



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

**Broadcasting Authority of Ireland**

**Broadcasting Complaint Decisions**

**December 2015**

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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](http://www.bai.ie), by emailing [info@bai.ie](mailto: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](http://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, 27 complaints have been considered by the BAI. The Compliance Committee has considered 12 of these complaints. Four complaints have been upheld in full, two have been upheld in part and the remaining six complaints have been rejected. The Executive Complaints Forum has considered and rejected 15 complaints. The decisions of the Compliance Committee were reached at its meeting held in October 2015. The decisions of the Executive Complaints Forum were reached at meetings held in September, October and November 2015.

# Broadcasting Complaint Decisions

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## Upheld by the BAI Compliance Committee

**Complaint made by:** Miss. Evelyn Fennelly

**Ref. No.** 102/15

**Station:**

4FM

**Programme:**

News Bulletin

**Date:**

28<sup>th</sup> May 2015

**1. Programme**

The complaint concerns an item on the *News Bulletin* at 4pm on *Classic Hits 4FM*. The item concerned a prisoner who is challenging his solitary confinement in a Midlands Prison.

**2. Complaint Category**

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

**3. Complaint Summary**

The complainant states that the news bulletin included a reference that the justification for the solitary confinement was for the “*maintenance of good order*” in the prison. The complainant states that the newsreader then added the comment “*reason enough*” after reading the story. The complainant believes it is inappropriate for an employee of the broadcaster to use a news update segment to broadcast their personal views.

**4. Broadcaster’s Response**

**4.1 Initial response to complainant**

The complainant did not receive a response from the broadcaster.

**4.2. Broadcaster’s Response to BAI**

Classic Hits 4FM states that the newsreader did not make a comment relating to the story in the news bulletin that concerned a prisoner in a Midlands Prison. They state that he did make an introductory comment before a story relating to the *Top Gear* programme. The comment followed a station ID and news indent of “*stay up to date with news and sport – Classic Hits 4 FM*”. The broadcaster acknowledges that the close proximity of the comment to the previous story could cause potential confusion with some listeners. *Classic Hits 4FM* promises to ensure that no such technique is utilised in future broadcasts.

**5. Decision of the Compliance Committee: Upheld (Majority)**

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a)(objectivity and impartiality in news) and the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* (Section 4: Rules: 4.1, 4.2.), the Committee has decided to uphold the complaint.

In this regard: -

- The Committee, having reviewed the broadcast, has concluded that the news presenter made a comment about a story included in the 4pm bulletin that lacked objectivity and impartiality.

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- Specifically, the Committee found that the bulletin included a story focusing on a prisoner in a Midlands Prison whose lawyers were challenging his solitary confinement conditions. The news presenter read the following: “...*his lawyers say his punishment is arbitrary because the prison authorities have failed to provide any reason for his solitary confinement other than that his behaviour is a threat to the maintenance of good order.*” Following a short station and news promotion, the presenter was heard to state - “*Seems reason enough.*” It was the Committee's view that the comment could only be understood as a reference to the preceding news story and in particular a comment on the reasons stated by the prison authority for the prisoner's solitary confinement.
- The Committee did not agree with the view of the broadcaster that the presenter's remark was an introductory remark to the story dealing with the *Top Gear* programme since the words “*Seems reason enough*” made no sense in the context of that story, which dealt with criticisms by the Argentinean Government of a car registration number featured in an edition of the *Top Gear* programme. The Committee also noted that there was a clear break between the comment and the *Top Gear* story, which is the on-air technique used to separate news stories.
- In view of the above, the Committee has concluded that the item infringed the requirements of the Broadcasting Act 2009 and the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs*. Accordingly, the complaint has been upheld.

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**Complaint made by: Mr. Gerard Carroll**

**Ref. No. 114/15**

**Station:**

RTÉ Radio 1

**Programme:**

The Ray D'Arcy Show

**Date:**

9<sup>th</sup> June 2015

**1. Programme**

The complaint concerns *The Ray D'Arcy Show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3pm to 4.30pm. The complaint relates to a discussion with Mr. Colm O'Gorman, *Executive Director* with *Amnesty International* in Ireland on its report "*She is not a criminal: The impact of Ireland's abortion law*".

**2. Complaint Category**

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

**3. Complaint Summary**

The complaint states the following:-

- During this interview with Mr. Colm O'Gorman of *Amnesty International*, the presenter, in the opinion of the complainant, openly advocated a change in the Constitution to facilitate the introduction of abortion legislation to Ireland.
- He states that the lack of balance in this interview was displayed by what he describes as the presenter's agreement with Mr. O'Gorman's position on abortion and via what he describes as the addition of his own views supporting easier access to abortion within Ireland.
- The complainant states that presenters, such as Mr. Ray D'Arcy, can exert a strong influence on their listeners, particularly younger ones. It is therefore unacceptable to use his position to pursue an agenda, particularly this one which may again become the subject of a national referendum.
- The complainant does not accept that an interview with Mr. Ben Conroy of *The Iona Institute*, eleven weeks later, is a satisfactory defence for balance.

Furthermore, he states that listeners were not advised either prior to or during the interview with Mr. O'Gorman that a programme featuring the opposing argument would be broadcast.

**4. Broadcaster's Response**

**4.1 Broadcaster's Response to Complainant**

The broadcaster states the following:

- The interview with Mr. Colm O'Gorman concerned the report "*She is not a criminal: The impact of Ireland's abortion law*", which was authored by *Amnesty International's* Senior Legal Adviser, Ms. Christina Zampas.

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They state that it was a significant news story on the day because the group revealed that Ireland was one of the focus countries for *Amnesty's* global campaign.

- Audience participation is a hallmark of *The Ray D'Arcy Show* and text and email communication are an integral part of any item.
- A statement by Ms. Cora Sherlock of the *Pro-Life Campaign* was quoted extensively to the interviewee by the presenter, alleging that *Amnesty* was no longer an unbiased defender of human rights principles.
- The broadcaster states that some very robust text and emails, unhappy with the *Amnesty* campaign, were read to Mr. O'Gorman on the day and the presenter also pointed out to the interviewee that there were no dissenting voices within the report.
- The purpose of the interview was to explore the thinking behind this report by *Amnesty International*. The presenter was cognisant of fairness, both by putting contrary opinions to the interviewee and using several robust contributions from listeners about the *Amnesty* report.
- The editorial approach does not absolve a broadcaster of its obligations in respect of fairness and impartiality, which can be achieved over a number of broadcasts. In keeping with those principles, the *Pro-Life Campaign* was invited to propose a representative to be interviewed on the programme for a similar duration and in the same way, to explore for the benefit of listeners the thinking behind the *Pro-Life Campaign's* refutation of the *Amnesty* report.

### 4.2 Broadcaster's Response to BAI

RTÉ states the following:

- RTÉ refers to the above response by a member of *The Ray D'Arcy Show* production team and in addition, wishes to cite the related broadcast of 25<sup>th</sup> August 2015, an interview with Mr. Ben Conroy of *The Iona Institute* of similar duration to the interview of 9<sup>th</sup> June 2015.

This interview was clearly associated on air by the presenter to the interview which is the subject of complaint and the content of the interview was clearly allied to the interview of 9<sup>th</sup> June 2015 and the subject of the *Amnesty* report. As can be heard, the interviewee was given the opportunity to address fully the issues raised and views put forward by the *Executive Director* of *Amnesty* in Ireland in the interview of 9<sup>th</sup> June 2016.

- RTÉ is aware of the 11-week period which elapsed between the two broadcasts. This is in large part due to the difference in interpretation between *The Ray D'Arcy Show* and the *Pro-Life Campaign* as to the nature of the invitation made to the *Campaign* in a telephone call of 10<sup>th</sup> June 2015 between a representative of the *Campaign* and a member of the production team.



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- Another factor which influenced the period between broadcasts is the correspondence between Ms. Cora Sherlock of the *Pro-Life Campaign* and the *Head of RTÉ Radio 1*. Ms. Sherlock requested a meeting, with specific reference to the interview which is the subject of complaint, with the *Managing Director RTÉ News & Current Affairs*. In his absence on leave, the *Head of RTÉ Radio 1* (*The Ray D'Arcy Show* is a production of RTÉ Radio and not of RTÉ News & Current Affairs) offered to meet Ms. Sherlock, who declined the invitation.
- RTÉ wishes to refer also to its invitation to Professor Binchy, an advisor to the *Pro-Life Campaign*, to be interviewed on the programme in relation to the *Amnesty* report and Mr O'Gorman's interview. Professor Binchy declined the invitation at that time.

Correspondence between the *Pro-Life Campaign* and *Head of RTÉ Radio 1* and between Professor Binchy and *The Ray D'Arcy Show* is provided with the documents attached to the summary of the complaint.

### 5. Decision of the Compliance Committee: Upheld (Majority)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, section 48(1)(a)(fairness, objectivity and impartiality in current affairs), the Committee has decided to uphold the complaint.

In this regard:

- The Committee noted that the issuing of the report dealt with an important news and current affairs issue that merited discussion on *The Ray D'Arcy Show*, given the range and mix of items commonly addressed on the programme.
- The Committee noted that where, as in this instance, an organisation issues a report it is common practice and editorially legitimate to interview a representative of the organisation that has published the report. In this context, the *Executive Director of Amnesty International* in Ireland was interviewed and was given the opportunity to outline the reasons for the commissioning of the report and the content of the report. The role of the report in the context of the global campaign being undertaken by *Amnesty International* on the human rights of women, in particular, their reproductive rights, was detailed.

From listening to this interview, the audience would have been fully informed of the position of *Amnesty International* on Ireland's current legislation on abortion and its view that this legislation violates the human rights of Irish women.

The Committee noted that the content included contributions by text that was critical of the stance of *Amnesty International* on Ireland's abortion laws. The Committee also noted that the interviewee acknowledged that there were other views on this issue but was also quite clear, that in his opinion, it is unacceptable for those holding these other views to limit the human rights of women.

- While noting these other views, it was the opinion of the Committee that the programme did not meet the requirements for fairness, objectivity and impartiality as set down in the Broadcasting Act 2009.

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In this regard, the Committee noted the extensive nature of the interview, on a topic that is of public controversy and debate, in which the interviewee made consistent and strong criticisms of the approach of the Irish State to access to abortion. The Committee also noted that the issuing of the report was also directly linked to a campaign by *Amnesty International* to change the Irish Constitution, in particular, the 8<sup>th</sup> Amendment.

Given this, the Committee was of the view that the other perspectives provided (as set out above) were insufficient, particularly where the presenter provided very little in terms of counterpoints to those of his interviewee and where there were no other contributions via interviewees.

- It was also the view of the Committee that the approach taken to the presentation of the programme also contributed to the failure to meet the requirements for fairness, impartiality and objectivity. In particular, it was the view of the Committee that listeners to the programme would have reasonably concluded that the presenter endorsed the views of his interviewee and was articulating a partisan position.

In this regard, the Committee noted comments by the presenter. For example, with reference to previous Irish governments, the presenter stated – “*The thing that came up over and over again that we have been told that our laws need changing and government after government have done nothing about it*”.

On the work of a Joint Oireachtas Committee established to inform recent legislation on abortion in Ireland, the presenter stated – “*It was flawed, basically, fundamentally flawed*”.

