266 rounds of ammunition listed as individual firearms in the numbers or why were 18 telescopic sights listed as individual firearms?

The complainant states that he incensed at the treatment of law abiding sport people and how the Prime Time programme represented the story.

4. Broadcaster's Response

4.1 Initial response to complainant

RTÉ states that the report in question examined proposals from the *Department of Justice and Equality / An Garda Síochána Working Group on Review of Firearms Licensing*, in particular the proposals to ban most handguns and semi-automatic rifles and shotguns which are capable of holding more than three rounds. The broadcaster states that the report did address the current licensing situation in Ireland. The broadcaster states that Mr. Des Crofton, *National Director of the National Association of Regional Game Councils*, stated "*People who hold firearm certificates in this country go through a very rigorous vetting which includes not only the character of the applicant, whether they have criminal records, it includes also for example we have to provide details of our medical practitioners, give access to the Gardaí to contact them just in case there's any doubt or any query about mental state*".

The broadcaster states that the report set out the arguments made by Gardaí in favour of the proposals. Those who oppose the proposals were also given a fair opportunity to put forward their case against the new measures being suggested, with interviews included from representatives of *National Association of Regional Game Councils*, the *National Association of Sporting Rifle and Pistol clubs* and the owner of a business which provides clay pigeon shooting as a visitor attraction.

Broadcasting Complaint Decisions

The broadcaster states that the subsequent studio discussion included Deputy Finian McGrath, a member of the Oireachtas Justice Committee and solicitor Mr. William Egan, who was suggested to the programme by *Association of Regional Game Councils* as a spokesperson. RTÉ closely reviewed the discussion and are satisfied that both men were given fair opportunity to put forward their arguments. The presenter challenged both guests on what they were saying and in fact at one stage repeatedly interrupted Deputy McGrath and warned him to let Mr. Egan speak.

In relation to the statistics regarding firearms, the broadcaster states that the report included the number of licensed firearms in Ireland and the breakdown of the type of firearms certificates have been issued for. The disputed figures relate to the number of firearms stolen between 2010 and 2014. This was not included in the report but was raised by Deputy McGrath during the studio debate.

In respect of the gun figures, Mr. Egan responded to Deputy McGrath and challenged the figures, saying “*You’re misrepresenting the statistics – the statistics in fact that have been published – there’s a problem – they’re unreliable in essence – at the end of February statistics were published which suggested that 1,710 firearms had been stolen – that in fact was contested by the sporting associations I’m associated with and within ten days the Minister for Justice had qualified those statistics reducing them by 600*”.

4.2 Response to BAI

RTÉ states the video report examined proposals from the *Department of Justice and Equality / An Garda Síochána Working Group on Review of Firearms Licensing*, in particular the proposals to ban most handguns and semi-automatic rifles and shotguns which are capable of holding more than three rounds. This editorial framework and perspective was made clear in the introduction to the report and in the report itself. They further state:

- The studio debate involved Deputy Finian McGrath, a member of the Oireachtas *Justice, Defence and Equality Committee* (which was examining the proposals) and solicitor Mr. William Egan, who was suggested to the programme by the *Association of Regional Game Councils* as a spokesperson.
- Licensed firearm holders presented themselves and were portrayed in both video report and studio discussion as reasoned individuals who participate in a responsible and inclusive sporting pastime and have a clear and moderately articulated point of view. The broadcaster states that the programme suggested no similarity whatsoever between these individuals and criminals. The broadcast shows no breach in this or any other respect of Rules 4.3 or 4.19.
- The broadcaster states that the substantial background checks currently required were noted on air by Mr. Des Crofton, *National Director of the National Association of Regional Game Councils*.

