



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
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OF IRELAND

Broadcasting Authority of Ireland

Broadcasting Complaint Decisions

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BAI Complaints Handling Process

Under the Broadcasting Act 2009, viewers and listeners to Irish radio and television services can complain about broadcasting content which they believe is not in keeping with broadcasting codes and rules. When making a complaint, the relevant programme or commercial communication should be identified, including the date of broadcast and time. The complainant should explain what it is about the broadcast that has led them to make a complaint. It is important to set out clearly the grounds of the complaint and why the programme material or commercial content does not comply with the BAI's Broadcasting Codes. A copy of the codes may be found on the BAI's website: www.bai.ie, by emailing info@bai.ie or by phoning the BAI on 01 644 1200.

In line with the complaint process, the viewer or listener should direct their complaint to the broadcaster in the first instance and in the manner detailed in 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 complaint referrals, the BAI will have regard to the relevant codes and rules, the 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. Further information may be found on the complaints handling section of the BAI's website: www.bai.ie.

The details of the broadcasting complaints decisions reached by the BAI are set out in this document. The decisions deal with the issue of whether a programme or a commercial communication did or did not comply with the relevant legal requirements and the relevant broadcasting codes or rules. The decisions do not constitute endorsement or support for the views of either parties to the complaint nor will they address every aspect of a complaint submission. The BAI will not carry out a separate or independent assessment outside of the matters raised in the complaint.

In total, 40 complaints have been considered by the BAI. The Compliance Committee has considered 16 of these complaints and one complaint has been upheld *in part*. The Executive Complaints Forum has considered and rejected 24 complaints. The decisions of the Compliance Committee were reached at its meeting held in July and September 2015. The decisions of the Executive Complaints Forum were reached at meetings held in June, July & August 2015.

Upheld in Part by the BAI Compliance Committee

Complaint made by: John and Ann Fitzgerald

Ref No. 72/15

Station:

Cork 96FM

Programme:

The Opinion Line

Date:

3rd February 2015

1. Programme

The complaint concerns *The Opinion Line* which is broadcast weekdays on *Cork's 96FM*. This is a phone-in programme dealing with a range of topics, including news and current affairs. The complaint relates to a discussion on objections to a planning development in Youghal, Co. Cork.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Sections 48(1)(b) (offence and harm) and 48(1)(c)(privacy of the individual); the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2); and the *Code of Programme Standards* (Principle 2.2 - Due Care and Rule 3.5.2 - Factual Programming).

3. Complaint Summary

The complainants claim that they were named on-air as objectors to a planning development in Youghal, Co. Cork. They state that, however, the valid grounds of their planning appeal were deliberately ignored during the programme. They further state that despite there being two other appeals to the proposed development, they were personally targeted as private citizens on this programme. The complainants believe the programme provided a platform for a group who mounted a campaign and a boycott in the local media and online via social media, against them as private citizens.

The complainants add that in their opinion the presenter repeatedly made factually incorrect statements claiming that the complainants were the main objectors and that they were serial objectors. The complainants further claim that in their opinion:

- The story was not researched;
- The content of the programme was unfair, biased, not objective and not impartial;
- the content exposed the complainants to taunting and unfair public ridicule;
- their privacy as private citizens was invaded;
- the content of the show incited hatred against them;
- the content resulted in harm and offence to them.

4. Broadcaster's Response

4.1 Initial response to complainant

Cork's 96FM states that this item was factual and highlighted that a public meeting was to be held in Youghal concerning objections to a planned development. They state that *The Opinion Line* is a listener driven phone-in programme. They state that callers contacted the station voicing their support for the development. Despite repeated appeals from the programme presenter, nobody from Youghal called-in to voice objections to the plans. In the absence of this, the presenter tried to balance the debate through his questioning. The broadcaster claims that the complainants were not identified on-air as objectors. However, clearly, their names were already in the public domain through the planning process.

4.2. Broadcaster's Response to BAI

Cork's 96FM states that *The Opinion Line* on *Cork's 96FM* is presented by Mr. P.J. Coogan who was previously a news reporter with the station for many years. They state that, in fact, he is arguably one of the most experienced journalists in Cork. The programme is edited by Ms. Deirdre O'Shaughnessy who is also an accomplished journalist. Prior to joining the station last year, Deirdre was Editor of a large local newspaper, *The Cork Independent*. *Cork's 96FM* feel it is important to highlight this level of experience in order to indicate that the programme is well-researched and professional in its approach. The broadcaster believes the programme was factually correct. They state that the presenter made a point on several occasions to encourage people who disagreed with the planning proposal to make contact. They state that no-one did. The broadcaster states that in an effort to get some balance, the discussion was widened to take calls from people who had a view on the impact of similar developments in other towns.

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

The Committee considered the broadcast and the submissions from the broadcaster and the complainants. Following a review of the material the Committee has decided to uphold the complaint in part. In reaching this view, the Committee had regard to the Broadcasting Act 2009, Sections 48(1)(b) (offence and harm) and 48(1)(c)(privacy of the individual), the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2) and the *Code of Programme Standards* (Principle 2.2 - due care and Rule 3.5.2 - factual programming).

In this regard:-

- The Committee noted that the complainants, contrary to the initial submission from the broadcaster to the complainants, were named during the programme and were named on two occasions. The Committee did not agree with the complainants that their naming during the programme was a breach of their privacy since the names of those who object to planning applications are publicly available and for this reason, this element of the complaint was rejected.

However, it was the view of the Committee that the manner in which their objection was handled during the programme infringed the requirements of the Broadcasting Act 2009 and the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

- The Committee noted that any member of the public has a legal right to object to a planning development. It also noted that in the case of the particular planning development, it would appear that the most recent objections (prior to those discussed during the programme in question) were upheld and a number of steps were necessary to remedy issues highlighted by An Bord Pleanála. In this context, the characterisation of the complainants on a number of occasions during the programme as *'serial objectors'* was deemed unfair and it was also considered unfair on the basis that the programme included almost no detail as to why the complainants were objecting to the development.
- While the broadcaster states that it made every effort to place on-air callers who supported the views of those who objected to the planning permission, the absence of any callers opposing the development does not absolve the programme makers to ensure that the programme is fair to all parties.

In such circumstances, it would have been expected that the programme presenter would have addressed this by, for example, articulating the grounds for the complainants' objections and putting questions from their perspective to other callers to the programme.

- The Committee also noted that while the presenter and other contributors discussed the potential impact of an out-of-town retail development, as proposed, on business in Youghal Town Centre, and the basis it would appear for objections by businesses to the plan, similar treatment was not afforded in respect of the complainant's objections.
- The Committee further noted a number of contributions in the programme which were considered to lack fairness. This included the characterisation by the presenter of the delay in the development of the site as one that arose solely from objections. In this regard, he stated – *"...nothing happened and the reasons were objections, mainly coming from the same people."* This was considered problematic in circumstances where delays may legitimately arise as a result of poor planning that elicits reasonable objections, as would appear to have been the case previously, and where such delays arise not from objections but from objective flaws in the planning proposed.

In another instance, the description of the objectors as people who *"don't like change"* who are *"small minded"* and who want to *"suck the life out of [Youghal]"* went unchallenged or questioned by the programme presenter. Furthermore, the Committee noted that at one point the presenter stated that it seemed to him that those objecting were doing so *"...for reasons best known to themselves."*

The Committee noted that, as with the names of the objectors, the reasons for the objections were readily available to the public and hence to the programme makers and should have been provided to the listeners in the interest of fairness.

- The Committee also had regard to those elements of the complaint dealing with offence and harm. From its review of the programme, the Committee concluded that the content could not reasonably be considered as bringing public ridicule on the complainants or inciting or causing hatred or harm against them. While the Committee has concluded that the programme lacked fairness, objectivity or impartiality it noted that the tone and approach was moderate.

While the complainants highlighted a number of other issues, including what they state was the impact of social media and other activities, these fall outside the remit of the BAI. For these reasons those elements of the complaint pertaining to the Code of Programme Standards were rejected.

- In view of the above, the Committee had deemed the content to be contrary to the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* and the Broadcasting Act 2009. Accordingly, the complaint has been upheld in part.

Rejected by the BAI Compliance Committee

Complaint made by: Mr. Seán Carty

Ref No. 75/15

Station:

RTÉ 2FM

Programme:

The Dave Fanning Show

Date:

24th January 2015

1. Programme

The complaint concerns *The Dave Fanning Show* which is broadcast on Saturday mornings. This contains mainly music, film news and reviews and interviews. The item complained of refers to the playing of a clip from '*Love/Hate*', the *RTÉ One* television crime drama series which included coarse language.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, 48(1)(b)(offence and harm); the *Code Of Programme Standards* (Principles 2.2 – Due Care, 2.3 – Protection of Children, 2.4 – Compliance and Rules 3.1 – Violent Content & 3.3 - Coarse and Offensive Language).

3. Complaint Summary

The complainant states that he was driving on Saturday with his young children in his car and heard a clip from '*Love/Hate*' on this programme which he states was riddled with swearing. The complainant found this unacceptable given that it was broadcast on a day when children could be listening.

The complainant further states:

- The editorial team would have been aware of the violent and explicit nature of this clip and how it would be harmful and disturbing to children. He states that in this context, reasonable measures were not taken given that children would be listening on a Saturday morning.
- The clip was expletive laden and extremely violent in nature. It was taken from a programme that was clearly reserved for adult viewing. In this context, no regard was given to its appropriateness for the time of broadcast.
- He states that given the time of day of the broadcast (a Saturday morning), the likely composition of the audience was obviously not taken into account.

4. Broadcaster's Response

4.1 Initial response to complainant

The complainant did not receive a response from the broadcaster. *RTÉ* apologised for the lack of response.

4.2. Broadcaster's Response to BAI

RTÉ state that *The Dave Fanning Show* on Saturday (11.00am-1.00pm) broadcast a discussion with an entertainment journalist about how audiences can see blurred lines between fictional TV characters and real-life people, including the actors who play the characters. *RTÉ* further states that:

- The complaint refers to an audio clip from the *Love/Hate* TV programme which was played as illustration of part of this item.
- In the overall context of the item, the clip was seventeen seconds in duration, within an item which was over sixteen minutes long. It was played eight minutes into the discussion by which point listeners will have been aware of the nature of the topic and its inclusion will not have come as a surprise.
- *The Dave Fanning Show* covers a broad range of adult-focussed topics ranging from social to popular culture. The audience has an expectation of content which is adult-focused in nature and airs on *RTÉ 2FM*, an entertainment station which is targeted at an audience of 25-44 year-olds. The presenter has long been associated with alternative music and arts content which pushes boundaries, therefore those who listen to him would have an expectation of content that is adult in nature. For example, the item complained of was preceded by an interview with Dr. Christian Jessen of the Channel 4 programme *Embarrassing Bodies*, which raises health awareness and destigmatises 'embarrassing' body parts and medical conditions. The show content is not child-centred nor does it attempt to engage editorially with children or with topics of interest to them.
- *The Dave Fanning Show* typically attracts an older audience, who are very familiar with the often forceful language and nature of film and TV programmes. Neither of the programmes broadcast before or after *The Dave Fanning Show* are aimed at or likely to attract a children's audience. As above, this is not the target audience of the *RTÉ 2FM* channel.
- The robust language and content of the programme, *Love/Hate*, was widely known by the time this clip was broadcast. It had already aired for five seasons and was the subject of much public debate and widespread advertising over a long period preceding this broadcast. The inclusion of the clip was not therefore inappropriate.

- The audience would have an expectation that any inclusion of *Love/Hate* would contain this type of content and colloquial language. Also, the character 'Nidge', the subject of the discussion and clip, was widely known to use strong and aggressive language. There was however no depiction in the clip of violence of any kind, including actions with which a listener might identify.
- The audience would also have been aware that Love/Hate characters would form part of the discussion, as the presenter and contributor, had earlier in the item talked about *Love/Hate* for over two minutes. Furthermore, it is reasonable to expect that the audience would have expected 'Nidge' to be included in the discussion as the 'Nidge' character was a subject of much public interest prior to the item being broadcast.

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

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following consideration of the material, the Committee has decided to reject the complaint. In reaching this decision, the Committee had regard to the Broadcasting Act 2009, 48(1)(b)(offence and harm) and the *Code Of Programme Standards* (Principles 2.2 – Due Care, 2.3 – Protection of Children, 2.4 – Compliance and Rules 3.1 – Violent Content & 3.3 - Coarse and Offensive Language).

In this regard:

- The Committee had regard to the requirements of the *Code of Programme Standards*, which, amongst other requirements, sets out the shared responsibilities of broadcasters and parents/guardians to minimise the potential for harm and offence to be caused to children. In the case of broadcasters, this also sets out an obligation to schedule responsibly and to provide audience information (such as prior warnings) about programme content that has the potential to harm or offend audiences.

It also permits broadcasters to include content where they believe that it is editorially justified while also having regard to the type of broadcast service on which it will air and also the likely audience for the programme and the channel, the expectations of that audience and whether the typical audience for the programme is likely to be offended or harmed, such that a prior warning, for example, is required.

- Having reviewed the content, the Committee was of the opinion that the inclusion of coarse language on a Saturday morning, when a higher number of children were potentially members of the audience, increased the potential for the content to cause harm and offence. The Committee was also of the view that audiences would have been better served had the item been introduced with a prior warning about the language to be included and in this regard the broadcaster is asked to give consideration to this element of the decision when scheduling similar content in future.

However, the Committee had regard to a number of other considerations. The Committee noted that *2FM* is not a channel targeted at children but at adults and, in this context, it is appropriate that the content on such a service will reflect this audience focus. It also noted that the programme and the topic about which the complaint is made, were not likely to have been of interest to children nor was the content preceding the item likely to have been of interest to children.

Furthermore, the Committee also noted there was a context provided for the segment about which the complaint is made (the blurred lines between fictional characters and real life) and that the coarse language was a very short part of a 16-minute interview. Finally, the Committee noted that the programme, *Love/Hate*, would have been familiar to audiences and known for its coarse and offensive language.

- While the channel type and programme type, as well as the other contextual factors set out above, do not give broadcasters free rein to include content that is offensive or harmful, the Committee must also have regard to the right of certain audiences to hear content that is of interest to them and which will not, generally, be considered offensive or harmful to the typical audience. The Committee must also consider the editorial independence of a broadcaster and their right to select appropriate and interesting content for its audience. The need to balance these considerations with the avoidance of offence and harm may result in some audience members being offended by certain content.
- Having considered the item as a whole and having regard to the interests of audiences and the editorial freedom of broadcasters, the Committee was of the view that the content did not, on balance, infringe the requirements of the Broadcasting Act 2009 or the *Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

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Complaint made by: Mr. David Kiely

Ref No. 76/15

Station:

Classic Hits 4FM

Programme:

Niall Boylan at Night

Date:

9th April 2015

1. Programme

The complaint concerns *Niall Boylan at Night* which is broadcast week nights on *Classic Hits 4FM*. This is a listener 'phone-in programme dealing with a range of topics, including current affairs. The complaint refers to a discussion about a gay man working in a children's crèche.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, section 48(1)(b)(offence and harm); the BAI *Code of Programme Standards* (Principles 5 and 6).

3. Complaint Summary

The complainant refers to an email from a listener being read out on the show objecting to a gay man working in the crèche at which this listener's child attends. The complainant believes this topic was offensive and that by broadcasting it, the station provided a platform for another listener, Joe, to describe gay people as sexual deviants and to state that 'gay' and 'paedophile' were interchangeable terms. It is the view of the complainant that this represented incitement to hatred and while the presenter challenged the caller's views, such incitement should not have been broadcast in the first place.

The complainant believes that by allowing this man to describe a gay man as a "nonce" – a term for a child abuser, the broadcaster failed in its duty of care and allowed incitement to occur.

4. Broadcaster's Response

4.1 Initial response to complainant

Classic Hits 4FM state that the *Niall Boylan at Night* show is a controversial phone-in programme which is broadcast after the watershed.

The broadcaster states that it has been on air for over 4 years, so there is a listener expectation that some callers will give controversial and extreme opinions. These will always be challenged by the presenter, the callers or both. This is what happened when 'Jim' (not 'Joe') came on the programme on 19th April. The broadcaster states that this show will continue to feature opinions that could be regarded as extreme or archaic, as to silence these people would hinder the progression of society. It is the presenter and his team's belief that brushing these people's views under the rug serves no purpose to anyone.

4.2. Broadcaster's Response to BAI

Classic Hits 4FM state that on the programme in question, the presenter was discussing a listener's email regarding her concerns about her child attending a crèche where a member of the staff was a gay man. The production team felt that the email was worthy of discussion and the broadcaster believes it was dealt with in a very balanced manner.

The broadcaster states that the complainant refers to a listener called 'Joe' (*actually called 'Jim'*) who put forward some very controversial comments, but by the complainant's admission, the presenter "*clearly held an opposing view*". The broadcaster states that the duty of care on the night was to ensure that Jim's extreme comments did not go unchallenged and the broadcaster believes the presenter did carry out this duty of care in that regard.

Classic Hits 4FM believes that the listener's email and comments made by the caller in question were in the public interest and under Principle 6 of the *BAI Code of Programme Standards*, public interest content may include programme material that: '*exposes false or misleading claims made by individuals or organisations*'.

In relation to Principle 5 of the Code, *Classic Hits 4FM* claims that the broadcast did not include material '*with the intent to stir up hatred*'. The editorial justification for broadcasting the material was to create open debate and to expose and challenge extreme views.

The complainant refers to the caller's use of the word '*nonce*'. The presenter and production team had no knowledge of the meaning of this word but have since discovered this is an Australian slang word and one not used widely in Ireland. The definition of the word in slang terms apparently refers to someone being a '*perv*'. The presenter challenged this view throughout the programme.

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 decision, the Committee had regard to the Broadcasting Act 2009, section 48(1)(b)(offence and harm) and the *BAI Code of Programme Standards* (Principles 5 and 6).

In this regard:

- The Committee took account of the programme style, format and time of broadcast. The Committee noted that the programme is a caller-driven 'phone-in' programme, broadcast in the evening and which will often deal with controversial topics and views. The content and contributions to the programme may often be of an adult nature and may include language that some listeners may find offensive and harmful.

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- In assessing the programme, the Committee considered the discussion highlighted by the complainant in whole and in the context and had regard to the focus of the programme, the contributions by callers and via text messages as well as the moderation of, and contributions to, the discussion on the part of the programme presenter. The Committee noted that the context for the discussion was an email where the view was expressed by a parent who objected to their child being minded in a crèche by a gay man. The calls and texts that followed set out various views as to whether this was an acceptable position to hold.
- In the case of the caller, '*Jim*', and his views on homosexuality, it was evident from the contributions and the views expressed by the presenter that his views were inimical to society and in this regard, '*Jim*' was trenchantly challenged on his views in a manner and style that audiences to the programme would be familiar, i.e. robustly and with elements of coarse language. While this caller's opinions were clearly objectionable and would reasonably be expected to cause offence, the Committee found that they were not endorsed by the presenter or the programme as a whole.

The Committee did not agree that the airing of such views amounted to incitement to hatred but rather the programme explored and challenged the views of some individuals about homosexuality, views that most citizens would find abhorrent.

- In view of the above, the Committee did not agree that the programme infringed the Broadcasting Act 2009 or the BAI *Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

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Complaint made by: Mr. Brendan O' Regan

Ref No. 78/15

Station:

RTÉ One TV

Programme:

The Week In Politics

Date:

12th April 2015

1. Programme

The complaint concerns *The Week in Politics* broadcast on Sunday evenings. This is a weekly current affairs programme. The complaint relates to a debate on the then forthcoming Marriage Referendum.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, 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, 4.22).

3. Complaint Summary

The complainant states that the panel for the discussion on this programme was evenly divided and the filmed segments were reasonably fair. However, he states that to use a personal story (which examined the issue from the perspective of a family) on the 'Yes' side and no personal story on the 'No' side, amounted to a lack of balance.

The complainant also states that the programme presenter was one-sided and unfair in her chairing of the debate on the topic of same-sex marriage. He states that, in general, she was more intense with and inclined to interrupt those on the 'No' side, especially Senator Rónán Mullen. He states that the presenter frequently interrupted, didn't let the 'No' side representatives finish their points, put forward contentious views as if they were a given and dismissed points the 'No' side were trying to make. The complainant states that, in contrast, apart perhaps for two points, the presenter was, in his opinion, far easier on the representatives of the 'Yes' side of the referendum debate.

Furthermore the complainant claims the following were other examples of the presenter's chairing of the debate in a manner that was not fair, objective or impartial:

- The assumption/insistence by the presenter that the Children and Family Relationships Bill has '*nothing to do with this referendum*', which is a very much a contested point by the 'No' side.
- The assumption/insistence by the presenter on '*what experts say*' regarding outcomes for children of same-sex marriages – the complainant states that the presenter used studies cited by the 'Yes' side and ignored those used by the 'No' side.

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- The suggestions by the presenter of ‘*scaremongering*’ by the ‘No’ side regarding the effects on children of same-sex marriage but no suggestion of scaremongering by the ‘Yes’ side.
- The presenter’s comment that most countries ‘*at least the majority in Western Europe*’, facilitate same-sex marriage.
- The presenter’s comment that we have already been redefining marriage and that marriage is now ‘*unrecognisable*’ as a ‘*construct*’ from what it was decades ago – again another point from the ‘Yes’ campaign.
- When Senator Mullen started to talk about Government manipulation, the presenters said: ‘*leave out the Government*’ – this was evidence of bias as it was in the view of the complainant a reasonable point by Senator Mullen.
- The presenter took a different approach with the ‘Yes’ side representatives, giving them an easy time, apart from a ‘no’ point to Mr. John Lonergan at one point and when she suggested to Senator Katherine Zappone that many would say it’s foolhardy to rush this instead of seeing how it pans out in other countries.

The complainant claims that the presenter’s attitude was similar in the last section of the programme when speaking with the journalist.

4. Broadcaster’s Response

4.1 Initial response to complainant

RTÉ states that the reports which featured on the programme were made in consultation with the ‘Yes’ campaign and the ‘No’ referendum campaigns. The broadcaster states that to ensure fairness, both groups were contacted at the same time. The opportunity to identify families who could best articulate their standpoint was provided and the ‘Yes’ side said a family would take part to reflect their position on the debate. The ‘No’ side were informed of this and they indicated they remained hopeful of securing the participation of a family from outside Dublin.

On the evening before filming was scheduled, the ‘No’ side informed RTÉ that they had not made the progress they had hoped. In light of this the ‘No’ side suggested Mr. Keith Mills as an interviewee and RTÉ accepted.

RTÉ believes the presenter gave both sides the space to articulate their views. As with any referendum, it was at times a robust debate but always fair. Throughout the programme, the presenter continually put the contrasting views to the participants and was not dismissive of either side.

In her discussions with the two newspaper editors in the third part of the programme, the presenter continued to be impartial. She examined the political imperative of parties to get voters to the polls if the referendum they supported was to be passed. It should be noted that the Editor of the Irish Independent believed as it stood then, that the referendum was likely to be voted down.

The Editor of the Connacht Tribune felt this was also the case in the event of a low turnout. This was the issue the presenter was teasing out.

4.2. Broadcaster's Response to BAI

RTÉ states that the approach to this debate was in evidence from the outset when both sides were offered the opportunity to make an opening statement scripted by Senators Mullen and Zappone themselves. RTÉ notes that while the specified time was 1 minute 20 seconds, Senator Mullen's contribution as broadcast was 25 seconds longer than that of Senator Zappone. However, as noted by the BAI in the *Broadcasting Authority of Ireland Guidelines in Respect of Coverage of Referenda* (March 2015), an absolute equality of airtime is not the sole or final test of equity in coverage. Both Senators had the opportunity to respond to what the other had said.

RTÉ also make the following points:

- To ensure fairness, the programme contacted both 'Yes' and 'No' campaign groups at the same time. Both were given the opportunity to identify families who could best articulate their standpoint. When the 'Yes' campaign indicated that a family would take part, the programme so informed the 'No' campaign. The latter indicated that they remained hopeful of securing the participation of a family, from outside Dublin.

On the evening before filming was scheduled, the 'No' side informed the programme that they had not made the progress they hoped and, in light of this, suggested Mr. Keith Mills as an interviewee. RTÉ state that the programme accepted their recommendation. They state that this completely open and fair-handed dealing with the campaigns disproves any charge of bias and demonstrates the scrupulously objective and impartial manner of dealing with the campaigns on both sides of the argument.

- The broadcaster states that in the studio debate, the experienced news and current affairs presenter gave both sides of the argument the opportunity to articulate their views, putting contrasting views to the participants in a fair and appropriate manner. In the complaint, it is suggested that a comment made by the presenter that the *Children and Family Relationships Bill* has '*nothing to do with this referendum*' is evidence of bias. It was not. The presenter recognised that this was a point of argument which is why the issue formed a significant part of the debate which followed. It was an issue which she dealt with in a fair, objective and reasonable manner. Furthermore, it may be noted in this context that a presenter handling a current affairs debate will frequently put challenging points of view to participants in a direct manner which nevertheless does not indicate the advocacy of a partisan position which would breach Rule 4.22 of the Code.
- The broadcaster states that it may also be noted that the equitable handling of a debate does not necessarily require an identical approach to participants. On occasion, one side of an argument may choose a strategy of adhering to positive statements with minimal challenge to their opponents, while the other side may indeed mount such challenge to the opposing argument.

Broadcasting Complaint Decisions

In that case, the equitable conduct of a debate may require the facilitator to put challenging points to one side which the other side has chosen not to put, thereby promoting full debate on behalf of the audience.

- The broadcaster states that throughout the debate, the presenter pressed the panellists to prove their points. When challenging the 'No' argument on the question of outcomes for children, she quoted the Special Rapporteur on Child Protection. It is unfair and incorrect to dismiss this as the quotation of "*studies used by the Yes side*". The presenter correctly identified the source and then allowed the 'No' side to counter the argument. This was an appropriate approach. Any suggestion of bias is completely misplaced.
- Similarly, it may be noted that the presenter put to the proponents of the 'Yes' argument questions on the need for access to marriage by those to whom civil partnership is available, on whether the male-female relationship does not deserve its own special recognition because of its biological aspect, and on whether the putting of the referendum should not have awaited the completion of legislation on reproduction and children.
- The broadcaster states that the complainant suggests that the presenter showed bias in requesting one of the participants to "*leave out the Government*" when he made a political charge about government manipulation in the debate. The allegation of bias is inaccurate. The actual position is that there was no government representative on the panel and therefore, as they were not present to defend their position, in fairness and in keeping with Rule 4.3 of the Code in respect of persons and organisations referred to in a broadcast, the presenter moved the debate along. This was a fair and reasonable thing to do: the debate was based on the substantive issue of constitutional change in respect of marriage and structured accordingly, not as a political debate.
- The broadcaster states that in her discussions with two newspaper editors, in the third part of the programme, the complainant suggests that the presenter had "*an attitude*" which indicated she was supportive of the 'Yes' side. This allegation does not stand the test of scrutiny. The presenter examined the political imperative of parties to get voters to the polls if the referendum they supported was to be passed. This was journalistically appropriate and reasonable. It should be noted that the Editor of the Irish Independent believed, as it stood then, that the referendum was likely to be voted down. The Editor of the Connacht Tribune felt this was also the case in the event of a low turn-out. This was exactly the issue which the presenter was teasing out.
- RTÉ would contend that the programme was fair, objective and impartial. At no time did the presenter express a personal view on what way people should vote in the referendum (ref Rule 4.21). At no point, did she give any indication or suggestion as to what way she was going to vote.

It is a fact of current affairs interviewing and chairing of debates that presenters will put challenging points of view to participants; there is a clear distinction between the proper use of this technique and the advocacy of a partisan position. To challenge a panellist's point of view is not to '*dismiss*' it, a term used in the complaint.

- The broadcaster states that appropriate implementation of a fairness principle should not be taken to mean that an “*artificial balance*” is required in order to comply with the Code, nor should it be taken to imply that equal allocation of airtime is always necessary to achieve fairness.

For all the reasons set out above, *RTÉ* is satisfied that the conduct of the broadcast as a whole and of the debate complied with both the spirit and the letter of the BAI Code.

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

The Committee has considered the broadcast and the submissions by the complainant and the broadcaster. Following a review of the material, the Committee has decided to reject the complaint. In reaching this decision, the Committee had regard to the Broadcasting Act 2009, 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, 4.22).

In this regard:

- The Committee considered the programme in whole and in context and had regard to the two pre-recorded segments and the studio debate, which included two representatives each from the ‘Yes’ and ‘No’ side of the referendum debate. From its review of the programme, the Committee found that both sides of the referendum debate were afforded the opportunity to set out their views during the duration of the programme.
- As a debate, the format included a free flow of views, views which were challenged by the presenter and by the participants in the debate, as would be expected given the format of the programme. While noting the complainant’s interpretation of the role and interjections of the programme presenter, the Committee did not agree that the content of the programme supported the complainant’s interpretation. Rather, the Committee found that the questions and approach of the presenter were intended to drive the debate and to respond to the points being made by all sides with a view to informing the programme audience.

In this regard, the Committee found that the presenter articulated different views on the issues rather than advocated or supported those views. For example, in respect of the issues of ‘*scaremongering*’, the presenter highlighted that issues around the potential impact of the referendum on children, articulated by those on the ‘No’ side of the debate, had been described as ‘*scaremongering*’. As a presenter, it would be expected that she would highlight a range of views on an issue and to simply state that there are such views is not to validate or endorse these views.