On the issue of the right to travel for an abortion as provided for in the Irish Constitution, the presenter commented, with apparent incredulity, – “*Then we have enshrined in our Constitution...the right to travel to do something illegal [in Ireland]*”, which was followed by a reference by the presenter to a comment, that he attributed to Dr. Peter Boylan, that the Irish Constitution is “*profoundly hypocritical*” in respect of this right to travel.

While noting that such views are honestly held by people on this topic, the Committee was of the opinion that their articulation by the presenter in the specific context of this interview and in the absence of any significant alternative views on the issue, including views on the role of Irish governments, the Oireachtas Committee and the appropriateness of the Irish Constitution, compounded the lack of fairness, objectivity and impartiality that the Committee considered evident in the broadcast. The Committee was of the opinion that these views aligned and supported those of the interviewee on the topic at hand in circumstances where such views are contested.

- The Committee also had regard to the selection by the presenter of correspondence from a previous programme which detailed the traumatic experience of an Irish couple upon receiving the ashes of their child in the post (after having travelled to Britain to end the pregnancy on account of a fatal foetal abnormality).

When considering previous complaints about discussions on the topic of fatal foetal abnormalities, the BAI recognised that stories focusing on human interest aspects of this difficult situation will not always constitute news and current affairs. However, while noting that the programme segment included references to the human interest aspects of this topic, as detailed in the *Amnesty* report, the Committee found that they were highlighted with a view to supporting the objectives of *Amnesty International*, which is to bring about a change in the Irish Constitution. In this context, the story selected by the presenter mirrored those of the *Amnesty* report and, in the Committee's view, served to support Amnesty's position.

- Finally, the Committee had regard to the second programme cited by the broadcaster as a related broadcast. The Broadcasting Act 2009 states that fairness, objectivity and impartiality can be achieved in “*two or more related broadcasts...if the broadcasts are transmitted within a reasonable period of each other.*” It was the view of the Committee that the broadcast did not constitute a related broadcast. It took this view on account of the significant duration between the broadcast about which the complaint is made – 11 weeks. The Committee did not believe that the issues highlighted by the broadcaster in arranging a specific interview were a mitigating factor, given the considerable duration between broadcasts. More generally, the Committee was of the view that the issues arising with the broadcast itself were a sufficient basis to uphold the complaint.
- In view of the above, it was the Committee's view that the broadcast did not comply with the fairness, objectivity and impartiality requirements of the Broadcasting Act 2009. Accordingly, the complaint has been upheld.

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**Complaint made by: Ms. June Twomey**

**Ref. No. 126/15**

**Station:**

RTÉ Radio 1

**Programme:**

The Ray D'Arcy Show

**Date:**

9<sup>th</sup> June 2015

**1. Programme**

The complaint concerns *The Ray D'Arcy Show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3pm to 4.30pm. The complaint relates to a discussion with Mr. Colm O'Gorman, *Executive Director of Amnesty International* in Ireland, on its report "*She is not a criminal: The impact of Ireland's abortion law*".

**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 4:1, 4.2 and 4.22).

**3. Complaint Summary**

The complainant states that:

- The interview with Mr. Colm O'Gorman of *Amnesty International* was, in her opinion, biased and included unsubstantiated accusations that she believes represented unbalanced research.
- She states that the *Amnesty* Report is a completely one-sided document, yet the presenter allowed Mr. O' Gorman to discuss this controversial report unchallenged.
- No one from the pro-life organisations was included to critically evaluate the report in question. She states that, having been in contact with the *Pro-Life Campaign*, the complainant has been assured that no interview opportunity was offered to them by RTÉ.
- In her opinion, the programme did untold damage as it was broadcast on a primetime slot when some listeners believe such broadcast are reliable in its facts and impartial in its agenda and content.
- In her opinion, the presenter promoted and advocated the guest's views saying, for example "*it made me very angry and the thing that came up over and over again was that we've been told by numerous human rights organisations that our abortion laws are contravening basic human rights and yet government after government have done nothing.*"
- She states that much of the *Amnesty* report is anecdotal and so cannot be contradicted or proven.

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- She states that the presenter referred to Ms. Cora Sherlock's response to the Report but did not invite her to speak. Mr. O'Gorman was then allowed to interpret and, in the view of the complainant, dismiss Ms. Sherlock's opinion based on one sentence read out.
- When the presenter referred to the fact that "*there is no dissenting voice in this report*", Mr. O'Gorman was allowed to refer to Professor Patricia Casey as someone who restricted people's rights. He stated "*it's a human rights report but we generally don't speak to people who would restrict people's rights and see them violated when we are publishing research into the impact of human rights violations...*"
- The complainant states that Mr. O'Gorman was also allowed to say what he wished about the Ms. Savita Halappanavar case without focusing on the facts.

### 4. Broadcaster's Response

#### 4.1 Broadcaster's Response to Complainant

The broadcaster states the following:

- The interview with Mr. Colm O'Gorman concerned the report "*She is not a criminal: The impact of Ireland's abortion law*", which was authored by *Amnesty International's* Senior Legal Adviser, Ms. Christina Zampas. They state that it was a significant news story on the day because the group revealed that Ireland was one of the focus countries for *Amnesty's* global campaign.
- Audience participation is a hallmark of *The Ray D'Arcy Show* and text and email communication are an integral part of any item.
- A statement by Ms. Cora Sherlock of the *Pro-Life Campaign* was quoted extensively to the interviewee by the presenter, alleging that *Amnesty* was no longer an unbiased defender of human rights principles.
- The broadcaster states that some very robust text and emails, unhappy with the *Amnesty* campaign, were read to Mr. O'Gorman on the day and the presenter also pointed out to the interviewee that there were no dissenting voices within the report.
- The purpose of the interview was to explore the thinking behind this report by *Amnesty International*. The presenter was cognisant of fairness, both by putting contrary opinions to the interviewee and using several robust contributions from listeners about the *Amnesty* report.

- The editorial approach does not absolve a broadcaster of its obligations in respect of fairness and impartiality, which can be achieved over a number of broadcasts. In keeping with those principles, the *Pro-Life Campaign* was invited to propose a representative to be interviewed on the programme for a similar duration and in the same way, to explore for the benefit of listeners the thinking behind the *Pro-Life Campaign's* refutation of the *Amnesty* report.

### 4.2 Broadcaster's Response to BAI

RTÉ states the following:

- RTÉ refers to the above response by a member of *The Ray D'Arcy Show* production team with respect to Rules 4.1, 4.2, 4.22.
- In the referral to the BAI, the complainant questions the accuracy of the *Amnesty International* report, suggesting that elements of it may be "*alleged or fabricated*". RTÉ has no reason to believe – and the complainant does not demonstrate any basis for a belief – that a reputable organisation such as *Amnesty International* would fabricate material for a report or cause such material to be broadcast.
- The complaint referral also suggests that the interviewee's reference to the death of Ms Savita Halappanavar was "*without reference to the facts.*" RTÉ notes that a programme contributor is entitled to expression of their view on a particular topic.

It also notes also the statement in the HSE Final Report (June 2013) on Ms Halappanavar's death: "*We recommend that the clinical professional community, health and social care regulators, and the Oireachtas consider the law including any necessary constitutional change and related administrative, legal and clinical guidelines in relation to the management of inevitable miscarriage in the early second trimester of a pregnancy including with prolonged rupture of membranes and where the risk to the mother increases with time from the time that membranes were ruptured including the risk of infection. These guidelines should include good practice guidelines in relation to expediting delivery for clinical reasons including medical and surgical termination based on available expertise and feasibility consistent with the law.*"

- With respect to Rule 4.22, in keeping with the broadcaster's entitlement to make decisions on editorial matters such as format, *The Ray D'Arcy Show* does not generally host debates.

Interviews are conducted on an exploratory basis, drawing out an interviewee's point of view and/or story in the conversational style for which the presenter is known and which is appreciated and enjoyed by his large audience as, in the words of the BAI guidelines to Rule 4.22, he "*draws them into consideration and debate on matters of public controversy and current public debate.*" The interview of 9<sup>th</sup> June 2015 with Mr. O'Gorman was in keeping with that editorial format and presentational manner. However, as stated in the RTÉ response of 9<sup>th</sup> July 2015 to the initial complaint, that editorial format does not absolve a programme of its obligations in respect of fairness and impartiality.

Therefore, in addition, and with respect also to Rules 4.1 and 4.2, RTÉ wishes to cite the related broadcast of 25<sup>th</sup> August 2015, an interview with Mr. Ben Conroy of *The Iona Institute* of similar duration to the interview of 9<sup>th</sup> June 2015.

- The broadcaster states that the interview with Mr. Conroy was clearly associated on air by the presenter to the interview which is the subject of complaint and the content of the interview was clearly allied to the interview of 9<sup>th</sup> June 2015 and the subject of the *Amnesty* report. As can be heard, the interviewee was given the opportunity to address fully the issues raised and views put forward by the *Executive Director of Amnesty International* in Ireland in the interview of 9<sup>th</sup> June 2015.
- RTÉ is aware of the 11-week period which elapsed between the two broadcasts. This is in large part due to the difference in interpretation between *The Ray D'Arcy Show* and the *Pro-Life Campaign* as to the nature of the invitation made to the *Campaign* in a telephone call of 10<sup>th</sup> June 2015 between a representative of the *Campaign* and a member of the production team.
- Another factor which influenced the period between broadcasts is the correspondence between Ms. Cora Sherlock of the *Pro-Life Campaign* and the *Head of RTÉ Radio 1*. Ms. Sherlock requested a meeting, with specific reference to the interview which is the subject of complaint, with the *Managing Director RTÉ News & Current Affairs*. In his absence on leave, the *Head of RTÉ Radio 1 (The Ray D'Arcy Show)* is a production of RTÉ Radio and not of RTÉ News & Current Affairs) offered to meet Ms. Sherlock, who declined the invitation.
- RTÉ wishes to refer also to its invitation to Professor William Binchy, an advisor to the *Pro-Life Campaign*, to be interviewed on the programme in relation to the *Amnesty* report and Mr. O'Gorman's interview. Professor Binchy declined the invitation at that time.

Correspondence between the *Pro-Life Campaign* and *Head of RTÉ Radio 1* and between Professor Binchy and *The Ray D'Arcy Show* is provided with the documents attached to the summary of the complaint.

### 5. Decision of the Compliance Committee: Upheld (Majority)

Having considered the broadcast and the submissions from the complaint parties and having 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 & Impartiality in News and Current Affairs* (Section 4:1, 4.2 and 4.22), the Committee has decided to uphold the complaint.

In this regard:

- The Committee noted that the issuing of the report dealt with an important news and current affairs issue that merited discussion on *The Ray D'Arcy Show*, given the range and mix of items commonly addressed on the programme.



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- The Committee noted that where, as in this instance, an organisation issues a report it is common practice and editorially legitimate to interview a representative of the organisation that has published the report. In this context, the *Executive Director* of *Amnesty International* in Ireland was interviewed and was given the opportunity to outline the reasons for the commissioning of the report and the content of the report. The role of the report in the context of the global campaign being undertaken by *Amnesty International* on the human rights of women, in particular, their reproductive rights, was detailed. From listening to this interview, the audience would have been fully informed of the position of *Amnesty International* on Ireland's current legislation on abortion and its view that this legislation violates the human rights of Irish women.