Broadcasting Complaint Decisions

- In relation to complaint about the figures used in the report, the broadcaster states that they were all official figures and served to inform the viewer about the current number of firearms licensed in this country. There was no breach in the broadcast in this respect, or in any other, of Rules 4.1, 4.2, 4.3 or 4.17.
- The broadcaster states that the number of stolen firearms was mentioned by Deputy Finian McGrath during the studio discussion where each side was given fair opportunity to make the arguments they wished. Therefore the dispute in relation to these statistics was fairly and impartially reflected in the broadcast. There was no breach in the broadcast in this respect, or in any other, of Rules 4.1, 4.2, 4.3 or 4.17.
- The complainant also takes issue with the presenter's handling of the studio debate following the report, claiming there was not impartial treatment of the two contributors. The broadcaster states that the debate in question involved Deputy Finian McGrath, a member of the Oireachtas Justice, Defence and Equality Committee and solicitor William Egan, who was suggested to the programme by the Association of Regional Game Councils as a spokesperson. During the debate, both contributors were given fair opportunity to put forward their arguments. There was no breach of Rules 4.3 or 4.22 here or elsewhere in the broadcast.
- In respect of the alleged breach of Rule 4.10, the broadcaster states that there was no inaccurate or unfair reference to or use of material referring to previous events, and no such instances are indicated in the complaint.
- The complaint referral additionally refers to a Garda "*showing firearms that can't even be licensed in the State*". The broadcaster states that the Chief Superintendent Fergus Healy is heard saying, "*there is a pool of twenty-five guns out there that have been used in the shootings over the last number of years*". He goes on to say "*the greater success we have in dealing with the illegal importation of these guns, it basically turns the criminal's attention to the people who have the guns legally*". It was not stated or implied that all the guns shown by Gardaí were either legally or illegally held.

5. Decision of the Compliance Committee: Reject (Unanimous)

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following a review of the material the Committee has decided to reject the complaint. In reaching this view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.3, 4.10, 4.17, 4.19, 4.22).

In this regard: -

- The Committee noted that the issues highlighted by the complainant were not borne out by a review of the programme in question.

Broadcasting Complaint Decisions

- The Committee did not agree with the complainant that the programme linked those who hold legal firearms with '*criminals and thugs using illegal firearms*'. Rather, the focus of the programme was on whether there were any risks to public safety arising from the current licensing regime for firearms. It was clearly stated by one contributor, representing those who use firearms legally, that the issue is not the weapons but rather the individuals who hold them and went on to state that Ireland has a very rigorous licensing regime which ensures that legally held firearms are held by those who are responsible and do not pose a threat to society. The risk highlighted in the programme was that legal gun ownership does present potential risks in terms of theft for criminal activity and also from the fact that there is always the potential that someone certified to hold a firearm legally may use it to kill.

A number of examples were used to highlight these risks and the Committee did not agree that the highlighting of these risks could be taken to mean that those who hold firearms legally are a risk to society.

- The complainant questioned the manner in which the contribution by Chief Superintendent Healy of An Garda Síochána was treated during the programme and noted the lack of challenge to the comments that he made. The Committee noted that Superintendent Healy contributed as part of a pre-recorded programme segment that preceded the studio debate and neither he nor other contributors were challenged on their views, since the objective of the item was to illustrate Irish gun culture in terms of areas such as deer hunting, the sport of target shooting and gun crime and killings. This was followed by the studio debate where views were presented, and as one would expect from a studio debate, challenged by the presenter and the contributors.
- In terms of how the studio debate was handled and the use of research statistics, the Committee noted that it was handled in the usual manner for such debates with the presenter managing the discussion so that each party was afforded the opportunity to set out their views. There is no requirement for equal time in a programme discussion, rather, the requirement is for fairness, objectivity and impartiality.

The Committee noted that Deputy McGrath, in comparison to Mr. Egan, was more forthright in terms of the tone and manner of his contributions but also noted that Mr. Egan was also afforded adequate opportunity to answer the questions of the presenter and rebut comments by Deputy McGrath that Mr. Egan felt were incorrect. The Committee noted that the presenter requested Mr. Egan to avoid 'bamboozling' the audience with statistics. However, the Committee found that this was an editorial decision for the presenter to make in circumstances where she felt that too many statistics would confuse viewers.