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- On the issue of the use of a family in favour of a 'Yes' vote in one of the pre-recorded segment and the absence of a 'No' family; the Committee has no reason to doubt the reasons for this as set out by the broadcaster in their response. In any event, there was no obligation to include a family for the 'No' side as an automatic requirement for fairness.

The Committee found that when reviewing the pre-recorded segment that the views of the 'Yes' and 'No' side were clearly set out in a fair, objective and impartial manner in the pre-recorded item, albeit using different editorial approaches.

- Having had regard to the above, it was the view of the Committee that the programme did not infringe the Broadcasting Act 2009 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

Complaint made by: Mr. Paul Williams

Ref No. 81/15

Station:

Newstalk 106-108FM

Programme:

Newstalk Breakfast Show

Date:

20th May 2015

1. Programme

The complaint concerns *Newstalk Breakfast Show* which is broadcast each weekday morning on *Newstalk 106-108FM*. This is a news and current affairs programme. The item complained of refers to an interview with Mr. David Quinn of The Iona Institute. The interview was conducted in the context of the debate on the then forthcoming *Marriage Referendum*.

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 1 and 2 and Sections 4.1, 4.2, 4.3 and 4.19).

3. Complaint Summary

The complainant states, that in his opinion one of the programme presenters, Mr. Chris Donoghue, over-stepped the mark several times during an interview with Mr. David Quinn. The complainant states that from his review of the programme and the manner in which the interview was conducted (which he describes as haranguing in tone), it is obvious to the complainant that the presenter is a 'Yes' voter in respect of the *Marriage Referendum*. The complainant states, that in his opinion, the presenter showed little impartiality during this interview. He states that the answers to some questions posed by the presenter were not fully answered by Mr. Quinn due to consistent interruptions by the presenter with further questions.

The complainant states that such an approach is unfair to those who, at the time of the interview, had yet to decide how they were going to vote in the *Marriage Referendum* and gave little in the way of informative detail of the consequences of the wording used for changing the Constitution.

The complainant states that what people will remember from this interview will instead be the tone, attitude and nuances used by the presenter in this instance, whose job it is to be impartial.

4. Broadcaster's Response

4.1 Initial response to complainant

Newstalk 106-108FM states that they disagree with the claim that the presenter was rude or overly hostile. They further state that he was challenging and robust and they are confident that it was fair. The broadcaster states that Mr. Quinn is an experienced campaigner and he was given ample time to respond to the presenter's questions. They state that he defended himself with aplomb. The broadcaster states that the presenter tackled Mr. Quinn's contribution to this referendum campaign, and also provided some context for what they describe as Mr. Quinn's social conservatism by exploring other aspects of his attitude to marriage, namely, divorce.

4.2. Broadcaster's Response to BAI

Newstalk 106-108FM states the interviewee was clearly a proponent of the 'No' side in the then forthcoming *Marriage Referendum*. They state that given that he had 28 minutes to air his views on the programme in question, it was important that the interviewer was challenging in order to provide balance, transparency and accountability. The broadcaster states that a number of short on-street interviews with the public ('vox pops') were aired at the outset of the interview and they state that these were a further effort to be fair, objective and impartial on the topic under discussion. The broadcaster states that Mr. Quinn was very much able to defend and explain himself and, in fact, on a number of occasions was forceful and accused the *Newstalk* presenter of trying to '*muddy the waters*' and introduce extraneous matters to the interview. He went further and stated that people should be questioning the presenter's interview style.

The broadcaster states that Mr. Quinn was perfectly able to engage in the heated and spirited interview and that he was forceful and confrontational himself when he felt the need to be. The *Newstalk* presenter accepted this and the interview ended calmly and was a perfectly informative, well-balanced and trustworthy piece.

Newstalk further adds that at no point did the presenter express his own view. Given that the interviewee was advocating a particular side of the Referendum, the onus was on *Newstalk* as a responsible broadcaster to engage in forceful questioning in accordance with the Codes.

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

The Committee has considered the broadcast and the submissions from the broadcaster and the complainant. Following a review of the material, the Committee has decided to reject the complaint. In reaching this decision, the Committee had regard to the 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 1 and 2 and Sections 4.1, 4.2, 4.3 and 4.19).

In this regard:

- The Committee noted that the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* acknowledges that it is the role of a programme presenter to robustly challenge (where appropriate) interviewees and that to do so is not de facto evidence of a lack of fairness, objectivity and impartiality on the part of the presenter or the programme makers. Notwithstanding this, presenters are also required by this Code to take care that their approach to an interview, including their tone, does not result in unfairness.
- In this context, it was evident to the Committee that the interview was particularly robust. However, it was also evident that both parties to the interview engaged in the discussion in a robust manner with the presenter challenging the views of the interviewee and the interviewee challenging the approach of the presenter in respect of his line of questioning.
- The Committee also noted that the interview was extensive, at nearly 30 minutes, and examined in detail the issues at the centre of the opposition to the proposed referendum by Mr. Quinn and others who were advocating a 'No' vote. Mr. Quinn was afforded ample opportunity to set out his reasons for advocating a 'No' vote and to respond to questions put to him by the presenter about those reasons. The Committee also noted that a key element of Mr. Quinn's arguments related to the impact of a 'Yes' vote on the family, in practice and from a legal and constitutional perspective, including on the issue of surrogacy and that his arguments were clearly set out during the programme.
- The Committee also noted that the presenter, in his questioning, examined the 'worldview' of Mr. Quinn (on the issue of marriage and the family). The Committee was of the view that, as an advocate of a 'No' vote, as a representative of an organisation that takes a particular perspective on social issues (including the Marriage Referendum) and as a columnist in a national newspaper, it was appropriate for the programme to examine this 'worldview' in more detail since it informed his approach to the *Marriage Referendum*. The Committee was of the view that the questions put to Mr. Quinn around this broader area were those that listeners may themselves have had and that it is an appropriate role for a programme presenter to set out these questions and to challenge an interviewee on their views, particularly in the closing stages of a referendum debate, when the public may still be deciding how to vote.
- In considering any complaint, the Committee has regard to the programme in whole and in context. Having considered the interview as a whole, the Committee was of the view that Mr. Quinn ably set out his views and was afforded the opportunity to do so and listeners to the programme would have been clear about his position on the *Marriage Referendum*. While the interview was clearly robust, the Committee did not agree that the presenter lacked fairness, objectivity or impartiality in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Brendan O' Regan

Ref No. 82/15

Station:

Programme:

Date:

Newstalk 106-108FM

Newstalk Breakfast Show

20th May 2015

1. Programme

The complaint concerns *Newstalk Breakfast Show* broadcast each weekday morning on *Newstalk 106-108FM*. This is a news and current affairs programme on this service. The item complained of refers to an interview with Mr. David Quinn of *The Iona Institute*. The interview was conducted in the context of the debate on the recent *Marriage Referendum*.

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* (Principles 1 and 2 and Section 4: Rules 4.1, 4.3 and 4.22).

3. Complaint Summary

The complaint refers to an interview between one of the programme presenters, Mr. Chris Donoghue and Mr. David Quinn of *The Iona Institute* regarding the then upcoming *Marriage Referendum*. The complainant states that the programme presenter came across more as a campaigner than an impartial interviewer and he was rude and overly hostile to Mr. Quinn and took an approach that entirely suited the 'Yes' side of the referendum debate. The complainant further states he has no issue with robust questioning but he believes that the interview was an ad hominem attack in the worst way, and most of all, contrasts drastically with what he describes are the easy interviews given to the 'Yes' side of the referendum debate.

4. Broadcaster's Response

4.1 Initial response to complainant

Newstalk 106-108FM states that they disagree with the claim that the presenter was rude or overly hostile. They further state he was challenging and robust and they are confident that it was fair. The broadcaster states that Mr. Quinn is an experienced campaigner and he was given ample time to respond to the presenter's questions. They state that he defended himself with aplomb.

The broadcaster states that the presenter tackled Mr. Quinn's contribution to this referendum campaign, and also provided some context for what they describe as Mr. Quinn's social conservatism by exploring other aspects of his attitude to marriage, namely, divorce.

4.2. Broadcaster's Response to BAI

Newstalk 106-108FM states the interviewee was clearly a proponent of the 'No' side in the then forthcoming *Marriage Referendum*. They state that given that he had 28 minutes to air his views on the programme in question, it was important that the interviewer was challenging in order to provide balance, transparency and accountability. The broadcaster states that a number of short on-street interviews with the public ('vox pops') were aired at the outset of the interview and they state that these were a further effort to be fair, objective and impartial on the topic under discussion. The broadcaster states that Mr. Quinn was very much able to defend and explain himself and, in fact, on a number of occasions was forceful and accused the *Newstalk* presenter of trying to '*muddy the waters*' and introduce extraneous matters to the interview. He went further and stated that people should be questioning the presenter's interview style.

The broadcaster states that Mr. Quinn was perfectly able to engage in the heated and spirited interview and that he was forceful and confrontational himself when he felt the need to be. The *Newstalk* presenter accepted this and the interview ended calmly and was a perfectly informative, well-balanced and trustworthy piece.

Newstalk further adds that at no point did the presenter express his own view. Given that the interviewee was advocating a particular side of the Referendum, the onus was on *Newstalk* as a responsible broadcaster to engage in forceful questioning in accordance with the Codes.

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

The Committee has considered the broadcast and the submissions from the broadcaster and the complainant. Following a review of the material, the Committee has decided to reject the complaint. In reaching this decision, the Committee had regard to the 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* (Principles 1 and 2 and Section 4: Rules 4.1, 4.3 and 4.22).

In this regard:

- The Committee noted that the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* acknowledges that it is the role of a programme presenter to robustly challenge, where appropriate, interviewees and that to do so is not de facto evidence of a lack of fairness, objectivity and impartiality on the part of the presenter or the programme makers. Notwithstanding this, presenters are also required by this Code to take care that their approach to an interview, including their tone, does not result in unfairness.
- In this context, it was evident to the Committee that the interview was particularly robust. However, it was also evident that both parties to the interview engaged in the discussion in a robust manner with the presenter challenging the views of the interviewee and the interviewee challenging the approach of the presenter in respect of his line of questioning.

- The Committee also noted that the interview was extensive, at nearly 30 minutes, and examined in detail the issues at the centre of the opposition to the proposed referendum by Mr. Quinn and others who were advocating a 'No' vote. Mr. Quinn was afforded ample opportunity to set out his reasons for advocating a 'No' vote and to respond to questions put to him by the presenter about those reasons. The Committee also noted that a key element of Mr. Quinn's arguments related to the impact of a 'Yes' vote on the family, in practice and from a legal and constitutional perspective, including on the issue of surrogacy and that his arguments were clearly set out during the programme.
- The Committee also noted that the presenter, in his questioning, examined the 'worldview' of Mr. Quinn (on the issue of marriage and the family). The Committee was of the view that, as an advocate of a 'No' vote, as a representative of an organisation that takes a particular perspective on social issues (including the Marriage Referendum) and as a columnist in a national newspaper, it was appropriate from the programme to examine this 'worldview' in more detail since it informed his approach to the *Marriage Referendum*.

The Committee was of the view that the questions put to Mr. Quinn around this broader area were those that listeners may themselves have had and that it is an appropriate role for a programme presenter to set out these questions and to challenge an interviewee on their views, particularly in the closing stages of a referendum debate, when the public may still be deciding how to vote.

- In considering any complaint, the Committee has regard to the programme in whole and in context. Having considered the interview as a whole, the Committee was of the view that Mr. Quinn ably set out his views and was afforded the opportunity to do so and listeners to the programme would have been clear about his position on the *Marriage Referendum*. While the interview was clearly robust, the Committee did not agree that the presenter lacked fairness, objectivity or impartiality in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Peter Thomas

Ref No. 83/15

Station:

TV3 & 3e

Programme:

Advert: Subway Chicken Chipotle Sandwich

Date:

12th April 2015

1. Advertisement

The complaint concerns an advertisement for Subway Chicken Chipotle Sandwich. The item complained of refers to a campaign that ran through March 2015 on TV3 and 3e.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, section 48(1)(d)(broadcasting codes); the BAI *General Commercial Communications Code* – Sections 3.1 (Protecting the Individual and Society), 3.2 (Offence, Harm and Human Dignity), 3.3 (Transparency) and 3.4 (Compliance).

3. Complaint Summary

The complainant states the advertisement featured a 6" sandwich stuffed with numerous large chicken breast slices. He states that, in actual fact, as he verified in a number of outlets, the serving was around two table spoonfuls of tiny chicken pieces and was in no way as suggested by the advertisements. He states that, for this reason, the broadcast images were therefore doubly false, both as to the nature and amount of what was actually served.

He also states that any excuse of the images being "*prior to cooked preparation*" would not hold anyway, for additional reasons:

- The imaged chunks of chicken are already cooked;
- Any fast food industry claim of images of massive hamburger, chicken or other sandwich servings on their own as being "*prior to preparation*" represents a wholly unnatural way of showing it, which would of course never be done prior to preparation in restaurant practice.
- He states that TV commercials may be shown as specifically serving up a giant sandwich with a drink as an illusory finished meal product. This has now become common practice also with burgers, as per TV ads in recent times for other outlets, sometimes with people eating clearly massive fake burgers, also having un-melted cheese etc.

4. Broadcaster's Response

4.1 Initial response to complainant

TV3 states that in their advertising copy approval process they ensure, based on the material at hand, that each commercial abides by the BAI *General Commercial Communication Code*. In this instance, there is nothing in the advertising copy to suggest that the commercial was in breach of the Code. TV3 confirms that this advertisement was also approved by Clearcast for the UK channels operating in the Republic of Ireland.

The broadcaster's policy is to operate within the principles as set out by the BAI *General Commercial Communications Code* and they are satisfied that they did so in respect of this advertisement.

4.2. Broadcaster's Response to BAI

TV3 states it is clear that the complainant takes issue with the general nature of fast food advertising in Ireland. Regarding the specifics of this complaint, TV3 cannot reasonably be expected to conduct a survey of *Subway* outlets to compare the sold products with the images included in the actual advertisement. The advertisement is for a chicken chipotle sandwich and as they understand it, that is what the customer gets. They are unable to verify whether the content of the sandwiches purchased by the complainant were so at variance with the advertised product as to be considered dishonest. Even accepting that this might be true, they are not in a position to say whether this is due to the manner in which staff in individual stores prepared the sandwich or whether it is a matter of company policy.

4.3 Advertising Agency Response

The advertising agency, *Mediacom*, was contacted for their views. They did not respond to the BAI.

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 decision, the Committee had regard to the Broadcasting Act 2009, section 48(1)(d)(broadcasting codes) and the BAI *General Commercial Communications Code* – Sections 3.1 (Protecting the Individual and Society), 3.2 (Offence, Harm and Human Dignity), 3.3 (Transparency) and 3.4 (Compliance).

In this regard:-

- The Committee noted that the function of advertising is to set out the best presentation of a product/or service being promoted and audiences are familiar with this element of advertising.

This does not mean that false or misleading advertising is permitted, however, a determination as to whether an advert is false or misleading will be made on the basis of an objective and provable failure to provide what was offered, as opposed to the subjective experience of a particular customer.

As with any consumer experience, a customer may be dissatisfied with what has been provided to them following a purchase. There may be a range of reasons as to why a particular supplier may not meet the standards of a customer and these may be because of an objective failure of the supplier to provide a product or service, for example, the sale of a faulty product or via deficient customer service. It might also be because the product/service did not meet the expectations of the customer but the product or service supplied is nevertheless neither faulty nor deficient but rather one that the customer simply does not like.

- The role of the BAI *General Commercial Communications Code* is to regulate advertising so as to ensure that there is no objectively misleading or false information in an advertisement, i.e. to ensure that what is promoted as being sold is what the customer will get. For example, if an advertisement stipulates that a product is subject to a warranty or a guarantee then both must in reality be offered to customers purchasing the product or service.
- In the case of the advertisement in question, the Committee noted that the advert promoted the sale of a 6" sub sandwich with chicken pieces, chipotle sauce, melted cheese and a drink for the price of €4. The advert also indicated that the sandwich was also served with salad ingredients such as lettuce.

While noting that the complainant had concerns about the quality of the product served in individual outlets, the Committee found no evidence from his submission that the meal did not contain the above set of ingredients or that it was not offered for the price quoted in the advertisement such that the advert was objectively misleading or false.

- In view of this, the Committee did not agree that the advert infringed the Broadcasting Act 2009 or the BAI *General Commercial Communications Code* in the manner specified by the complainant. Accordingly, the Committee had decided to reject the complaint.

Complaint made by: Mr. Gerard Byrne

Ref. No. 84/15

Station:

Programme:

Date:

TV3

Ireland AM

29th April 2015

1. Programme

The complaint concerns *Ireland AM*, which is broadcast weekday mornings on TV3 from 7.00am – 10.00am. This is a lifestyle/entertainment programme with elements of news and current affairs. The programme made reference to alcohol and abstinence and this reference is the subject of the complaint.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(offence and harm); the *BAI Code of Programme Standards* (Principle 1 – Respect for Community Standards).

3. Complaint Summary

The complainant states that during the item in question the presenter, while interviewing a gentleman, remarked that people who are teetotallers are untrustworthy. The complainant states that he never drank himself and raised his family in the proper way and does not understand how this opinion could be aired in this way. He also feels it was made in bad taste and a slur on the honesty of people who do not take a drink.

4. Broadcaster's Response

4.1 Initial response to complainant

TV3 states *Ireland AM* is a lifestyle show which regularly features celebrity interviews such as this one, which was an interview with the actor Mr. Richard E. Grant. During the course of that interview, the interviewer made the following remark: '*Irish people have a tendency to not trust people that don't drink*'. Mr. Grant had just informed the presenter that he didn't drink as he was allergic to alcohol.

The broadcaster states that the interview was conducted in a light-hearted manner and the interview style is clearly more accurately described as banter and teasing rather than a serious conversation. The comment was not to be taken in a literal sense or meaning, but as a joke.

4.2. Broadcaster's Response to BAI

TV3 states the interview was conducted off-site at an event that Mr. Richard E. Grant was attending. It was a very brief interview which quite unexpectedly turned to the topic of alcohol. Mr. Grant informed the interviewer that he didn't drink as he was allergic to alcohol.

The broadcaster states that the TV3 interviewer and Mr. Grant laughed at the remark made by the presenter. The broadcaster states that the interview was conducted in a very jovial and convivial way and the interview style is clearly more accurately described as banter and teasing rather than a serious conversation. The comment was not to be taken in a literal sense or meaning but rather as a joke.

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

Having reviewed the broadcast, the submissions from the complainant and the broadcaster and having had regard to the requirements of the Broadcasting Act 2009, Section 48 (1)(b)(offence and harm) and the *BAI Code of Programme Standards* (Principle 1 - Respect for Community Standards), the Committee has decided to reject the complaint.

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

- The Committee noted that alcohol consumption is an important issue in Irish society and must accordingly be treated appropriately. The Committee also acknowledged that there are different approaches and views on this issue and that these must be treated sensitively. It also noted that a range of views on this issue would be expected to be seen and heard on Irish broadcasting services, including TV3;
- Broadcasters should accommodate this range of views and, in doing so, the content may not always appeal to all audiences and some television viewers may find the content unsuitable or offensive.

The BAI's rules place requirements on broadcasters which reflect these different considerations and, when determining a complaint, the BAI will consider whether an appropriate balance has been achieved between what may be the different interests of the viewing audience as a whole and not only the views of individual viewers;

- In this context, the Committee found that the item that is the subject of the complaint focused on a comment from an interviewee who did not drink alcohol. From its review of the content, the Committee found that the presenter made a comment about Irish attitudes to alcohol, attitudes which can be complex and contradictory.

The Committee found that the comment in question was light-hearted in tone and had the nature of a slightly critical but also self-deprecating comment directed at the attitudes of Irish drinkers towards those who abstain. The Committee did not consider it a criticism of those who choose not to drink alcohol;

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- In view of this, the Committee did not agree that the programme item infringed the Broadcasting Act 2009 or the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Mr. David Byrne

Ref No. 85/15

Station:

Programme:

Date:

RTÉ Radio 1

Liveline

11th May 2015

1. Programme

The complaint concerns *Liveline* which is broadcast on weekday afternoons. This is a phone-in style programme dealing with a range of topics, including news and current affairs. The item that is the subject of the complaint is a segment on the programme dealing with the discovery of an abandoned baby in Rathcoole, Co. Wicklow.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(offence and harm); the BAI *Code of Programme Standards* (Principle 3 – Protection from Harm).

3. Complaint Summary

The complainant states that at a Garda press conference earlier on the day of the broadcast, both the *Gardaí* and the child and family agency, *Tusla*, appealed for the mother of an abandoned baby to come forward and that this request was made out of concern for the mother's welfare. The complainant states that the *Gardaí* and *Tusla* were at pains to make it clear to the mother that she would be dealt with 'compassionately and sensitively'.

The complainant states that the *Liveline* segment opened with a caller raising issues on the 'ethics' of the case and questioning whether the mother of the abandoned baby should face a '*criminal investigation*'. The complainant states that this caller proceeded to cite an example from the UK of a father, allegedly, being separated from his children '*for months*' while he was investigated for leaving them in a car while he ran an errand. The complainant states that this caller then claimed that a member of *An Garda Síochána* told him that the Rathcoole case was "*just hours away from becoming a murder investigation*". In the complainant's view, the presenter failed to promptly and vigorously rein-in what the complainant describes as the caller's unsubstantiated claims. He states that it took another caller intervening and a statement from *Tusla* before the presenter offered clarification on some of the initial caller's points – but, the complainant states that the damage was probably already done.

The complainant states that this segment of the programme showed, in his opinion, a serious lack of editorial judgement. He states that not only was it poorly handled by the presenter, but the topic itself should not have been idly speculated on at this point in time. He states that conjecture by callers with no expertise/insights to a serious matter may have jeopardised the welfare of the mother in question by making it more difficult for her to come forward.

4. Broadcaster's Response

4.1 Initial response to complainant

RTÉ states that the presenter spoke to a caller who raised the issue of what, he felt, was in the best interests of Baby Maria, the child abandoned in this instance. This caller felt that too much weight was being given to the welfare of the mother and not enough to the welfare of Baby Maria. The broadcaster states that it was a view that was echoed by some of their listeners. The broadcaster also states that this caller also suggested that the location where the baby was found was so remote that the chances of her being discovered were slim. In this regard, he quoted unnamed *Garda* sources who said it was unlikely that she would have survived had she not been discovered. The broadcaster states that the presenter gave *Garda* press office updates during the programme.

The broadcaster states that the discussion about the circumstances of the abandoned baby was intended to give voice to a view that reflected the opinion of some of their listeners. They discussed the call at their editorial meeting after the programme and it was agreed that in retrospect the discussion did not work. *RTÉ* also made an editorial decision to remove the broadcast from their podcast and from their website.

4.2. Broadcaster's Response to BAI

RTÉ states that *Liveline* received several calls and texts raising questions in relation to the manner in which *An Garda Síochána* were pursuing their enquiries. These included an email on the morning of 11th May from a listener who was concerned that the emphasis placed on the welfare of the mother and on the desire to reunite mother and child possibly misrepresented the circumstances in which the baby had been found, in a remote location which detracted from the possibility of her being discovered.

The broadcaster states that the caller asked if the abandonment of a newborn child was not cause for a criminal inquiry; what was the standard operating procedure of the *Gardaí* in the event of a child being abandoned; and whether it was ethically, legally, medically appropriate that the *Gardaí* had expressed the wish to reunite the mother with her baby.

RTÉ further states:

- The Producer of the Day contacted the correspondent and discussed the points he had made in his email and wished to make on-air. Based on this conversation and a discussion with the Producer in Charge, a decision was made to put him on-air, as he was making valid points which had been expressed by other correspondents to *Liveline*, and doing so in a sensitive and lucid manner. *Liveline* also contacted the *Garda* Press Office in regard to the points he was making.
- On-air, the questioning of the approach of *An Garda Síochána* to their enquiries was raised by the caller in a calm, judicious manner. His view was not necessarily that of all listeners or members of the public; but it was a viewpoint whose thoughtful expression showed consideration for all the parties involved and raised a debate on a matter of public importance.

- Listening will confirm that it is not correct to say that the presenter did not, with equal consideration for those involved, challenge the caller's point of view. So, too, did a second caller; he did so vigorously and in more heated tones than the original caller had put his view, and the debate arguably moved away to a degree from the core question of the nature of *Garda* enquiries in such a case.
- The broadcaster states that it is important to note as an element of the broadcast on the topic that later in the programme, at 2.20pm, the presenter reiterated the statement of the Principal Social Worker with the child and family agency, *Tusla*, that they were working closely with the *Garda Child Protection Unit* and that their concern at that time was for the mother; the baby, they said, was getting every support.
- The broadcaster states that the editorial format of *Liveline* is characterised, as it was this instance, by its coverage of the response of listeners to topics of the day. Full editorial consideration is given to the wisdom of covering any particular topic. It will always be borne in mind by the editorial team that the fact that the public may be interested in a topic does not necessarily mean that broadcasting on it is necessarily in the public interest, as understood in Principle 6 of the *Code of Programme Standards*. On this occasion, after proper consideration it was decided that a discussion would in fact serve the public interest.

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)(b)(offence and harm) and the BAI *Code of Programme Standards* (Principle 3 – Protection from Harm).

In this regard:-

- The Committee noted that the *Liveline* is a topical caller-driven programme dealing with a range of issues, including current affairs. At the time of the broadcast, the story of the baby abandoned in Rathcoole was an ongoing news story and the Committee considered it an appropriate topic for the programme.
- From its review of the discussion, the Committee noted that a caller set out his view as to whether it was wise to re-unite the baby with her mother given the particular circumstances of her abandonment. The Committee also noted that the presenter set out a number of questions which examined and to some extent challenged the views of this caller. These included questions about what the presenter suggested were assumptions that the caller may have been making, for example, about the exact intent of the mother, the circumstances of the abandonment and the state of mind and well-being of the mother when she decided to leave the baby that was subsequently discovered. He also questioned whether the caller was taking the statement by *An Garda Síochána*, that it was anxious to unite the child with her mother, too literally and that any such reunion would be professionally and carefully managed in the interest of both the mother and the child.

The Committee also noted that the views of this caller were also strongly challenged by a second caller to the programme who questioned the appropriateness of the first caller's contribution given that the mother was still being sought.

- It was also the view of the Committee that the inclusion in the programme of the first caller (who queried the approach of *An Garda Síochána*) may have reasonably been considered insensitive by some listeners given the circumstances and the Committee noted that the broadcaster decided to exclude this segment of the programme from the podcast of the programme and the broadcaster website.
- Notwithstanding this, having had regard to the discussion as a whole, the approach taken by the presenter and the inclusion of a second caller who challenged the views of the first caller, the Committee did not agree that the programme infringed the Broadcasting Act 2009 or the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Station:

RTÉ One

Programme:

Prime Time

Date:

31st March 2015

1. Programme

The complaint concerns *Prime Time* broadcast on RTÉ One at 9.30pm. This is an evening current affairs programme broadcast twice weekly. The programme focused on the private rental sector. The complainant was a participant in the programme.

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 & Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2).

3. Complaint Summary

The complainant states that, at the beginning of the discussion, the following comment was made by the programme presenter, “*We have seen some of the problems facing landlords and, I don’t know how much sympathy there will be in the general public for landlords, but they may well argue, look we took a hit when rents were falling, now we surely have the right to charge what the market rate is*”. The complainant states this unsympathetic public opinion towards landlords summed up RTÉ’s editorial decisions in respect of this programme which she states were not fair or objective, being much more in favour of the problems facing tenants than the challenges of landlords. The complainant further states:

- The programme featured the Director of the *Private Residential Tenancies Board* (PRTB). The complainant states that the Director stated that “*if the tenant refuses to pay the rent at the end of the (PRTB) process, we will take them to court and we will register that judgement against them*”. The complainant states that this comment was allowed to go completely unchallenged and is unfair and untrue as evidenced by correspondence received from the office of the PRTB Director outlining that there is no legal onus on the PRTB to bring the tenants to court and there is no right of appeal of the PRTB’s decision;
- The complainant states that the Director of the PRTB went on to say – “*I can well understand that for landlords, many of whom have really overstretched themselves to pay for rental property, who leveraged off their own homes and were actively encouraged to do so, that it can be a difficulty for them, if there is a rent arrears situation*”.

The complainant states that this was a completely unfair comment to make and she states that it implied that landlords were only in this situation where they are suffering from rent arrears because of their own behaviour, having over-stretched themselves in their borrowings.

The complainant states that this characterisation is untrue and that the difficulty is that the landlord is not being paid the rent which they are entitled to because, according to the complainant, the PRTB is not taking effective action in dealing with unpaid rent. The complainant states that RTÉ did not have a representative of a landlord's association partake in the debate on the programme and instead had a mortgage advisor who happened to be a landlord. She states that, on the other hand, *Threshold*, a body who advocates for tenant's rights was represented in the debate;

- The complainant states that it was unfair that there was no opportunity for a landlord's representative to outline in any detail why 19,000 landlords left the market last year, even though this highlights the seriousness of the issues landlords face and contributes to the difficulties tenants face in obtaining rental accommodation, driving rents higher;
- The complainant states that the programme did not refer to the huge issue for landlords with regards to public bodies not linking with each other such as the *Department of Social Protection* and the PRTB. The complainant states that in advance of the programme, she had provided RTÉ with proof that the *Department of Social Protection* had paid arrears of over €2k to a tenant, despite having been informed that the tenant was not passing on the rent to the landlord. She states that this never featured on the programme and RTÉ cut out the part where she stated that the tenants had left her properties with sizeable rent arrears. This was unfair.
- The complainant states this programme was a golden opportunity to have a real discussion on how to progress to a system that really works for both sides of the debate, but unfortunately that did not happen.