The Committee noted that the content included contributions by text that was critical of the stance of *Amnesty International* on Ireland's abortion laws. The Committee also noted that the interviewee acknowledged that there were other views on this issue but was also quite clear, that in his opinion, it is unacceptable for those holding these other views to limit the human rights of women.

- While noting these other views, it was the opinion of the Committee that the programme did not meet the requirements for fairness, objectivity and impartiality as set down in the Broadcasting Act 2009.

In this regard, the Committee noted the extensive nature of the interview, on a topic that is of public controversy and debate, in which the interviewee made consistent and strong criticisms of the approach of the Irish State to access to abortion. The Committee also noted that the issuing of the report was also directly linked to a campaign by *Amnesty International* to change the Irish Constitution, in particular, the 8<sup>th</sup> Amendment.

Given this, the Committee was of the view that the other perspectives provided (as set out above) were insufficient, particularly where the presenter provided very little in terms of counterpoints to those of his interviewee and where there were no other contributions via interviewees.

- It was also the view of the Committee that the approach taken to the presentation of the programme also contributed to the failure to meet the requirements for fairness, impartiality and objectivity. In particular, it was the view of the Committee that listeners to the programme would have reasonably concluded that the presenter endorsed the views of his interviewee and was articulating a partisan position.

In this regard, the Committee noted comments by the presenter. For example, with reference to previous Irish governments, the presenter stated – “*The thing that came up over and over again that we have been told that our laws need changing and government after government have done nothing about it*”.

On the work of a Joint Oireachtas Committee established to inform recent legislation on abortion in Ireland, the presenter stated – “*It was flawed, basically, fundamentally flawed*”.



On the issue of the right to travel for an abortion as provided for in the Irish Constitution, the presenter commented, with apparent incredulity, – “*Then we have enshrined in our Constitution...the right to travel to do something illegal [in Ireland]*”, which was followed by a reference by the presenter to a comment, that he attributed to Dr. Peter Boylan, that the Irish Constitution is “*profoundly hypocritical*” in respect of this right to travel.

While noting that such views are honestly held by people on this topic, the Committee was of the opinion that their articulation by the presenter in the specific context of this interview and in the absence of any significant alternative views on the issue, including views on the role of Irish governments, the Oireachtas Committee and the appropriateness of the Irish Constitution, compounded the lack of fairness, objectivity and impartiality that the Committee considered evident in the broadcast. The Committee was of the opinion that these views aligned and supported those of the interviewee on the topic at hand in circumstances where such views are contested.

- The Committee also had regard to the selection by the presenter of correspondence from a previous programme which detailed the traumatic experience of an Irish couple upon receiving the ashes of their child in the post (after having travelled to Britain to end the pregnancy on account of a fatal foetal abnormality).

When considering previous complaints about discussions on the topic of fatal foetal abnormalities, the BAI recognised that stories focusing on human interest aspects of this difficult situation will not always constitute news and current affairs. However, while noting that the programme segment included references to the human interest aspects of this topic, as detailed in the *Amnesty* report, the Committee found that they were highlighted with a view to supporting the objectives of *Amnesty International*, which is to bring about a change in the Irish Constitution. In this context, the story selected by the presenter mirrored those of the *Amnesty* report and, in the Committee’s view, served to support Amnesty’s position.

- Finally, the Committee had regard to the second programme cited by the broadcaster as a related broadcast. The Broadcasting Act 2009 states that fairness, objectivity and impartiality can be achieved in “*two or more related broadcasts...if the broadcasts are transmitted within a reasonable period of each other.*” It was the view of the Committee that the broadcast did not constitute a related broadcast. It took this view on account of the significant duration between the broadcast about which the complaint is made – 11 weeks. The Committee did not believe that the issues highlighted by the broadcaster in arranging a specific interview were a mitigating factor, given the considerable duration between broadcasts. More generally, the Committee was of the view that the issues arising with the broadcast itself were a sufficient basis to uphold the complaint.
- In view of the above, it was the Committee’s view that the broadcast did not comply with the Broadcasting Act 2009 or with Rules 4.1, 4.2 or 4.22 of the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs*.

## Broadcasting Complaint Decisions

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**Complaint made by: Ms. Mary O'Byrne**

**Ref. No. 127/15**

**Station:**

RTÉ Radio 1

**Programme:**

The Ray D'Arcy Show

**Date:**

9<sup>th</sup> June 2015

### 1. Programme

The complaint concerns *The Ray D'Arcy Show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm to 4.30pm. The complaint relates to a discussion with Mr. Colm O'Gorman, *Executive Director* with *Amnesty International* in Ireland, on its report "*She is not a criminal: The impact of Ireland's abortion law*".

### 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, 4.2 and 4.22).

### 3. Complaint Summary

The complaint states that:

- The tone and the manner in which the interview was conducted by the presenter lacked fairness, objectivity and impartiality, particularly because, in her opinion, the presenter endorsed and supported the liberalisation of abortion laws in Ireland proposed by *Amnesty*.
- For example, she cites the presenter's assertion that Ireland's position on abortion is contravening basic human rights while also not mentioning the widely held view that the right to life is the most basic of these human rights.
- Overall, in her opinion, the presenter neglected his responsibility to provide balance by only presenting one side to this story.

### 4. Broadcaster's Response

#### 4.1 Broadcaster's Response to Complainant

The broadcaster states the following:

- The interview with Mr. Colm O'Gorman concerned the report "*She is not a criminal: The impact of Ireland's abortion law*", which was authored by *Amnesty International's* Senior Legal Adviser, Ms. Christina Zampas. They state that it was a significant news story on the day because the group revealed that Ireland was one of the focus countries for *Amnesty's* global campaign.
- Audience participation is a hallmark of *The Ray D'Arcy Show* and text and email communication are an integral part of any item.

## Broadcasting Complaint Decisions

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- A statement by Ms. Cora Sherlock of the *Pro-Life Campaign* was quoted extensively to the interviewee by the presenter, alleging that *Amnesty* was no longer an unbiased defender of human rights principles.
- The broadcaster states that some very robust text and emails, unhappy with the *Amnesty* campaign, were read to Mr. O’Gorman on the day and the presenter also pointed out to the interviewee that there were no dissenting voices within the report.
- The purpose of the interview was to explore the thinking behind this report by *Amnesty International*. The presenter was cognisant of fairness, both by putting contrary opinions to the interviewee and using several robust contributions from listeners about the *Amnesty* report.
- The editorial approach does not absolve a broadcaster of its obligations in respect of fairness and impartiality, which can be achieved over a number of broadcasts. In keeping with those principles, the *Pro-Life Campaign* was invited to propose a representative to be interviewed on the programme for a similar duration and in the same way, to explore for the benefit of listeners the thinking behind the *Pro-Life Campaign’s* refutation of the *Amnesty* report.

### 4.2 Broadcaster’s Response to BAI

RTÉ states the following:

- RTÉ refers to the above response by a member of *The Ray D’Arcy Show* production team with respect to Rules 4.1, 4.2 and 4.22.
- With respect to Rule 4.22, in keeping with the broadcaster’s entitlement to make decisions on editorial matters such as format, *The Ray D’Arcy Show* does not generally host debates. Interviews are conducted on an exploratory basis, drawing out an interviewee’s point of view and/or story in the conversational style for which the presenter is known and which is appreciated and enjoyed by his large audience as, in the words of the BAI guidelines to Rule 4.22, he “*draws them into consideration and debate on matters of public controversy and current public debate.*” The interview of the 9<sup>th</sup> June 2015 with Mr. O’Gorman was in keeping with that editorial format and presentational manner. However, as stated in the RTÉ response of 9<sup>th</sup> July 2015 to the initial complaint, that editorial format does not absolve a programme of its obligations in respect of fairness and impartiality.

Therefore, in addition, and with respect also to Rules 4.1 and 4.2, RTÉ wishes to cite the related broadcast of 25<sup>th</sup> August 2015, an interview with Mr. Ben Conroy of *The Iona Institute* of similar duration to the interview of 9<sup>th</sup> June 2015.

- The interview with Mr. Conroy was clearly associated on air by the presenter to the interview which is the subject of complaint and the content of the interview was clearly allied to the interview of 9<sup>th</sup> June 2015 and the subject of the *Amnesty* report.

As can be heard, the interviewee was given the opportunity to address fully the issues raised and views put forward by the *Executive Director of Amnesty* in Ireland in the interview of 9<sup>th</sup> June 2015.

- RTÉ is aware of the 11-week period which elapsed between the two broadcasts. This is in large part due to the difference in interpretation between *The Ray D'Arcy Show* and the *Pro-Life Campaign* as to the nature of the invitation made to the *Campaign* in a telephone call of 10<sup>th</sup> June 2015 between a representative of the *Campaign* and a member of the production team.
- Another factor which influenced the period between broadcasts is the correspondence between Ms. Cora Sherlock of the *Pro-Life Campaign* and the *Head of RTÉ Radio 1*.

Ms. Sherlock requested a meeting, with specific reference to the interview which is the subject of complaint, with the *Managing Director RTÉ News & Current Affairs*. In his absence on leave, the *Head of RTÉ Radio 1* (*The Ray D'Arcy Show* is a production of RTÉ Radio and not of RTÉ News & Current Affairs) offered to meet Ms. Sherlock, who declined the invitation.

- RTÉ wishes to refer also to its invitation to Professor William Binchy, an advisor to the *Pro-Life Campaign*, to be interviewed on the programme in relation to the *Amnesty* report and Mr. O'Gorman's interview. Professor Binchy declined the invitation at that time.

Correspondence between the *Pro-Life Campaign* and *Head of RTÉ Radio 1* and between Professor Binchy and *The Ray D'Arcy Show* is provided with the documents attached to the summary of the complaint.

### 5. Decision of the Compliance Committee: Uphold (Majority)

Having considered the broadcast and the submissions from the complaint parties and having 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 & Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2 and 4.22), the Committee has decided to uphold the complaint.

In this regard:

- The Committee noted that the issuing of the report dealt with an important news and current affairs issue that merited discussion on *The Ray D'Arcy Show*, given the range and mix of items commonly addressed on the programme.
- The Committee noted that where, as in this instance, an organisation issues a report it is common practice and editorially legitimate to interview a representative of the organisation that has published the report. In this context, the *Executive Director of Amnesty International* in Ireland was interviewed and was given the opportunity to outline the reasons for the commissioning of the report and the content of the report.

The role of the report in the context of the global campaign being undertaken by *Amnesty International* on the human rights of women, in particular, their reproductive rights, was detailed. From listening to this interview, the audience would have been fully informed of the position of *Amnesty International* on Ireland's current legislation on abortion and its view that this legislation violates the human rights of Irish women.

The Committee noted that the content included contributions by text that was critical of the stance of *Amnesty International* on Ireland's abortion laws. The Committee also noted that the interviewee acknowledged that there were other views on this issue but was also quite clear, that in his opinion, it is unacceptable for those holding these other views to limit the human rights of women.

- While noting these other views, it was the opinion of the Committee that the programme did not meet the requirements for fairness, objectivity and impartiality as set down in the Broadcasting Act 2009.