Notwithstanding this, Mr. Egan clearly made his point which was that it was his view and the view of those that he represented that the statistics quoted by Deputy McGrath in terms of firearms were incorrect. While the presenter did not question the statistics presented by Deputy McGrath, audiences would have been informed, on account of Mr. Egan's contribution, of a view on the statistics that was different to that presented by Deputy McGrath.

Broadcasting Complaint Decisions

- In view of the above, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.3, 4.10, 4.17, 4.19, 4.22) in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Nigel McHugh

Ref. No. 68/15

Station:

RTÉ One

Programme:

Prime Time

Date:

10th March 2015

1. The Programme

The complaint concerns a broadcast of RTÉ's One TV's *Prime Time* programme, its evening current affairs programme broadcast twice weekly at 9.30pm. The programme in question included an item dealing with the current review of firearms legislation and a live studio discussion on the topic of gun licensing legislation in Ireland.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009 Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

3. Complaint Summary

The complainant states the programme contained two segments. He states that the first segment of the programme was entitled '*Guns in Ireland*' and purported to deal with new firearms licensing laws sought by the Gardaí. The complainant further states:

- At no stage was it noted that Ireland has some of the toughest laws in Europe, governing the ownership of sporting and target firearms. The complainant states that the reporter followed *An Garda Síochána* Chief Superintendent Fergal Healy around as he was shown a variety of guns which Chief Superintendent Healy had a problem with. The complainant states that a semi-automatic rifle was shown and Chief Superintendent Healy was at pains to stress that this gun was found in the possession of a member of the public. The complainant states that the only problem with the gun was the presence of two magazines exceeding the permitted bullet capacity allowed in this State.
- The complainant states that at no point did the reporter ask any probing questions about the firearms shown.
- The complainant states that later in the report a variety of guns were shown. He states that these all looked real enough especially as they were shown in semi-darkness. However, the stickers proclaiming them to be Air Soft replicas are clear to be seen. The complainant states that the manner in which this was filmed would have misled viewers as to the character and trustworthiness of sports and target shooters in Ireland.
- He states that at no point was it acknowledged that Ireland has a strict and comprehensive system of firearm licensing already in place.

Broadcasting Complaint Decisions

- He also states that there was no attempt in this segment to investigate the reality of the firearms licensing situation in Ireland. Instead it was in his opinion an uninformed, glib and sensationalist view of the shooting public, which he states was more suited to the ‘Red top’ tabloids.

In the second segment of the programme, the complainant states:

- The presenter permitted Mr. Finian McGrath T.D. to make what he describes as astonishing claims regarding the number of guns stolen in the last four years, the number of illegal guns and the danger of anyone in an urban setting being allowed to own a firearm.
- The presenter allowed Deputy Mr. McGrath to continually interrupt and shout over the other participant and allowed him make disgraceful and distasteful comments about victims of suicide.
- That the presenter allowed these comments to stand, without objection and that this was evidence of a lack of fairness, objectivity and impartiality.

4. Broadcaster’s Response

4.1 Initial response to complainant

RTÉ acknowledged receipt of the complaint and advised the complainant of how to make a complaint to the BAI. RTÉ also advised the complainant that a fuller response would be submitted in due course, this response was not forthcoming from them.

4.2 Response to BAI

- RTÉ states that the video report examined proposals from the *Department of Justice and Equality / An Garda Síochána Working Group on Review of Firearms Licensing*, in particular the proposals by the Working Group to ban most handguns and semi-automatic rifles and shotguns which are capable of holding more than three rounds. This was made clear in the introduction to the report and in the report itself.
- The broadcaster states that the studio debate involved Deputy Finian McGrath, a member of the *Oireachtas Justice, Defence and Equality Committee* (which was examining the proposals) and solicitor Mr. William Egan, who was suggested to the programme by the *Association of Regional Game Councils* as a spokesperson.
- The complaint refers to the inclusion of replica guns in the report. The broadcaster states that, in fact, the report stated clearly that anyone can walk into a shop and buy these replica guns which look the part – and that this is an issue which the Justice Committee will have to take into account when deciding if there is merit in proposals to ban certain firearms. Replica firearms were also shown in the introduction of the report, where the script read: “Let’s talk about guns. From long rifles to small pistols and everything in between.”