4. Broadcaster's Response

4.1 Initial response to complainant

RTÉ states that *Prime Time* made a conscious decision to devote an entire item to the concerns of landlords and a separate one to those of tenants. This decision was made to ensure that the issues of concern to landlords were not dealt with in any sense as an afterthought, but were given equal weight with those of tenants.

The broadcaster states that the subject of the private rental market is enormous, and a programme like *Prime Time*, even when devoting a considerable portion of their programme to it, has to decide what issues to cover and what issues to omit and those choices rarely satisfy everyone.

However, RTÉ feels that the choices made in this instance were fair and reasonable. Another substantial portion of the complaint relates to what the representative of the PRTB said on air and RTÉ feels these points would be more appropriately addressed to the PRTB. In terms of the challenges or lack of them to the PRTB representative, they feel that the approach taken was also fair and reasonable.

4.2. Broadcaster's Response to BAI

RTÉ states the subject of the private rental market is an enormous one; it would not be possible in any television programme to cover all aspects of it. Therefore, as is standard editorial practice, the *Prime Time* editorial team had to choose which aspects of the topic to focus on, and which issues to omit. However, the absence of some aspects of the subject was simply a consequence of maintaining an editorial focus on a manageable range of issues on the viewers' behalf, both in the pre-recorded reports and the studio discussion, and did not result in any unfairness.

As stated by the presenter at the outset, the item examined some key issues “*from both sides*” - those of tenant and landlord. The broadcaster states that:-

- Both pre-recorded reports, one examining the tenant's perspective and the other the landlord's, included case histories and showed the human cost of failures in the private rental market, not only from the tenant's point of view, but also from the landlord's.
- Similarly in the studio discussion, the tenant's viewpoint was represented by Senator Aideen Hayden, the Chairperson of *Threshold*, and the landlord's by Karl Deeter of *Irish Mortgage Brokers*.
- To both, the presenter put fair and courteously challenging questions which allowed the studio guests the opportunity to express their points of view.
- In both the pre-recorded reports and the studio discussion, the issues of concern to landlords were not dealt with in any sense as an afterthought, but were given equal weight with those of tenants. For example, the report made very clear that the problem of rogue tenants is a very real one, including examples of the distress and difficulties that rogue tenants can cause landlords. It was not necessary to spell out for the audience that rogue tenants necessarily take up supply that could otherwise be available for responsible ones. There has indeed been public discussion of the possibility of rent allowance being paid directly to landlords and, had time allowed, this could well have been included; however, its omission did not result in unfairness or lack of impartiality.
- Had the editorial focus been on the operation of the *Private Residential Tenancies Board*, points made by the complainant may have been put to that organisation's representative. But this was not the focus; the editorial choice of the programme was to bring viewers an overview of the key concerns of both landlords and tenants in respect of rental property.

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

Having reviewed the broadcast, the submissions from the complainant and the broadcaster and having had regard to the requirements of the Broadcasting Act 2009, Section 48 (1)(a)(fairness, objectivity and impartiality in new and current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2), the Committee has decided to reject the complaint.

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

- It is the practice of the Committee to consider complaints about content having had regard to the programme content in whole and in context. This approach recognises that viewers or listeners to a programme will be informed by the totality of contributions made and not simply by the individual parts.

For this reason, the Committee took account of the content in the pre-recorded segments of the programme that is the subject of the complaint and the subsequent studio discussion and the range of contributors in each programme element;

- The Committee will also take into consideration the editorial focus of the programme, that is, the stated focus of the programme content. A particular news and current affairs topic can often be approached from multiple angles. As it is not generally practical to feature all relevant angles in a programme, it is common practice for a broadcaster to examine one aspect of a topic so as to inform audiences in more detail. This will entail not covering other aspects of a topic about which audiences may have an interest. However, such a decision is not automatic evidence of a lack of impartiality, fairness or objectivity. In general, not covering certain aspects of a story will be relevant only where they result in a lack of fairness, objectivity and impartiality, for example, where a particular individual or group is subject to criticism and their perspective on the topic is not featured in the programme, in circumstances where it is necessary to ensure fairness, objectivity and impartiality;
- In the case of the programme which is the subject of the complaint, the Committee noted that the focus of the programme was the rental sector in Ireland, the challenges faced by actual and prospective renters and those experienced by landlords. In this regard, the Committee noted that the presenter stated that the programme segment would examine the issue from '*both sides*' and the programme reflected this in terms of the inclusion of a pre-recorded segment focusing on renters and one focusing on landlords.

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The studio discussion that followed also included contributions reflecting the views of landlords and renters. The Committee found from its review of each element that a broad range of perspectives had been articulated and that in the studio segment, the contributors and the presenters questioned and challenged the comments made;

- The Committee also noted that the complainant was a contributor to the programme and she was afforded the opportunity to set out her perspective on the rent crisis from the perspective of landlords;
- In terms of the choice of contributor to reflect the perspective of landlords in the studio discussion, a decision in this regard rests with the broadcaster. They are under no obligation to interview a particular group (except where not to do so would be unfair) and in the case of this programme, it was evident that the contributor chosen clearly set out the views from the perspective of landlords.
- The complainant cited a number of issues and topics which she feels should have been included, as well as questions that she believes should have been asked. While the audience may have been better informed by the inclusion of some additional information such as that cited by the complainant, broadcasters must necessarily make decisions as to what to include and not include when there is only a limited amount of time to examine a topic.
- From its review of the programme and the complaint submissions, the Committee determined that there was no basis to conclude that content not covered in the programme resulted in a lack of fairness, objectivity and impartiality;
- In view of the above, the Committee did not agree that the programme infringed the requirements of the Broadcasting Act 2009 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

Complaint made by: Mr. Flannan Barnwell

Ref. No. 88/15

Station:

Programme:

Date:

RTÉ One

Irish Pictorial Weekly

12th April 2015

1. Programme

The complaint concerns *Irish Pictorial Weekly*, which is a satirical sketch show broadcast on Sunday nights on RTÉ at 9.30pm. The sketch in question included a song which contained coarse language.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(offence and harm); the *BAI Code of Programme Standards* (Principle 1 - Respect for Community Standards and Principle 5 - Respect for Groups in Society).

3. Complaint Summary

The complainant states that a song was sung which included the following “*God can be a right feckin bollix*” and “*we should all pray like fuck*”. The complainant claims that in broadcasting such material, the broadcaster failed to adhere to Principle 1 and 5 of the *Code of Programme Standards*. The complainant further claims that the broadcaster failed to show due respect for religious views and it is his opinion that it deliberately scripted the offensive words and sentences to cause the most disrespect for all religious views, particularly those of a Christian nature.

4. Broadcaster’s Response

No response received from RTÉ by the due date. The reason cited by RTÉ to the BAI was administrative error.

4.1. Broadcaster’s Response to BAI

RTÉ state that while always mindful that comedy, and particularly satire, is a matter of taste and mindful also of the sensibilities of viewers, RTÉ believes that in providing a satirical view of contemporary life and culture in Ireland the series contributes to RTÉ’s delivery of its public service remit. In addition, RTÉ asserts that the series fulfills the expectations of its audience; the programme is well known to its audience for its format and for its robust, challenging and satirical comedy.

RTÉ claim that religious beliefs were not the subject of the sketch that is the topic of the complaint. The parodic country and western singer 'Dominic Walsh', featured in the sketch, is a regular character on the programme and the comic target of the sketches in which he appears is the combination of conservatism and sentimentality in his performances.

In the sketch, which is in two parts (the second part contains the material complained of), no offence is directed towards sincere religious beliefs and the sketch was not intended to or likely in the belief of RTÉ to cause undue offence to this comedy programme's audience, to members of the public in general or to adherents of the Roman Catholic faith or of any Christian faith.

The broadcaster states that community standards, the focus of Principle 1 of the Code, do not prevent the broadcast of satirical comedy. RTÉ believe it could be argued that iconoclastic comedy is a long-established tradition in Irish life and in Irish broadcasting which audiences in Ireland appreciate, understand and welcome. In relation to Principle 5, the broadcaster states that no group is identified in the section of the sketch which is complained of.

In closing, RTÉ wishes to apologise to the complainant and to the BAI for the lack of response, due to administrative error.

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

Having reviewed the broadcast, the submissions from the complainant and the broadcaster and having had regard to the requirements of the Broadcasting Act 2009, Section 48 (1)(b)(offence and harm) and the *BAI Code of Programme Standards* (Principle 1 - Respect for Community Standards and Principle 5 - Respect for Groups in Society), the Committee has decided to reject the complaint.

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

- The Committee noted the type of programme that was the subject of the complaint. Specifically, the programme was satirical comedy and it is common for such programmes to treat topics in a humorous and sometimes vulgar manner. It is also common for such programmes to push the boundaries of acceptable content and this is a well-established aspect of comedy programming. The Committee also noted that the programme was broadcast at 9.30pm and that it is common for programming at this time of day to be targeted at adult audiences and to provide content that will not be to the taste of all viewers and that some viewers may find offensive;
- In this context, a key consideration for the Compliance Committee is whether the content is unduly offensive and is such that it is likely to widely offend. This level of offence can occur because the content is beyond the bounds of acceptable community standards or it is broadcast at a time that is inappropriate for general audiences;

Broadcasting Complaint Decisions

- Having reviewed the programme content, taking account of the programme genre and the time of broadcast, it was the Committee's view that the content did not infringe community standards nor did it infringe requirements in respect of groups in society;
- Concerning the coarse language, the Committee found that it had a context in the satirical song featured in the programme. In particular, the item juxtaposed the archetypical image of the clean-cut and twee Country and Irish singer with songs that were cynical, misanthropic and vulgar. Further, the Committee found that the focus of the humour was not aimed at religion or those who held religious beliefs but rather at the character portrayed in the programme and his perspective on life and God;
- In view of the above, the Committee did not agree that the programme infringed the requirements of the Broadcasting Act 2009 or the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Martin Ford

Ref. No. 91/15

Station:

Ocean FM

Programme:

North West Today

Date:

18th May 2015

1. Programme

The complaint concerns *North West Today*, which is a current affairs programme broadcast daily from 9am – 11 am on Ocean FM. The complaint refers to a live broadcast on the then forthcoming referendum on marriage with participation from a panel and members of the audience. The complainant was a participant in the programme.

2. Complaint Category

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

3. Complaint Summary

The complainant states that he attended a debate on the *Marriage Referendum* and was a member of the audience supporting the 'No' side. The complainant states that he put forward a hypothetical situation where two men who are paedophiles get married and are then in a position to adopt and abuse children. He states that, however, before he could finish he was cut off by the presenter of the programme and had the microphone pulled out of his hand. The presenter told him he would not allow him to continue given the line he was taking. The complainant believes the presenter should have remained neutral and allowed him to finish his question.

4. Broadcaster's Response

Ocean FM states that the question being presented by the complainant was highly offensive and the linking of paedophilia specifically to gay men was also highly offensive and incorrect. The broadcaster states that the presenter was absolutely correct to prevent the complainant from developing this point which had nothing to do with the subject matter of the Referendum.

4.1. Broadcaster's Response to BAI

Ocean FM states that the programme was a live event featuring six people on a panel; three on the 'Yes' side and three on the 'No' side. Members of the public were invited to attend and at various times during the broadcast, people were allowed make their contribution.

The broadcaster states that when the complainant spoke he indicated that he had concerns about two men who were paedophiles getting married and at that point the presenter interjected and indicated that that type of question would not be allowed. Ocean FM maintains that this was done on the basis of good taste and relevance. The broadcaster states that the debate had been carried out in a fair, frank and respectful manner but the introduction of fears that same sex marriage might encourage paedophilia was dangerous and misleading. The complainant's comment caused anger and upset among all six members of the panel and also provoked subsequent anger among the listening public.

Ocean FM believes they took the right action by disallowing the question.

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

Having reviewed the broadcast, the submissions from the complainant and the broadcaster and having had regard to the requirements of the Broadcasting Act 2009, Section 48 (1)(a)(fairness, objectivity and impartiality in new and current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2), the Committee has decided to reject the complaint.

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

- The Committee noted that the complainant was a participant in the programme and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* includes particular requirements in terms of how broadcasters treat programme contributors;
- The Committee also noted that the programme was about an important current affairs issue, the *Marriage Referendum*, scheduled to take place shortly after the date of broadcast. As such, the BAI's rules require broadcasters to take additional care when dealing with a topic of this importance;
- Further, broadcasters are editorially independent of the regulator and are appropriately free to arrange and manage programme content (and the treatment of the subject of that content) in a manner that they believe will best meet the needs of the audience, while also complying with the relevant legislation and codes;
- Having had regard to the above, it was the view of the Committee that it was not ideal for the presenter, having invited the question, to cut short the complainant's contribution in a context where he had been invited to participate and where programme debates are intended to provide audiences with the widest range of views. However, audience members in studio debates have no automatic right to contribute to a programme and decisions in this regard, as well as decisions about how to manage a live debate, rest appropriately with the programme maker;

Furthermore, given the nature of the question asked by the complainant, which some audience members are likely to have found unduly offensive and where a discussion based on this question might compound that offence, the Committee was of the view that the editorial decision to cut short the complainant's contribution was, on balance, one that the broadcaster was entitled to make, particularly in circumstances where it was not evident how the question was relevant to the *Marriage Referendum*;

- In view of the above, the Committee did not agree that the programme infringed the requirements of the Broadcasting Act 2009 or the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Ms. Niamh Barry, Ms. Natalie McDonnell, Mr. Patrick Rooney, Mr. Alex Layden **Ref. No. 103/15**

Station:

RTÉ One

Programme:

Claire Byrne Live

Date:

11th May 2015

1. Programme

The complaint concerns *Claire Byrne Live* which is a current affairs programme broadcast on Monday nights. The programme entailed a debate on the then forthcoming *Marriage Referendum*.

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 & Impartiality in News and Current Affairs* (Section 4: Rule 4.27).

3. Complaint Summary

The complainants state the following:

- On the evening of Monday, 11th May, 2015, RTÉ and the programme presenter allowed an hour long debate on the *Marriage Referendum* to, in the complainants' view, be dominated by the issues of adoption, assisted human reproduction and surrogacy. The complainants state that after two authored reports and some initial comments from people in the audience, the presenter turned to panellist, Senator Rónán Mullen. They state that this occurred just over 14 minutes into the programme. They states that she asked Senator Mullen the following open-ended question: "*Rónán Mullen, that comes up time and time again, concerns about children, adoption and surrogacy?*"
- The complainants state that from this moment until around the 46-minute mark, the debate focussed exclusively on the issues of adoption, and donor-assisted human reproduction/surrogacy. The complainants further state that in their opinion the moderator failed throughout this period to move the debate to the issue of extending the right to marry for same-sex couples.
- The complainants believe that the devotion of more than half of the programme to these issues of adoption and surrogacy, issues advanced by opponents of the referendum, was unfair and in breach of the BAI's key principle that coverage should be approached with an emphasis on the issues that the public must decide in the referendum.

- The complainants state that in their opinion it cannot be argued that this 32-minute section of the programme complied with the BAI's key requirement of focus on the issues to be decided, because the presenter herself expressly acknowledged that this was not the case. After a commercial break, she stated: *"Welcome back to our discussion on the same-sex marriage referendum. Now we spoke a lot about children, surrogacy and adoption before the break, I want to get to, really I suppose, what we are being asked about on the day."*
- The complainants state that during the more than half hour of the programme devoted to adoption and surrogacy, RTÉ and the presenter, facilitated the casting of inappropriate comments as to the motivations of children's charities in asserting that the passage of the referendum was in the interests of children, and as to the independence from Government of the Chairman of the *Adoption Authority*, and *Special Rapporteur on Child Protection*, Dr. Geoffrey Shannon. A pre-recorded interview with Dr. Shannon had been broadcast during the course of the debate, but Dr. Shannon was not present in the studio to be given an opportunity to defend his good name and refute the implication of a lack of independence from Government on his part. These entirely unsubstantiated allegations were not challenged by RTÉ.
- The complainants state that it is clear that opponents of the Referendum were questioned in a more open-ended, and sometimes leading, fashion, affording them greater leeway to set the agenda of the debate. Supporters of *Marriage Equality* were, on the other hand, questioned in a narrower and more pointed fashion, and were interrupted more frequently. They state that this was evident of a passive approach by the presenter to the questioning of the 'No' side of the debate.
- The complainants claim that in this as in other debates broadcast throughout the last five days, supporters of the Referendum have engaged with and debated the points being raised by the 'No' side, but opponents of the 34th Amendment have evaded engagement with the substantive pro-equality arguments made by the 'Yes' side.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ state the following:

- With regard to the question of time allocated to deal with the issues of adoption, assisted human reproduction and surrogacy, RTÉ does not agree that devoting approximately half the debate to these issues was unfair or in breach of guidelines.

- The broadcaster states that during the 32-minutes referred to, Minister Simon Coveney and members of the audience advocating for a 'Yes' vote gave their views on the relevance or not of these issues to the referendum.
- Also included was a six minute interview with Dr. Geoffrey Shannon, Chair of the *Adoption Authority* and *Special Rapporteur on Child Protection*. He did not wish to appear in the studio but wished to bring clarity from his perspective to some argument being made by the 'No' side.
- In relation to the presenter's chairing of the debate, RTÉ state that her tone and questioning were fair to both sides in the studio and during her pre-recorded interview with Mr. Shannon. She allowed both sides time to make their arguments and put opposing points to both sides.

4.2 Broadcaster's Response to BAI

RTÉ state that the complaint has two core considerations. The first is whether the time allowed to both sides of the argument contributed to fair, impartial, objective and equitable coverage, specifically in the context of the interview with Dr. Geoffrey Shannon, Chair of the *Adoption Authority*. The second is whether editorial coverage of certain topics which were the subject of public controversy at the time was fair and objective. While the complaint focuses on these two considerations, RTÉ submits that deliberation on the fairness, objectivity and impartiality of the broadcast must consider the entire programme, including the pre-recorded videos by proponents of a 'Yes' and 'No' vote, the debate between Minister Simon Coveney and Senator Rónán Mullen, including contributions by members of the invited studio audience, and the pre-recorded interview with Dr. Geoffrey Shannon.

The complaint in respect of equitable coverage focuses particularly on the contribution to the programme of Dr. Shannon. RTÉ state the following:

- The intervention of Dr. Shannon in the referendum debate was a newsworthy and important event in a referendum campaign which had seen considerable attention paid to the topic of adoption law and procedures. The inclusion of his interview was entirely in keeping with section 5 of the *BAI Guidelines in Respect of Coverage of Referenda*.
- The broadcaster states that Dr. Shannon's views were his professional, considered views based on his experience and he made it clear that he was not advocating a vote either way. That was emphasised on the programme both before and during his interview. However they were still views with which there was unequivocal legal and policy disagreement from those making the 'No' argument, as can be clearly seen in the programme itself. In that context and in the interests of fairness, impartiality and an equitable approach, the bearing of Dr. Shannon's views on the referendum debate was acknowledged by the RTÉ Referendum Steering Group.

- For the reasons above, RTÉ asserts that there was no breach with regards to fairness, balance or objectivity in relation to the equitable coverage of the referendum arguments within this programme. Furthermore, this coverage was undertaken in a completely transparent manner in the broadcast, in which the perspectives of all contributors were clearly identified. It is RTÉ's understanding that the requirement for transparency in section 5 of the *BAI Guidelines in Respect of Coverage of Referenda (March 2015)* refers to broadcast material and is not intended to interfere with a broadcaster's confidential editorial process.
- In relation to the other aspect of the complaint which deals with editorial decisions around the issues covered in the debate programme, RTÉ state that they are satisfied that the issues discussed across this one-hour programme were not just appropriate but also important for viewers and voters.

The programme discussed all issues from adoption and surrogacy and any potential impact of the vote either way on those issues to marriage, love, sexuality, equality and the definition of family.

- The broadcaster states that at the time of broadcast, there was a debate ongoing as to whether the referendum, if passed, would impact constitutionally on the adoption process or whether it would confer a right to a family for same-sex married couples. RTÉ is satisfied that to discuss these issues comprehensively within a major debate programme was entirely appropriate.
- RTÉ claim that the complaint misrepresents the presenter's meaning when she said - "*I want to get to really, I suppose, what we're being asked on the day.*" In saying that, they assert that the presenter was certainly not supporting the complainants' assertion that the impartial editorial coverage of referendum arguments in the programme up to that point unduly emphasised any aspect of those arguments. She was simply expressing the editorial decision to move the debate to focus on the formal question which would be put to voters in the referendum proposal.
- RTÉ asserts that the complainants' reference to the passivity of the presenter in dealing with contributors from the 'No' side is inaccurate and unfair and is not supported by a review of the programme and the presenter's professional handling of debate.

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

Having reviewed the broadcast, the submissions from the complainants and the broadcaster and having had regard to the requirements of the Broadcasting Act 2009, Section 48 (1)(a)(fairness, objectivity and impartiality in new and current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.27), the Committee has decided to reject the complaint. In reaching this decision, the Committee had regard to the following:

- The Committee noted the programme genre, a debate programme, and noted that such programmes are free-flowing, organic and dynamic compared to standard studio-based current affairs programmes. As such, the on-air management of such programming, the type of contributor interactions as well as audience expectations are different from standard studio based formats. Accordingly, in considering the complaint, the Committee had regard to these factors;
- In this context, the Committee noted that the role of the presenter is to moderate the debate, to drive the debate forward and, where appropriate, to challenge and question contributors in the interest of the wider audience, with a view to ensuring participating studio audiences and contributors are afforded an opportunity to set out their opinions. The Committee also had regard to the debate as a whole, and the totality of contributions to the programme debate;
- The Committee noted that the programme topic was the then forthcoming *Marriage Referendum*. The programme included studio participation by those favouring a 'Yes' vote and those favouring a 'No' vote as well as contributions from independent parties, such as Dr. Geoffrey Shannon. The Committee noted that, as would be expected, both sides set out their views and these views were probed and questioned by the presenter but also by contributors from the opposing sides of the debate. Having reviewed the programme as a whole it was evident to the Committee that a broad range of views from both sides of the debate were presented during the programme;
- The Committee also noted that the issue of adoption, assisted reproduction, surrogacy and the perceived potential unseen consequences of the constitutional change were key issues for those advocating a 'No' vote. These were issues in the public domain and were being discussed across media and amongst the general population. There were views, both during the programme and in the broader referendum campaign, which challenged the relevancy of these issues to the constitutional question that was before the citizens of Ireland. However, the function of a broadcast debate programme is to examine such issues and it is wholly appropriate that the participants in the programme advocating a 'No' vote were permitted to set out their views. Given that such issues constituted the main arguments of the 'No' side, it was also unsurprising that they took up a considerable amount of the programme and the Committee considered it editorially legitimate to take this approach;

- While it is appropriate for a presenter to facilitate debate and to question and challenge views, sometimes robustly, in the case of a discussion on a referendum, it is not generally their role to decide what views can be expressed, except, for example, in circumstances where such views are illegal, such as those that would incite hatred. In this context, the Committee did not agree with the complainants that the presenter facilitated unfairness.

Rather, the Committee found that she facilitated the airing of the key issues articulated by the 'No' side and the 'Yes' side, as one would expect from an impartial programme presenter dealing with a matter of great public significance.

In terms of the approach to questioning taken by the presenter, the Committee found that this approach was fair. It also noted that a different approach to questioning is not automatic evidence of unfairness; rather, different approaches are often necessary depending on the views expressed by contributors and how they chose to respond;

- The Committee was of the view that audiences may have been better served by a wider debate of the issues than was evident in the programme. In addition, audiences may also have benefited had some of the contributions been challenged more forcefully. However, having considered the programme as a whole, having had regard to the fact that it was a live debate and having had regard to the above considerations, the Committee did not agree that the programme infringed the requirements of the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainants. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Ms. Niamh Barry, Ms. Natalie McDonnell, Mr. Patrick Rooney, Mr. Alex Layden **Ref. No. 104/15**

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ Radio One	Morning Ireland	14 th May 2015

1. Programme

The complaint concerns *Morning Ireland* which is a news current affairs programme broadcast weekday mornings from 7am – 9am. This was an interview with footballer, Mr. Ger Brennan on the topic of the then forthcoming *Marriage Referendum*.

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 & Impartiality in News and Current Affairs* (Section 4: Rule 4.17, 4.20 and 4.27).

3. Complaint Summary

The complainants state the following:

- In the course of his interview, Mr. Brennan, made a number of plainly incorrect statements relating to the Constitution. These included:
 - Article 41 of the Constitution states that where possible, a child should be brought up by [his or her] mother and father.
 - If the referendum passes, from a constitutional point of view, two men will have a constitutional right to procreate a child through human-assisted reproduction.
- The complainants states that these clearly inaccurate statements were not challenged by the interviewer. They state that, given that the statements contained basic and obvious errors, it was incumbent upon the interviewer to challenge them.
- The complainants state that, of the several errors made by Mr. Brennan, only one was corrected by the interviewer. This was in respect of his statement that Mr. William Binchy had been in favour of both divorce and abortion. They state that the interviewer noted that Mr. Binchy's pro-life stance was well known.

- The complainants claim that balance does not simply mean the provision of equal airtime for the expression of opinion, however irrelevant to the issues to be decided or incorrect such opinion may be. In its coverage of the Marriage Equality Referendum, RTÉ News and Current Affairs failed, in their opinion, to produce relevant, balanced and fair programming and reportage.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ state the following:

- Mr. Ger Brennan referred to Article 41 of the Constitution and although he cited the first part correctly, he added on the non-existent reference to *"where possible a child should be brought up by his or her mother and father"*. RTÉ accepts the Mr. Brennan should have been picked up on that statement.
- In relation to Mr. Brennan's statement that a 'Yes' vote would give two men a constitutional right to procreate a child through human-assisted reproduction, RTÉ accept that he was not challenged on this during the broadcast in question. However, the broadcaster claims that *Morning Ireland* aims for fairness across programmes and just two days earlier, listeners would have heard Mr. Justice Cross, *Referendum Commission Chairperson*, stating that there are no specific Constitutional provisions on the issue as to surrogacy.
- On reflection, Mr. Brennan could have been challenged immediately during his interview on his claim about rights of access to assisted reproduction. Nevertheless, keeping in mind the broadcasts on the programme before and after that interview, of opposing and far more authoritative views on the topic, RTÉ does not believe there was any infringement of the legislation or code.

4.2 Broadcaster's Response to BAI

RTÉ state the following:

- The Series Editor of *Morning Ireland*, in response to the complainant's initial complaint, recognised that it would have been preferable had Mr. Brennan been challenged on his statements in respect of the Constitution. However, many statements made by Mr. Brennan in the interview did not go unchallenged by the presenter. For example:
 - Interviewee: ". . . *that child is then taken away from the natural parents and the biological father.*"
Presenter: *"Not taken away, because nobody's doing anything against anybody's will. Has that not even been considered?"*
Interviewee: ". . . *[babies] have pretty much been sold as commodities.*"
Presenter: *"Are you seriously suggesting that would happen in this country?"*

- The fact that Mr. Brennan is not and did not present himself – and clearly was not presented to listeners – as a constitutional or indeed legislative expert, must be a factor in assessing the gravity and influence of his inaccurate statements in relation to the Constitution.
- Alongside the interview with Mr. Brennan, the same edition of *Morning Ireland* presented a related interview with the writer, Mr. Colm Tóibín. In the words of the presenter introducing the first interview: “*Today we’re going to hear two opposing views on marriage rights.*”
- RTÉ claim that listening to that second interview will confirm that Mr. Tóibín was afforded a similar opportunity to that given to Mr. Brennan, to outline his support of a ‘Yes’ vote, with, in the interests of fairness and impartiality, challenging questioning of a similar level being put by the presenter.
- In addition, and in the context of Rule 20 and of fairness, impartiality and objectivity in the overall coverage of the *Marriage Referendum* by *Morning Ireland*, RTÉ state that it may be noted that listeners to the programme would have heard *Referendum Commission Chairperson* Mr. Justice Cross state in the edition of 12th May 2015 just two days previously, that there are no specific Constitutional provisions on the issue as to surrogacy. Furthermore, in the following week, on 19th May 2015, *Morning Ireland* listeners will also have heard the Commission Chairperson, in his final interview before the broadcasting moratorium in advance of the vote, state that: “*The referendum is not in our view, about surrogacy.*”
- RTÉ recognise that Mr. Brennan’s statements about the Constitution could usefully have been challenged. However, that does not indicate acceptance that, when taken in whole, and in conjunction with related broadcasts within the same edition and in other editions of the programme, the interview with Mr. Brennan represented a breach of the requirement for fair, impartial and objective broadcasting.

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

Having reviewed the broadcast, the submissions from the complainants and the broadcaster and having had regard to the requirements of the Broadcasting Act 2009, Section 48 (1)(a)(fairness, objectivity and impartiality in new and current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.17, 4.20 and 4.27), the Committee has decided to reject the complaint.

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

- It was the view of the Committee that listeners may have been served better had the presenter challenged what were evident errors, acknowledged by the broadcaster in its response to the BAI, in the contribution made by the interviewee.