In this regard, the Committee noted the extensive nature of the interview, on a topic that is of public controversy and debate, in which the interviewee made consistent and strong criticisms of the approach of the Irish State to access to abortion.

The Committee also noted that the issuing of the report was also directly linked to a campaign by *Amnesty International* to change the Irish Constitution, in particular, the 8<sup>th</sup> Amendment. Given this, the Committee was of the view that the other perspectives provided (as set out above) were insufficient, particularly where the presenter provided very little in terms of counterpoints to those of his interviewee and where there were no other contributions via interviewees.

- It was also the view of the Committee that the approach taken to the presentation of the programme also contributed to the failure to meet the requirements for fairness, impartiality and objectivity. In particular, it was the view of the Committee that listeners to the programme would have reasonably concluded that the presenter endorsed the views of his interviewee and was articulating a partisan position.

In this regard, the Committee noted comments by the presenter. For example, with reference to previous Irish governments, the presenter stated – *"The thing that came up over and over again that we have been told that our laws need changing and government after government have done nothing about it"*.

On the work of a Joint Oireachtas Committee established to inform recent legislation on abortion in Ireland, the presenter stated – *"It was flawed, basically, fundamentally flawed"*. On the issue of the right to travel for an abortion as provided for in the Irish Constitution, the presenter commented, with apparent incredulity, – *"Then we have enshrined in our Constitution...the right to travel to do something illegal [in Ireland]"*, which was followed by a reference by the presenter to a comment, that he attributed to Dr. Peter Boylan, that the Irish Constitution is *"profoundly hypocritical"* in respect of this right to travel.

While noting that such views are honestly held by people on this topic, the Committee was of the opinion that their articulation by the presenter in the specific context of this interview and in the absence of any significant alternative views on the issue, including views on the role of Irish governments, the Oireachtas Committee and the appropriateness of the Irish Constitution, compounded the lack of fairness, objectivity and impartiality that the Committee considered evident in the broadcast. The Committee was of the opinion that these views aligned and supported those of the interviewee on the topic at hand in circumstances where such views are contested.

- The Committee also had regard to the selection by the presenter of correspondence from a previous programme which detailed the traumatic experience of an Irish couple upon receiving the ashes of their child in the post (after having travelled to Britain to end the pregnancy on account of a fatal foetal abnormality).

When considering previous complaints about discussions on the topic of fatal foetal abnormalities, the BAI recognised that stories focusing on human interest aspects of this difficult situation will not always constitute news and current affairs.

However, while noting that the programme segment included references to the human interest aspects of this topic, as detailed in the *Amnesty* report, the Committee found that they were highlighted with a view to supporting the objectives of *Amnesty International*, which is to bring about a change in the Irish Constitution. In this context, the story selected by the presenter mirrored those of the *Amnesty* report and, in the Committee's view, served to support Amnesty's position.

- Finally, the Committee had regard to the second programme cited by the broadcaster as a related broadcast. The Broadcasting Act 2009 states that fairness, objectivity and impartiality can be achieved in "*two or more related broadcasts...if the broadcasts are transmitted within a reasonable period of each other.*" It was the view of the Committee that the broadcast did not constitute a related broadcast.

It took this view on account of the significant duration between the broadcast about which the complaint is made – 11 weeks. The Committee did not believe that the issues highlighted by the broadcaster in arranging a specific interview were a mitigating factor, given the considerable duration between broadcasts. More generally, the Committee was of the view that the issues arising with the broadcast itself were a sufficient basis to uphold the complaint.

- In view of the above, it was the Committee's view that the broadcast did not comply with Broadcasting Act or with Rules 4.1, 4.2 or 4.22 of the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs*.

### Upheld in Part by the BAI Compliance Committee

**Complaint made by:** Mrs. Kelly O'Rourke

**Ref. No.** 123/15

**Station:**

RTÉ Radio 1

**Programme:**

The Ray D'Arcy Show

**Date:**

9<sup>th</sup> June 2015

**1. Programme**

The complaint concerns *The Ray D'Arcy Show* which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm to 4.30pm. The complaint relates to an interview with Mr. Colm O'Gorman, *Executive Director of Amnesty International* in Ireland, on its report "*She is not a criminal: The impact of Ireland's abortion law*".

**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 4.17 and 4.22).

**3. Complaint Summary:**

The complainant states the following:

- In her opinion, the interview with Mr Colm O'Gorman of *Amnesty International* gave him a platform to proclaim his opinions on abortion without any challenge from the presenter.
- She also states that no representative from a pro-life organisation was invited to participate in the discussion.
- The complainant states that Mr. O'Gorman went through what she describes as a list of pro-choice talking points and made numerous incorrect assertions, for example, "*had she been given a termination at that point it is highly likely that Savita would be alive*" - this totally contradicts the findings of the inquest. Also, "*.. just appalling consequences...here would see women dying because of a lack of abortion services*".
- The complainant states that, not only was Mr. O'Gorman allowed to make his comments unopposed; he was aided in this regard by the presenter, for example via his comment – "*Why do you think we've got to 2015 and we're still debating this*".



## Broadcasting Complaint Decisions

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- The complainant states that the presenter spoke compassionately about a family who chose to abort their child but when mentioning a woman who carried her ill child to term, he failed to even remember her name or any details of her story and spoke dismissively of her decision to have a wake for her child.
- The complainant states that the presenter read a brief excerpt from a statement by Ms. Cora Sherlock of the *Pro-Life Campaign*. In the view of the complainant, Mr. O’Gorman was then allowed to dismiss the statement as representing Ms. Sherlock’s personal views rather than the reality that she was representing, a national organisation.
- The complainant states that the presenter ironically mentions that the *Amnesty* report includes no dissenting voices. The presenter then gives Dr. Patricia Casey as an example of someone who could have been consulted. He then allows Mr. O’Gorman to characterise Dr. Casey and other pro-life doctors as “*people who would restrict people’s right and see them violated*”.
- The complainant states that a few texts from listeners were read on-air which challenge Mr. O’Gorman and ask for balance. However, in her opinion, no response was asked for from Mr. O’Gorman and none was offered.
- The complainant challenges the validity of the broadcaster’s claim that a representative of the *Pro-Life Campaign* was invited for interview on the programme for a similar duration to explore the refutation of the *Amnesty* report. The complainant was assured by the *Pro-Life Campaign* that no such invitation was offered.

### 4. Broadcaster’s Response

#### 4.1 Broadcaster’s Response to Complainant

In its response, the broadcaster stated:

- RTÉ states that the interview with Mr. Colm O’Gorman concerned the report “*She is not a criminal: The impact of Ireland’s abortion law*”, which was authored by *Amnesty International’s* Senior Legal Adviser, Ms. Christina Zampas. They state that it was a significant news story on the day because the group revealed that Ireland was one of the focus countries for *Amnesty’s* global campaign.
- Audience participation is a hallmark of *The Ray D’Arcy Show* and text and email communication are an integral part of any item.
- A statement by Ms. Cora Sherlock of the *Pro-Life Campaign* was quoted extensively to the interviewee by the presenter, alleging that *Amnesty* was no longer an unbiased defender of human rights principles.
- Some very robust text and emails were read to Mr. O’Gorman on the day, unhappy with the *Amnesty* campaign, and the presenter also pointed out to the interviewee that there were no dissenting voices within the report.



## Broadcasting Complaint Decisions

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- The purpose of the interview was to explore the thinking behind this report by *Amnesty International*. The presenter was cognisant of fairness, both by putting contrary opinions to the interviewee and using several robust contributions from listeners about the *Amnesty* report.
- The editorial approach does not absolve a broadcaster of its obligations in respect of fairness and impartiality, which can be achieved over a number of broadcasts. In keeping with those principles, the *Pro-Life Campaign* was invited to propose a representative to be interviewed on the programme for a similar duration and in the same way, to explore for the benefit of listeners the thinking behind the Campaign's refutation of the *Amnesty* report.

### 4.2 Broadcaster's Response to BAI

RTÉ states the following:

- In respect of Rule 4.17, the complaint refers to alleged inaccuracies in statements made by the interviewee. The broadcaster states that a broadcast contributor is entitled to express their views on a given topic. Furthermore, the complainant alleges to be inaccurate, statements by Mr O'Gorman which are, at the very least, issues of interpretation or point of view. For example, the view of the interviewee in relation to the death of Ms Savita Halappanavar is dismissed as "unfounded", notwithstanding the fact that the findings of the HSE Final Report (June 2013) on Ms. Halappanavar's death stated as one of its recommendations that there was a requirement for "*clear and precise national clinical Guidelines*" which "*should include good practice guidelines in relation to expediting delivery for clinical reasons including medical and surgical termination based on available expertise and feasibility consistent with the law.*"
- The complaint also describes as "*unfounded*" an opinion expressed by the interviewee in relation to mortality due to the unavailability of abortion services in Ireland but produces no evidence to demonstrate the inaccuracy of his statement.
- With respect to Rule 4.22, in keeping with the broadcaster's entitlement to make decisions on editorial matters such as format, *The Ray D'Arcy Show* does not generally host debates. Interviews are conducted on an exploratory basis, drawing out an interviewee's point of view and/or story in the conversational style for which the presenter is known and which is appreciated and enjoyed by his large audience as, in the words of the BAI guidelines to Rule 4.22, he "*draws them into consideration and debate on matters of public controversy and current public debate.*"

The interview of 9<sup>th</sup> June 2015 with Mr O'Gorman was in keeping with that editorial format and presentational manner. However, as stated in the RTÉ response of 27<sup>th</sup> July 2015 to the initial complaint, that editorial format does not absolve a programme of its obligations in respect of fairness and impartiality. Therefore, in addition, RTÉ wishes to cite the related broadcast of 25<sup>th</sup> August 2015, an interview with Mr. Ben Conroy of *The Iona Institute* of similar duration to the interview of 9<sup>th</sup> June 2015.

- The interview with Mr. Conroy was clearly associated on-air by the presenter to the interview which is the subject of complaint and the content of the interview was clearly allied to the interview of 9<sup>th</sup> June 2015 and the subject of the *Amnesty* report. As can be heard, the interviewee was given the opportunity to address fully the issues raised and views put forward by the *Executive Director* of *Amnesty* in Ireland in the interview of 9<sup>th</sup> June.
- RTÉ is aware of the 11-week period which elapsed between the two broadcasts. This is in large part due to the difference in interpretation between *The Ray D'Arcy Show* and the *Pro-Life Campaign* as to the nature of the invitation made to the *Campaign* in a telephone call of 10<sup>th</sup> June 2015 between a representative of the *Campaign* and a member of the production team.
- Another factor which influenced the period between broadcasts is the correspondence between Ms. Cora Sherlock of the *Pro-Life Campaign* and the *Head of RTÉ Radio 1*. Ms. Sherlock requested a meeting with the *Managing Director RTÉ News & Current Affairs*. In his absence on leave, the *Head of RTÉ Radio 1* offered to meet Ms. Sherlock (*The Ray D'Arcy Show* is a production of RTÉ Radio and not of RTÉ News & Current Affairs), who declined the invitation.
- RTÉ wishes to refer also to its invitation to Professor William Binchy, an advisor to the *Pro-Life Campaign*, to be interviewed on the programme in relation to the *Amnesty* report and Mr O'Gorman's interview. Professor Binchy declined the invitation at that time.