Broadcasting Complaint Decisions

The replicas guns were shown as the words “and everything in between” were being said. There was no inaccurate portrayal of firearms and at no point was a table of toy guns shown.

- The complaint to the broadcaster alleges an unfair portrayal of sports and target shooters. The broadcaster states that, in fact, as viewing will confirm, licensed firearm holders presented themselves and were portrayed in both video report and studio discussion as reasoned individuals who participate in a responsible and inclusive sporting pastime and have a clear and moderately articulated point of view. The programme suggested no similarity whatsoever between these individuals and criminals or suggested in any way that sports and target shooters were likely to engage in criminal activity.
- The complaint refers to the report’s coverage of Garda concerns in relation to the availability of firearms. The broadcaster states that An Garda Síochána is on the record (at a hearing of the Oireachtas Justice Committee on 17 December 2014) as stating that they believe stronger regulation and prohibition of certain firearms is required to prevent massacres such as Hungerford in 1987 and Norway in 2011, where the culprits used their legally held firearms.

At the hearing, Gardaí stated that firearms designed for use for military and police purposes and currently licensable within the State pose a potentially devastating and lethal risk to the community. Senior Gardaí are also on record as saying that one of the reasons they have proposed more strict firearms legislation is because legally held firearms have been stolen and used to kill people. The report was an accurate and impartial account of the concerns of the national police force, illustrated with appropriate archive footage.

- The complainant states that “*at no point was it acknowledged that Ireland has a strict and comprehensive system of firearm licensing already in place.*” The broadcaster states that this is simply incorrect. The report included an interview with Des Crofton, National Director of the National Association of Regional Game Councils, who stated: “People who hold firearm certificates in this country go through a very rigorous vetting which includes not only the character of the applicant, whether they have criminal records, it includes also for example we have to provide details of our medical practitioners, give access to the Gardaí to contact them just in case there’s any doubt or any query about mental state”. This excerpt from Mr Crofton’s interview adequately highlighted what he himself described as the rigorous vetting regime already in place.
- The statistic quoted by Deputy McGrath during the debate about the number of firearms stolen between 2010 and 2014, did not go unchallenged. Mr. Egan immediately responded by saying, “*You’re misrepresenting the statistics – the statistics in fact that have been published – there’s a problem – they’re unreliable in essence – at the end of February statistics were published which suggested that 1,710 firearms had been stolen – that in fact was contested by the sporting associations I’m associated with and within ten days the Minister for Justice had qualified those statistics reducing them by 600.*”

Broadcasting Complaint Decisions

- The broadcaster states that the complainant is incorrect in claiming that either the reporter or presenter put forward inaccurate facts or statistics and no such inaccuracies are specified in the complaint.
- The broadcaster states that Deputy McGrath quoted during the studio discussion a figure of 150,000 illegally held firearms. As was actually pointed out by Deputy McGrath, that figure was not included in the *Prime Time* report but was quoted by the Deputy.

The figure of 150,000 illegally held firearms in Ireland, quoted by Deputy McGrath, is one that was included in submissions to the Justice, Defence and Equality Committee by those opposing the stricter gun controls as part of their argument against the proposals. The presenter immediately challenged Mr McGrath, asking him if An Garda Síochána shouldn't then be targeting illegally held firearms rather than those that are legally held.

RTÉ states that the programme had no "agenda" such as alleged by the complainant and there was in the programme no expression whatsoever of the broadcaster's own views. The programme, both in its accurate and impartial report based on reliable sources and in its impartial and fair conduct of the studio debate, allowed different perspectives in the debate the opportunity to put forward their arguments while also appropriately.