In the absence of these challenges, the potential to provide audiences with a fully informed view was not provided. However, on balance, the Committee did not deem the programme to lack fairness, objectivity and impartiality. In particular, the Committee noted that the interviewee was not an expert on the issue and while this does not remove obligations to ensure views are challenged, a different interview style was used than might otherwise have been, and the Committee found this approach legitimate from an editorial perspective. In this regard, the Committee noted that the presenter did question the views of the interviewee but in a less forceful manner than was warranted;

- In addition, the same programme also included a similar non-expert contribution from the writer, Mr. Colm Tóibín. More broadly, the Committee had regard to the fact that few listeners are likely to have approached the segment without already being familiar with the key issues arising from the Referendum debate, including criticisms of both sides of the debate. This would be especially so given the date of the broadcast, which was towards the end of the campaign. As such, audience members are not likely to have been unduly swayed by the contribution from Mr. Brennan;
- In view of the above, it was the opinion of the Committee that the interview did not, on balance, infringe the requirements of the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity or Impartiality in News and Current Affairs* in the manner specified by the complainants. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Ms. Niamh Barry, Ms. Natalie McDonnell, Mr. Patrick Rooney, Mr. Alex Layden **Ref. No. 105/15**

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ One	Six One News	15 th May 2015

1. Programme

The complaint concerns *the Six One News which* is broadcast each evening from 6.01pm – 7pm. The item complained of refers to a report on the then forthcoming *Marriage Referendum*.

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 & Impartiality in News and Current Affairs* (Section 4: Rule 4.2, 4.17 and 4.19).

3. Complaint Summary

The complainants state that the report on the *Marriage Referendum* included the views as expressed by two psychologists, Dr. Maureen Gaffney and Dr. Gerard Van Der Aardweg. In their opinion, the report was surprisingly silent as to the background of Dr. Van Der Aardweg, who attended the event of the *Alliance for the Defence of Family and Marriage* (ADFAM) – an organisation campaigning for a ‘No’ vote in the *Marriage Referendum*.

The complainants state the following:

- The reporter stated that Dr. Van Der Aardweg quoted from “*a study in Amsterdam*” showing that the average duration of homosexual relationships was “just” one and a half years. Dr. Van Der Aardweg then appeared on screen stating the study also indicated that the average duration of homosexual relationship was not monogamous in the first year. There was no indication in the report that the veracity or reliability of “*a study in Amsterdam*” had been verified by RTÉ.
- The complainants state that this was a significant omission, particularly in circumstance where the professional body, *Psychiatrists in Ireland* (PSI) recently expressed concern about the psychological research cited by ADFAM in their professional literature.

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- The complainants state that the reporter went on to include comments by Dr. Gaffney which related to the issue of outcomes for children raised by same-sex parents. There was nothing in the report to counter-balance the very serious statements as to the nature and duration of homosexual relationships.
- The complainants refer to comments made by Dr. Van Der Aardweg at the ADFAM event reported in the Irish Times. However, none of his controversial comments were included in this report on the Six One News.
- The complainants claim that the report presented Dr. Gaffney and Dr. Van Der Aardweg as psychologists of equal standing, notwithstanding the fact that the PSI has expressed concerns about ADFAM's reliance on Dr. Van Der Aardweg's research.
- The complainants state that there was lack of sensitivity and care in the manner in which the Six One News reported a potentially offensive statement of undoubtedly questionable credibility about the durability of same-sex relationships.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ state the following:

- The report included the views of people on both sides of the Referendum Campaign i.e. Mr. Ger Brennan, in favour of a 'No' vote and Colm Tóibín in favour of a 'Yes' vote.
- The report reflected the fact that both campaigns had presented views by psychologist which, they asserted, supported their point of view. The reporter pointed out that there was a clash in their views over the stability of families from same-sex couples.
- The report stated that Dr. Van Der Aardweg was quoting from a study in Amsterdam that showed the average duration of a homosexual relationship to be a year and a half.
- This comment was not challenged or verified in the report but neither was the comment from Dr. Gaffney, speaking at a *Yes Equality* event, who said that there is not one single study in the scientific research literature that shows any significant difference in the emotional, educational or social development of children for same-sex couples.

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- In the context of the news report of events of the day, it could not be expected to verify every statement made by both psychologists. The report impartially presented the arguments that both sides made.

4.2 Broadcaster's Response to BAI

RTÉ state the following:

- Neither psychologist was invited to participate in the broadcast; the broadcast was a report on their presentation by the respective campaigns. The production and reporting on the two presentations was credible and trustworthy; the editorial context of such a report was not one in which questioning was appropriate.
- Psychologist, Dr Van Der Aardweg, was presented as an expert by the *Alliance for the Defence of Family and Marriage* group. Professor Maureen Gaffney was presented as an expert psychologist at a *Yes Equality* press conference. Both psychologists were featured in the report, introduced as: "*Psychologists have clashed over the stability of families based in same-sex relationships.*" It should be noted that Professor Gaffney's point of view was a rebuttal to that expressed by Dr. Van Der Aardweg.
- It may also be noted, in the above context and with reference to Principle 5 of the *BAI Code of Programme Standards*, that the report did not include statements made at both press conferences of a particularly contentious nature, instead focusing on the core of the argument.
- The complaint refers, for example, to statements made at the ADFAM press conference, not included in the report; similarly, statements by Professor Gaffney, referring to Nazi Germany and apartheid-era South Africa, were not reported. The report focussed on the key element of the differing view taken by the two psychologists.
- In keeping with Principle 5, no speech likely to incite hatred was included. During the *Marriage Referendum*, views on family and relationships which will have been upsetting to individuals on both sides of the argument were expressed. RTÉ News and RTÉ as a broadcaster, were conscious of the potential for such upset and, as on this occasion, took this into consideration and exercised discretion, without censorship, when covering the campaign.
- The goal is to report on the arguments put forward that day by the groups involved. While, appropriate editorial discretion was shown in reporting both conferences, neither statement made by the psychologists was analysed; nor were they presented by RTÉ News in such an editorial context. Viewers are aware that campaigns can and do quote statistics and studies which support a particular view and that very frequently there are statistics and studies available to counter that from the other argument. This may be noted in the statement by Professor Gaffney, carried in the report.

- The logic of this complaint is that RTÉ News should not have reported the key event of that day's 'No' campaign, laying itself open to the accusation of suppressing one side of the argument to the advantage of the other. Or that RTÉ News should have done so but offered an analysis (presumably by other psychologists) of the statements made at the press conferences, something which lies outside the valid and reasonable expectation of such a news report. Or that RTÉ News should have included in its report the most controversial, potentially offensive statements made at the two conferences, in possible breach of Principle 5 of the *BAI Code of Programme Standards*.

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

Having reviewed the broadcast, the submissions from the complainant and the broadcaster and having had regard to the requirements of the Broadcasting Act 2009, Section 48 (1)(a)(fairness, objectivity and impartiality in news and current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.2, 4.17 and 4.19), the Committee has decided to reject the complaint.

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

- The Committee noted that the item was a news report on developments in the *Marriage Referendum* campaign that had arisen during the news cycle since the previous edition of the programme. As a news report it was limited to a factual report on the views of those featured and did not include analysis. In this regard, the item presented the views of the GAA footballer Mr. Ger Brennan and writer Mr. Colm Tóibín and set out the reasons that they believed that one should vote against or in favour of the proposed change to the Constitution. This was followed by different views of psychiatrists on the stability of same sex unions (in the case of a psychiatrist attending an event arranged by the 'No' side) and the wellbeing of children reared in same sex unions (in the case of the psychiatrist attending an event arranged by the 'Yes' side);
- As a factual news report, that simply presented views, there was no requirement to challenge or investigate the views expressed. In this regard, broadcasting legislation is clear about the requirement that news content should be objective and impartial but places no obligations in respect of fairness. Further, there was no evidence to indicate that the items demonstrated a lack of objectivity and impartiality on the part of the broadcaster;
- In view of the above, it was the opinion of the Committee that the broadcast did not infringe the requirements of the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainants. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Patrick Armstrong

Ref. No. 116/15

Station:

RTÉ Radio 1

Programme:

The Marian Finucane Show

Date:

21st June 2015

1. Programme

The complaint refers to a discussion of the coverage of the deaths in Berkeley, California of six Irish students after a balcony they were standing on collapsed. *The Marian Finucane Show* is a magazine programme including elements of current affairs, lifestyle and human interest topics. The programme is broadcast every Saturday and Sunday mornings from 11:00am to 1pm.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and 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 during a discussion about the collapse of the balcony in Berkeley, comments were made about the construction company to the effect that this company was to blame for the accident. The complainant cites comments such as *it looks like the fault lies with the builder, doesn't it?* and *this builder has form; inflicted with negligence of others*. The complainant claims that these comments (not verbatim) were made without regard for fact and in the light of recent reports, unfounded.

4. Broadcaster's Response

4.1 Initial response to complainant

RTÉ states that:

- This was a wide ranging discussion during which the panel members considered various articles in the Sunday newspapers examining the different reasons why a balcony designed to hold the weight of 2 tonnes could collapse with only 13 people on it;
- An article in the *Irish Mail on Sunday* focused on the lead construction company and the problems tenants in another building had experienced with dry rot in their balconies. One of the panellists pointed out that a spokesperson for the construction company had refuted this was the reason for the Berkeley balcony collapse.

He also pointed to a *Sunday Times* newspaper article that concluded the incorrect placement of a plastic membrane on the building had led to the collapse;

- The broadcaster states that at no time did the panel come to any conclusion about who or what was to blame. That segment concluded with the presenter herself saying “*and how is one to know about these things*” which clearly shows that a fuller investigation of the facts are required before coming to any conclusion.

4.2. Broadcaster’s Response to BAI

RTÉ states that:

- The discussion took place in the context of the terrible tragedy in Berkeley having dominated conversation in Ireland that week;
- A number of panellists spoke both from a personal perspective and, with consistent reference to various newspaper articles covering the tragedy from various different perspectives;
- The complaint focuses on slightly over one minute of this ten-minute item, in which one panellist synthesised newspaper coverage of the potential liability of the company which constructed the apartments where the balcony had collapsed. This contribution was clearly contextualised within the newspaper discussion by the presenter, introduced as “*reading through the various articles today . . . this builder has form.*” A report in *The Irish Mail on Sunday* newspaper was quoted, which included noting that a spokesperson from the construction company refuted claims of negligence; so, too, was a report in *The Sunday Times* newspaper. The broadcaster states that the panellist’s brief account was concluded by the presenter underlining, in a way appropriate to the conversational tone of the programme, that no conclusions had yet been reached, saying, “*How is one to know about these things?*”
- RTÉ states that the broadcast was entirely accurate in its account of the newspaper coverage of this aspect of the tragedy, and RTÉ notes that the complaint does not claim otherwise. It was also fair, impartial and objective, in that it was limited to an account of that coverage, presented no material extraneous to that coverage, did not become a substantive or definitive discussion of the liability of the contractors if any, and underlined that no conclusion on responsibility could be reached.
- The broadcaster states that it may be noted that the complainant makes a mistaken connection between an earlier comment by a panellist on the deaths being due to negligence and the later account of newspaper coverage of the quality of the apartment building’s construction. That earlier comment, which referred to the Stardust tragedy, did not ascribe fault to any party but simply made the not unreasonable assumption that the sudden collapse of a balcony was possibly due to negligence of some kind.

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

Having reviewed the broadcast, the submissions from the complainant and the broadcaster and having had regard to the requirements of the Broadcasting Act 2009, Section 48 (1)(a)(fairness, objectivity and impartiality in new and current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2), the Committee has decided to reject the complaint.

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

- The Committee noted that, in line with the regular programme format for the show, the programme is driven by the main news stories of the day and the week. The main story in the newspapers on that day was the tragic deaths and serious injury of a number of Irish students in Berkeley, California. For this reason, the contributors detailed the angles on this story included in that day's newspaper headlines and in the inside pages and the discussion developed from this analysis. In this regard, the item approached the story from a number of angles, including the performance of the agencies of the Irish State, such as the Irish Consulate, in dealing with the situation, as well as discussions about a *New York Times* newspaper article. The item also discussed the personal impact of the situation on the programme contributors, on the population at large and also on those who had, like those injured and who had died, visited the United States on J1 visas.
- In this context, the news coverage and the discussion focused, as one would expect, on the possible causes for the collapse of the balcony which led to the tragic deaths and serious injuries.

The track record of the builder of the apartment complex where the balcony was located was therefore a legitimate aspect of the story on which to focus, not only because of the facts of the case but also because it was referenced in newspaper articles that drive the format of the Sunday edition of the programme. Upon reviewing the broadcast, the Committee found that the contributors did not allege or assert liability in a definitive manner but rather questioned whether negligence could be a factor having had regard to newspaper coverage and the facts of the story. The newspaper coverage made references to a prior building complex where issues had allegedly arisen and also made reference to the building standards expected of balconies such as the one involved in the situation under discussion. The views of the construction company, who built the apartments and who denied that they were responsible for the deaths and injuries, were also featured.

More broadly, the causes were discussed in a speculative manner which references such as “...it looks like, based on the articles” and “how is one to know?” typifying this approach. The Committee also noted that the complainant's reference to a comment by a contributor about victims being “*inflicted with the negligence* [of others]” was in fact a reference to the Stardust Nightclub fire and not to the Berkeley balcony tragedy.

Broadcasting Complaint Decisions

- In view of the above, it was the opinion of the Committee that the broadcast did not infringe the requirements of the Broadcasting Act 2009 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.

Rejected by the BAI Executive Complaints Forum

Complaint made by: Mr. Donal O'Sullivan-Latchford on behalf of Family and Media

Association

Ref. No. 40/15

Station:

Programme:

Date:

RTÉ Radio 1

Drivetime

28th January 2015

1. Programme

The complaint concerns *Drivetime* which is broadcast weekday evenings on *RTÉ Radio 1* from 16:30 – 19:00 and which is one of the weekday news and current affairs programmes on *RTÉ Radio 1*. The complaint concerns an item on this programme dealing with the *Gender Recognition Bill* that was, at the time of the broadcast, being discussed in the Houses of the Oireachtas.

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, 4.21 and 4.22).

3. Complaint Summary

The complainant states the following:

- The complainant states that the programme item dealt with the concerns that some transgender people had about aspects of the *Gender Recognition Bill* being discussed in the Houses of the Oireachtas. He states that particular emphasis was given during this programme to the fact that a married person could not have their true gender recognised, since this would leave them in a de facto same-sex marriage, which did not exist at this time and was the subject of a referendum. The complainant further claims that the “concerns” really amounted to an argument in favour of same-sex marriage during which no counter-argument was heard or even alluded to.
- The complainant also states that this same-sex marriage argument was articulated firstly, by Mr. Broden Giambrone, the *Chief Executive of Transgender Equality Network Ireland (TENI)*.

He states that the *TENI* spokesperson's point was then highlighted by the presenter and further elaborated on by a reporter for the *Drivetime* programme. The complainant states that, finally, in a 2 minute clip from a recorded interview, a married transgender person claimed (effectively because same-sex marriage did not exist) to be in the position of being forced to divorce in order to access the rights proposed in the Gender Recognition Bill.

The complainant states that the voice of the *Drivetime* reporter was heard only once in this time and for 4 seconds, only, when he interjected with what the complainant describes was an entirely non-challenging question.

- The complainant claims that these instances were effectively an argument for same-sex marriage and were in no way challenged by any of the interviewers, presenters or interviewees. He states that no alternative view points or arguments were allowed to be heard. The complainant therefore believes that this was unfair and clearly one-sided, particularly in the context of the same-sex marriage referendum.

4. Broadcaster's Response

4.1 Initial response to complainant

No response was received by the complainant. *RTÉ* states that this was due to misfiling.

4.2. Broadcaster's Response to BAI

RTÉ states that this report was recorded and broadcast on the day that the *Gender Recognition Bill* was debated in *Seanad Éireann* on 28 January 2015. The report was a follow-up to the 2013 *Drivetime* series 'Growing up Transgender', which explored the lives of transgender people in Ireland, ahead of the Government's commitment to draft legislation for gender recognition. The follow-up report explored the concerns of transgender people, now that the legislation was up for debate in the Houses of the Oireachtas.

RTÉ states that, in line with the broadcaster's editorial freedom to decide on the topic and angle of its broadcasts, the item was introduced as follows, making the editorial angle of the report clear to listeners within the context of their expectations of a news-driven programme such as *Drivetime*.

"This afternoon the Gender Recognition Bill was debated in the Seanad. The Bill allows transgender people to have their true gender legally recognised by the State for the first time. There are concerns about some elements contained in the Bill, including the requirement for a medical evaluation and the exclusion of married transpeople. Now, Drivetime's Neil Doherty met some of those affected by the Bill this afternoon."

The broadcaster states that the report heard the personal stories and views of two individuals directly affected by the legislation, namely the father of a transgender man, a transgender woman, and also of Mr. Broden Giambrone, spokesperson for *Transgender Equality Network Ireland*.

The broadcaster further states:

- The first segment of the report included a clip in which Mr. Giambrone summarised the concerns of his members regarding certain requirements contained within the legislation.

- The second segment of the report featured a transgender woman who is legally married to a woman, with whom she has children. The draft legislation does not allow for this woman to apply for gender recognition because she does not meet the requirement that a trans person be single.

In the interview, this woman outlined that the requirement to be single means that she will be excluded from a pathway to gender recognition. The broadcaster states that this woman argued that this leaves her with two choices: to continue to live legally as a man; or to become single to meet the criteria (i.e., get divorced). The broadcaster states that this guest stated that she does not want a divorce. She argued that she wants to protect her children by remaining married.

- The broadcaster states that at no point in the interview did this guest articulate a position in favour of same-sex marriage. In the interview, this guest posed a question to government, asking how the draft legislation meets the state's obligation to protect her marriage and cited article 41 of the Constitution. The broadcaster states that the interview was not about same-sex marriage. Rather, it heard the testimony of a transgender woman who highlighted the choices that she now feels she faces because of the requirement in the legislation for a transgender person to be single for their gender to be recognised. The reporter did not challenge this guest on the issue of same-sex marriage, because same-sex marriage was not discussed with this guest.
- The broadcaster states that the third segment of the report heard the personal story of the father of a transgender man. This guest spoke about the difficulties encountered by his son in coming out as transgender and about his concerns about the lack of a pathway for gender recognition for younger trans people.
- The fourth segment of the report heard once again from the transgender woman who spoke about her concerns that a transgender person would need the approval of a medical practitioner before applying for gender recognition.

The complainant argues that *“particular emphasis was given to the fact that a married person could not have their true gender recognised.”* RTÉ states that:

- The duration of the complete report was approximately 9 minutes and 30 seconds.
- The discussion and interview surrounding marital status of the guest who was a transgender woman lasted approximately 2 minutes and 30 seconds.
- Mr. Broden Giambrone summarised the concerns of his members for approximately 1 minute and 45 seconds, of which 25 seconds focussed on the requirement to be single.

RTÉ claim that the requirement to be single was appropriately, accurately and impartially dealt with as a core element of the editorial purpose of the report, the outlining of the objections of transgender people to the proposed legislation.

The reporter and presenter's references to the requirement to be single were in the entirely factual context of outlining the complex issues arising from the draft legislation and were not in any way positing a position in favour of same-sex marriage.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity & impartiality in current affairs) and the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.21 and 4.22).

In this regard:-

- When considering the complaint, the Forum noted that the discussion in question took place in the context of the Gender Recognition Bill, which had been debated in Seanad Éireann earlier on the same day. The topic was explored through interviews with three guests; a transgender woman, the father of a transgender man and Mr. Broden Giambrone, the spokesperson for *Transgender Equality Network Ireland*. The Forum was of the view that the decision to explore the topic through a series of interviews was a legitimate editorial approach.
- The Forum was mindful of the complainant's belief that the segment in question was biased in favour of marriage equality, but the members did not agree that the discussion was about marriage equality.

The discussion was focused on the *Gender Recognition Bill*, and although the fact that same-sex marriage was not legal at the time of broadcast was mentioned, this was merely a factual statement which was made only in relation to the Bill and the potential impact of the Constitutional provisions, in place when the Bill was under discussion, on the rights of people impacted by the Bill. The Forum did not feel that it was reasonable to view this as a discussion on same-sex marriage. The handling of the topic was fair and the fact that the discussion didn't expand into a wider debate on the marriage referendum cannot be viewed as infringing the requirements to be fair, objective and impartial in circumstances where the referendum was not relevant to the topic under discussion.

- The Forum noted that Mr. Broden Giambrone's contribution was fact-based and focused on what the Bill allows for and the implications of that Bill for transgender people. Mr. Giambrone did outline some of the concerns he had with the Bill, but the Forum did not agree with the complainant's view that the points he raised amounted to an argument in favour of same-sex marriage.

They were instead an examination of issues arising from the Bill and the perceived limitations in a number of circumstances. Given this, the Forum noted that this was a factual discussion on the Bill and not one about marriage equality.

- The Forum noted that the other two contributors were speaking about their personal experiences, being a transgender woman and the parent of a transgender man. The Forum noted the complainant's belief that the presenter was overly sympathetic but found no evidence of this in the broadcast. Further, each of their contributions related to the Bill and were not about marriage equality.
- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 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. As the discussion constituted current affairs, Rule 4.21 was not considered as part of the Forum's consideration.

Broadcasting Complaint Decisions

Complaint made by: Mr. Donal O'Sullivan-Latchford on behalf of Family and Media Association **Ref. No. 41/15**

Station:

Newstalk

Programme:

Lunchtime

Date:

4th February 2015

1. Programme

The complaint concerns *Lunchtime* which is broadcast weekdays from 12:30 – 13:30 and which is one of the weekday news and current affairs programmes on *Newstalk*. The complaint concerns an interview with a woman who had experienced a pregnancy where the foetus had a fatal foetal abnormality.

2. Complaint Category

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

3. Complaint Summary

The complainant states the following:

- The complainant believes the interview lacked any challenging questions and he states that the interviewee's answers, which would have been refuted had a '*pro-life*' spokesperson been present, were allowed to go unchallenged. He states that, for example, when the interviewee stated that in her opinion the termination of a baby with a life limiting condition by means of early delivery was not abortion.
- The complainant states that the interviewer adopted the prejudicial language of the interviewee and came across as excessively sympathetic to her position.
- The complainant believes this interview was not fair, balanced or impartial.
- The complainant states that, given that this was in his opinion a single, unchallenging interview of an advocate of abortion and given that it was not balanced by another view, the interview did not meet the requirements of the BAI's regulations or the Broadcasting Act.

4. Broadcaster's Response

4.1 Initial response to complainant

No response was received by the complainant. *Newstalk* apologises and states that the response to the complainant had almost been completed within the required time but, due to unforeseen certified sick leave, *Newstalk* was not in a position to send it on time.

4.2 Broadcaster's Response to BAI

Newstalk states that the interviewee appeared on *Lunchtime* to share her experience of fatal foetal abnormality and her reaction when faced with the news that one of her unborn twins had already died and that the other would not survive outside the womb.

The broadcaster states that the presenter gave his guest the opportunity to tell her story and to express her view but, despite the sensitive nature of the interview, he also challenged her on a number of occasions pointing out that her view that legislation should be introduced with regard to cases like hers may not be '*the will of the people*'.

He said '*You say there's one world inside Leinster House and another outside it. What Leinster House and the politicians inside it are supposed to do is reflect the will of the people. Could it be the case that they have been up to some point reflecting the will of the people and how can we say for certain that has changed and that they are not still reflecting a an opinion that you may not agree with, that many people may not agree with, but that still is out there?*'

The broadcaster states that the presenter clearly put to his guest that there are many in similar positions to her who have chosen to carry foetuses deemed to be incompatible with life to full term and indeed the programme has featured such case studies on a number of occasions. The broadcaster states that the guest acknowledged the right of people to choose this course of action. She also stressed that she had no desire to dismiss debate around the issue of abortion and accepted that she was giving a personal view on a very specific matter on which she felt qualified to speak on given her experience. *Newstalk* claim that the fact, as argued by the complainant, that the interview was not balanced on the day with a similar interview with an 'opponent of abortion' does not in itself represent unfairness or partiality.

Newstalk state that with regard to the BAI's Code, that the programme presenter demonstrated '*an even-handed approach*' in terms of how he presented the interview and how he treated the contributor throughout what must have been for her a difficult and deeply personal interview. They state that he was independent, unbiased and editorially independent at all times and clearly as outlined above reflected the views of those not participating in this particular piece of content. *Newstalk* believe the interview was conducted in an objective and impartial manner that was fair to all interests concerned including those of the programme guest.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to the requirements of the Broadcasting Act 2009 Section 48(1)(a)(fairness, objectivity & impartiality in current affairs) and the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4:Rules 4.1, 4.2, 4.21 and 4.22).

In this regard:-

- The Forum noted that the interview in question was conducted in the context of a proposed amendment to the *Protection of Life during Pregnancy Act 2013* which had been introduced by Ms. Clare Daly T.D. and was due to be debated in the Dáil later the same week of the broadcast. The interview in question was with a woman who was discussing her experience with fatal foetal abnormality. The broadcaster chose to explore the topic through a personal interview, this is not uncommon and the Forum was of the view that it was a legitimate editorial approach.
- The Forum did not find any evidence to support the complainant's belief that the interviewer adopted prejudicial language or that he came across as excessively sympathetic to the interviewee's position. The members noted that the presenter was sensitive to the nature of the contributor's experiences, however, this was to be expected and the Forum did not feel that there was any necessity to challenge the contributor when she was speaking about her personal experience.
- The Forum noted that there was a wider discussion on the law surrounding termination in cases of fatal foetal abnormality and the Forum found that the presenter challenged the contributor about these wider issues and presented an alternative viewpoint when necessary.
- The principle of fairness does not necessarily require that all possible opinions on a subject are addressed, and the Forum noted that the programme was discussing fatal foetal abnormalities and current Irish law and was not a debate about abortion in general.
- The interviewee was there to tell her personal story and the Forum felt that the complainant's assertion that the interviewee was advocating abortion or that the presenter was pursuing a partisan position were unfounded.
- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 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

Complaint made by: Mr. Donal O'Sullivan-Latchford on behalf of Family and Media Association

Ref. No. 42/15

Station:

Newstalk

Programme:

Lunchtime

Date:

6th February 2015

1. Programme

The complaint concerns *Lunchtime*, which is broadcast weekdays from 12:30 – 13:30 and which is one of weekday news and current affairs programmes on *Newstalk*. The complaint concerns an interview on this programme with Mr. Richard Boyd Barrett T.D. and Ms. Olivia Mitchell T.D. on the subject of fatal foetal abnormalities and the options open to parents under Irish law in respect of the termination of unborn children with such conditions.

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. 4.19 and 4.22).

3. Complaint Summary

The complainant states the following:

- The complainant believes the interview with Deputy Boyd Barrett lacked any challenging questions and he states that the interviewee's answers, which would have been refuted, had a '*pro-life*' spokesperson been present, were allowed to go unchallenged. He states, for example, the contribution by Deputy Boyd Barrett which the complainant states implied that the termination of pregnancy in which the foetus has a life limiting condition did not really constitute abortion.
- The complainant claims that the interviewer adopted, what he describes as the interviewee's prejudicial tone and language and as a result came across as excessively sympathetic to the position that the interviewee was adopting.
- The complainant believes this interview was not fair, balanced or impartial.
- The complainant states that the interview that followed with Ms. Olivia Mitchell T.D. did not challenge what he describes as the basic '*pro-abortion*' arguments which had been advanced by Deputy Boyd Barrett but instead dealt only with technicalities. The complainant states that the interviewer in this case provocatively and controversially suggested that certain people almost had been '*denied a voice*' in the abortion debate and in this regard, lined up beside Deputy Boyd Barrett and his arguments.

4. Broadcaster's Response

4.1 Initial response to complainant

No response was received by the complainant. *Newstalk* apologises and states that the response to the complainant had almost been completed within the required time but, due to unforeseen certified sick leave, *Newstalk* was not in a position to send it on time.

4.2 Broadcaster's Response to BAI

Newstalk states that the item under consideration was a news item covering events in the Dáil on 6th February, the day Ms. Clare Daly T.D put forward her Bill allowing for terminations in cases of fatal foetal abnormalities. The focus of the piece was clear from the outset - that the constitutionality of the Bill and the government's insistence that they did not have a mandate to hold a referendum to change the constitution to facilitate it.

The broadcaster states that the programme presenter introduced the item opening with a clip of Minister for Health, Mr. Leo Varadkar T.D. making that point in the Dáil and a counterpoint on the politics of the issue from Mr. Mick Wallace T.D.

The broadcaster states that the guests on the programme, Mr. Richard Boyd Barrett T.D. and Ms. Olivia Mitchell T.D. represented the two sides of the debate in the Dáil. The broadcaster states that Deputy Boyd Barrett clearly argued that he believed the Bill was constitutional and the grounds on which he held that belief and Deputy Mitchell gave her view that it was unconstitutional and that, on advice from the Attorney General, the Government was of the view that the Bill was unconstitutional and that therefore could not be supported by them.

The broadcaster states that Deputy Boyd Barrett had chosen this particular day to share with the Dáil his personal experience of fatal foetal abnormality and his interview on Lunchtime was the first in which he had an opportunity to put his views in the context of the loss to a fatal foetal abnormality of his baby daughter. The broadcaster states that in the interests of treating contributors on the programme '*fairly and honestly*' as required in the Code it would have been remiss of the presenter and Lunchtime, both with regard to Deputy Boyd Barrett and to the listener, not to put his views in this context.

The broadcaster states that Deputy Boyd Barrett therefore was afforded time to explain his views but he was also challenged on the point that medical misdiagnosis in the case of fatal foetal abnormalities could occur and that in such a case a healthy child could be terminated.