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

Having considered the broadcast and the submissions from the complaint parties and having 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 & Impartiality in News and Current Affairs* (Rules. 4.17 and 4.22), the Committee has decided to uphold the complaint in part.

In this regard:

- The Committee noted that the issuing of the report dealt with an important news and current affairs issue that merited discussion on *The Ray D'Arcy Show*, given the range and mix of items commonly addressed on the programme.
- The Committee noted that where, as in this instance, an organisation issues a report it is common practice and editorially legitimate to interview a representative of the organisation that has published the report. In this context, the *Executive Director* of *Amnesty International* in Ireland was interviewed and was given the opportunity to outline the reasons for the commissioning of the report and the content of the report. The role of the report in the context of the global campaign being undertaken by *Amnesty International* on the human rights of women, in particular, their reproductive rights, was detailed.

From listening to this interview, the audience would have been fully informed of the position of *Amnesty International* on Ireland's current legislation on abortion and its view that this legislation violates the human rights of Irish women.

The Committee noted that the content included contributions by text that was critical of the stance of *Amnesty International* on Ireland's abortion laws. The Committee also noted that the interviewee acknowledged that there were other views on this issue but was also quite clear, that in his opinion, it is unacceptable for those holding these other views to limit the human rights of women.

- While noting these other views, it was the opinion of the Committee that the programme did not meet the requirements for fairness, objectivity and impartiality as set down in the Broadcasting Act 2009. In this regard, the Committee noted the extensive nature of the interview, on a topic that is of public controversy and debate, in which the interviewee made consistent and strong criticisms of the approach of the Irish State to access to abortion. The Committee also noted that the issuing of the report was also directly linked to a campaign by *Amnesty International* to change the Irish Constitution, in particular, the 8<sup>th</sup> Amendment.

Given this, the Committee was of the view that the other perspectives provided (as set out above) were insufficient, particularly where the presenter provided very little in terms of counterpoints to those of his interviewee and where there were no other contributions via interviewees.

- It was also the view of the Committee that the approach taken to the presentation of the programme also contributed to the failure to meet the requirements for fairness, impartiality and objectivity. In particular, it was the view of the Committee that listeners to the programme would have reasonably concluded that the presenter endorsed the views of his interviewee and was articulating a partisan position.

In this regard, the Committee noted comments by the presenter. For example, with reference to previous Irish governments, the presenter stated – “*The thing that came up over and over again that we have been told that our laws need changing and government after government have done nothing about it*”.

On the work of a Joint Oireachtas Committee established to inform recent legislation on abortion in Ireland, the presenter stated – “*It was flawed, basically, fundamentally flawed*”. On the issue of the right to travel for an abortion as provided for in the Irish Constitution, the presenter commented, with apparent incredulity, – “*Then we have enshrined in our Constitution...the right to travel to do something illegal [in Ireland]*”, which was followed by a reference by the presenter to a comment, that he attributed to Dr. Peter Boylan, that the Irish Constitution is “*profoundly hypocritical*” in respect of this right to travel.

While noting that such views are honestly held by people on this topic, the Committee was of the opinion that their articulation by the presenter in the specific context of this interview and in the absence of any significant alternative views on the issue, including views on the role of Irish governments, the Oireachtas Committee and the appropriateness of the Irish Constitution, compounded the lack of fairness, objectivity and impartiality that the Committee considered evident in the broadcast. The Committee was of the opinion that these views aligned and supported those of the interviewee on the topic at hand in circumstances where such views are contested.

- The Committee also had regard to the selection by the presenter of correspondence from a previous programme which detailed the traumatic experience of an Irish couple upon receiving the ashes of their child in the post (after having travelled to Britain to end the pregnancy on account of a fatal foetal abnormality).

When considering previous complaints about discussions on the topic of fatal foetal abnormalities, the BAI recognised that stories focusing on human interest aspects of this difficult situation will not always constitute news and current affairs. However, while noting that the programme segment included references to the human interest aspects of this topic, as detailed in the *Amnesty* report, the Committee found that they were highlighted with a view to supporting the objectives of *Amnesty International*, which is to bring about a change in the Irish Constitution. In this context, the story selected by the presenter mirrored those of the *Amnesty* report and, in the Committee's view, served to support Amnesty's position.

- Finally, the Committee had regard to the second programme cited by the broadcaster as a related broadcast. The Broadcasting Act 2009 states that fairness, objectivity and impartiality can be achieved in “*two or more related broadcasts...if the broadcasts are transmitted within a reasonable period of each other.*” It was the view of the Committee that the broadcast did not constitute a related broadcast. It took this view on account of the significant duration between the broadcast about which the complaint is made – 11 weeks. The Committee did not believe that the issues highlighted by the broadcaster in arranging a specific interview were a mitigating factor, given the considerable duration between broadcasts. More generally, the Committee was of the view that the issues arising with the broadcast itself were a sufficient basis to uphold the complaint.
- In view of the above, it was the Committee's view that the broadcast did not comply with the Broadcasting Act 2009 or with Rule 4.22 of the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs*. The Committee did not find that the content infringed the requirement for due accuracy and for this reason that element of the complaint relating to Rule 4.17 was rejected.

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**Complaint made by:** Mrs. Elaine Noonan

**Ref. No.** 124/15

**Station:**  
RTÉ Radio 1

**Programme:**  
The Ray D'Arcy Show

**Date:**  
9<sup>th</sup> June 2015

### 1. Programme

The complaint concerns *The Ray D'Arcy Show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm to 4.30pm. The complaint relates to a discussion with Mr. Colm O'Gorman, *Executive Director* with *Amnesty International* in Ireland, on its report "*She is not a criminal: The impact of Ireland's abortion law*".

### 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, 4.2, 4.21 and 4.22)

### 3. Complaint Summary

The complainant states that:

- In her opinion, this interview was more of a chat between two people who were agreeing totally on the subject at hand rather than any sort of challenging or balanced journalism.
- In this regard, she states that the presenter frequently aired his own opinions which she states consistently agreed with those of Mr. O'Gorman. For example, he stated "... it made me very angry.." "so that's horrific" ...it's the choice I think is the important thing".
- Mr. O'Gorman was given extended opportunities to talk at length with no questions or challenges.
- The presenter failed to ask Mr. O'Gorman for evidence to back up his assertions regarding the law in Ireland and its impact on women's lives.
- A comment from the presenter that "*there were no dissenting voices within the report*" does not, in the opinion of the complainant, constitute balance.
- She further states that, despite the claim by the broadcaster that a statement from Ms. Cora Sherlock from the *Pro-Life Campaign* was quoted extensively on the programme, only one sentence was quoted and Mr. O'Gorman was allowed to respond at length.
- Having contacted the *Pro-Life Campaign* office, the complainant rejects the broadcaster claim that the *Pro-Life Campaign* was invited to propose a representative to be interviewed on the programme for a similar duration as that offered to Mr. O'Gorman.

- The complainant does not believe that the interview with Mr. Ben Conroy of *The Iona Institute*, 11 weeks after this programme was aired, was sufficient to provide another perspective.

#### 4. Broadcaster's Response

##### 4.1 Broadcaster's Response to Complainant

The broadcaster states the following:

- The interview with Mr. Colm O'Gorman concerned the report "*She is not a criminal: The impact of Ireland's abortion law*", which was authored by *Amnesty International's* Senior Legal Adviser, Ms. Christina Zampas. They state that it was a significant news story on the day because the group revealed that Ireland was one of the focus countries for *Amnesty's* global campaign.
- Audience participation is a hallmark of *The Ray D'Arcy Show* and text and email communication are an integral part of any item.
- A statement by Ms. Cora Sherlock of the *Pro-Life Campaign* was quoted extensively to the interviewee by the presenter, alleging that *Amnesty* was no longer an unbiased defender of human rights principles.
- The broadcaster states that some very robust text and emails, unhappy with the *Amnesty* campaign, were read to Mr. O'Gorman on the day and the presenter also pointed out to the interviewee that there were no dissenting voices within the report.
- The purpose of the interview was to explore the thinking behind this report by *Amnesty International*. The presenter was cognisant of fairness, both by putting contrary opinions to the interviewee and using several robust contributions from listeners about the *Amnesty* report.
- The editorial approach does not absolve a broadcaster of its obligations in respect of fairness and impartiality, which can be achieved over a number of broadcasts.

In keeping with those principles, the *Pro-Life Campaign* was invited to propose a representative to be interviewed on the programme for a similar duration and in the same way, to explore for the benefit of listeners the thinking behind the *Pro-Life Campaign's* refutation of the *Amnesty* report.

### 4.2 Broadcaster's Response to BAI

RTÉ states the following:

- RTÉ refers to the above response by a member of *The Ray D'Arcy Show* production team with respect to Rules 4.1, 4.2, 4.21.
- With respect to Rules 4.21 and 4.22, in keeping with the broadcaster's entitlement to make decisions on editorial matters such as format, *The Ray D'Arcy Show* does not generally host debates. Interviews are conducted on an exploratory basis, drawing out an interviewee's point of view and/or story in the conversational style for which the presenter is known and which is appreciated and enjoyed by his large audience as, in the words of the BAI guidelines to Rule 4.22, he "*draws them into consideration and debate on matters of public controversy and current public debate.*" The interview of the 9<sup>th</sup> June 2015 with Mr. O'Gorman was in keeping with that editorial format and presentational manner. However, as stated in the RTÉ response of 9<sup>th</sup> July 2015 to the initial complaint, that editorial format does not absolve a programme of its obligations in respect of fairness and impartiality. Therefore, in addition, and with respect also to Rules 4.1 and 4.2, RTÉ wishes to cite the related broadcast of 25<sup>th</sup> August 2015, an interview with Mr. Ben Conroy of *The Iona Institute* of similar duration to the interview of 9<sup>th</sup> June 2015.
- The broadcaster states that the interview with Mr. Conroy was clearly associated on air by the presenter to the interview which is the subject of complaint and the content of the interview was clearly allied to the interview of 9<sup>th</sup> June 2015 and the subject of the *Amnesty* report.

The broadcaster states that, as can be heard, the interviewee was given the opportunity to address fully the issues raised and views put forward by the *Executive Director of Amnesty* in Ireland in the interview of 9<sup>th</sup> June 2015.

- RTÉ is aware of the 11-week period which elapsed between the two broadcasts. This is in large part due to the difference in interpretation between *The Ray D'Arcy Show* and the *Pro-Life Campaign* as to the nature of the invitation made to the *Campaign* in a telephone call of 10<sup>th</sup> June 2015 between a representative of the *Campaign* and a member of the production team.
- Another factor which influenced the period between broadcasts is the correspondence between Ms. Cora Sherlock of the *Pro-Life Campaign* and the *Head of RTÉ Radio 1*.

Ms. Sherlock requested a meeting, with specific reference to the interview which is the subject of complaint, with the *Managing Director RTÉ News & Current Affairs*. In his absence on leave, the *Head of RTÉ Radio 1* (*The Ray D'Arcy Show* is a production of RTÉ Radio and not of RTÉ News & Current Affairs) offered to meet Ms. Sherlock, who declined the invitation.