5. Decision of the Compliance Committee: Reject (Unanimous)

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following a review of the material the Committee has decided to reject the complaint. In reaching this view, the Committee had regard to the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

In this regard: -

- The Committee noted that the issues highlighted by the complainant were not borne out by a review of the programme in question.
- The Committee did not agree with the complainant that the programme would have misled the public about the character and trustworthiness of sport and target shooters. It was clearly stated by one contributor, representing those who use firearms legally, that the issue is not the weapons but rather the individuals who hold them and went on to state that Ireland has a very rigorous licensing regime which ensures that legally held firearms are held by those who are responsible and do not pose a threat to society. In addition, the programme included the deer hunting sector where the recreational and economic benefits of hunting were set out and on two occasions, the inclusive nature of target shooting as well as the good character of target shooters (and their responsible approach to firearm ownership) were set out.

Broadcasting Complaint Decisions

The Committee found that the risk highlighted in the programme was that legal gun ownership does present potential risks in terms of theft for criminal activity and also from the fact that there is always the potential that someone certified to hold a firearm legally may use it to kill. A number of examples were used to highlight these risks and the Committee did not agree that the highlighting of these risks could be taken to mean that those who hold firearms legally are a risk to society.

- The complainant stated that in the pre-recorded section of the programme no probing questions were asked about the firearms shown and the described in interview segments. The Committee noted that the objective of the pre-recorded element was to illustrate Irish gun culture in terms of areas such as deer hunting, the sport of target shooting and gun crime and killings and to set out the context for the studio debate that followed.

In this regard, it was noted that no contributors in the pre-recorded segment were challenged on their views and that this raised no issues considering the editorial purpose of this segment of the programme. The Committee noted that this segment was followed by the studio debate, where views were presented, and as one would expect from a studio debate, challenged by the presenter and the contributors.

- In terms of how the studio debate and the complainant's comments about statistics, the contribution of Deputy McGrath and the management of the debate by the presenter, the Committee found that it was handled in the usual manner for such debates with the presenter managing the discussion so that each party was afforded the opportunity to set out their views. The Committee noted that Deputy McGrath, in comparison to Mr. Egan was more forthright in terms of the tone and manner of his contributions but also noted that Mr. Egan was also afforded adequate opportunity to answer the questions of the presenter and rebut comments by Deputy McGrath that Mr. Egan felt were incorrect. The Committee noted that the presenter requested Mr. Egan to avoid 'bamboozling' the audience with statistics. However, the Committee found that this was an editorial decision for the presenter to make in circumstances where she felt that too many statistics would confuse listeners.

It was the view of the Committee that this approach could not be considered as amounting to a lack of fairness, objectivity and impartiality where Mr. Egan was afforded the opportunity to clearly state that in his opinion the statistics quoted by Deputy McGrath in terms of firearms were incorrect. While the presenter did not question the statistics presented by Deputy McGrath, listeners would have been informed, on account of Mr. Egan's contribution, of a view on the statistics that was different to that presented by Deputy McGrath.

- In view of the above, it was the opinion of the Committee that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a) (fairness, objectivity and impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Rejected by the BAI Executive Complaints Forum

Complaint made by: Mrs. Sharon Walker

Ref. No. 13/15

Station:

TV3

Programme:

Ireland AM

Date:

11th February 2015:
7.45am

1. Programme

The complaint concerns *Ireland AM*, the morning television programme on TV3. The programme is broadcast live every weekday from 7am-10:00am. The programme includes a range of content, including news, current affairs, weather updates, showbiz, fashion, beauty, food, health, home and garden. The complaint concerns a discussion on contraception that took place during this programme.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(offence and harm); the *Code of Programme Standards* (Principles 2.2 - Due Care, 2.3- Protection for Children and Rule 3.2 - Sexual Conduct).

3. Complaint Summary

- The complaint concerns a discussion on contraception that took place during this programme. The complainant objects to the part of the programme which she states showed a model of an erect penis having a condom put onto it.
- The complainant is of the view that this type of material is completely inappropriate on a programme that many households have on in the morning, before children go to school. The complainant states there may have been warnings before the item, but she changed channel to TV3 and none was evident to her.
- The complainant states that she was extremely disappointed with this part of the programme, as she frequently watches with no issues. The complainant feels this was completely inappropriate content which is not suitable for her family.