Newstalk states that Deputy Mitchell was clearly given the opportunity to argue her point that the Bill was unconstitutional and this directly contradicted Deputy Boyd Barrett's stance on the issue. They state that the fact that her basis for doing so was not a personal experience, directly opposite to his, cannot be taken to mean that the programme was partial towards him.

She contributed on what was the substance of the debate in the Dáil and was given ample time to do so. *Newstalk* believes that overall the piece accurately and fairly represented the debate that was taking place in the Dáil and was ‘*fair to all interests concerned*’ in that regard.

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

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

In this regard:-

- When considering the complaint, the Forum noted that the discussion in question took place in the context of a Bill which was put forward by Ms. Clare Daly T.D. on the same day as the broadcast. The Bill proposed to change the *Protection of Life During Pregnancy Act 2013* and the contributors, Mr. Richard Boyd Barrett T.D. and Ms. Olivia Mitchell T.D., were discussing the constitutionality of the proposed Bill.

The Forum was mindful of the complainant’s belief that the segment in question failed to be impartial, fair or balanced and felt that a pro-life person should have been on the programme. However, the Forum noted that the focus of the discussion was about the constitutionality of the Bill and not on the issue of abortion. The broadcaster has the editorial right to approach a topic in a manner they feel is relevant and in this case the topic was about the constitutionality of the Bill. There was no obligation for this to expand into a wider discussion on whether or not abortion is right in cases of fatal foetal abnormality.

- The Forum felt that the topic was dealt with in a fair and even-handed manner by the presenter. There was no evidence to support the complainant’s view that the presenter adopted a prejudicial tone or was excessively sympathetic to the interviewee’s viewpoint.
- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 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

Complaint made by: Mr. Donal O'Sullivan-Latchford on behalf of Family and Media Association

Ref. No. 45/15

Station:

Programme:

Date:

RTÉ One

Six One News

29th January 2015

1. Programme

The complaint concerns *Six One News* which is broadcast weekday evenings on *RTÉ One* from 18:00 – 19:00 and which is the early evening news and current affairs programme on *RTÉ One* Television. The complaint concerns a report on this programme dealing with access to schools for the children of parents who do not subscribe to the Christian faith.

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, 4.17, 4.19 and 4.21).

3. Complaint Summary

The complaint concerns a news report which was introduced as *"Ireland's Humanist Association is asking the Government to remove legislation that allows the country's religious run schools to discriminate against children raised with no religion. They say non-religious children are being turned away from their local schools because of the provision. The Association is meeting the Taoiseach and the Minister for Education this evening."*

The complainant states that the report did not meet the requirements of the Broadcasting Act or the BAI's Code of *Fairness, Objectivity and Impartiality in News and Current Affairs* for the following reasons:

- The complainant claims that the introduction was biased and set the tone for what followed. He states that the expression *"allows the country's religious run schools to discriminate against children ..."* is a loaded one and that the word *'discriminate'* has a pejorative connotation and is almost never used in a positive or, even, neutral way.
- The complainant claims that *RTÉ* has reported as fact that, in Irish law, religious schools (can) discriminate. He states that the Act that *RTÉ* is actually reporting on says the opposite - that religious schools do not discriminate.

He states that these negatively phrased, misleading, inaccurate claims about the Irish legislation in question (*The Equal Status Act 2000*, which the *RTÉ* report never actually names) are repeated later by the *RTÉ* news reporter in the report proper.

- The complainant states that the news report opens with a short introduction and an interview with a couple whose applications for their son to attend three local religious run schools, they claim, have been rejected.

The complainant states that when the mother of the child says, *"When it comes to the closest school, which happens to be a Catholic school, he's very far down in terms of category for prioritization and allocation of places "*, the RTÉ news reporter, interrupts (at the word 'allocation') with an impatient *"Why?"*, before the mother has finished. The complainant states that this could be taken up as indicating the reporter's own frustration with such a 'bad' law. He says that the mother answers, *"Because he doesn't have a Baptismal cert. Em, because we've decided that we would prefer for him to make those kind of decisions when he's older..."* The complainant states that as the mother is giving this answer, the RTÉ news reporter is seen nodding and looking at both parents in a very concerned manner. The interview continues in this vein. Then, the news reporter says, *"This couple doesn't want to be named. They don't want the schools in question to be named either. They are afraid identification could make a bad situation worse."*

- The complainant believes this comment is an unfair slur on similar schools. He states that there is almost a suggestion of vindictiveness on the part of these schools, and by extension, all such schools, which he states heightens further the sympathy which has been created towards the couple in question and the sympathy which is being created towards those wanting to change the law. The complainant states that we never hear from anyone on the other side of the debate that RTÉ is clearly trying to foster. Nor are their views represented fairly, in any other way.
- The complainant states that the father of the child was then interview and stated, *"And we're being told there's no place for him. That's because he's not a Catholic."* The complainant claims the real reasons for this are: the schools are full and there are no non-denominational schools and/or insufficient demand, for them in this particular area.

The complainant states that instead of providing this explanation the RTÉ news reporter then, inaccurately and uncritically, explains what the father has said - repeating, in fact, what he describes as the inaccurate, negative and misleading claims about The Equal Status Act 2000 (which the RTÉ report never names) made at the beginning of the RTÉ report.

- The complainant states that next, the news reporter introduces the following juxtaposition: *"Ireland's equality laws allow religious run schools to discriminate ... The Humanist Association wants this changed"*.
- He states that *The Humanist Association of Ireland* is, in this way, introduced as an apparent *'knight in shining armour coming to the rescue'* of the country and of all those for whom sympathy has been carefully aroused and heightened, in this report, and pressurising the Government into changing what is, clearly, here, presented by RTÉ as *'bad'*!

- The complainant states that a clip of Mr. Brian Whiteside of *the 'Irish Humanist Association' (The Humanist Association of Ireland)*, is played and he is shown saying, *"In a country almost brought to ruin by lack of honesty, lack of integrity, how can it be alright for parents to be asked to do something totally against their conscience, simply in order to get their child enrolled in a State run school?"* The complainant states that, however, nowhere in the preceding interview or anywhere else in this report is it claimed or has it been claimed that parents had been asked to have their babies baptised at all, let alone baptised against their consciences, which is stated, inaccurately, as fact, here, and, quite incredibly, is not corrected by RTÉ.
- The complainant believes that this clip of what he describes as Mr. Whiteside's misleading, uncorrected *'question'* is then followed, by another clip, on this occasion, of the Minister for Education, Ms. Jan O'Sullivan T.D., in what appears to be, and is certainly presented as, an answer to that misleading and uncorrected question by Mr. Whiteside. The complainant states that the Minister's 'response' is *'wrapped up'* with a judgemental and dismissive comment from the RTÉ news reporter: *"But, that is little comfort to these parents"*. The RTÉ journalist uses this to end her report.
- The complainant claims that the timing of the report in an apparent cynical attempt to influence the outcome of a meeting between *The Humanist Association of Ireland* and the Government which was taking place that night, is especially worrying. The complainant further claims that this was, regrettably, an unfair, even, shoddy piece of propaganda, unworthy of any 'News' programme.

4. Broadcaster's Response

4.1 Initial response to complainant

No response was received by the complainant. RTÉ apologised to the complainant and to the BAI for the lack of response to his initial complaint. Re-organisation of the RTÉ Complaints administration process over the past three months unfortunately caused the misfiling of this complaint which was therefore not forwarded to RTÉ News for response.

4.2. Broadcaster's Response to BAI

RTÉ states that the report by its Education Correspondent looked at an issue that has been topical for the past number of years, most particularly among parents seeking to enroll their children in Irish primary schools.

In this regard:-

- By far the majority (96%) of schools are managed by religious organisations, in particular Catholic Church-managed schools (89%). The patrons of the vast majority of these primary schools instruct their schools to give priority to children of their own faith when it comes to enrolment. They are entitled to do this under Irish law. Children of other Christian faiths usually come next, and then children of other faiths. Children who have no faith are only considered when all those categories have been filled.

- Where there is oversubscription, the parents of children of no faith can find themselves at the bottom of the list in the case of all of their local schools. The current demographic boom means that very many schools, especially in urban areas, are oversubscribed. If non-religious parents don't have a multi-denominational school in their area, with places, then they can find themselves in serious difficulty.
- Parents are aware that if they baptise their child, their chances of getting a place are greatly enhanced.
- The Roman Catholic Church, by far the largest provider of primary education here, has recognised the need for more diversity of provision and has published several documents of its own, including a submission to the forum. The Irish state has been criticised by the United Nations and a range of other international bodies for the lack of choice afforded to parents in the education system.
- For all these reasons, this is an issue that is worthy of *RTÉ* News coverage.
- The report broadcast on *RTÉ* News on the 29th January featured a non-religious mother and father who were considering baptising their child, just to get him into school. They felt the enrolment system was compelling them to do something that was against their consciences. They were very unhappy about this. These parents represent a growing minority of parents here who find themselves in this position.
- The report focussed on this couple, illustrating the dilemma of this minority, as mentioned above the subject of national and international concern. As *The Humanist Association of Ireland* was about to meet the Taoiseach to raise with him their concern that current legislation allows schools to discriminate against non-religious children, Mr. Brian Whiteside of *The Humanist Association of Ireland* was interviewed.

To address the specifics of the complaint, the broadcaster states:

1. The complainant criticises the use of the word '*discriminate*'. The broadcaster states that in the report the word is used in the generally understood sense of '*recognising a distinction*' and of favouring one category over another. This is a factual representation of the situation described above, where schools are legally entitled to favour one category of children over another.

The *RTÉ* News report makes clear that "*Ireland's equality laws allow schools to discriminate in favour of children of their own faith.*" The broadcaster states that it is accurate in stating that legislation allows schools to act in a way which would reasonably be generally understood to be discriminatory, but are allowed to do so by being specifically excluded on the basis of religion from the anti-discrimination provisions of the *Equal Status Act 2000*. The broadcaster states that the legislation does not, as the complainant states, say that "*religious schools do not discriminate*"; it simply says that they cannot be accused of doing so under that piece of legislation, as defined in that legislation.

RTÉ also notes that the report did not explore the legislation in any detail, which would be impossible in a short news report aimed at a general audience.

2. The complainant says that a question put by the reporter “could be taken up as indicating the reporter's frustration with such a ‘bad’ law.” RTÉ rejects this allegation. The reporter is simply questioning in order to focus the interview on the core matters. The complainant's interpretation is imaginative and partisan.
3. The complainant criticises the reporter for *"nodding and looking at both parents in a very concerned manner."* The broadcaster states that it may be noted that it is the job of a reporter to draw out and facilitate interviewees in putting their point of view. This is a particularly sensitive role where, as in this case, it is difficult for parents to speak publicly about their problem. The parents in question did not wish to speak publicly because they did not want to draw attention to their child. However they also felt strongly that their situation merited being publicised as an example of the circumstances in which non-religious parents and their children can find themselves. For that reason they agreed to be interviewed, but without being named. Having never given an interview before, and addressing a topic that is an upsetting one for them because it affects their own child, they naturally found the experience difficult. In every interview situation but especially in a sensitive one such as this it is normal for a reporter to listen closely and respectfully to what the interviewees are saying.
4. The complainant states *"there is almost a suggestion of vindictiveness on the part of these schools"*. The broadcaster states that there was no such suggestion, ‘almost’ or otherwise. The report makes it absolutely clear that schools and their patrons are allowed by equality legislation to do as they do. No motive whatsoever is ascribed to them doing so.
5. The complainant states *"we never hear from anyone on the other side of the debate that RTÉ is clearly trying to foster"*. The broadcaster states that the report was about the operation of the Irish primary education system in respect of the enrolment of non-religious children and the legislation which allows schools to operate in the way they do. *The Humanist Association of Ireland* is asking the Government to change the legislation. In the report, RTÉ News interviewed both sides of this debate – *The Humanist Association of Ireland* and the Government (represented by the Minister for Education). It is up to the Government to change the law.

It is the Government's responsibility, under *The Constitution, the Education Act*, and international conventions to ensure that all children can be educated according to their parent's consciences.

The complainant appears to allege that there was unfairness in not hearing the view of Catholic or other religious school patrons. There was in fact no unfairness. The report accurately presented the topic as a matter between the State and non-religious parents, illustrated in the report by the couple interviewed and represented by *The Humanist Association of Ireland*.

The recent *European Court of Human Rights* ruling on the 'Louise O'Keeffe case' again upheld the Irish state's responsibility for the education of children here.

The broadcaster states that, in other words, neither the Roman Catholic Church nor any other religious body that runs schools has a constitutional or other legal responsibility to provide for the education of any child. Therefore, when it comes to seeking a change in legislation or any other change to the system, it is the Government which is responsible for that legislation, not any individual church. That is presumably why *The Humanist Association of Ireland* sought a meeting with the Taoiseach and not any of the churches who run the schools, and why *RTÉ News* interviewed the Minister for Education rather than misleadingly diverting the argument towards any religious institutions.

6. The complainant criticises the inclusion of the assertion by Mr. Brian Whiteside, on behalf of *The Humanist Association of Ireland*, that parents should not be "*asked to do something totally against their conscience.*" The broadcaster states that Mr. Whiteside stated a point of view which is substantiated by the situation regarding enrolment described in detail above. It was stated as a point of view on that situation and not as a matter of fact specific to any particular case.

It may be noted also that in stating that parents were "*asked*" to do something it was clearly meant that the situation, rather than any individual or organisation, "*asked*" it of them. Similarly, when earlier in the report the mother stated that "*we were told that if he was baptised, it would increase our chances of getting him a place in school,*" she did not ascribe the suggestion to any party.

7. The complainant criticises the final line in the report as "*judgemental*". The broadcaster states that after the Minister for Education has spoken about plans for the future, the reporter says "*but that is little comfort to these parents,*" referring to parents currently in this situation. This is an accurate statement of fact.

Each year, parents in this situation find themselves urgently seeking a place for their child for the coming year or the year after.

8. The complainant states there was no attempt "*to acknowledge the position of those who provide education in an environment which promotes certain religious values.*" The broadcaster states that, as explained above, this was a short news report about one issue: that of the difficulties faced by the non-religious parents of children in enrolling their children in primary school, the representations to Government on their behalf by *The Humanist Association of Ireland*, and the response of Government. The report was not on the topics of religious education, the promotion of religious values in schools or any related topics on which it would have been appropriate or necessary to seek the views of religious organisations involved in education.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to the Broadcasting Act 2009 Section 48(1)(a)(fairness, objectivity & impartiality in current affairs) and the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.3, 4.17, 4.19 and 4.21).

In this regard:-

- The members were mindful of the complainant's belief that the introduction to the news item displayed bias and set a negative tone for the rest of the report. The Forum noted that the introduction to this news item was based on a request from *The Humanist Association of Ireland* to remove legislation relating to admissions to religious schools, and a meeting between the Association and the Government which was due to occur the same evening as the news broadcast. It was a factual introduction and could not reasonably be considered as being biased.
- The Forum had regard for the complainant's concerns regarding the use of the word "*discriminate*" but noted that this is based on the legal terminology and the impact of the current law on the access to education by children whose parents do not hold a religious view. As such, the use of the word could not be viewed as infringing on the objectivity of the piece.
- The Forum noted that the report included a wide range of contributors and captured differing opinions on the matter. A member of *The Humanist Association of Ireland*, Mr. Brian Whiteside, and the Minister for Education, Ms. Jan O'Sullivan T.D., were both afforded the opportunity to present their views.
- The report also included two parents who do not belong to a specific religion and have experienced difficulty getting their child into some religious-run schools. The parents' contribution was based on their personal experience and the Forum noted that this is a legitimate editorial approach to exploring a news story in more depth and adding context.

The complainant believes that the reporter displayed bias through her language and interview techniques but the Forum felt that this was a subjective view of the complainant and could find no evidence of any such bias in the report.

- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 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

Complaint made by: Mr. Dónal O’Sullivan-Latchford (on behalf of the Family and Media Association) **Ref. No. 37/15**

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
Newstalk 106-108FM	The Breakfast Show Pat Kenny Show	13 th February 2015

1. The Programme

The complaint refers to an edition of *The Breakfast Show* (news and current affairs) and *The Pat Kenny Show* (predominantly news and current affairs programme with human interest and entertainment elements) and an interview with former T.D and Government Minister, Mr. Pat Carey.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009 (Section 48 (1)(a) – fairness, objectivity and impartiality in news and current affairs), the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Principle 2 and Rules 1, 2, 3, 18, 19, 20 and 22).

3. Complaint Summary

- The complainant maintains that Mr. Pat Kenny mentioned on *The Breakfast Show*, when referring to an upcoming interview with Mr. Pat Carey on his own show, that Mr. Carey mentioned “*in passing that he himself is gay*”. The complainant believes this was inaccurate as Mr. Carey had said on another programme that day that he was ‘*coming-out*’ precisely in order to strengthen the ‘Yes’ vote in the then upcoming referendum on marriage. The complainant states that there was no “*in passing*” element to what he did. The complainant believes this was misleading to the listener and unfair to those who would argue for a ‘No’ vote in the referendum.
- The complainant also believes the interview on the *Pat Kenny Show* was unfair to the ‘No’ side in the then forthcoming referendum on marriage as it allowed, in his opinion, for an unchallenged advocacy of a ‘Yes’ vote.

4. Broadcaster’s Response

4.1 Initial response to complainant

Newstalk rejects the reference by Mr. Pat Kenny on *The Breakfast Show* regarding Mr. Pat Carey ‘*coming-out*’ as in any way unfair to those who would vote ‘No’. The broadcaster states that Mr. Kenny made it clear on the programme that Mr. Pat Carey was advocating a ‘Yes’ vote and that he was at the same time ‘*coming out*’ as a gay man. Whether he came out ‘*in passing*’ or not make no material difference.

Newstalk reject the second part of the complaint in which the complainant claims that the interview with Mr. Carey on *The Pat Kenny Show* allowed “for a basically unchallenged advocacy of a yes vote”. The broadcaster states that the interview was about Mr. Carey’s personal story. They state that he expressed his regret at not ‘coming-out’ earlier and spoke of his admiration of Minister for Health, Mr. Leo Varadkar T.D. The broadcaster states that Mr. Carey was at times critical of the tactics of the ‘Yes’ side but he did not actively advocate for a ‘Yes’ vote. They state that, furthermore, Mr. Pat Kenny put to him some of the arguments of the ‘No’ side – that civil partnership should be enough and that marriage is about reproduction.

4.2 Response to BAI

- *Newstalk 106-108FM* states that the interview on *The Pat Kenny Show* with Mr. Pat Carey, former Fianna Fáil Minister for Community, Equality and Gaeltacht affair was undertaken in the context of the front page headline in the *Irish Times* that day, “*Pat Carey criticises Fianna Fáil over same- sex marriage campaign.*”
- The broadcaster states that there are two main issues that the complainant has with this item, the first is that the use of the phrase “*in passing*” to describe Mr. Pat Carey’s ‘coming-out’ as a gay man was deliberately misleading and was done in order to make the item seem less one-sided and to give the yes side an advantage. They state that, as already noted in our response to the complainant, it was entirely clear from the interview that Mr. Pat Carey was gay and the actual introduction to the piece states “*Pat Carey has criticised the campaign for same-sex marriage as lacking energy and urgency and has also revealed to the world that he is gay.*”
- The broadcaster states that the presenter then proceeds to interview Mr. Carey about his personal experience of ‘coming-out’ as gay for over half the duration of the interview. He asks him about when he knew he was a gay man and the personal and professional impact of this and many more questions about his personal experiences of being gay.

The broadcaster states that in light of this it is simply incorrect to suggest that *Newstalk* deliberately tried to mislead listeners and was unfair to those who would vote no in the same sex referendum by the premeditated and deliberate use of the words “*in passing*” as an attempt to downplay his coming out as gay when almost the entire interview was about Mr. Carey being gay.

- The broadcaster states that the introduction to the piece itself was very clear and in no way misled the public about the nature and purpose of the upcoming piece, in fact it could not have been any clearer especially given the context and timing of the piece, when the two issues that were the subject matter of the interview were reported in the national media that day, namely that Mr. Carey had come out as a gay man and also that he was critical of the government’s referendum campaign.

- As regards the allegation that the interview was unfair to the 'No' side as it allowed for an unchallenged advocacy of a 'Yes' vote, *Newstalk* reject this allegation on the basis that the interview was clearly not a debate or discussion about convincing the public to vote 'Yes'. It was made up of two parts – an interview about Mr. Carey coming out as a gay man and about his reported criticism of the government's 'Yes' campaign.
- The broadcaster states that the complainant is purporting to suggest that simply having an openly gay man on air, who also happens to be the former Minister for among others equality, is automatically unfair to the 'No' side. They state that this is just an incorrect contention and in their respectful view, simplistic.

The broadcaster agrees that there could be cause for concern if the interview was a discussion about the actual issues and a call on the listener to vote 'Yes' but this is categorically not what the interview was about.

- The broadcaster states that, upon listening to the piece, it is abundantly clear that the former government minister, who criticised the government over the same-sex marriage campaign, did not advocate or encourage voters to vote 'Yes' in the upcoming campaign. This was not a debate about the actual same sex marriage referendum.
- **Sections 4.1, 4.2, 4.3:**
The broadcaster states that the piece was introduced without any ambiguity or obfuscation and the interview was conducted in a wholly transparent manner. Obviously it would be apparent to the listener that as an openly gay man Mr. Carey would be an advocate of the 'Yes' side but this is not an automatic unfair disadvantage to the 'No' side such that it constitutes a breach of the sections complained of. The broadcaster states that, in order for *Newstalk* to be in breach of what it is complained of there must be substantiating evidence actually demonstrating bias and partiality. They state that the presenter put to Mr. Carey the view taken by many 'No' side advocates, like Mr. Bruce Arnold, that Civil Partnership should be enough. This provided balance to the piece.
- **Sections 4.18, 4.19 and 4.22:**
Newstalk does not accept that there was any misleading of the listener. The interviewer did not present his own view at any point such that a partisan position was advocated.

They state that while there were certainly discussions about the 'Yes' side's campaign and how it could be run better, to balance this out the 'No' side campaign's view was presented also and its views were presented to the listener. *Newstalk* is satisfied that this is sufficient to fulfil our duties under the Codes.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to the Broadcasting Act 2009 Section 48 (1)(a)(fairness, objectivity and impartiality in news and current affairs); the BAI Code of *Fairness, Objectivity and Impartiality in News and Current Affairs* (Principle 2 and Section 4: Rules 1, 2, 3, 18, 19, 20 and 22).

In this regard:-

- The Forum noted that the reference to “*in passing*” in the preview of the programme was not of sufficient significance to raise any concerns under broadcasting codes nor could it be considered as misleading to listeners or a significant mistake that would require a correction or clarification. The Forum also noted that the subsequent interview was largely a human interest piece where Mr. Pat Carey set out his experiences and views of a wide range of personal and other matters. Where balance was required or where the interview crossed into an area that could fall for consideration under current affairs, the presenter ensured an alternative view was present through his line of questioning.
- The Forum noted the complainant’s opinion that the presenter was unfair to the ‘No’ side but did not find evidence of this in the broadcast. The Forum noted that Mr. Carey was being interviewed in his capacity as a gay man and with regard to his experience of ‘*coming out*’, but also in his capacity as an ex-Minister and with respect to his criticism of in particular Fianna Fáil’s approach to the ‘Yes’ campaign. The exploration of a topic through both human interest and a discussion on issues surrounding a topic is a legitimate editorial approach. The Forum was of the view that the presenter conducted the interview in a fair manner and dealt with the interviewee appropriately and had regard to the different aspects of his contribution. The forum found no evidence to support the suggestion that a partisan position was advanced in the programme.
- The Forum were mindful of the complainant’s view that the interview amounted to an unchallenged advocacy of the ‘Yes’ vote, however, they did not find that this was the case.

The Forum noted that the principle of fairness does not necessarily require that all possible opinions on a subject are addressed or that they should receive equal air-time. The fact that this was a not a general discussion about the Marriage Referendum cannot be viewed as an infringement to the requirements regarding fairness.

- The members were therefore of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 or the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Noel Conway

Ref. No. 54/15

Station:

RTÉ Radio 1

Programme:

Morning Ireland

Date:

10th March 2015

1. Programme

The complaint concerns *Morning Ireland* which is a current affairs programme that is broadcast weekday mornings on *RTÉ Radio 1* from 7.00 – 9.00am. The programme included an interview with Mr Michael McGrath T.D, Finance Spokesperson for Fianna Fáil, on how the current Government was performing.

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 claims that the presenter was concerned with attacking Fianna Fáil policies from 6/7 years ago, rather than what is relevant today. The complainant also states that the presenter was concerned with getting Mr. McGrath to compliment An Taoiseach, Mr. Enda Kenny T.D.'s achievements rather than dealing with the current Government's failure in dealing with the banks. The complainant feels that *RTÉ* are more biased in their current affairs reporting, in that they are not challenging decisions being taken by the present regime.

4. Broadcaster's Response

4.1 Initial response to complainant

The complaint was forwarded to *RTÉ* on 10th March and again on 25th March. The complainant only received an acknowledgement on both occasions from *RTÉ* and was advised they would respond as soon as possible to both his emails.

4.2 Broadcaster's Response to BAI

RTÉ states that the occasion of the interview was the fourth anniversary of the election by the Dáil of Mr. Enda Kenny T.D. as the fifth Fine Gael Taoiseach. Later that day, he and Tánaiste Ms. Joan Burton T.D. would report on progress made on their Agreed Programme for Government.

RTÉ further states:-

- It was a legitimate opening question for the presenter to ask the Finance Spokesperson for the main opposition party if he would not give some credit to the incumbent government for how it had handled the last four years.

It did not imply approval of that record, simply invited Deputy McGrath to respond to the government's record. Deputy McGrath's reply to that question in fact bore out the legitimacy of the presenter's question and its framing. Deputy McGrath maintained that, insofar as the government had stuck to the plan devised by the outgoing Fianna Fáil administration, he would give it credit.

- Deputy McGrath was asked about his party's policy on repossessions. He outlined that policy; there were back-and-forth exchanges with the presenter on the matter. The Deputy had a case to make against the government, and he made it clearly, without interruption. The presenter asked him why successive governments – i.e., governments with and without Fianna Fáil – had allowed the banks to amass so much power. It was made clear that there was no suggestion this was an exclusive responsibility of Fianna Fáil in government.

The broadcaster states that, in short, this was a straightforward political interview, conducted fairly and impartially and without bias or malice, allowing a senior spokesperson for the main opposition party time and space to outline his party's policies in a crucial area of the economy.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to the requirements of 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.)

In this regard:-

- When considering the complaint, the Forum noted that the programme in question is a current affairs programme with an expected and understood format, particularly when interviewing experienced T.D.'s and Ministers. The Forum noted that the programme included an interview with Mr. Michael McGrath T.D., the Finance Spokesperson for Fianna Fáil. The focus of the interview was the performance of the government over the past four years. The contents and manner of the discussion was in keeping with audience expectations.
- The Forum noted that the interview opened with the presenter asking the Finance Spokesperson if he would give some credit to the incumbent government for how it had handled the last four years. Deputy McGrath was given ample opportunity to respond and to make his points clearly.

Broadcasting Complaint Decisions

- In its assessment, the Forum was mindful of the requirement for broadcasters to treat 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 presenter was robust with Deputy McGrath and played '*devil's advocate*' when required but overall he was fair, impartial and objective. The Forum found this was a completely legitimate editorial approach and Deputy McGrath was given adequate time to respond to all matters that were raised during the programme.

- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 or the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Dónal O’Sullivan-Latchford on behalf of the Family and Media Association **Ref. No. 55/15**

Station:

RTÉ Radio 1

Programme:

Morning Ireland

Date:

10th February 2015

1. Programme

The complaint concerns *Morning Ireland* broadcast weekday mornings on *RTÉ Radio 1* from 7.00 – 9.00am and which is a current affairs programme. The programme included an interview with Ms. Tracy Harkin of the organisation, *Every Life Counts*.

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 1, 2, 3, 19 and 22).

3. Complaint Summary

- The complainant states that the programme included an interview with Ms. Tracy Harkin, a woman whose child was diagnosed with Trisomy 13. The complainant states that this condition is cited as a fatal foetal abnormality and unborn children with this diagnosis are often described as being having a condition deemed *‘incompatible with life’*.
- While noting that the interviewer showed great insensitivity to a mother whose child is *‘still alive’*, the complainant states that the interviewee repeatedly asked her if parents should be *‘forced’* to carry their children if given a similar diagnosis. The complainant states the question fails to recognise the humanity of the unborn baby whose right to life is protected in the Constitution. The complainant states that this is clearly the position of those advocating the abortion of such babies. The complainant states that the interviewer continued to repeat this question, changing the form slightly where Ms. Harkin’s answers discredited it.
- The complainant states the interviewer didn’t present challenging questions, such as *‘Some people would say such and such... What would you say to that?’* He states that this formula of words would have been cold and insensitive, given that Ms. Harkin’s daughter is very much alive, despite the misleading diagnoses.

4. Broadcaster's Response

4.1 Initial response to complainant

No response was forthcoming from the broadcaster.

4.2. Broadcaster's Response to BAI

RTÉ states that the background to this broadcast was a Dáil vote due to take place the following afternoon on the *Private Members Bill* tabled by Ms. Clare Daly T.D., which sought to allow terminations in the case of a medical diagnosis of fatal foetal abnormality.

When the Bill was debated the previous week, Deputy Daly criticised the Government for doing nothing to address the issue of women carrying their pregnancy to full term in cases of fatal foetal abnormality. She said this was not good enough and appealed to Government T.D.s to support her Bill.