- RTÉ wishes to refer also to its invitation to Professor William Binchy, an advisor to the *Pro-Life Campaign*, to be interviewed on the programme in relation to the *Amnesty* report and Mr. O’Gorman’s interview. Professor Binchy declined the invitation at that time.

Correspondence between the *Pro-Life Campaign* and *Head of RTÉ Radio 1* and between Professor Binchy and *The Ray D’Arcy Show* is provided with the documents attached to the summary of the complaint.

### 5. Decision of the Compliance Committee: Upheld in Part (Majority)

Having considered the broadcast and the submissions from the complaint parties and having 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 & Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.21 and 4.22), the Committee has decided to uphold the complaint in part.

In this regard:

- The Committee noted that the issuing of the report dealt with an important news and current affairs issue that merited discussion on *The Ray D’Arcy Show*, given the range and mix of items commonly addressed on the programme.
- The Committee noted that where, as in this instance, an organisation issues a report it is common practice and editorially legitimate to interview a representative of the organisation that has published the report. In this context, the *Executive Director* of *Amnesty International* in Ireland was interviewed and was given the opportunity to outline the reasons for the commissioning of the report and the content of the report. The role of the report in the context of the global campaign being undertaken by *Amnesty International* on the human rights of women, in particular, their reproductive rights, was detailed. From listening to this interview, the audience would have been fully informed of the position of *Amnesty International* on Ireland’s current legislation on abortion and its view that this legislation violates the human rights of Irish women.

The Committee noted that the content included contributions by text that was critical of the stance of *Amnesty International* on Ireland’s abortion laws. The Committee also noted that the interviewee acknowledged that there were other views on this issue but was also quite clear, that in his opinion, it is unacceptable for those holding these other views to limit the human rights of women.

- While noting these other views, it was the opinion of the Committee that the programme did not meet the requirements for fairness, objectivity and impartiality as set down in the Broadcasting Act 2009. In this regard, the Committee noted the extensive nature of the interview, on a topic that is of public controversy and debate, in which the interviewee made consistent and strong criticisms of the approach of the Irish State to access to abortion.



The Committee also noted that the issuing of the report was also directly linked to a campaign by *Amnesty International* to change the Irish Constitution, in particular, the 8<sup>th</sup> Amendment. Given this, the Committee was of the view that the other perspectives provided (as set out above) were insufficient, particularly where the presenter provided very little in terms of counterpoints to those of his interviewee and where there were no other contributions via interviewees.

- It was also the view of the Committee that the approach taken to the presentation of the programme also contributed to the failure to meet the requirements for fairness, impartiality and objectivity. In particular, it was the view of the Committee that listeners to the programme would have reasonably concluded that the presenter endorsed the views of his interviewee and was articulating a partisan position.

In this regard, the Committee noted comments by the presenter. For example, with reference to previous Irish governments, the presenter stated – “*The thing that came up over and over again that we have been told that our laws need changing and government after government have done nothing about it*”.

On the work of a Joint Oireachtas Committee established to inform recent legislation on abortion in Ireland, the presenter stated – “*It was flawed, basically, fundamentally flawed*”. On the issue of the right to travel for an abortion as provided for in the Irish Constitution, the presenter commented, with apparent incredulity, – “*Then we have enshrined in our Constitution...the right to travel to do something illegal [in Ireland]*”, which was followed by a reference by the presenter to a comment, that he attributed to Dr. Peter Boylan, that the Irish Constitution is “*profoundly hypocritical*” in respect of this right to travel.

While noting that such views are honestly held by people on this topic, the Committee was of the opinion that their articulation by the presenter in the specific context of this interview and in the absence of any significant alternative views on the issue, including views on the role of Irish governments, the Oireachtas Committee and the appropriateness of the Irish Constitution, compounded the lack of fairness, objectivity and impartiality that the Committee considered evident in the broadcast. The Committee was of the opinion that these views aligned and supported those of the interviewee on the topic at hand in circumstances where such views are contested.

- The Committee also had regard to the selection by the presenter of correspondence from a previous programme which detailed the traumatic experience of an Irish couple upon receiving the ashes of their child in the post (after having travelled to Britain to end the pregnancy on account of a fatal foetal abnormality).

When considering previous complaints about discussions on the topic of fatal foetal abnormalities, the BAI recognised that stories focusing on human interest aspects of this difficult situation will not always constitute news and current affairs. However, while noting that the programme segment included references to the human interest aspects of this topic, as detailed in the *Amnesty* report, the Committee found that they were highlighted with a view to supporting the objectives of *Amnesty International*, which is to bring about a change in the Irish Constitution.

## Broadcasting Complaint Decisions

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In this context, the story selected by the presenter mirrored those of the *Amnesty* report and, in the Committee's view, served to support Amnesty's position.

- Finally, the Committee had regard to the second programme cited by the broadcaster as a related broadcast. The Broadcasting Act 2009 states that fairness, objectivity and impartiality can be achieved in "*two or more related broadcasts...if the broadcasts are transmitted within a reasonable period of each other.*" It was the view of the Committee that the broadcast did not constitute a related broadcast. It took this view on account of the significant duration between the broadcast about which the complaint is made – 11 weeks. The Committee did not believe that the issues highlighted by the broadcaster in arranging a specific interview were a mitigating factor, given the considerable duration between broadcasts. More generally, the Committee was of the view that the issues arising with the broadcast itself were a sufficient basis to uphold the complaint.
- In view of the above, it was the Committee's view that the broadcast did not comply with Broadcasting Act 2009 or with Rules 4.1, 4.2 and 4.22 of the *BAI Code of Fairness, Objectivity & Impartiality News and Current Affairs*.

The Committee did not find that the content had infringed the requirements relating to the prohibition on news presenters articulating a partisan position since the programme content was considered current affairs and not news content. For this reason that element of the complaint relating to Rule 4.21 was rejected.

### Rejected by the BAI Compliance Committee

**Complaint made by:** Mr. Dónal O’Sullivan-Latchford on behalf of the Family and Media Association **Ref. No. 50/15**

**Station:**  
RTÉ Radio 1

**Programme:**  
The Ray D’Arcy Show

**Date:**  
5<sup>th</sup> February 2015

#### 1. Programme

The complaint concerns *The Ray D’Arcy Show* broadcast weekday afternoons on RTÉ Radio 1 from 3.00 – 4.30pm. This is a lifestyle/entertainment programme. The complaint concerns a discussion about the release of the film, *50 Shades of Grey* and a newspaper report that the film would not be shown in Buncrana, Co. Donegal.

#### 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* (Section 4: Rules 2, 3, 17, 19, 20 and 22).

#### 3. Complaint Summary

The complainant states that the presenter opened the programme with what he describes as the following false claim: “*50 Shades of Grey has been banned in St. Mary’s Hall in Buncrana*”. The complainant states that the item continued with an interview with a reporter from the *Inishowen Independent* newspaper, which had run the article with the sub-heading: ‘*Pornographic and sexually violent movie will not be shown at local church hall cinema*’.

The complainant further states:-

- The article did not actually make the false claim the film had been banned, in contrast with the claim made by the RTÉ presenter.
- The complainant states that the Facebook page of St. Mary’s Hall stated ‘*the real reason we aren’t showing 50 Shades of Grey is because the distributor didn’t give it to us! Unfortunately, as a small community-run cinema we don’t have the capacity to run 4 shows a day, 7 days a week! Anything else you hear is made up!*’
- The complainant states that the cinema’s statement was reported on the Irish Times website and by other publishers. In addition, the complainant quotes Darragh McLaughlin of Cinema Inishowen who was quoted as saying – “*the truth of what happened is that the distributors required that we took the film on the condition we ran it for two full weeks, with showings four times daily, which is just not commercial viable for a small community-run cinema.*”

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- The complainant states that the rest of the RTÉ interview focused on a non-existent ban which was presented as resulting from pressure from, and the undue influence of, the *Catholic Church*.
- The complainant states that this programme amounted to a disgraceful lack of impartiality, on the part of the *Ray D'Arcy* programme.

### 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 programme interviewed a reporter from *the Inishowen Independent*. He told the presenter that one of the paper's reporters had spoken to a range of people, including the manager of St. Mary's Hall Cinema in Buncrana and the parish priest. The reporter ascertained that the cinema was not going to show the movie, which was factually correct. RTÉ further states:

- This was a breaking news story and the programme broadcast the most up-to-date information on the story by talking to the editor of the local newspaper that broke the story. At the time of broadcast, the information broadcast was therefore accurate (Rule 4.2 and 4.17) and not misleading (Rule 4.19).
- The item was a brief, light-hearted and affectionate piece about a community resource in Inishowen. RTÉ submits that to characterise the topic as one of "*public controversy or the subject of current public debate*," in other words as current affairs, is exaggerated. This was a short 'human interest' story of the day in which none of the protagonists were dealt with unfairly (Rule 4.3).
- The use of the term 'banned' in the broadcast was a fair – and, again, tonally light-hearted – reflection of the understanding current at that point of the reason behind the film not being shown in a parochial hall, as reflected in the *Inishowen Independent* article. Neither did the presenter's good-humoured comments amount to the expression of a partisan view on the topic (Rule 22).
- Over the next day or so, further information became available about the reason *50 Shades of Grey* was not shown in St. Mary's Hall. With any rolling piece of news, there will always be fresh angles as the days go by. In the editorial judgement of the programme, this was not a story which was of such interest to its listeners that the programme's editorial format warranted returning to the topic of the screening in Buncrana, or indeed of such significance that it required updating or clarification (Rule 4.20).

The broadcaster states that by the time the programme broadcast an item on the subject of the film itself a week later (and not on the subject of its screenings in Buncrana or elsewhere), the story of the Buncrana screening was no longer of interest to listeners. In that context, RTÉ notes that the *BAI Compliance Committee* has in the past upheld the editorial freedom of broadcasters to decide on topics to be covered and the perspective on those topics.

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

Having reviewed the broadcast, the submissions from the complaint parties and the requirements of the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* (Section 4: Rules 2, 3, 17, 19, 20 and 22), the Committee has decided to reject the complaint.

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

- The Committee noted that the introduction to the programme by the presenter was factually incorrect insofar as the film had not been banned. Members noted that it would have been preferable had this error not been communicated to listeners. Furthermore, it would have been preferable had it also been corrected on the following day. Notwithstanding this, the Committee did not consider the error to be such that it infringed the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs*.
- In particular, the Committee had regard to the tone and content of the item. The item was considered to be a light news story and was treated accordingly in terms of the approach, which was humorous in tone. The broadcaster had also taken steps to interview the editor of the newspaper in which the story was printed. The Committee noted that the editor of the newspaper did not contradict the presenter's description of the film as having been banned. However, he did not concur with this characterisation of the situation. Instead, it was evident from his contribution that he set out the fact that the film would not be shown but he was more circumspect than the presenter about the reasons for this decision. As such, when the item was taken as a whole, listeners would likely have had a more rounded view of the situation than that initially stated in the presenter's introduction.
- The Committee also noted that the interview was broader than simply a discussion of the reasons as to why the film was not being shown and touched on the role of the specific cinema in the community, how it operated financially, upgrades to the equipment, amongst other matters. Furthermore, it was also noted that neither the cinema owner nor the Parish Priest had lodged complaints in respect of the item.
- On the issue of whether the local *Roman Catholic Church* had a role in the decision not to show the film, given the sexual content of the film as well as the fact that it would be shown in the parochial hall, the presenter asked the editor whether there was a connection between this and the decision not to show the film. The Committee found that this was a legitimate approach to the facts of the story, notwithstanding that the presenter's conclusion from these facts was erroneous.