4. Broadcaster's Response

4.1 Initial response to complainant

TV3 states this feature was not taken lightly and with this in mind, there were three separate on-air warnings to give parents time to ensure children should not watch the segment. When talking about contraception, their resident doctor felt that they should demonstrate how to use protection appropriately as, unfortunately, in her practice she sees mistakes made that have resulted in unwanted pregnancies. With this serious outcome in mind, TV3 received positive feedback regarding how responsible they were in their approach.

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4.2 Response to BAI

TV3 states *Ireland AM* is a lifestyle type show that typically features segments on matters, including health and medical issues. Their aim is to carry out open, educational and informative discussions on a variety of topics. TV3 further states that three clear warnings were given. They state that the first was provided at the start of the show at 7am, the second at the 'coming up' point, aired at 7.40am and the third was at 7.45am just before the piece was about to begin.

TV3 would respond to the various sections of complaint as follows:-

- **Section 2.2 Due Care** – TV3 states that they did use '*prior warnings for programme material which has the potential to offend*' and these warnings were provided in a clearly audible manner. TV3 believes this piece to be factual, educational and in compliance with the Content Principles. They reiterated the various means of information sources and believe this was beneficial to their viewers who want to seek further information on the matter of contraception.
- **Section 2.3 Protection for Children** – when airing this piece, TV3 state that they gave comprehensive and frequent warnings in relation to the upcoming topic. TV3 state that *Ireland AM* is not a children's programme nor is TV3 a children's channel.
- **Section 3.2 Sexual Conduct** – TV3 strongly deny the piece featured detailed scenes of a sexual nature, sexual relationships between under aged young people or adults and they further deny that the scenes showed nudity. It was a medical and educational model of the male reproductive organ and whilst the topic was in relation to contraception, it was not a conversation in relation to sex. TV3 states they felt it necessary and important to demonstrate how to use condoms properly.

5. Decision of the Executive Complaints Forum: Reject (Majority)

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. In reaching this decision, the Forum had regard to the Broadcasting Act 2009, *section 48(1)(b)(offence and harm)* and *the Code Programme Standards* (Principles 2.2 - Due Care, 2.3- Protection for Children and Rule 3.2 - sexual conduct). Having reviewed the material, the Forum has decided to reject the complaint. In this regard:-

- In considering the complaint, the Forum considered whether the model of the erect penis which was displayed during a segment on sexual health was likely to cause harm and offence in the manner suggested by the complainant. In this context, the Forum had regard to the broadcaster's responsibility in relation to the time of broadcast, the audience expectation, the programme type and the broadcaster's use of prior warnings about the programme content.
- Section 2.2 of the *Code of Programme Standards* requires that broadcasters shall exercise due care by taking all reasonable measures to ensure that viewers and listeners to programme material are protected from undue offence and from harm. The Forum were of the view that due care was exercised by the broadcaster.

Broadcasting Complaint Decisions

When considering this the Forum had regard for the channel type and noted that TV3 has a mainly adult audience and the programme content reflects this audience focus. The Forum also noted that there were three clear warnings before the segment started, one at the beginning of the programme, one shortly before the segment started and another warning during the introduction to the piece. For this reason, the Forum was satisfied that the broadcaster took reasonable measures to ensure that the viewers were informed.

- Section 2.3 of the *Code of Programme Standards* recognises that the broadcasters share a responsibility with parents in protecting children from exposure to inappropriate and harmful programme material. For this reason, the Code requires that broadcasters take care when scheduling programme content when there is a greater likelihood that children will be watching, for example, during school holidays or when a programme comes before or after a children's programme.

The Forum was of the view that programme in question was aimed at adults and was not scheduled either side of a children's programme. The Forum was also of the view that the segment in question was an informative piece on contraception and noted that the model penis was used during a demonstration of how to correctly put on a condom. The Forum noted that it was a fact-based health segment which was professional and educational, and that many children would not understand or be interested in the discussion. The Forum did acknowledge that the time of broadcast meant that some children could view the programme and that some viewers may have found it inappropriate but noted that there was nothing in the programme likely to cause undue offence or to cause harm. The Forum was therefore satisfied that the warnings broadcast, the type of channel and the audience expectations were sufficient to avoid undue offence and harm.