The broadcaster states that Ms. Tracy Harkin was invited for interview partly on the basis of her own amazing story as a mother. She is a mother to several children, including Kathleen Rose who has Trisomy 13 – medically considered to be a fatal foetal abnormality. Ms. Harkin was also sought for interview in her capacity as a representative of the group *Every Life Counts*, therefore, as an advocate of the argument against Deputy Daly's Bill. Ms. Harkin understood this and was dealt with fairly, both in the contexts of the broadcast and its preparation (Rule 4.3).

The broadcaster states that the interview proceeded therefore in two stages:

- At the beginning of the interview, Ms. Harkin was given the opportunity to provide listeners with context to her story. She spoke articulately and inspiringly about how her daughter survived despite medical advice to the contrary.
- Ms. Harkin also made her point that it is "medically meaningless" to suggest that a baby might not be born alive; she was given the opportunity to outline her own experience, in the course of which she called for better perinatal hospital care.
- The aim of the first part of the interview was to allow Ms. Harkin to tell her own story, to show how and why her experience is so often cited as an example of someone who faced the agonising news that their unborn child was diagnosed with what is termed a fatal foetal abnormality. She made a choice, and was vindicated by the fact that her daughter not only survived, but has reached the age of eight.
- The second phase of the interview addressed Ms. Harkin in her capacity as an advocate of a particular argument in the debate about Deputy Daly's Bill, representing the view of the organisation *Every Life Counts*. This would by definition mean a different tone and a different line of questioning from the first part of the interview.

- The broadcaster states that the questions put to Ms. Harkin in the second part of the interview were fair ones in relation to its editorial perspective. At this point in the interview, Ms. Harkin was advocating a general position, and so the presenter pursued the issue when it became apparent to him that, in his judgement, listeners were not having the benefit of a direct answer.
- The broadcaster states that while Ms. Harkin made her points robustly, and seemed not to be distracted by the nature of the questions, it is true that the presenter asked one question repeatedly; clearly he felt that it might be possible for Ms. Harkin to answer directly. It was here that he departed from his usual high standards, and allowed a professional irritation to show in an inappropriately impatient tone.
- The broadcaster states that the presenter accepts that the manner of the interview at that point did not reflect his intention to be respectful of Ms. Harkin's personal and family story, while also addressing her attitude to Deputy Daly's Bill as the spokesperson of an organisation. While it was far from his intention, he and *RTÉ* acknowledge that fair-minded listeners would have heard his tone as disrespectful. This was a difficult interview, in the sense that it combined both the '*human interest*' element of Ms. Harkin's personal story and the element of dealing with the proponent of a particular view on a matter of public debate and controversy.

RTÉ asserts very emphatically, however, that the presenter's questioning was not in substance at that or any other point in breach of the principles of fairness, objectivity and impartiality and that it was fundamentally in keeping with Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. Furthermore, the manner in which the interview was conducted did not result in any misrepresentation of views and facts, nor would it have led to any misunderstanding of the matters covered (Rule 4.19).

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to 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 1, 2, 3, 19 and 22.)

In this regard:-

- When considering the complaint, the Forum noted that the discussion in question took place in the context of a Bill which was put forward by Ms. Clare Daly T.D. and which was due to be considered by Dáil Éireann the following afternoon. The Bill would have provided for two medical professionals (an obstetrician and a perinatologist) to jointly certify in good faith that the foetus in question was suffering from a fatal foetal abnormality.

Broadcasting Complaint Decisions

The Forum was mindful of the complainant's opinion that the segment in question failed to be impartial, fair or balanced. However, the Forum could see no clear rationale for this under each heading as provided by the complainant.

- The Forum noted that *RTÉ* interviewed Deputy Daly in the second hour of the programme. In the first hour, the programme brought listeners a different perspective from a person with personal experience who was also a representative of an organisation, *Every Life Counts*. The Forum noted that the interview commenced with a human interest element through which the personal experience of the interviewee was explored. The interview then progressed to the particular issues of the Deputy Daly's proposed legislation in which the interviewee was now outlining the position of the group she represented. It was the view of the Forum that the second part of the interview was more challenging as would be expected by the audience and the participant. It is the view of the Forum that Ms. Harkin was aware of her role in the programme and the manner in which the presenter dealt with her was both fair and appropriate.
- The Forum felt that the topic was dealt with in a fair and even-handed manner by the presenter. The members noted that *RTÉ* acknowledged in their response to the complainant that the interviewer was irritable when Ms. Harkin did not answer questions put to her, however, the Forum was of the view that while he challenged her in his capacity as an interviewer he was not overtly rude.

The Forum felt that overall the interviewee was treated fairly, and while the Forum acknowledge that the manner of the presenter was not ideal, they did not agree with the complainant's view that the presenter was advocating the termination of pregnancy in cases of fatal foetal abnormality.

- The Forum noted that the complainant had failed to demonstrate how views or facts were misrepresented and the members found no evidence in the broadcast to indicate that Rule 4.19 was infringed. The Forum was mindful of the requirement under Rule 4.22 for the presenter to ensure that the audience has access to a wide variety of views. They noted that in this instance the presenter had a narrow focus when questioning Ms. Harkin, however, they were of the view that the subject matter was treated fairly and that Ms. Harkin was given ample opportunity to respond. Ms. Harkin was brought on to discuss not only her personal experience, but also as her role as a public advocate for the organisation and it was reasonable for the presenter to ask potentially challenging questions to contributors who are advocating a position. The Forum also noted that some of the issues raised by Ms. Harkin were referenced and included in questions in the later interview with Deputy Daly. On the whole therefore, the Forum was of the view that the presenter dealt fairly with the matter under consideration and with both contributors.
- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 or the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. William Mongey

Ref. No. 57/15

Station:

Programme:

Date:

RTÉ Radio 1

Drivetime

10th February 2015

1. Programme

The complaint concerns *Drivetime* broadcast weekday evenings on *RTÉ Radio 1* from 4.30 – 7.00pm and which is a current affairs programme. The complaint concerns an item on the programme where the presenter and the sports news reader criticised St. Andrews Golf Club, in Scotland, for its male-only membership rule. The broadcast was triggered by the club changing the rule.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs), the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Rules 1, 2, 17 and 21, under 48(1)(b)(Harm and Offence), the Code of Programme Standards - Sections 3.4.1, 3.4.2 (persons and groups in society) and 3.5.3 (factual programming) and Section 48 (1)(b) (Law & Order).

3. Complaint Summary

The complainant states that both the presenter and the sports presenter expressed their opinions on the story and indicated their disapproval of the golf club's policy and of the fact that, in their opinion, it had taken too long for the club to change it. The complainant states this was unfair for the following reasons:

- He states that there is nothing wrong with having a club that caters for one sector of society, regardless of how that sector is selected. He states that the right to exercise one's freedom of association is a constitutional right and has been approved in this country at Supreme Court level in the Portmarnock Golf Club case. He states that Mr. Justice O'Higgins famously said in the High Court Portmarnock case: *"It is permissible to have - exclusively - a bridge club for Bulgarians, a chess club for Catholics, a wine club for women and a golf club for gentlemen"*.
- The complainant states that there are many female-only clubs and associations in Ireland and other countries but as a regular listener to *Drivetime*, the complainant has not heard the presenters disparage women's rights to form their own associations in similar terms.

- He further states that in addition to attacking the constitutional right of freedom of expression and failing to attack female-only clubs, the broadcasters also failed to inform the listeners of the existence of these two aspects of the topic, thus deliberately hiding from the listeners relevant information which would have allowed them to determine that the broadcast was unfair.

The complainant believes this approach is part of a long-term pattern of practices by *RTÉ*. These practices, while seemingly innocuous in themselves, accumulate to disadvantage men when taken as a whole and the complainant requests that this complaint be assessed in this context.

4. Broadcaster's Response

4.1 Initial response to complainant

No response was forthcoming from the broadcaster.

4.2. Broadcaster's Response to BAI

RTÉ states in this programme the sports reporter was reporting on the decision by the *Royal and Ancient* – golf's governing body in this part of the world – to admit women members to the club at St. Andrews. The broadcaster states that its sports reporter concluded his report by saying, "*Only took them 260 years,*" to which the programme presenter replied, "*Should we give them a clap on the back?*" The sports reporter then said, "*I don't think so.*" The presenter then agreed saying, "*I don't either.*" The sports reporter then stated that "*only 85% voted yes,*" following which the presenter concluded that 15% "*still believe it should not be like this.*"

The broadcaster states that their exchange was completely factual and accurate (Rule 4.17). They state that the decision was taken by the *Royal and Ancient*. It was taken after 260 years of a male-only rule. Eighty-five percent of members approved. Therefore, logically, 15% of those who voted did not believe this was the right position. As to whether or not the members should be praised or "*given a clap on the back*" for their decision, the broadcaster states that both the sports reporter and the programme presenter agreed they should not. This was the entirety of their exchange.

The broadcaster states that it should be noted that the courts have decided against certain organisations, where it is clear that their activities do not cater to the specific and particular needs of one sex rather than another. The broadcaster states that it is unclear how, by not disparaging women's rights and the *Royal and Ancient* decision to recognise them, anything in the broadcast discriminated against men. It is equally unclear how '*disparaging*' others – in this case, women – would vindicate the complainant's rights.

The broadcaster states that this passing comment in a sports bulletin was light-hearted and lightly made, did not adopt a partisan position on a topic of public controversy or current public debate (Rule 4.21), was sympathetic to the decision of the great majority of *Royal and Ancient* members, supportive of the principle of non-discrimination captured in Rules 3.4.1, 3.4.2 and 3.5.3 rather than in breach of them, and expressed no offensive view whatsoever of any individual or group (section 48(1)(b)). Nor did it incite to crime of any kind.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to the requirements of the Broadcasting Act 2009 Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs), 48(1)(b)(Harm and Offence) and 48 (1)(b) (Law & Order); the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 2, 17 and 21); the Code of Programme Standards (Rules 3.4.1, 3.4.2 - persons and groups in society and Rule 3.5.3 - factual programming).

In this regard:-

- The Forum noted that the complaint related to an interaction between a sports presenter and the main programme presenter at the end of a sports bulletin. The decision by the Royal and Ancient to admit women members to the club at St. Andrews was included in the sports bulletin. The reporter concluded his contribution by saying “*Only took them 260 years,*” to which the programme presenter replied, “*Should we give them a clap on the back?*” The sports reporter then said, “*I don’t think so.*” The presenter then replied saying, “*I don’t either.*” The sports reporter then stated that “*only 85% voted yes,*” following which the presenter concluded that 15% “*still believe it should not be like this.*”
- The Forum did not find any evidence to support the complainant’s belief that the sports reporter or the programme presenter set out to disadvantage ‘men’ with their comments. The Forum did not feel that the interaction could be reasonably considered as discriminating against men.
- The Forum noted that this subject is not a matter of public controversy and therefore Rule 4.21 is not relevant to this complaint. The Forum also noted that there was no evidence of inaccuracy in the broadcast and the complainant failed to make a sufficient case in relation to Rule 4.17. The Forum was also of the view that there was no undue emphasis on age or gender and no case was made by the complainant in relation to Law and Order.
- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009, the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* or the *Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Dónal O'Sullivan-Latchford on behalf of the Family and Media Association
Ref. No. 61/15

Station:

RTÉ Radio 1

Programme:

Morning Ireland

Date:

13th February 2015

1. Programme

The complaint concerns *Morning Ireland* which is a current affairs programme that is broadcast weekday mornings on *RTÉ Radio 1* from 7.00 – 9.00am. The complaint concerns an interview with Bishop Eamonn Walsh, the Auxiliary Bishop of Dublin, on the subject of temperance and Lenten observance.

2. Complaint 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 BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Principles and Rules 1, 2, 3 and 19.) and the BAI Code of Programme Standards (Rule 3.7 – Alcohol, Drugs and Substance Abuse).

3. Complaint Summary

The complainant states that, given the topic, and the widely recognised negative effects of substance abuse to the abuser and to others, the tone of the interview, as set by the interviewer, was, in the complainant's view bizarrely hostile. The complainant states that this 'crankiness' in tone, including difficult to fathom interruptions and a strange incredulousness on the part of the interviewer, was in spite of the fact that what was being promoted - temperance and Lenten observance - is a basically well known uncontroversial, positive, tried and trusted response to substance abuse. The complainant further states:

- The effect of the interview would have been partially to undermine the important work being undertaken by the Church to tackle the widely accepted problem of substance abuse in society.
- It is unlikely that representatives of other groups who attempt to confront the problem of substance abuse would have received so negative a hearing, despite the widely recognised excellent track record that the Church and Faith based interventions have in this area.
- There is a possibility, therefore, that RTÉ was, also, in breach of the principle of avoiding harm in the BAI *Code of Programme Standards* and of Rule 3.7.

4. Broadcaster's Response

4.1 Initial response to complainant

The broadcaster acknowledged receipt of the complaint, but did not follow up with a substantial response.

4.2. Broadcaster's Response to BAI

RTÉ states that in their view a hearing of the broadcast will confirm that it bears no resemblance to what is alleged.

The broadcaster states that no objective listener could have formed the complainant's opinion of the presenter's attitude. It is obvious listening back to the interview that Bishop Walsh had a strong message to impart, and he was allowed the opportunity to do so uninterrupted. He made his case in a clear and balanced way, calling for self-awareness and honesty on the part of citizens in the debate on alcohol and abstention. He made it clear that he was not preaching, and that he was certainly not preaching total abstention.

The broadcaster states that there were hardly any interruptions and, any there were, were part of the normal back-and-forth of radio interviews in which presenters have a responsibility to facilitate the exploration of a topic on behalf of listeners. The presenter asked Bishop Walsh for his view on the attempts by the drinks industry to promote moderation. This was fairly and properly put to him as an aspect of the ongoing public debate on alcohol abuse. The Bishop was withering and unyielding in his rejection of the claimed bona fides of the industry. He was asked his opinion, and he gave it. Listeners would have taken away from the interview a clear understanding of the Bishop's position.

RTÉ further states there was no unfairness in the dealing with the interviewee, on or off-air (Rule 4.3). There was no possibility of misrepresentation of views and facts, or of misunderstanding of the matters covered (Rule 4.19).

The broadcaster states that the item was fair, impartial and objective on a topic of current public debate (Rules 4.1 and 4.2). There was absolutely no encouragement whatsoever, by interviewee or interviewer, of drug, alcohol or solvent abuse; the allegation that there was a breach of Rule 3.7 of the BAI *Code of Programme Standards* is, in their opinion, simply extraordinary.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum 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); the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Principles and Section 4: Rules 1, 2, 3 and 19); the BAI Code of Programme Standards (Rule 3.7 – Alcohol, Drugs and Substance Abuse).

In this regard:-

- When considering the complaint, the Forum noted that the discussion in question took place with Bishop Eamonn Walsh, the Auxiliary Bishop of Dublin, on the subject of temperance and Lenten observance. Bishop Walsh was speaking in his capacity as Vice Chair of the *Irish Bishops Drugs and Alcohol Initiative* and it was the view of the Forum that he was given ample opportunity to respond to questions put to him by the presenter. The Forum noted that the interview commenced with an open question that gave Bishop Walsh an opportunity to set out his views on the matter. The presenter, also, on occasions adopted the role of '*devil's advocate*' to ensure that other views were raised and discussed. This is not uncommon and the Forum was of the view that it was a legitimate editorial approach.
- The Forum noted that a broad range of issues were discussed, including abstinence, moderation and the purpose of Temperance Sunday. The Forum noted the complainant's view that the presenter was hostile and incredulous, but was of the opinion that the interview was in the style and manner that both the audience and a participant would expect and did not therefore concur with the complainant's viewpoint.
- The Forum noted that the interviewer asked questions to elicit answers, for which Bishop Walsh was given adequate time to respond. The Forum was of the opinion that the interview was fair, objective and impartial in relation to the issues addressed. They were also mindful that the purpose of the programme was to highlight and discuss abstinence or moderation during Lent and was of the view that this was achieved in a fair manner. The Forum did not agree with the complainant's view that the item undermined the work of the Church.
- The Forum was of the view that an insufficient case had been set out in order for the complaint to be considered under Rule 4.19 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. Equally the Forum could find no evidence supporting the consideration of the complaint under Section 3.7 of the *BAI Code of Programme Standards*.
- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009, the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* or the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Donal O'Driscoll

Ref. No. 24/15 and 25/15

Station:

RTÉ One

Programme:

6.01 News
9.00 News

Date:

7th November 2014

1. Programme

The complaint concerns an item, broadcast on both the *6.01 News* and the *9:00 News*. These are the main daily news and current affairs programmes on RTÉ One Television. The complaint refers to a report on a Supreme Court decision in relation to surrogacy, which ruled that matters pertaining to surrogacy are legislative matters for the Houses of the Oireachtas.

2. Complaint Category

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

3. Complaint Summary

The complainant states that in his opinion the overall thrust of the report was to say that the Court was correct in its judgement and that legislation was needed.

In relation to the *6.01 News*, the complainant claims:

- The RTÉ reporters, on the whole, did provide objective accounts of the Court's specific decision; however, the underlying problem is surrogacy and not what is written on a birth certificate.
- The view was put forward by at least one member of RTÉ staff that "legislation was long overdue". Non-RTÉ contributors gave opinions which supported this view. The complainant felt that it was left to Mr. David Quinn of the *Iona Institute* to express a different view and to address the real issues. In the space of 17 seconds (during which he spoke) it was not possible to describe the ramifications of surrogacy. It was the view of the complainant that one was left with the conclusion that surrogacy was a "good" thing and the sooner it was legislated for the better.
- There was no mention that changes to the Constitution might be involved
- In the second part of the News, a discussion took place between Dr. Simon Mills, described as a barrister and medical person and the newsreader, Mr. Brian Dobson. They agreed that "*it*" was a matter for legislation. There was no-one to give an alternative opinion.

Broadcasting Complaint Decisions

In relation to the 9:00 News the complainant claims:

- It was reported that Minister Leo Varadkar intended to introduce legislation to deal with surrogacy “*before the end of the year*”. The complainant noted that there was no mention that changes to the Constitution might be involved. Apart from the interviewer saying that “*this was a complex area*”, there was no balancing opinion.

4. Broadcaster’s Response

4.1 Initial response to complainant

The complainant only received an acknowledgement from RTÉ. RTÉ apologised to the complainant and to the BAI for the lack of response to this complaint and also for the delay in responding to the referral. Mr. O’ Driscoll’s email complaint of the 5th December 2014 was forwarded for response to the editorial executive responsible on 16th December 2014. RTÉ states that, unfortunately, over the Christmas period both the complaint response and reminders of its necessity were overlooked.

4.2. Broadcaster’s Response to BAI

RTÉ state that the broadcast complained of was a report on a Supreme Court decision and an associated interview. RTÉ state:

Six One News:

- The Six One News bulletin in question reported on a Supreme Court decision that day in respect of surrogacy, ruling that any law on surrogacy was a matter for the Oireachtas.
- The bulletin went on to report the consequent stated commitment to legislation by the Minister for Justice and the Minister for Health. The report also included a view that legislation should allow surrogacy such as that at issue in the Supreme Court case and an opposing view that legislation should not permit such surrogacy.
- The broadcaster states that none of those interviewed took the complainant’s personal view that “*changes to the Constitution might be involved.*” Therefore there was no related inaccuracy in the report.
- The broadcaster states that the new item took no view of the matter but accurately and impartially reported the Supreme Court ruling and the reactions to it of Government Ministers, lawyers, commentators, and individuals immediately involved in surrogacy.
- The broadcaster states that the complaint is incorrect to state that: “*The view was put forward by at least one member of RTÉ staff (unnamed) that ‘legislation was long overdue’.*” In fact, these were the words of the Minister for Health, reported as such in the bulletin.

Broadcasting Complaint Decisions

- The broadcaster states that the interview later in the programme with Dr. Simon Mills was an analytical view by an expert on medical law which, in the context of the Supreme Court view that legislation was required, looked at the options available and varying international practice, impartially noting that there was no international consensus on the issue.

Nine News:

- The broadcaster states that the Nine News bulletin in question reported on a Supreme Court decision that day in respect of surrogacy, which ruled that the law did not allow the genetic mother of twins born to her sister to have her name on their birth certificates, as their mother. The Court ruled that any law on surrogacy was a matter for the Oireachtas.
- The report included the statement by the Chief Justice that there was nothing in the Constitution to “*stop the development of appropriate laws.*” This is contrary to the personal view expressed by the complainant on the issue.
- The news report also included a view that legislation should allow surrogacy such as that at issue in the Supreme Court case and an opposing view that legislation should not permit such surrogacy by prohibiting it altogether.
- The bulletin went on to report the Government's stated intention to bring in new legislation on assisted human reproduction.
- The bulletin also included a report on a couple in the same circumstances as the couple who had brought the case to the Supreme Court, in that they were the genetic parents of a baby who had been carried to term by a third person. This illustrated the situation which had been the subject of the Supreme Court action.
- The broadcaster states that the report took no view of the matter but accurately and impartially reported the Supreme Court ruling and the reactions to it of Government Ministers, lawyers, commentators, and individuals immediately involved in a situation analogous to the one ruled on by the Supreme Court.
- *RTÉ* are not clear as to what the complainant refers when he states that: “*there was no balancing opinion.*” They state that the facts of the ruling, the view of the Court that legislation was required and did not require constitutional change, the circumstances which had given rise to the court case, the Government commitment to legislation and opposing views on the nature of that legislation were all reported accurately and impartially in this news bulletin, which was not structured or presented as a current affairs debate.

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

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

Six One News

- The Forum noted that the complaint refers to a report on the Supreme Court ruling regarding surrogacy which found that any law on this issue was a matter for the Oireachtas. The Forum members were of the view that this was a factual news report and those interviewed, including solicitors, academics and a representative from the Iona Institute, provided differing views on the outcome of the Supreme Court ruling.
- The Forum also found that contrary to what the complainant stated, a member of the RTÉ staff did not put forward the view that “legislation was long overdue”. The reporter stated that the Minister, Mr. Leo Varadkar T.D. said “legislation on this issue is long overdue”.

Nine News

- In relation to the 9.00 News, the Forum was of the view that, as with the 6:01 News, this was a news report on the facts that emanated from the ruling of the Supreme Court. The view from the court was that legislation was required on this issue not a constitutional change.
- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 or the *Code of Fairness, Objectivity and Impartiality in News* (Principles and Rules 4.1, 4.2) in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Dónal O’Sullivan-Latchford on behalf of the Family and Media Association **Ref. No. 32/15**

Station:

RTÉ Radio 1

Programme:

The Marty Morrissey Show

Date:

21st January 2015

1. Programme

The complaint concerns *The Marty Morrissey Show* broadcast weekday afternoons on *RTÉ Radio 1* from 3.00pm – 4.30pm. This is an entertainment and lifestyle programme with elements of news and current affairs. The complaint concerns an interview with Mr. Donal Óg Cusack and Ms. Valerie Mulcahy on their experience of being gay in Ireland.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs), the BAI *Code of Fairness, Objectivity and Impartiality* – (Principles and Section 4: Rules 4.1, 4.2, 4.3, 4.18, 4.19, 4.20, 4.22, 4.23).

3. Complaint Summary

The complainant states the item took the form of an interview with two guests, Mr. Donal Óg Cusack and Ms. Valerie Mulcahy. The complainant states that during this interview both of the guests expressed their support for same-sex marriage in multiple ways, on several occasions.

The complainant further states:-

- In his introduction to the item and at the end of the programme, the presenter stated that the programme would explore different views later in the week. The complainant states that, as far as he is aware, and despite the requirement to do so under broadcasting codes, the programme appears not to have done this.
- In his opinion, the broadcast only explored one view and there was no attempt to explore other views or challenge the one view that was expressed.
- The complainant states this programme was a one-sided expression of views on one side of the debate, only, in favour of same-sex marriage.
- The complainant believes that the failure to observe impartiality is worse for the fact that the wording on the then forthcoming Referendum on same-sex marriage was made known that day and was reported by *RTÉ* prior to the programme being broadcast.

Broadcasting Complaint Decisions

- The complainant states that contrary to the presenter's opening and closing remarks, there was no broadcast of a balancing programme. The complainant also felt that balance would have been difficult to achieve, in any event, given the critical timing of the first broadcast, just after the wording of the Referendum had been made public.

4. Broadcaster's Response

4.1 Initial response to complainant

No response was forthcoming from the broadcaster.

4.2. Broadcaster's Response to BAI

RTÉ states that the complainant is incorrect that the programme did not follow through on the commitment to listeners to return to the topic later in the week. The broadcaster states that two days after the broadcast on 21st January, the same programme carried an interview with the Roman Catholic priest Fr. Harry Bohan. As in the related broadcast of 21st January, a certain amount of the discussion was of a '*human interest*' nature and had no relation to current affairs topics. The broadcaster states that time was given to the Roman Catholic view of homosexuality, although this is not of course a topic of current affairs debate.

On the current affairs topic of same-sex marriage, the broadcaster states that Fr. Bohan was invited to give the view of the Roman Catholic Church. This was done without challenge, which was not required in order to achieve fairness.

The broadcaster states that under Rule 4.18 of the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* these two broadcasts should be considered as a whole:

18. Two, or more, related broadcasts may be considered as a whole if the broadcasts are transmitted within a reasonable time period and such links are made clear to the audience.

RTÉ further states:

- The programmes were clearly linked in terms of their stated topic(s) and the presenter's commitment to return to them. They were transmitted with a reasonable time period, on a Wednesday and the following Friday.
- The programmes were not presented as '*personal view*' or '*authored*' – Rules 4.23 and 4.24 are therefore irrelevant.
- Across the two related broadcasts, the presenter facilitated the discussion of a range of views. There was no breach of Rule 4.22.
- There was no mistake to be acknowledged or rectified and therefore no relevance for Rule 4.20.

Broadcasting Complaint Decisions

- There was no misrepresentation of views or facts in the broadcasts (and none indicated in the complaint) and therefore no breach of Rule 4.19.
- Listening to the broadcasts will confirm that contributors were dealt with fairly in keeping with Rule 4.3.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to the requirements of the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs), the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Principles and Section 4: Rules 4.1, 2, 3, 18, 19, 20, 22, 23 & 24).

In this regard:-

- The Forum noted that this was a light entertainment/lifestyle programme which at times covered some current affairs items. In this case, the item covered was an interview with former GAA goalkeeper, Donal Óg Cusack on the reaction to an RTÉ television documentary which followed him as he travelled to different parts of the world to discover what it is like to be gay in this day and age. The documentary carried a variety of views on homosexuality. At the outset the presenter stated: *"this programme will also explore different views later in the week as we are aware that there are a variety of issues to discuss and explore."*
- The Forum found that this was a human interest story about the lives of Donal Óg Cusack and Valerie Mulcahy, both of whom have gone public on their sexuality. The focus of the interview was the difficulties faced by gay and lesbian people in revealing their sexuality. It was not about the then forthcoming referendum on same sex marriage and there was only a short mention of this during the interview.
- The Forum noted that the complaint is heavily based on the complainant's belief that the presenter had referenced a related broadcast to be aired later in the week but that no such programme was broadcast. The presenter did inform listeners that the subject matter would also be discussed at a later date when an opposing view would be broadcast, and the Forum noted that this follow-up discussion did take place two days later on the same programme when Fr. Harry Bowen was interviewed.

During this interview, he provided the Roman Catholic Church's stance on same sex marriage. The purpose of the related broadcast was to explore opposing views and the Forum found that this was achieved in the second broadcast.

- The Forum felt that the topic was dealt with in a fair and even-handed manner and without the presenter expressing his personal view.

Broadcasting Complaint Decisions

- 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 members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 or the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* or under the *Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Station:

RTÉ One

Programme:

Nationwide

Date:

23rd February 2015

1. Programme

The complaint concerns *Nationwide*, broadcast on *RTÉ One*. This is a lifestyle programme. The section of the programme complained of was a feature on the village of Ballyheigue, County Kerry and an interview with Mr. Don O'Neill, an internationally renowned designer, regarding his life, his work and his long-term relationship with his partner.

2. Complaint Category

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

3. Complaint Summary

- The complainant states that during the interview, the homosexual lifestyle of Mr. Roger Casement was highlighted, while ignoring the opposing viewpoint or suppressing some basic facts. The complainant believes that this section was improper and biased especially given the upcoming Constitutional Referendum on same-sex marriage.
- The complainant states:
 - When the statue of Mr. Casement was the subject of discussion, it was said that he was “gay” or words to that effect. However, the complainant claims that the Black Dairies which give rise to such claims are still strongly disputed by certain scholars. Given this uncertainty, the complainant believes it was improper to attempt to make Casement into a homosexual icon without due challenge.
 - The complainant also states that regardless of the great success and renown of Mr. O'Neill, the fashion designer, it was improper in the circumstances of the upcoming Referendum to question him about his same-sex relationship, all done in such a way as to promote acceptance of such a lifestyle. None of the other interviewees or the various musicians or dancers were questioned about their lifestyles/marriage or other arrangements. Furthermore, the complainant claims that it was improper campaigning and demonstration of blatant bias in the circumstances of the upcoming Referendum, to single out the fashion designer.

4. Broadcaster's Response

4.1 Initial response to complainant

The complainant only received an acknowledgement on from RTÉ.

4.2. Broadcaster's Response to BAI

RTÉ states that the editorial purpose of the *Nationwide* programme, well known to its exceptionally large audience, is to reflect the richness of the country's culture and the lives of the people of Ireland, their successes, their failures, and their struggles in life.