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- The BAI's news and current affairs code requires that a significant mistake in a programme be acknowledged and rectified in a speedy manner. In this context, the Committee did not consider the mistake by the presenter to amount to a significant one, which would require rectification. Furthermore, having considered the nature of the item, the issues set out above and the programme segment as a whole, the Committee did not consider the mistake was such that it amounted to the item lacking fairness, objectivity and impartiality.
- For these reasons the Committee did not agree that the item infringed the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

**Station:**

RTÉ Radio One

**Programme:**

*Liveline*

**Date:**

9<sup>th</sup> February 2015

**1. Programme**

The complaint concerns *Liveline*, broadcast weekday afternoons on RTÉ Radio One from 1.45pm to 3.00pm. This programme is a caller-driven show that deals with a range of topics including news and current affairs issues.

**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).

**3. Complaint Summary**

The complainant states that this programme consisted entirely of a discussion about the arrest of several people in connection with an incident at Jobstown, Tallaght, Dublin 24, when protestors barricaded *Tánaiste* and *The Minister for Social Protection*, Ms. Joan Burton T.D. and others in a car for over an hour. The complainant states that one of those involved and subsequently arrested was Cllr. Mick Murphy of the *Anti-Austerity Alliance*, who was featured throughout the programme.

This complaint centres around the way the programme was conducted and in the complainant's view, the way it was allowed to become an unbalanced party-political broadcast on behalf of the party and policies of Cllr. and also an unfair attack on the *Labour Party*. The complainant states that:-

- Cllr. Murphy was allowed to repeatedly assert that Minister Burton thought she could '*swan around*' Jobstown no problem. The complainant states that Cllr. Murphy's characterisation of her visit and her demeanour was deliberately phrased to create and spread a negative impression of Minister Burton and of her motivation. Minister Burton was invited to participate in a community-based event in Jobstown.
- The complainant states that Cllr. Murphy repeated strategic party slogans attacking the *Labour Party*, on the lines of '*they promised one thing and delivered another*'. The complainant states that these are not facts, they are messages designed to harm another party and constitute party-political broadcasting.
- Cllr. Murphy was allowed to broadcast an hour-long assault against his party's primary political target, the *Labour Party*. These went unchallenged by the presenter.

### 4. Broadcaster's Response

#### 4.1 Initial response to complainant

No response was forthcoming from the broadcaster other than an initial acknowledgement.

#### 4.2 Broadcaster's Response to BAI

RTÉ states that Cllr. Mick Murphy was one of four people who had been arrested and questioned in relation to a protest in Jobstown the previous November involving *Tánaiste* Ms. Joan Burton T.D. On his release, he spoke to *Liveline* about his arrest and detention at Rathfarnham Garda station. RTÉ state that there was a robust discussion between *Liveline* listeners in relation to the protest and Cllr. Murphy's arrest, moderated fairly and impartially by the presenter.

During the programme several callers engaged with Cllr. Murphy, expressing alternative viewpoints to those expressed by Cllr. Murphy on air. Some of these comments are synopsisised below: -

- Being elected as a public representative does not put one above the law. Using violence, threatening violence and intimidate is unacceptable. It is quite important that this type of behaviour is stopped quickly.
- *As a constituent of Dublin South West I want to strongly condemn the actions of Paul Murphy TD. I gave him my Number 2 vote in the bye election and he was elected on the strength of the transferred vote. I was sorry from the outset that my vote helped elect him. He is a self serving publicist. I fully support the right to protest and always have . . . but the likes of Paul Murphy have hijacked legitimate protest.*
- *I don't like the water charges but Mick Murphy does not represent me or anyone that I know. How dare he say that Joan Burton cannot saunter around Tallaght...I'm absolutely fuming at his portrayal of Tallaght and its people. Joan Burton was invited to Tallaght and as far as I'm concerned she would be welcome to Tallaght.*
- *Anti-water protests. How many of your listeners whose family members were trapped in a car for two hours when going about their legitimate work would not expect the Gardaí to act on it? Are we saying that public representatives going about their work are fair game for this type of attack? The message needs to be sent out that bullying tactics are not tolerated in our society in any situation.*



- *I have an alternative explanation for this morning's arrest other than "political interference" or direction as mentioned by Cllr. Murphy . . . the Gardaí may not like to be spat at and have eggs drip down their face? Or stand by while homophobic and other verbal abuse is hurled at decent people such as Senator Zappone? Or simply that they like the idea of people being able to go about their lawful business.*

The broadcaster states that callers were also heard on air in support of Cllr. Murphy, for example:

- *This is not about Joan Burton, it's about the Government . . . ashamed that the Taoiseach would back Germany when the Greek people are hungry, children not being fed and we are supporting this . . . from a moral point of view, ashamed of our government . . . am non party political. Agrees with protests.*
- *Has been in court three times in Dundalk for protesting. The Gardaí called it Public Order. The case was thrown out of court about two weeks ago. Has been out since. Protests peacefully. Supports Paul Murphy and the other guys completely. It's people's democratic right to protest.*
- *This is an attack on free speech and the right to demonstrate. Not a member of any party. Has protested on the property tax marches and water marches...believe it's an attack on the right to demonstrate and free speech.*

The broadcaster also noted that Cllr. Murphy's wife was also on-air, critical of the arrest of her husband. RTÉ claim that in the context of the editorial format, the programme of 9<sup>th</sup> February 2015 was in keeping with audience expectations and was fair, objective and impartial, in its presentation and in every other way.

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

Having reviewed the broadcast, the submissions from the complaint parties and considered 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 & Impartiality in News and Current Affairs* (Section 4: Rules: 4.1, 4.2.), the Committee has decided to reject the complaint.

In this regard:

- The Committee, having reviewed the broadcast, found that it contained a range of views. This included the lengthy contribution from Cllr. Murphy, callers who opposed his views and actions and those who supported them.

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- Regarding the contribution from Cllr. Murphy, the Committee was of the view that it was appropriate that he be afforded the opportunity to set out his opinions and his response to his arrest, particularly given Cllr. Murphy's central role in the story on that day. Given the circumstances of his arrest, his own political perspective and the broader context for the discussion - the introduction of water charges - the Committee found it unsurprising that he would be critical of the *Labour Party*.
- The Committee noted that such political criticisms are common in programme debates where those of one political affiliation will challenge and criticise the policies and positions of those of other political affiliations. Discussions of this nature are an expression of free speech and are important as a means of informing audiences. As important as this, is that other groups and individuals are afforded the equitable opportunity to respond to those criticisms and that those not politically affiliated are also given airtime to express their views. In this regard, while the Committee was of the view that the audience would have benefited from a more robust engagement between the presenter and the interviewee, a range of contributions and viewpoints were evident in the programme such that the Committee was satisfied that the aforementioned complementary obligations were met, as required by broadcasting law and the BAI's news and current affairs code.
- Having reviewed the broadcast as a whole, the Committee did not agree that the programme infringed the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* 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. 89/15**

**Station:**

RTÉ Radio One

**Programme:**

Liveline

**Date:**

19<sup>th</sup> May 2015

**1. Programme**

The complaint concerns *Liveline*, which is a news and current affairs/lifestyle/entertainment show broadcast each weekday afternoon from 1.45pm to 3.00pm. The topic discussed was 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: Rules 4.1, 4.3 and 4.22).

**3. Complaint Summary**

The complainant states that the topic of the then upcoming Referendum was dealt with in a most unbalanced way. He states that there were around 6 or 7 speakers for the 'Yes' side and about 2 or 3 speakers for the 'No' side. He states that the presenter interviewed the 'No' speakers much more intensely than the contributors for the 'Yes' side of the referendum debate. He notes that the presenter was particularly forceful with one of the participants, Mr. Anthony Coughlan.

**4. Broadcaster's Response**

**4.1 Broadcaster's Response to Complainant**

No response received from RTÉ by the due date other than an acknowledgement of receipt of the complaint.

**4.2 Broadcaster's Response to BAI**

RTÉ states that during the *Marriage Referendum* campaign, RTÉ and its individual programme strands were required by the *RTÉ Referendum Steering Group* to give equitable coverage to both the 'Yes' and the 'No' arguments, in keeping with BAI Guidelines on coverage of referendums. They further state:

- Notwithstanding the fact that the editorial format of *Liveline* is driven by listeners who choose to call the programme and express their views, the requirement for fair and equitable coverage is taken into account by the series. Such coverage is achieved through the monitoring of the programme discussion while on-air, through delivery across a number of related programmes, and through measures including the on-air encouragement of listeners to join the discussion. This was achieved during the four related broadcasts by *Liveline* on the topic of the *Marriage Referendum* on 17<sup>th</sup> April, 18<sup>th</sup> May, 19<sup>th</sup> May and 20<sup>th</sup> May. This point is relevant in the context of Rules 1 and 3.

- The broadcaster states that that achievement is particularly notable in the context of a programme whose coverage on any topic, as noted above, is so strongly influenced by listener response. In that context, the broadcaster states that it will be noted that while more on-air callers to the four programmes expressed the intention of voting 'Yes' than expressed the intention of voting 'No' (accurately reflecting calls to the programme), the editorial commitment of the programme to equitable coverage of the argument resulted in the overall duration of contributions to the 'No' argument slightly exceeding the overall duration of contributions to the 'Yes' argument.
- With reference to the complainant's specific allegation in respect of the programme of 19<sup>th</sup> May and in the context of Rule 4.22, listening will confirm that the presenter put equal challenge to both sides of the argument, either by putting an opposing point of view directly or by inviting callers to respond to the opposing argument of another caller.
- The broadcaster states that the presenter's challenge to one caller. Mr. Anthony Coughlan, on the subject of campaign funding (and not the substantive issue of same-sex marriage) was appropriately robust in a context where (a) that caller is a very experienced public campaigner and formidable debater, (b) the caller had raised the topic of funding of one of the campaigns, (c) it fell to the presenter (ref Rule 4.22) to "*to reflect the views of those who cannot . . . participate in content*", i.e., the campaign in question, and (d) the caller was allowed ample time to express his point of view on the issue.

It will also be noted that, again in the interests of encouraging debate, later in the programme the presenter directed listeners towards that caller's online writing on the topic.

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

Having considered the broadcast and the submissions from the complaint parties and having 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 & Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.3 and 4.22), the Committee has decided to reject the complaint.

In this regard:

- The Committee noted the format of the programme, which is one that is driven by caller interaction and engagement. While a broadcaster will make editorial decisions as to who to put on-air and who not to put on-air, the content will unavoidably be influenced by the views of the callers and by the preponderance of the views expressed by the callers. As such, it will be likely that if the majority of callers hold a certain view then that will be apparent, to some extent in what is carried on-air. While it is the responsibility of the programme makers to manage the discussion, it is also their responsibility, particularly in a caller driven programme, to reflect the views of the contributors.