- Section 3.2 of *Code of Programme Standards* has regard for the appropriateness of the inclusion of sexual conduct during programme material. It places requirements that the inclusion content of a sexual nature be appropriate and justified. In this regard, it was the view of the Forum that the content was factual and informative and did not constitute sexual content. In this regard, the Forum noted that there were no scenes of a sexual nature or nudity within this programme and, therefore, this section was not relevant to the complaint.
- In view of the above, it was the opinion of the Forum that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(b) (offence and harm) or the *Code of Programme Standards* (Principles 2.2 - Due Care, 2.3- Protection for Children and Rule 3.2 - Sexual Conduct) in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Ms. Margaret Lee

Ref. No. 14/15

Station:

RTÉ Radio 1

Programme:

The John Murray Show

Date:

31st December 2014:

1. Programme

The complaint concerns *The John Murray Show* broadcast weekday mornings on RTÉ Radio 1 from 9am-10am. The programme has a focus on lifestyle, human interest and entertainment topics. The edition of the programme in question was a review of events in 2014 which included contributions from a panel of guests.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs).

3. Complaint Summary

- The complaint concerns a discussion on *The John Murray Show* during which the complainant states that one of the guests was allowed to refer to Ireland as a “*Banana Republic*” and this was not, according to the complainant, challenged.
- The complainant also states that another contributor stated that the last Pope said that women were suitable for cleaning the church but not to give out Holy Communion. The complainant requested that RTÉ furnish her with the origin of this supposed view as she does not believe this statement to be true.
- The complainant states that in her opinion the tone of the programme when referring to Ireland was negative. In this regard, she cites one person who texted that the highlight of his year was getting a job and another who texted that the highlight was the return of her adult daughter (or son) to live in Ireland.
- The complainant states that neither of these ‘good news’ items received any positive reaction from the presenter.

4. Broadcaster’s Response

4.1 Initial response to complainant

RTÉ states the programme used clips from items that had run throughout the year as a springboard for a range of issues for discussion and as a way of reflecting back on the outgoing year. The broadcaster states that the tone was celebratory and uplifting – and whilst the approach of the presenter and panellists was light-hearted, some serious issues were dealt with. The broadcaster states that each of the panellists spoke on the subject of religion and spirituality. In this regard, one contributor talked about how she had been involved in the Catholic Church for many years but that she now considered herself to be spiritual rather than religious.

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She said that was partly due to the Church's attitude towards women and that the previous Pope had said that it's acceptable for women to clean churches but not to give out the Eucharist. RTÉ can find no evidence that Pope Benedict XVI said that, however, the point she was making was that the Church was happy for women to play supporting roles rather than those of leadership.

The broadcaster states that another contributor, the Editor of the *Connaught Tribune*, is entitled to his view of the world and that his description of the country as a '*Banana Republic*' was fair comment in an open exchange of ideas.

The broadcaster states that throughout the programme, the presenter asked for listeners to text in their highlights and lowlights from the year. The overwhelming majority were positive and many of them were read out. The presenter's tone when reading them was upbeat and no comment on them was required. RTÉ refutes the contention that the tone of the programme when referring to Ireland was negative. They believe the overall tone of the show was celebratory and uplifting.

4.2 Response to BAI

RTÉ submits that listening to the programme will confirm that it was editorially structured and presented to listeners as a review of the year with an emphasis on entertainment, media and music, using excerpts from items the programme had run throughout the year as a springboard for conversation and as a way of reflecting back on the outgoing year. The programme was not structured or presented or understood by listeners as a debate on matters of public controversy. For these reasons, the broadcaster states that the broadcast cannot be considered to be a current affairs item subject to the requirements of section 48(1)(a) of the Broadcasting Act 2009.

The broadcaster states that, although the programme did include some 'lowlights', referring to sad subjects such as the death of entertainer Mr. Robin Williams, it was for the most part a light-hearted and humorous conversation on the year's highlights during which guests were invited to give their personal reminiscences of the year. Far from being negative, the dominant tone of the programme was celebratory and uplifting.