RTÉ states:

- The edition of 23rd February 2015 focused on the village of Ballyheigue, County Kerry, leading with a profile of Ballyheigue native and internationally renowned designer, Mr. Don O'Neill.
- The programme's approach to this '*At Home With...*' human-interest feature on Mr. O'Neill was the same as many other similar '*At Home With...*' features which the programme includes on a regular basis. The format of these profiles includes questions about the important elements of the subject's life, including their long-term relationships.
- In keeping with the format, Mr. O'Neill spoke about his family, his mother's death, his family's B&B business in Ballyheigue, his work as a designer and how the Kerry landscape continues to inspire his designs, his strong Catholic faith and, briefly towards the end of the item, his relationship with his partner Pascal.
- To have shown any editorial prejudice in respect of Mr O'Neill's sexual identity and twenty-one year partnership would be not only in breach of RTÉ Editorial Guidelines, but of Rule 3.4 of the BAI *Code of Programme Standards 2007* (re-drafted as Principle 5 of the BAI *Code of Programme Standards 2015*).
- The complaint notes that other interviewees were not questioned about their personal relationships. In fact, while noting that other interviewees were not the subject of the '*At Home With...*' format and therefore not profiled in the same manner as Mr O'Neill, it may also be noted that Mr O'Neill's father was questioned and responded movingly about his relationship with his late wife, in the context of their shared deep religious faith.
- The complaint mentions a reference in the programme to a statue in Ballyheigue of Mr. Roger Casement. Mr. O'Neill referred to Mr. Casement as "*one of our national heroes, obviously, who did amazing things in his day*" and commented, "*Being a gay man, it's quite amazing to have that beautiful statue of him here in Ballyheigue.*"

RTÉ claims that this brief comment was not in breach of any BAI code and it may be noted that the facts, myths, speculation, assertions and counter-assertions associated with Roger Casement's life were not the subject of the broadcast.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to Broadcasting Act 2009 Section 48(1) (a)(fairness, objectivity and impartiality in current affairs), the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 2, 3, 21 and 22.)

In this regard:-

- The members were of the view that the segment of the programme was not a current affairs item and therefore could not be considered under the requirements of the Broadcasting Act 2009, *the Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Donal O'Driscoll

Ref. No. 38/15

Station:

Programme:

Date:

RTÉ One

Prime Time

18th December 2014

1. Programme

The complaint concerns an item, broadcast on *Prime Time*. This is a news and current affairs programme broadcast twice weekly on *RTÉ One* television. The programme featured a topic on a pending High Court case in which a family of a pregnant woman was diagnosed as clinically dead, requested the Court to allow her to be taken off life support. The programme consisted of a pre-recorded introductory report followed by a studio debate.

2. Complaint Category

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

3. Complaint Summary

The complainant claims that:

- The pre-recorded introductory report lacked balance in certain aspects. It is the complainant's view that while Dr. Adam McCauley who gave a balanced view, the contribution from Ms. Susan Mitchell of the *Sunday Business Post* was not balanced. He states that in his opinion, her contributions were intended to link the issue discussed in the programme to the substantive issue of abortion and that this was not, in his opinion, appropriate.
- A debate then followed between Ms. Susan McKay and Mr. William Binchy. The complainant states that while speaking time for both participants in the debate was evenly matched, the interruptions by the presenter were not. While agreeing that in any discussion reasonable interruptions are a necessary feature, he states that Mr. Binchy interrupted Ms. McKay on 5 occasions and Mr. Binchy was interrupted on 8 occasions – but only 4 of these came from Ms. McKay while 4 came from the programme presenter.
- The complainant states that as a result of these interruptions, the presenter, instead of chairing the discussion, became a joint participant with Ms. McKay in cross examining Mr. Binchy.

Broadcasting Complaint Decisions

4. Broadcaster's Response

4.1 Initial response to complainant

The complainant only received an acknowledgement on from RTÉ.

4.2 Broadcaster's Response to BAI

The broadcast comprised: a pre-recorded report which included interviews with Dr. Adam McAuley, University College Dublin law lecturer and Ms. Susan Mitchell, Health Correspondent, *The Sunday Business Post*; a phone interview from studio with Mr. Jeffrey Spike, Professor of Clinical Ethics, University of Texas; and a studio debate between journalist and author Ms. Susan McKay and Mr. William Binchy, Legal Adviser to the Pro-Life Campaign. RTÉ state that:

- The interviews in the pre-recorded report conveyed the professional views of a law lecturer and a journalist specialising in medical topics. The broadcaster states that in neither interview was there any reference whatsoever to an entirely separate case referred to in the complaint.
- The phone interview again conveyed an informed analysis of the issues involved.
- The broadcaster states that in the studio debate, as is usual on this and related topics, strongly held convictions were expressed by the two contributors. They state that the presenter facilitated impartially and fairly the expression of both viewpoints, intervening on occasion in the interest of seeking clarity, facilitating the expression of contributors' opinions and supporting a focused debate on behalf of viewers, with no expression whatsoever of her own views.
- The broadcaster states that it may be noted in the context of the complaint's specific allegations that the presenter on two occasions brought in Mr. Binchy to respond to points made by Ms. McKay and on two other occasions requested Ms. McKay to allow Mr. Binchy to make his point.

5. Decision of the Executive Complaints Forum

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

In this regard:-

- When considering the complaint, the Forum noted that the discussion featured an upcoming High Court case in which a family of a pregnant woman, who was diagnosed as clinically dead, had requested the Court to allow her to be taken off life support.

Broadcasting Complaint Decisions

- The programme included a report which featured interviews with Dr. Adam McAuley, Law Lecturer, and Ms. Susan Mitchell, Journalist and Mr. Jeffrey Spike, Professor of Clinical Ethics. This was followed by a studio debate between Mr. Susan McKay, Journalist and Mr. William Binchy, Legal Adviser to the Pro-Life Campaign. This is a normal feature of such a programme whereby the video report and any additional analysis form the basis for the studio debate that follows.
- The Forum was of the view that the programme featured, in the main, people who are well experienced in appearing on television and debating issues. Each one was given ample time to put their views across. Interruptions in such debates are common and the Forum found that the presenter handled these well.
- The debate between Ms. McKay and Mr. Binchy was robust, which is to be expected given the ability of the participants and the subject matter. The Forum found that the presenter dealt with the subject matter in a manner which was fair, objective and impartial.
- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009, the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Station:

RTÉ One

Programme:

Six-One News

Date:

6th March 2015

1. Programme

The complaint concerns the *Six-One news* which is broadcast each evening on *RTÉ One*. This is one of the main news and current affairs programme broadcast on *RTÉ One Television*. The complaint concerns a decision by a printer to refuse a request to print invitations for a Civil Partnership.

2. Complaint Category

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

3. Complaint Summary

The complainant relates to the news on *RTÉ One* which had a feature concerning two men from Drogheda who were planning a wedding, a "*marriage*" to each other, which the complainant understands has not been made legal in this country yet. He states that the main point of that news feature was the disclosure that a printing company would not print the invitations for the event. He states that one of the persons intending to get "*married*", in the course of the interview, explained how he was "*devastated*" and probably used some other similar expressions to describe his emotions in the circumstances of the refusal of his business. The complainant states:

- Considering that homosexual marriage is the subject of an upcoming referendum, and *RTÉ* has an obligation of absence of bias, the programme featured demonstrated an improper bias, showing a support for the objectives of the 'Yes' side.
- He further states that Article 44 of the *Irish Constitution, Bunreacht na hÉireann*, upholds the right to freedom of conscience which the printing company people reserved in the circumstances.
- In his opinion, the bias in the programme feature was revealed by:
 - Ignoring this fundamental human right of freedom of conscience, enshrined in the Constitution and failing to inform viewers of its existence, and;
 - Failing to searchingly question the couple who had been refused a service. The complainant states that failure to do this questioning was a demonstration of bias in favour of the 'Yes' vote in the upcoming referendum.

4. Broadcaster's Response

4.1 Initial response to complainant

The complainant only received an acknowledgement on from *RTÉ* and was advised they would respond as soon as possible to both his emails.

4.2. Broadcaster's Response to BAI

RTÉ states the report in question was about a gay couple who were planning a Civil Partnership ceremony and whose order for invitations for that ceremony had been turned down by a local printer with whom one of the men had done business with in the past.

They further state:

- Civil partnership is legal in Ireland since the introduction of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, so the fact that a business was refusing to print invitations for that ceremony was of news value.
- The reported reason given to the couple involved was that the owners of the business were against “*gay marriage*”. In fact, it was made quite clear throughout the report that the couple in question were planning a legal civil partnership ceremony.
- *RTÉ* notes in parenthesis that while a constitutional change to allow marriage “*by two persons without distinction as to their sex*” is the subject of one of the forthcoming referendums, this report was broadcast on 6th March before the date had been set for the Referendums and therefore outside the time in which guidelines regarding Referendum coverage were in place.
- The company which was refusing to print the invitations was offered the opportunity to appear in the report, but declined. However, the reporter accurately quoted a statement which they issued.
- Viewing of the item will make it evident that the reporting was impartial and fair and that there was no breach of Rules 4.1 and 4.2 in this news report.
- Viewing will also confirm that there was no expression of any view whatsoever by the reporter or the news anchor who introduced the report, and therefore no breach of Rule 4.21.
- As the item in question was a news report and not a current affairs broadcast, *RTÉ* would argue that Rule 4.22 does not apply. Notwithstanding that, viewing will show that the report reflected, through accurate quotation from a statement, the views of those who could not, or choose not, to participate. It will also confirm that, as above, there was no expression whatsoever of their own views by the presenter or the reporter. Therefore, insofar as it might apply, there was no breach of Rule 4.22.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to the Broadcasting Act 2009 Section 48 (1)(a)(fairness, objectivity and impartiality in news and current affairs), the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.21 and 4.22).

In this regard:-

- When considering the complaint, the Forum noted that this was a news item and therefore Rule 4.22 did not apply. As the broadcast took place before the introduction of the *BAI Guidelines on Referenda Coverage* (25th March), the complaint was not considered under Rule 4.27. The complaint was therefore considered under Rules, 4.1, 4.2 and 4.21.
- The complaint relates to a report concerning two men, a gay couple who were planning a Civil Partnership ceremony and who had ordered invitations from a local printer. However, their order had been turned down by the printer who, it was reported, stated that he was against “*gay marriage*”.
- The complainant claimed that considering the upcoming referendum on same sex marriage, that broadcasting this item demonstrated broadcaster bias.
- The Forum found that the broadcaster has editorial independence and may therefore decide what to broadcast and not broadcast. However, cognisance must be taken as to the timing of the broadcast in relation to an impending referendum. In this case the date of the referendum had not been announced before the broadcast; therefore infringement of rule 4.27 does not apply.
- The Forum was of the view that this was a factual news item about a gay couple placing an order for invitations for their upcoming Civil Partnership ceremony and how the refusal by the printing firm affected them. There was no necessity for cross questioning as claimed by the complainant.
- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 or the *Code of Fairness, Objectivity and Impartiality in News* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Donal O'Sullivan-Latchford on behalf of the Family and Media Association **Ref No. 3 0/15**

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
Newstalk 106-108FM	Newstalk's Breakfast Show	26 th January 2015

1. Programme

The complaint concerns the *Breakfast Show* broadcast weekday mornings on *Newstalk*. This is a weekday news and current affairs programme. The programme in question included an interview with Mr. Dominic Hannigan T.D. of the Labour Party and a 'vox pop' of interviews on the street with the public, both dealing with the then forthcoming *Marriage Referendum*.

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* (Section 4: Rules 4.1, 4.2, 4.3, 4.19, 4.21 and 4.22).

3. Complaint Summary

The complainant states that the programme included coverage of the then upcoming *Marriage Referendum*, which consisted primarily of an interview with Labour Party T.D. Mr. Dominic Hannigan (6 minutes, 54 seconds), preceded by a 'vox pop' on the issue (56 seconds). The complainant states that the 'vox pop' was of four people, all from Co. Waterford, who expressed a variety of views about the influence of the issue of children in the Referendum. The complainant states that Deputy Hannigan had already represented the 'Yes' side of the Referendum in several high profile national radio debates, the most recent of these being on the *Morning Ireland* show on *RTÉ Radio One*, the previous Friday. The complainant states that the wording for the Referendum had been announced by the Government on the same week.

The complainant believes that the present item was unfair for the following reasons:

- He states that it was unfair that, in the context of a Referendum, a promoter of a 'Yes' vote should have been interviewed, on his own, on this issue.
- He states that it was unfair that someone who was a known representative of the 'Yes' campaign should have been given almost 90% (approximately 7 minutes) of the time allocated to the item.

- He states that even though the 'vox pop' included the voices of two people who were undecided on the issue of same-sex marriage and one who appeared to be intending to vote 'No', the very fact of their being either undecided or strongly disposed to voting 'No', was used by Deputy Hannigan, with the help of the presenter, to advance one of the key strategies of the 'Yes' side, that is, to rid the 'Yes' camp of complacency and 'rally the troops', a strategy which can clearly be seen, in action, in the opening exchange.
- He states that the presenter made no attempt to counter the arguments that Deputy Hannigan repeatedly made in favour of a 'Yes' vote. For example, Deputy Hannigan suggested that the 'No' side would "*try to confuse the issue (of the Children and Family Bill and the Referendum) in voters' minds*".
- Finally, he states that although he need not have referred to it at all, the presenter, in what the complainant states was an implicit approval of same-sex marriage, congratulated Deputy Hannigan on the campaigner's own gay marriage, last year - this, in spite of the fact that it is the desirability of allowing gay marriage which the people are being asked to decide upon in this Referendum.

4. Broadcaster's Response

4.1 Initial response to complainant

Newstalk 106-108FM states that the Labour Party T.D., Mr. Dominic Hannigan was interviewed following a recent poll in the *Sunday Business Post* newspaper and this was clearly presented in the introduction as the context to the piece. The broadcaster states that he was being interviewed in his capacity as a Member of the Government and not as an advocator of the 'Yes' vote for the purposes of a debate on the Referendum. They state that this distinction is important and that the piece was not about encouraging people to vote in a certain way and this was made very clear to the audience at the outset of the piece.

Newstalk further states:

- In response to the first point about it being unfair that a promoter of the 'Yes' vote was interviewed on his own, Newstalk states that he was not there to take part in a debate about the substantive issues involved in the Referendum, he was there as a Government Representative to answer legitimate concerns about how the Referendum was being handled.
- The broadcaster states that there is no requirement to have two opposing sides on a broadcast, once the interviewer is fair to all interests concerned and a number of other factors can be taken into account, such as the structure of the programme, the scope of the debate and the role of the presenter.

- During the course of the interview, which again was not in relation to the substantive issues of the Referendum but more about how it is being run, the interviewer forcefully presented the viewpoint of the 'No' campaign to the interviewee and put it to him that the 'No' side would say that you cannot separate marriage and children. The broadcaster states that the interviewer went further and used a clip featuring Ms. Terry Prone (a PR and communications consultant) to demonstrate the criticism that exists of the 'Yes' campaign and asked him "*do you think the campaign has bordered on self-righteousness?*" The 'vox pop' also clearly contained a wide vary of views on the upcoming Referendum and the issue of children and how it may impact on it.
- In response to the second issue, Newstalk believes that the addition of the 'vox pop' and the clip of Ms. Prone was sufficient to provide balance and the interview was carried out in a fair and impartial way and the interviewer presented both sides to the listener. The presenter was robust and challenged the interviewee in an effort to provide a fair and balanced piece.
- The broadcaster states that the Government representative was in favour of the 'Yes' side and that was apparent but he did not attempt to encourage or convince the public to vote one way or another. The broadcaster states that the Government representative was allowed discuss how he feels the campaign should be run and the interviewer was vigorous in challenging this and provided the opposing side's view. The broadcaster states that the interviewer did not present his own view at any point and was very careful to be fair to both sides of the 'Yes' and 'No' campaign.

4.2. Broadcaster's Response to BAI

The background and context to the piece was a recent poll which featured in the *Sunday Business Post* newspaper in relation to the same-sex Referendum. The broadcaster states that this was presented to the listener in the introduction as the context to the piece and the listener was further informed that Government T.D., Mr. Dominic Hannigan was going to be interviewed about it. The broadcaster states that the piece was not about encouraging people to vote in a certain way or about the merits of voting 'Yes' or 'No' in the Marriage Referendum, rather it was about the 'Yes' and 'No' campaigns - how they are being run and the Government's alleged complacency in respect of the handling of the 'Yes' campaign, which is a matter of huge public importance.

Newstalk believes that they must be able to have a Government representative on-air to discuss the Government's handling of and role in a Referendum without it turning into an adversarial and confrontational debate.

Broadcasting Complaint Decisions

Newstalk believes that the interview was handled in a credible, trustworthy and entirely transparent manner, as follows:

- Sections 4.1, 4.2 and 4.3:

Newstalk believes that the broadcast was a fair, impartial and objective interview that was transparent and accountable. During the course of the interview the issue arose about whether or not the Government is being complacent and that it may be tighter and tougher to pass the Referendum than initially thought. This discussion was not an attempt to convince people to vote 'Yes'. It is the Government's responsibility to pass the Referendum and this was a discussion about this. The issue then turned to whether or not the public were conflating the same-sex Referendum and the Children and Family Bill and both sides were put to the listener. The interviewer presented the viewpoint of the 'No' side campaign to the interviewee and put it to him that the 'No' side would say that you cannot separate marriage and children. This is admitted by the complainant as a central issue and it was put to the listener as such.

- Sections 4.19, 4.21, 4.22:

Again, *Newstalk* maintains that the interview was in respect of the campaign that the Government is leading and it was not in any way a meaningful discussion about the merits or otherwise of voting one way or another. The Government representative was of course in favour of the 'Yes' side and that was apparent but did not attempt to encourage or convince the public to vote 'Yes'. *Newstalk* rejects that any view or fact was misrepresented or presented in such a way as to render them misleading. The interviewer did not present his own view at any point such that a partisan position was advocated.

- *Newstalk* also notes how there were a number of other broadcasts, which were transmitted on 18th and 19th January, which they submit should be taken into account as related broadcasts to demonstrate how *Newstalk* is a careful and responsible broadcaster and is very mindful of its responsibilities to be a fair and impartial broadcaster.
- On the congratulations of Mr. Hannigan's marriage, to say that a polite congratulation on a gay marriage is an implicit approval and synonymous with presenting a view is just incorrect.

To conclude, *Newstalk* states that while there were certainly discussions about the 'Yes' side's campaign and how it could be run better, to balance this out, the 'No' side campaign's view was presented also and there were robust and harsh criticism of the 'Yes' side's campaign.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to the requirements of 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 1, 2, 3, 19, 21 and 22).

In this regard:-

- The Forum noted that the item in question was about the 'Yes' and 'No' campaigns for the Marriage Referendum which proposed amending the Irish constitution to provide for same-sex marriages.

The context for the piece was a *Sunday Business Post* opinion poll regarding the Referendum and the topic was explored through a number of vox-pops, an interview with Mr. Dominic Hannigan T.D. and a clip of an interview with Ms. Terry Prone, a PR consultant.

- The members noted that the piece concentrated on the nature of referendum campaigns and examined the political dimensions and electoral dynamics that come into play during referendum campaigns. The Forum was of the view that the item did not expand into a more general debate on the *Marriage Referendum* and the issues at the core of that Referendum. The members are of the opinion that this was a legitimate editorial approach to the topic and noted that there is no obligation for the piece to expand into a wider discussion on the 'pros' and 'cons' of same sex marriage, or to give equal air time to all possible views on that topic.
- The Forum had regard for the complainant's view that the piece was one-sided in favour of the 'Yes' side and his view that there should have been someone to represent the 'No' side. The interviewee was in favour of the 'Yes' vote, however, the presenter did offer alternative viewpoints and overall the discussion was balanced and the Forum found that the subject matter was explored in an impartial manner.
- The Forum did not agree with the complainant's belief that the presenter's congratulatory comment regarding the interviewee's recent wedding was an implicit approval of same-sex marriage. The Forum noted that the comment was at the end of the interview and while it was quite informal for a current affairs piece, the presenter, in noting an important event in the life of the interviewee, could not be considered as advocating a partisan position, contrary to the requirements of the BAI's code on news and current affairs.

Broadcasting Complaint Decisions

- When considering the complaint, it was the view of the Forum that the complainant had failed to provide any rationale as to why the content did not comply with Rules 4.3 and 4.19 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. In addition, as the programme content was current affairs and not news, Rule 4.21 did not apply. In view of this, members concluded that the programme did not infringe the requirements of the Broadcasting Act 2009 or Rules 4.1, 4.2 and 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 was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Donal O'Driscoll

Ref. No. 49/15

Station:

RTÉ One

Programme:

Six One News

Date:

17th February 2015

1. Programme

The complaint concerns an item, broadcast on the *Six One News* on *RTÉ One*. This is one of the main daily news and current affairs programmes on *RTÉ One* television. The complaint refers to a report during this programme on the Cabinet approval of the *Children and Family Relationships Bill*.

2. Complaint Category

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

3. Complaint Summary

The complainant states:

- During the report, An Taoiseach, Mr. Enda Kenny T.D. was featured speaking in favour of the Bill, saying it was the most important piece of legislation since the foundation of the State. This was followed by an interview with Dr. Geoffrey Shannon, the *Special Rapporteur on Child Protection*. Other voices and organisations in favour of the Bill were then featured, including *The Children's Right Alliance*. The complainant states that these views were not challenged and that this was contrary to the requirement for news and current affairs.
- The complainant states that the sole view against the proposals was expressed by Professor Ray Kinsella, Chairman of *Mothers and Fathers Matter*.

4. Broadcaster's Response

4.1 Initial response to complainant

The complainant did not receive an acknowledgement from *RTÉ*.

4.2 Broadcaster's Response to BAI:

RTÉ states that the *Six-One News* on February 17th 2015 carried two news items arising from Cabinet approval of the *Children and Family Relationships Bill*.

RTÉ further states:

- The first item began with a political report featuring Fine Gael, Fianna Fáil and Sinn Féin. The broadcaster states that all three Government and Opposition parties were accurately reported as being in favour of the Bill, with Sinn Féin pointing out that it does have some reservations. In this report, Political Correspondent, Mr. David Davin Power put a question to the Minister for Justice regarding whether the legislation was being pushed through ahead of the Marriage Referendum in May. The broadcaster states that he also pointed out in the course of the report, that it is rare to have such harmony between Government and Opposition parties on an issue.
- The broadcaster states that the second part of this item included some of the known detail about the contents of the Bill as well as reporting reaction from a wide cross-section of interest groups that had been campaigning on the elements included in the Bill (including fathers' rights, grandparents' rights, and assisted human reproduction). The broadcaster states that, again, those who had campaigned were broadly supportive of the Bill, although a spokesperson for *Treoir* (an organisation providing information for unmarried parents) thought that the legislation did not go far enough. The item also included Professor Ray Kinsella from the organisation, *Mothers and Fathers Matter*, who spoke against the Bill.
- The broadcaster states that this item was an accurate and impartial news report of the political and civil society responses to the Bill and nothing in the complaint demonstrates or proves otherwise.
- The broadcaster states that the second item was an interview with Dr. Geoffrey Shannon. Dr. Shannon's work on the protection of children in a wide range of areas, including abuse, pornography, forced marriage, etc., is widely recognised. Appointed by the Government, his independence is integral to the definition of his role.

The interview with him was in that context, drawing out his independent, expert analysis of the proposed legislation.

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

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

In this regard:-

- When considering the complaint, the Forum noted that the news report was about the Cabinet approval of the *Children and Family Relationships Bill*. The report was made up of snippets of interviews and was reflective of the views of various political parties, experts and interest groups on the proposals contained in the Bill.

Broadcasting Complaint Decisions

- The Forum did not agree with the complainant's view that the piece failed to be objective and impartial. The Forum found that the report was factual and captured the reaction to the passing of the Bill. As a news report, there was no requirement for the broadcaster to expand the piece into a wider debate about the Bill, or to give equal airtime to opposing views. The Forum found that the news report was accurate and transparent.
- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 or the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Brian O'Leary

Ref. No. 63/15 and 64/15

Station:

Programme:

Date:

RTÉ One

Six-One News and Nine News

9th March 2015

1. Programme

The complaints concern the *Six-One News* (63/15) and *Nine News* (64/15). These are the main daily news and current affairs programmes broadcast on *RTÉ One Television*. The complaints concern reports on both programmes about the issue of the then forthcoming *Marriage Referendum*.

2. Complaint Category

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

3. Complaint Summary

This complaint relates to the language used in the *Six-One News* and *Nine News* broadcasts, which reported on the upcoming Referendum on access to marriage in the Irish State. The complainant states that it is his view that *RTÉ's* reference to the "*Referendum on marriage equality*" was heavily biased, objective, and political.

The complainant further states:

- The term "*Referendum on marriage equality*", while used by the Fine Gael and Labour political parties as part of their "Yes" campaign, has no legal or constitutional basis. He states that the term "*equality*" is nowhere used in the proposed wording for the amendment and was studiously avoided by the legal draftsmen.
- He states that the proposed amendment will only serve, if passed, to broaden access to marriage in Ireland: it categorically does not provide equality of access to marriage for all those in Ireland who wish to marry their loved ones.

He states that, for example, a father and daughter/son wishing to marry each other, a mother and daughter/son wishing to marry each other, or two siblings wishing to marry each other will remain prohibited from doing so under the proposed amendment.

- He states that by no means can the broadening of access to marriage to one particular group (same-sex couples) be said to provide equality of access to marriage among all Irish citizens.

The complainant states that, with this in mind, it is clear that by adopting what he describes as the Fine Gael and the Labour Party's political terminology in their reporting of this Referendum, *RTÉ* are:

- a) Giving biased reporting in favour of the Fine Gael and Labour Party campaigns;
- b) Misleading their audience into thinking that a 'Yes' vote in the Referendum will provide equal access to marriage for all citizens; and,
- c) Incorrectly implicitly suggests that those who vote 'No' are voting against marriage equality, when marriage equality is not at stake in this Referendum - broadening of access to specific groups is.

The complainant states that participants in the debate should certainly be allowed to represent the Referendum in whatever terms they wish, but in his opinion it is completely unethical broadcasting for the state-owned media to adopt party slogans in their reporting of political issues in order to give a biased view of the issues under debate.

4. Broadcaster's Response

4.1 Initial response to complainant

The complainant only received an acknowledgement from *RTÉ* and was advised they would respond as soon as possible to both his emails.

4.2 Broadcaster's Response to BAI

RTÉ states that the complaint is correct that the phrase "*Referendum on Marriage Equality*" was included in the identical presenter-read introduction scripts on the *Six-One News* and *Nine News*.

They also state:

- *The Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015* was published on 21st January 2015, following Government agreement on the proposed wording that day.

The broadcaster states that the term '*Referendum on Marriage Equality*' was therefore impartially and objectively accurate in using the title of the Bill published six weeks previously and could not reasonably be construed as misleading viewers. Nor was there any expression of any views whatsoever by the broadcaster.

- The broadcaster states that it may also be noted in the context of the complaint of "*adopting Fine Gael and Labour's political terminology*," that the Bill was passed by both Houses of the Oireachtas with, as expected, the support of all political parties of the Oireachtas, and not only those of the Government coalition.

- The broadcaster states that *RTÉ News* broadcasting on Referendum 34 has, as a matter of editorial policy, in respect of impartiality and objectivity, used the terms ‘*marriage Referendum*’, ‘*same-sex marriage*’ and, when referring to the Referendum as proposed by Government and supported by Opposition parties, ‘*Marriage Equality Referendum*’ or ‘*Referendum on Marriage Equality*’. As an example of the impartial use of the varying terminology, it may be noted that the term ‘*same-sex marriage*’ was used in the pre-recorded report which followed the news anchor’s introduction in these broadcasts.
- The broadcaster states that all terminology has been used impartially, objectively and correctly, with the term ‘*Marriage Referendum*’ being that most frequently used, particularly since the publication of Broadcasting Authority of Ireland Guidelines in Respect of Coverage of Referenda on 25th March 2015, more than two weeks after this broadcast.

RTÉ notes that the broadcast was a news report on the launch of a Referendum campaign and could not be viewed as a current affairs broadcast.

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

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

In this regard:-

- The members noted that the complainant felt that the use of the term “*referendum on Marriage Equality*” did not belong in the news broadcast, as he believes that the term “*equality*” is nowhere used in the proposed wording for the amendment.

The Forum noted that the ‘Yes’ campaign often uses the term “*marriage equality*”, however, they noted that the official name of the Bill is “*Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015*”.

In this context, the Forum was of the view that the reference to marriage equality in the news report could not be seen as displaying bias but was rather a factual reflection of the name of the Bill.

- The Forum noted the complainant’s concern that use of the phrase “*marriage equality*” would mislead audiences as to the nature of the Referendum. However, the Forum felt it is likely that most audience members would be aware of the nature of the Referendum and the intention of the Bill in respect of marriage rights and did not believe there was any evidence to suggest that either news story was misleading on account of the use of this phrase.

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- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Ms. Loretta O'Hanlon

Ref No. 144/14

Station:

RTÉ Two

Programme:

Mom

Date:

11th November 2014

1. Programme

The complaint concerns an episode of the sitcom *Mom* which is a US TV series. The programme is about the relationship between a daughter and her mother, both of who are recovering from drug and alcohol addiction. The programme was broadcast at 8.15pm.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b) (harm and offence); the *Code of Programme Standards* (Principle 2.3 and Rule 3.7).