The broadcaster states that a conversation about personal spirituality was prompted by an excerpt from a previous interview on the programme with singer/songwriter, Ms. Sinéad O'Connor. One panellist talked about how she had been involved in the Catholic Church for many years but that she now considered herself to be spiritual rather than religious. She said that was partly due to the church's attitude towards women and that the previous Pope had said that it is acceptable for women to clean churches but not to give out the Eucharist. The broadcaster states that this was an impressionistic paraphrase of Pope Benedict XVI's well-documented views on the unacceptability of women priests, with the panellist expressing her personal view that the Catholic Church was happy for women to play supporting roles rather than those of leadership.

In the context of the editorial format and the personalised tone of the conversation which was not a debate on a matter of public controversy, RTÉ asserts that there was no requirement for this personal view to be challenged.

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The broadcaster states that the comment in respect of “banana republic” was neither unexpected nor inappropriate in the context of the light-hearted and humorous editorial format and tone, was clearly the personal view of the contributor, and did not require to be challenged in this editorial context.

5. Decision of the Executive Complaints Forum: Reject (Unanimous)

When considering the complaint, the members of the Forum reviewed the broadcast and 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 news and current affairs)*. Having reviewed the material, the Forum has decided to reject the complaint.

In this regard:

- When considering the complaint, the Forum noted that the programme in question is generally regarded as a light-entertainment show. It may also include, from time to time, content that would be categorised as news and current affairs. In this context, the Forum noted that the programme that is the subject of the complaint was a ‘look-back’ at the previous year (2014). The Forum found that it was a light-hearted discussion on a range of topics and while some of the topics were of a news and current affairs nature, the programme consisted of predominantly light-entertainment discussions which were not framed in a way that would be considered news and current affairs.
- In its assessment, the Forum was mindful of the requirement for broadcasters to treat news and current affairs content in a manner which is fair, objective and impartial. The Forum had regard to this requirement in the context of the editorial focus of the programme, which the broadcaster has the right to frame. In this regard, the Forum noted that the programme panel was made-up of a selection of guests who were on the programme to discuss the events of the past year and provide their opinion on these events. In this regard, the Forum noted that the approach to each topic was to hear the views of the panellists and the discussion proceeded in a jovial manner which set a tone that would make it clear to audiences that this was not a robust debate on topics of current public debate or controversy but a light-hearted discussion on the events of the past year.
- The Forum noted the complainant’s concern about a specific comment made about a past Pope which, she felt, was untrue. Namely, that the view of the Pope was that the only role for women was cleaning churches. The Forum noted that the comment was made by a female panellist during a discussion in which she explained her personal relationship with the Roman Catholic Church, particularly in relation to the Church’s treatment of women. The Forum was mindful of the requirement for current affairs to be presented with due accuracy as set out in the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. This requirement does not prohibit inaccurate content.

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Rather, it prohibits the broadcasting of content which leads to unfairness on account of the inaccuracy. In this context, and having regard to the programme as a whole and that this was a single comment within that programme, the Forum did not feel that the comment was such that it resulted in the programme being unfair.

- The complainant also took issue with a comment made which she states described Ireland being a 'Banana Republic'. The Forum again found that the panellist was making a comment which was clearly his own opinion about the future of the country in relation to reclaiming tax from corporations. The Forum found from its review of the programme that the contributor did not describe Ireland as a 'Banana Republic' but rather as a country that was no longer a 'Banana Republic'. The Forum was of the view that it is unlikely that listeners would have been unclear about this comment being the contributor's personal view. Further, the Forum did not believe that, having regard to the programme as a whole, the comments actually spoken by the contributor required the presenter to challenge the comment so as to ensure the fairness, objectivity and impartiality of the programme.
- It was the opinion of the Forum that the broadcast did not infringe Section 48(1)(a)(fairness, objectivity & impartiality in current affairs) of the Broadcasting Act 2009 in the manner specified by the complainant. Accordingly, the complaint has been rejected.