3. Complaint Summary

The complainant believes that the time of broadcast was inappropriate for this programme, and takes issue with one scene in particular. The scene in question is of a man and a woman in bed - he is bare-chested and she is only wearing underwear. The male character is inhaling marijuana through a bong (a filtration device which can be used for smoking cannabis) and he also refers to using cocaine. The complainant believes that this is of an adult nature and is not suitable for broadcast before 9pm.

4. Broadcaster's Response

4.1 Initial response to complainant

The broadcaster states that the programme was aired with the *Parental Supervision* (PS) rating at the beginning of the programme. In their response RTÉ states that their working definition of '*Parental Supervision*' is "*A programme aimed at the mature audience, i.e. it might deal with adult themes, be moderately violent, frightening or contain an occasional swear word, and the classification label invites parents or guardians to consider restricting children's access.*" RTÉ feels that the warning was suitable and that for the content of the broadcast.

RTÉ further states:

- They are of the view that the characters state of undress would be acceptable for broadcast at any time of the day as the covers were pulled up above their waists and that the women's bra is plain and swimsuit-like.

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- The use of the bong and the reference to using cocaine is reasonable when considered in the broader context of the story-arc for this specific programme and for the entire series, which is about a daughter and mother who are both recovering from alcohol and drug abuse.
- RTÉ are of the view that the man who is using the bong is clearly depicted as a “train-wreck” and the scene in no way condones the use of drugs.
- The broadcaster acknowledge that there are a number of occasions where sexual innuendo is used in a humorous way but these are suitable for the PS rating and the meaning would not be understood by a child.
- Some bad language is used in a humorous context which, RTÉ acknowledge, parents would not like their young children to hear. However, the broadcaster is not of the view that the language warranted a *Mature Audience* (MA) classification or a post-watershed transmission.
- RTÉ note that the programme-makers push the verbal and innuendo boundaries at times but have taken care to avoid elements which would require a post-watershed slot.

4.2 Broadcaster’s Response to BAI

RTÉ states that the programme was transmitted at 8:15pm with a *Parental Supervision* (PS) rating, visible to viewers at the beginning of the episode in the top right-hand corner of the screen. The decision not to broadcast an on-air warning before the episode was on the basis that, to avoid verbal warnings becoming over-used and therefore losing their impact. RTÉ would tend to restrict their use to occasions where the content goes to the limits of its classification and / or could be seriously disturbing or upsetting to viewers, neither of which was the case in this instance.

RTÉ further states:

Rule 2.3

- The use of the PS rating fulfils the requirement of Principle 2.3 of the BAI Code of Programme Standards that “*broadcasters share a responsibility with parents and guardians in protecting children i.e. those under 18 years of age, from exposure to inappropriate and harmful programme material.*”

The presence of the on-screen rating is also in keeping with Principle 2.2.1 of the Code, providing audience guidance through the implementation of a clearly visible classification for the programme material.

- RTÉ understands the complaint as stating that, due to the action contained in a particular scene, the programme is “*of an adult nature*” and “*should not have been broadcast at 8.15pm, before the 9pm ‘watershed’.*”

RTÉ notes that the complaint refers to the fact that in the scene in question a man and a woman appear seated in a bed, “*the man bare-chested, the woman dressed only in a black bra.*” The broadcaster believes that viewing will confirm that the two characters have a duvet pulled up beyond their waists and that the female character is wearing a very plain, swimsuit-like bra. The depiction includes no content of a sexual nature and would be acceptable to audiences at any time of the day.

Rule 3.7

- RTÉ note that the complaint refers also to the fact that, in the scene, the male character is depicted “*smoking cannabis through a ‘bong’*” and that there are references to this in the dialogue, as well as to the taking of cocaine. RTÉ acknowledge that this is correct, however, it believes that the editorial context of the scene, and of the episode and the overall series, make it clear that there is no breach of any of the provisions of Rule 3.7 of the Code.

Rule 3.7.3

- RTÉ notes that Rule 3.7.3 states: “Programme material shall not present depictions, either fictional or factual, which detail techniques for the administration of illegal drugs unless there is strong editorial justification for its inclusion.” However, no such techniques are depicted on-screen.

Rule 3.7.1 and 3.7.4

- In respect of Rules 3.7.1 and 3.7.4, RTÉ believe it should be noted that the series *Mom* is about ‘Christy’ (the female character in the scene at issue) and her ‘Mom’ who are both recovering alcoholics and drug-users. Within this context, they make frequent references to their past bad behaviour, in contrast to the sober and clean lives they are pursuing now. They frequently come up against reminders of the past they are trying to leave behind. While the male character is shown smoking cannabis, ‘Christy’, the character with whom the audience identifies and sympathises, declines to participate and clearly disapproves of this behaviour. RTÉ are the view that the values that drug-use and excessive drinking are harmful and destructive are very strongly upheld throughout the series, in this episode and in the scene complained of. RTÉ believe that the scene, the episode and the series do not encourage drug taking or substance abuse of any kind and in fact depict such activities in an emphatically unfavourable light.

RTÉ believes there are no grounds to uphold this complaint.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum had regard to the Broadcasting Act 2009, Section 48(1)(b)(harm and offence) and the *Code of Programme Standards* (Principle 2.3 and Rule 3.7).

In this regard:

- The Forum noted that the complainant felt that the programme contained adult content and took issue with the time of broadcast as she believed that children could be watching and, more specifically, stated that her own children saw some of the programme. Principle 2.3 of the *Code of Programme Standards* recognises that the broadcaster and parents share a responsibility for protecting children from inappropriate content. In this context, the broadcaster is required to include audience information, where deemed necessary, so as to inform audiences in advance of the content to be aired. This can include prior warnings, scheduling after the 'watershed' or the use of a classification system.
- Having considered the time of broadcast and channel-type, the Forum concluded that it is likely that audiences would expect to view adult content on *RTÉ Two* after 8pm. The Forum also noted that audience information was provided via RTÉ's classification system and a *Parental Supervision* (PS) rating was aired at the beginning of the programme. The members felt that the rating was appropriate for the content of the broadcast but felt that it may have been preferential for the PS symbol to be visible for longer.
- The Forum noted that the complainant took issue with one scene in particular which contained sexual content and depicted drug use. The Forum noted that the scene in question showed a couple sitting in bed, the woman was wearing a bra and the man was bare-chested and he was using a bong. Although the characters were in bed and some of the dialogue consisted of mild sexual innuendo, the members did not feel that there was any strong sexual content in the scene that would render the programme unsuitable for the time of broadcast or in the context of the *Parental Supervision* rating.
- The Forum was of the view that the use of a bong and the references to the use of other illegal substances was editorially justified by the storyline of the specific episode and the wider premise of the series. The members noted that the use of drugs was depicted in a negative light (for example via depictions in the programme of the impact of the drug taking on the coherence of the drug taker and his unsuitability as a boyfriend) and were of the opinion that the scene could not be viewed as encouraging the use of drugs or detailing techniques for administering illegal drugs.
- The members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 or the *Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Dónal O’Sullivan-Latchford on behalf of the Family and Media Association **Ref. No. 51/15**

Station:

RTÉ Radio 1

Programme:

The Ray D’Arcy Show

Date:

6th February 2015

1. Programme

The complaint concerns *The Ray D’Arcy Show* broadcast weekday afternoons on *RTÉ Radio 1* from 3.00 – 4.30pm, which is a lifestyle/entertainment programme. The complaint concerns an interview with Mr. Richard Boyd Barrett T.D. on the topic of fatal foetal abnormalities.

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 1, 2, 3, 19 and 22).

3. Complaint Summary

The complainant states that during this programme the presenter made no attempt to acknowledge the validity or the existence of other arguments against terminating a pregnancy in a situation where the unborn child has a life-limiting diagnosis. He states that the term "*incompatible with life*" was used by the presenter on several occasions and he states that this term is highly offensive to many parents who cherish the lives of their children, however short.

The complainant states that the presenter gave the impression that he was sympathetic to the arguments of Deputy Boyd Barrett and that he made no attempt to challenge any views articulated by Deputy Boyd Barrett and, in the complainants view, even somewhat embellished them. The complainant states that the presenter failed in his statutory duty to be even-handed and fair to all interests and to all of those involved in this debate, many of whom have, themselves, suffered greatly. The complainant states that, in his opinion, this item appears to have been one-sided propaganda.

4. Broadcaster’s Response

4.1 Initial response to complainant

No response was forthcoming from the broadcaster.

4.2 Broadcaster’s Response to BAI

RTÉ states Deputy Richard Boyd Barrett revealed in public through a deeply personal speech in Dáil Éireann, the story of his daughter who had lived for twenty days and whose thirteenth birthday it would have been the following week.

That afternoon, Deputy Boyd Barrett gave an interview to *The Ray D'Arcy Show*. The editorial format of this topical daily programme, well recognised by its listeners, frequently features such stories of the day.

The broadcaster states that the interview was primarily of a '*human interest*' nature. It focused on the traumatic experience of Deputy Boyd Barrett, his partner, and his two sons in dealing with the short life and death of their daughter and sister, and of his memories of his daughter, brought to full term and dying twenty days later.

The broadcaster states that, insofar as it touched on public debate on the topic, the interview was unreservedly sensitive to the dilemma of parents faced with these circumstances. The broadcaster states that neither interviewer nor interviewee proposed any particular course of action by those parents. Deputy Boyd Barrett referred to the necessity that "*Every support and comfort must be given to the mother in those circumstances.*"

The broadcaster states that, in the circumstances of this very personal interview, to have conducted a debate on the legislation proposed in the Dáil that day would have not only have been incongruous in the editorial framework of the interview, but also have been offensively insensitive not only to the experience of Deputy Boyd Barrett and his family but to any listeners who themselves had been through such an experience. The broadcaster states that it may be noted, however, that when the interview touched on the legislation, the presenter quoted the reference by the Minister for Health to the legal advice that such legislation would be unconstitutional.

The broadcaster states that the term '*fatal foetal abnormality*', used by the Deputy in his Dáil speech which prompted the interview and the term '*incompatible with life*' are standard medical and legal terms usually defined as a foetal anomaly diagnosed before birth that will with reasonable certainty result in death of the unborn child within a short time. They are not, however, inherently offensive terms and were used accurately and sensitively by both interviewer and interviewee. There was no breach of Rule 4.19 or of any other section of the Code, cited or otherwise, in this respect.

The broadcaster states that *The Ray D'Arcy Show* engages a large audience and, to quote the Guidance Notes to the news and current affairs Code, on occasion "*draws them into consideration and debate on matters of public controversy and current public debate*". However, the broadcaster states, that style, designed professionally to engage listeners, does not impose a viewpoint, either on interviewees or on the programme's audience. Specifically, it did not in this broadcast lead to the advocacy of a partisan position such as that outlined in the Guidance Notes and therefore did not breach Rule 4.22 of the Code. The broadcaster states that a terrible human dilemma in which parents are faced with deeply distressing prospects and choices was explored with sensitivity and consideration, with an interviewee who had himself been through this experience.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to the requirements of 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 1, 2, 3, 19 and 22).

In this regard:-

- The Forum noted that the context to this interview was a speech relating to the *Protection of Life in Pregnancy (Amendment) (Fatal Foetal Abnormalities) Bill 2013* which Deputy Boyd Barrett had given in the Dáil on the same day as the interview. The interview focused on the personal experience of Deputy Boyd Barrett, who had a daughter who had a fatal foetal abnormality and had died twenty days after birth. The Forum noted that the topic was explored through an interview which was predominately human interest; which is a legitimate editorial approach.

The complainant felt that the presenter was sympathetic to the interviewee's arguments but it was the view of the Forum that the sympathy displayed by the presenter related to the personal grief Deputy Boyd Barrett had experienced. The members did not believe it was necessary or appropriate for the presenter to challenge Deputy Boyd Barrett when he was discussing his personal experience.

- The broadcaster should be mindful of the wider context of an interview of this nature, in which the contributor is participating in a human interest capacity, but is also a public figure. In this regard, the Forum was of the view that, although this interview touched on wider issue regarding the *Protection of Life in Pregnancy (Amendment) (Fatal Foetal Abnormalities) Bill 2013*, the wider discussion focused on the experiences similar to those of the interviewee and the piece was not a discussion on the pros and cons of the Bill. There is no requirement for all possible opinions to be addressed in any one programme. However, the Forum noted that the presenter did offer a different point of view in relation to the wider topic regarding the Bill.
- The complainant took issue with the presenter's use of the term "*incompatible with life*", but the Forum noted that this is a term which is widely used in both the medical and legal world and the use of it by the presenter could not be considered as having infringed the Codes.
- The Forum agreed that the presenter's comments, regarding some of the practices resulting from the current legislation, as being "*barbaric*" and about possible jail time faced by women who have obtained a termination in the case of fatal foetal abnormality, could have been viewed by some listeners as being in support of a certain political stance. However, the members were of the view that the presenter was expressing sympathy for the personal suffering of some parents and was not advocating a partisan position.

Broadcasting Complaint Decisions

- Having had regard to the discussion as a whole, the members concluded that the programme did not infringe the requirements of Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) of the Broadcasting Act 2009 or Rules, 4.1, 4.2, 4.19 and 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 was rejected.
- When considering the complaint, it was the view of the Forum that the complainant had failed to provide any rationale as to how the content did not comply with Rule 4.3 and 4.19 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

Broadcasting Complaint Decisions

Complaint made by: Mr. Dónal O’Sullivan-Latchford on behalf of the Family and Media Association **Ref. No. 56/15**

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ Radio 1	The Ray D’Arcy Show	10 th February 2015

1. Programme

The complaint concerns *The Ray D’Arcy Show* broadcast weekday afternoons on RTÉ Radio 1 from 3.00 – 4.30pm, which is a lifestyle/entertainment programme. The programme included an interview with a woman who had chosen to terminate her pregnancy on account of the presence of a fatal foetal abnormality. The interview also dealt with the organisation, *Termination for Medical Reasons*, who provided support to the woman in question.

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* (Principles and Section 4: Rules 1, 2, 3, 19 and 22).

3. Complaint Summary

- The complainant states that the interview opened with what he describes as a false claim relating to the organisation *Termination for Medical Reasons* which the presenter claimed was founded as a support network for ‘babies who would not live outside the womb because of fatal foetal abnormalities’. The complainant believes that no one can say with certainty that a baby will not live outside the womb and it is the view of the complainant that the presenter made this claim without qualification.
- The complainant cites an example of another woman, who like the woman interviewed on the programme in question, had conceived a child with the same fatal foetal abnormality, but whose child had survived birth and lived for several years. The complainant is of the view that even those who die before birth never deserve to have their short lives cut shorter still. He believes that this is not a humane way to treat people who may (or, indeed, may not, in many cases) be terminally ill.
- The complainant states that, generally speaking, the interviewer failed to challenge any of the views of his interviewee in relation to terminating a pregnancy in the case of children with fatal foetal abnormalities. He states that in his questioning, the programme presenter facilitated the viewpoint of the interviewee.

The complainant states that the presenter gave the impression that he supported his interviewee and her viewpoint.

4. Broadcaster's Response

4.1 Initial response to complainant

No response was forthcoming from the broadcaster.

4.2 Broadcaster's Response to BAI

RTÉ states that the item, which is the subject of complaint, was a human interest interview as background to a then current Dáil debate on fatal foetal abnormality. The interview focused on the personal experience of the interviewee of the support group *Termination for Medical Reasons*. The broadcaster states that the interviewee chose to have a medical termination in Britain when her baby was diagnosed with Trisomy 13 along with a large cystic hygroma.

RTÉ further states:

- No false or misleading claims or facts were broadcast, as alleged in the complaint, nor were any misrepresented. The presenter's reference to the term 'fatal foetal abnormality' was grounded in the fact of medical diagnoses.
- It may also be noted, in the context of the complaint's allegation of unfairness to others not present, that both presenter and interviewee expressed acknowledgement and understanding of the choice of parents faced with a diagnosis of '*fatal foetal abnormality*' to carry their baby to term.
- In respect of Rule 4.22 of the Code, *RTÉ* notes that the BAI Guidance Notes on this section state: It is acknowledged that some current affairs output can be synonymous with personalities, where the manner in which the presenter presents or interviews contributors can be keenly anticipated by audiences. Often the nature and style of the presenter is a key factor in what engages audiences and draws them into consideration and debate on matters of public controversy and current public debate.
- *The Ray D'Arcy Show* is, as the title indicates, a programme which is synonymous with the broadcasting persona of its presenter, familiar to his audience over decades of radio and television presenting. However, that style, designed professionally to engage listeners, does not impose a viewpoint, either on interviewees or on the programme's audience.

Specifically, it did not in this broadcast lead to the advocacy of a partisan position such as that outlined in the Guidance Notes and therefore did not breach Rule 4.22 of the Code. A terrible human dilemma in which parents are faced with deeply distressing prospects and choices was explored with sensitivity and consideration, with an interviewee who had herself been through this experience.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to the requirements of 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 1, 2, 3, 19 and 22).

In this regard:-

- The complaint relates to an interview with a representative of the group called '*Termination for Medical Reasons*'. The focus of the interview was the personal experience of the interviewee, who had set up the organisation following a medical termination in Britain which she had when her baby was diagnosed with Trisomy 13.
- The Forum was mindful of the complainant's belief that the presenter made a false claim when introducing the organisation but, noted that the presenter's comment was a factual reflection of one of the organisation's stated aims and was not a view regarding medical terminations or fatal foetal abnormality.
- The interview focused on the personal experience of the interviewee and the Forum noted that exploring a topic through human experience is a legitimate editorial approach.
- The complainant felt that the presenter was sympathetic to the interviewee's views but it was the view of the Forum that the sympathy displayed by the presenter related to the personal experience of the interviewee.
- The members noted the complainant's belief that the presenter failed to challenge the interviewee but as the focus of the piece was the interviewee's personal experience, the members did not believe it was necessary for the presenter to conduct a robust interview. Further, the Forum noted that the interviewee acknowledged that other people with similar experiences have made different choices.
- The Forum noted that a broadcaster should be aware of the wider context when conducting interviews of this nature. In this instance the interview focused on the personal experience of the interviewee and the presenter offered a different point of view regarding the wider context of the *Protection of Life During Pregnancy Bill 2015*.
- Having reviewed the programme the members concluded that the programme did not infringe the requirements of Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) of the Broadcasting Act 2009 or Rules, 4.1, 4.2, 4.19 and 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 was rejected.
- When considering the complaint, it was the view of the Forum that the complainant had failed to provide any rationale as to how the content did not comply with Rule 4.3 of the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

Broadcasting Complaint Decisions

Complaint made by: Mr. Dónal O’Sullivan-Latchford on behalf of the Family and Media Association **Ref. No. 60/15**

Station:

RTÉ Radio 1

Programme:

The Ray D’Arcy Show

Date:

13th February 2015

1. Programme

The complaint concerns *The Ray D’Arcy Show* which is broadcast weekday afternoons on *RTÉ Radio 1* from 3.00 – 4.30pm, which is a lifestyle/entertainment programme. The programme included references by the presenter to recent comments made by Pope Francis on a number of topics, including child discipline and the role of children in marriage.

2. Complaint 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)(Harm and Offence); the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Principles and Section 4: Rules 1, 2, 3, 19 and 22) and the *Code of Programme Standards* (Section 3.4.5 - Persons and Groups in Society).

3. Complaint Summary

The complainant states that in the item in question, it is his view that the presenter expressed his opinions about Pope Francis, Catholic teaching, Catholic theology and the Church. The complainant states that in the course of expressing these views, he, to the same extent, misrepresented what the Pope had said and unfairly attacked him and "*the rest of the clergy in the Catholic Church*".

The complainant further states:-

- None of these people referred to were present to defend themselves, and the people, their views and beliefs were neither fairly nor accurately represented nor dealt with. The complainant states that critical scrutiny is one thing; unfair critical scrutiny is something very different.
- The complainant states that, in addition, the comments and the way they were expressed would have offended many Catholics. The complainant states that it is difficult to imagine the same sorts of critical comments being made, or the same tone being adopted, in relation to other religions and its clerics.
- The complainant cites an extract from the programme and states that it should also be noted that the interviewer did not make it clear that any intimated '*hitting*' applied only to that done by parents when disciplining their children.

The extract is as follows:

"The pope is in the papers today. He's all over the place, these weeks, isn't he? ...And then, last week, he intimated that it was ok to hit children, as long as it wasn't on the face, as to humiliate them. Well now he's saying that people, married Catholics, who don't have children, are selfish! He's definitely making the headlines. Selfish? Huh? That will offend an awful lot of people, especially coming from a celibate man. I don't know how he rates himself and the rest of the clergy in the Catholic Church, them being celibate and never going to procreate in their lives. Em anyway ... "

4. Broadcaster's Response

4.1 Initial response to complainant

No response was forthcoming from the broadcaster.

4.2 Broadcaster's Response to BAI

RTÉ states *The Ray D'Arcy Show* is, as the title indicates, a programme which is synonymous with the broadcasting persona of its presenter, familiar to his audience over decades of radio and television presenting.

The broadcaster states that the show is a topical daily show which frequently refers to news of the day on the programme. Audience expectation is that the presenter will comment on such stories. His comments, specifically on this occasion, were in reaction to specific reported statements by the Pope and did not amount to the adoption of a partisan position on the subject. The broadcaster states that, as can be heard, the tone of the comments is appropriately light in the editorial context of a topical afternoon magazine show.

The broadcaster states that the complaint alleges that the presenter's comments "*would have offended many Catholics.*" It may be noted in this context that no other complaint was received in respect of this item. Given the listenership of the programme and statistics on membership of the Catholic Church in Ireland, this would indicate very strongly that, with one exception, none of the many Catholics in *The Ray D'Arcy Show* audience were offended by the reference – certainly not to the extent of making a complaint.

The broadcaster states that the complainant does not give any indication of the manner in which "*many*" Catholics would have been offended by comments on a Pope who encourages debate within his Church, or any evidence of such offence.

RTÉ further states:

- Rule 4.1: No views were expressed on behalf of the broadcaster, RTÉ. The broadcast was not a current affairs item, debate or discussion, but a passing comment on a topical report within the expected and accepted editorial format of the programme.
- Rule 4.2: Insofar as the broadcast could be viewed as ‘*current affairs*’ (and it is evidently not a news bulletin), the comment was fair in the editorial context and was presented misleadingly as being objective or impartial.
- Rule 4.3: There were no contributors and the references to the Pope and the clergy he represents were fair comment on public statements made by the Pope.
- Rule 4.22: The broadcast was not a ‘*current affairs*’ item but a passing comment on a topical matter in a clear editorial context where such commentary is expected and, to judge by listenership figures, enjoyed by a large audience. The comments were specific to particular, accurately reported remarks, were tonally appropriate to this magazine programme, and were therefore not such that a partisan view was articulated on any subject.
- Rule 3.4.5: The presenter did not offer comment on “*religious views, beliefs or images*”. His comment was on the social views of the Head of a Church, specifically in relation to families and the rearing of children; there was no matter of doctrine or liturgy involved. Clearly, no offence was given to the vast majority of listeners, including members of that Church. It is noted that this rule is not designed to prevent “*critical scrutiny*”, in this of the social views of the Catholic Pontiff.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum has regard to 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), the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 2, 3, 19 and 22) and the *Code of Programme Standards* (Section 3.4.5 - Persons and Groups in Society).

In this regard:-

- The complaint relates to comments which the presenter made during a newspaper review. The news story in question related to remarks made by Pope Francis. The Forum could not find any evidence to support the complainant’s assertion that the presenter misrepresented the Pope’s remarks. The comments of Pope Francis were presented in an accurate and transparent manner.

Broadcasting Complaint Decisions

- The Forum noted that this is a standard format newspaper review and audiences would expect the presenter to provide a view on various stories which appear in the newspaper on the same day. The presenter's comments related to the remarks made by Pope Francis and the members did not agree with the complainant's view that the presenter attacked the Pope, the clergy and the Catholic Church.
- The Forum noted that the presenter's comments did not relate to religious views, beliefs or images and the members were not of the view that the content would cause undue offence to many Catholics.
- The Forum noted that the story referred to was not a matter of public controversy or current public debate, and felt that the comments made by the presenter were only mildly critical and were not unfair or partial.
- The members were of the view that the programme did not infringe the requirements of Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs) and 48(1)(b)(Harm and Offence) of the Broadcasting Act 2009, the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 2, 3, 19 and 22) or the *Code of Programme Standards* (Section 3.4.5 - Persons and Groups in Society). Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Pádraig McCarthy

Ref. No. 62/15

Station:

RTÉ One

Programme:

The Meaning of Life with Gay Byrne

Date:

15th February 2015

1. Programme

The complaint concerns *The Meaning of Life* which is broadcast Sunday evenings on *RTÉ One* from 10.30pm and which is a single interview-based programme about the areas that give the programme interviewees meaning in their lives. The programme in question involved an interview with the Irish singer songwriter, Ms. Mary Black.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(Harm and Offence); the *Code of Programme Standards* (Section 3.4.5 - Persons and Groups in Society).

3. Complaint Summary

The complainant states that at about 12 minutes into the programme, the programme presenter referred to his guest, Ms. Mary Black, as having attended the St. Louis School in Rathmines, and he stated (not asked): “*You must have realised that the real purpose of you being there was to be indoctrinated with the Roman Catholic faith, and that did happen of course*”.

The complainant further states:-

- To use the highly charged word “*indoctrinate*” is, in his opinion, a serious allegation, and confuses indoctrination with religious education. He states that, in saying that this was “*the real purpose*” of her education the presenter was saying that this “*indoctrination*” was the over-riding purpose of the school. The complainant states that this is a gratuitous insult to the school, and the presenter made no effort whatsoever to balance it by suggesting that there could have been any other agenda in the school which was beneficial. The complainant states that in the format of the programme there was no representative of the school to answer that charge, so at the very least, the presenter of the programme had a responsibility to put an opposite view which could defend the good name of the school to which the school is entitled.
- The complainant states that no school is faultless, just as no broadcaster is faultless, but what the presenter said is unjust and indefensible. The complainant states that Ms. Mary Black is a fine person whom the complainant admires, and he does not question her honesty and integrity. He also states that the presenter is a fine and experienced broadcaster, and this is a serious lapse on his part. The complainant states that it is not a defence to say that this is just the style and format of the programme to stimulate interest.

Whatever Ms. Black herself might have said, it was unacceptable that Mr. Byrne as presenter would not just suggest, but state in unequivocal terms his own partisan view without hearing the other side.

4. Broadcaster's Response

4.1 Initial response to complainant

A number of emails were sent to the broadcaster and only acknowledgements were received. RTÉ also apologised for the delay in responding to the complainant's emails and said they would follow up on this. No further response was forthcoming.

4.2 Broadcaster's Response to BAI

RTÉ states the series is described to audiences as a programme in which guests "*talk more revealingly than ever about the events, people, ideas and beliefs that give their lives meaning.*" The broadcaster states that audiences will be accustomed to hearing a very wide range of views on ethical and religious beliefs and in a format which, though it can include appropriate challenge, is essentially and very clearly designed primarily to reveal the outlook of the interviewee in a sympathetic, explorative interview framework. Given the range of guests and perspectives, programmes in the series will of its nature include the critical scrutiny of religion, something which is clearly provided for in Rule 3.4.5 of the *Code of Programme Standards*.

RTÉ does not believe that the exchange complained of, in the programme with Ms. Mary Black, could reasonably be seen as causing undue offence such as that envisaged in Rule 3.4.5. For example, while the term '*indoctrination*' has acquired pejorative connotations in some contexts, at core, it means simply '*to instill and/or teach a doctrine*', and this is the sense in which it would be understood by viewers of a programme with the editorial theme of *The Meaning of Life with Gay Byrne*.

The broadcaster states that many religious schools make known that an important objective is to instill faith-based values in their students. In the past, and the interviewee was referring to her schooling some decades ago, this was indeed often identified as a primary goal. Arguably, that goal is the one which distinguishes denominational religious schools from secular schools and therefore something that very few school boards or principals would dispute. It may be noted that, while it is not known how her school's charter was expressed at the time of the interviewee's attendance, when the culture was a good deal more overtly religious, to this day, the Christian and Catholic ethos is expressed in clear, unabashed terms on the school's website.

The broadcaster states that it may also be noted that the interviewee had expressed her views about her schooling in her recent autobiography so, in couching his question as he did, the presenter was anticipating her answer, drawing out her view on that aspect of her schooling for the benefit of viewers.

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

The Forum considered the broadcast and the submissions of the complainant and the broadcaster. Following a review of the material, the Forum has decided to reject the complaint. In reaching this decision, the Forum had regard to the Broadcasting Act 2009, Section 48(1)(b)(harm and offence) and the *Code of Programme Standards* (Principles 3.4.5 - Persons and Groups in Society).

In this regard:-

- The Forum acknowledged that some audience members may find the use of the word “*indoctrinate*” offensive. However, the members had regard for the context in which the word was used. The question was about the interviewee’s experience attending Catholic school and was not about a religious view, belief or image. Further, the Forum noted that this is a long-running programme and regular viewers would be very familiar with the format and types of interview questions.
- The members noted the complainant’s belief that the programme was unfair and that an opposing view should have been provided regarding Catholic schools, but were of the view that as this is not a current affairs programme, there is no requirement for fairness, objectivity and impartiality.
- The members were of the view that the programme did not infringe the requirements of Section 48(1)(b)(Harm and Offence) of the Broadcasting Act 2009 or the *Code of Programme Standards* (Section 3.4.5 - Persons and Groups in Society), in the manner specified by the complainant. Accordingly, the complaint was rejected.