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- The nature of this type of programme therefore places a particular responsibility on the presenter to respond to the range of callers on a given day, with a view to ensuring that the discussion is fair, objective and impartial, especially where the preponderance of callers is in favour of a particular position, as was the case with callers on this programme who favoured a 'Yes' vote in the then forthcoming *Marriage Referendum*.
- Having had regard to such considerations as well as the requirements of the Broadcasting Act 2009 and the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs*, the Committee was satisfied that the programme was compliant.

In reaching this decision, the Committee noted that fairness may be achieved in a number of ways and cannot be limited simply to a numerical assessment of the number of contributors holding a view or the airtime allocated to one view or another. It may be achieved through the selection of contributors, the scope of the debate, the structure of the programme, the presenter's handling of the topic, the make-up of audiences and through the airtime afforded. Furthermore, in the *BAI Guidelines on Coverage of Referenda*, the BAI encouraged broadcasters to approach coverage with an emphasis on the issues that the public must decide upon rather than taking an approach limited, simply, to ensuring that referenda interests receive equitable airtime.

- In this context, the Committee noted that the programme included contributions from those favouring a 'Yes' vote in the *Marriage Referendum* as well as those favouring a 'No' vote. The presenter was found to have examined each of these views in a manner that reflected the questions that audience members would likely to have had and the Committee found that the inclusion of a range of views and the presenter's handling of these views ensured that an appropriate range of perspectives on the *Marriage Referendum* were provided.
- On the issue of the approach to the interviewing of one contributor on the issue of campaign financing, the Committee was satisfied that this approach was appropriate. Different approaches to interviewing are part and parcel of radio programming. In practice, differences in approaches will be necessary on account of the issue under consideration or because of the individual being interviewed.

In the case of a programme such as *Liveline*, a robust interviewing style may be wholly inappropriate when dealing with a caller who may have never been on-air, who may be speaking about their own personal experience or who may not have a depth of knowledge about the subject.

In comparison, a robust style may be appropriate when dealing with an individual who has a depth of knowledge about a topic, has extensive prior experience of dealing with media and who is able and used to dealing with detailed and robust questioning.

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In this regard, it was the view of the Committee that the contributor in question fell into this second category and it was clear that he was very able to articulate his view on the *Marriage Referendum* and to address all questions put to him by the presenter. The Committee also noted that he was given full opportunity to do so.

- Having regard to the above, the was of the view that the programme did not infringe the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly the complaint has been rejected.

## Broadcasting Complaint Decisions

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

**Ref. No. 90/15**

**Station:**  
RTÉ One

**Programme:**  
The Consumer Show

**Date:**  
8<sup>th</sup> April 2015

### 1. Programme

The complaint concerns *The Consumer Show* which is a current affairs show which centres on the consumer rights of individuals and is broadcast on Wednesday evenings at 8.30pm. The complaint relates to a discussion on this programme about the world of food intolerance and food intolerance tests, including the IgG food intolerance test.

### 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 he was featured on the programme as the owner *IgG Food Intolerance Test Company*. He states that in respect of him and his company the programme lacked fairness, objectivity or impartiality. In this regard he states: -

- In his view, all the critical comments made against the complainant by the doctor and by the dietician featured in the programme were accepted, unquestioned, by the journalist.
- All points made against him were based upon the doctor's opinion which he states was incorrect.
- He states that the doctor and dietician had a conflict of interest, as they were part of an organisation, the *Irish Food Allergy Network (IFAN)* which is supported by several big pharmaceutical and nutritional companies.
- None of the case histories, with details of very sick children, helped by the IgG test were covered.
- The complainant states that one GP was asked about how she would deal with someone suffering with food intolerance. The GP recommended removing certain food groups from their diet.

Given that there are so many food groups that a person could be intolerant to, this, the complainant states, is unrealistic. The journalist accepted the doctor's answers and let this go unchallenged.

- The lack of fairness, objectivity and impartiality was also evident in the approach taken by the presenter, which he states, was dismissive of the complainant's product.



### 4. Broadcaster's Response

#### 4.1 Broadcaster's Response to Complainant

RTÉ states the nature of this programme was explained to the complainant prior to his participation. It was clear from the outset that the producers were aware that the medical community was not supportive of IgG testing. The complainant's contribution was intended to support IgG, to explain his understanding of how IgG works and to respond to the lack of support for IgG testing from the medical community. RTÉ further states:-

- The manner of presentation of contributions from representatives of both sides of the debate about the reliability and scientific basis for IgG testing was fair. Contributors were interviewed and their views presented in a balanced manner.
- Professor Jonathan Hourihane expressed his professional opinion on IgG, as did the complainant. Both opinions were portrayed fairly in the item.
- The dietician contributor stated that there were American, Canadian, Australian and European allergy and immunology organisations that have all recommended against the use of IgG testing in the diagnosis and management of food intolerance. The complainant had an opportunity to respond to these arguments.
- The complainant's contribution received virtually the same on-screen duration as Professor Hourihane and the dietician, Ms. Ruth Charles, combined.
- RTÉ are satisfied that the complainant was given fair opportunity to respond to critics of IgG.
- The producers are aware that *IFAN* has a written disclosure policy on its website in respect of any sponsors of materials or resources appearing on the site, as well as disclosure statements from its members concerning any industry sponsorship or associations they may have.
- The producers were given case histories by the complainant. However, as there were no specific case studies featured on either side, apart from the IgG tests undertaken by the presenter, it was decided not to include specific case studies beyond featuring the complainant stressing his patients' experiences of the benefits of the tests.
- Given that GP's are the first medical resource to which most consumers/patients will resort when experiencing a medical problem, the producers were satisfied that it was appropriate to interview a GP.

RTÉ are satisfied that the programme gave the complainant a full and fair opportunity to state the case for IgG food intolerance testing.

### 4.2 Broadcaster's Response to BAI

RTÉ states that the editorial remit of *The Consumer Show* is to investigate consumer issues. The item on food intolerance testing fairly and accurately conveyed the points of view both of those engaged in and supportive of IgG testing and those questioning the scientific and medical basis of such testing.

As can be seen in the broadcast, the complainant was given a fair opportunity in the broadcast to explain the basis for testing for IgG antibodies.

Contrary to his assertion that he was not allowed the right to reply to medical and scientific criticism, the complainant was given the opportunity to respond to criticism of IgG testing. This was in keeping with Rule 4.3 and Rule 4.4 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. The complainant was fully informed of the subject of the broadcast, including that it would include medical and scientific criticism of IgG testing, criticism of which he will have previously been aware and which was raised with him in interview.

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

Having considered the broadcast and the submissions from the complaint parties and having 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 & Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2), the Committee has decided to reject the complaint.

In this regard:

- The Committee noted that the focus of the programme is consumer issues and the programme is intended to inform consumer decisions. In this context, the Committee considered it appropriate that the programme would examine the efficacy of food intolerance tests in circumstances where issues had been highlighted by the medical community in Ireland, as well as in other jurisdictions. The Committee also noted that the Irish medicines regulator, as well as the European Commission, is undertaking an examination of these tests.

The Committee also noted that a critical examination of a particular consumer issue is not evidence of a lack of fairness in circumstances where concerns have been raised.

- Having reviewed the programme segment, it was evident to the Committee that it included contributions from both sides of the issue. Those who questioned the usefulness of food intolerance and those who advocated the benefits of the tests, including the complainant. In this regard, the programme featured a number of segments with the complainant, including one where he set out how the test works and another where he was afforded to opportunity to respond to criticisms of the tests articulated by the medical community. Furthermore, the programme included the presenter undertaking a food intolerance test in a pharmacy where pharmacy staff set out the benefits of the test, as well as detailing the results.

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- The Committee also noted that the complainant made a number of comments about the content of the programme and the suitability and motives of the contributors. In this respect, the Committee found that the complainant provided no information that would support these assertions. Furthermore, no information was provided that would substantiate the claim that the doctor and the dieticians had a conflict of interest. Rather the Committee found that they were permitted to set out their views in an equivalent manner to the complainant.
- The Committee also found that these contributions were accompanied by the experiences of the programme reporter who set out her own personal experience and analysis of the food intolerance tests that she had taken and there is nothing to indicate, either from the programme, or the complaint submissions, that her comments were anything other than honestly held.
- In view of the above, it was the opinion of the Committee that the programme did not infringe the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* in the manner stated by the complainant. Accordingly, the complaint has been rejected.

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**Complaint made by: Mr. Brendan O' Regan**

**Ref. No. 101/15**

**Station:**

TV3

**Programme:**

'Live from the George'

**Date:**

23<sup>rd</sup> May 2015

### **1. Programme**

The complaint concerns a one-off programme entitled '*Live from the George*', which was a once-off news and current affairs programme broadcast on TV3 at 4pm on the 23<sup>rd</sup> May 2015. The programme consisted of live coverage of the results of the *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: Rules 4.1, 4.3 and 4.22).

### **3. Complaint Summary**

The complainant states that the programme was, in his opinion, more of a party celebrating the 'Yes' result than fair, objective and impartial coverage of the results as they came in. He states that the programme was overwhelmingly orientated towards the 'Yes' side of the campaign. He states that maybe some 'No' campaigners were invited but considering the setup and venue, it is not surprising they didn't attend.

The complainant further states:-

- In all his years of watching referendum and election results, he has never seen something so one-sided as this programme - and he notes that this show was set up before the results were known. He states that the programme presenter was referring to a 'landslide' victory even as the tickertape at bottom of screen was showing a result of around 60/40.
- He states that another example of what he considers to be the presenter's bias was when he referred to concerns of a 'secret' No vote turnout – when he said: "*some of us [sic] were a bit apprehensive*". The complainant states that this showed which side of the debate the presenter was on.
- The complainant states that the referendum process was not yet over so there should have been referendum-cycle impartiality, but even apart from that, in terms of statutory requirements for current affairs, the programme was in his view hopelessly unfair and partial, even to the point of celebrating one side over the other, and the presenter obviously was joining in with one side.

### **4. Broadcaster's Response**

#### **4.1 Broadcaster's Response to Complainant**

TV3 states they do not accept that this piece was unfair or impartial. They believe it was fair and accurate coverage of a referendum result. They state that they invited prominent spokespersons for the 'No' side in the referendum campaign to take part but they refused to attend.

The broadcaster states that any reference to "landslide" victory for the 'Yes' side was based on the early tallies, which proved exaggerated – the presenter was unable to see the 'tickertape' showing the up-to-date results. TV3 state that it has been very careful and vigilant in its coverage of the Referendum so as to present fair, impartial and objective coverage of both sides of the debate. TV3 state that they were always going to cover the result no matter what it turned out to be. They state that they fulfilled their duty under the relevant legislation and codes by seeking to have spokespersons for the 'No' side attend but unfortunately this could not be achieved. Had the vote been 'No' it is very likely that it would have been the same format i.e. with no one representing the 'Yes' side in attendance.

The broadcaster states that it was always going to be difficult to cover the result and maintain fairness to both sides, and the context must be taken into account, and the fact that it was the Referendum result.

#### **4.2 Broadcaster's Response to BAI**

TV3 states they fulfilled their duty to deal fairly with contributors to current affairs content or with persons or organisations referred to in that context by inviting prominent spokespersons for both sides to attend. When such invites were extended to the 'No' side in the referendum campaign to take part, they refused. TV3 states that it does not accept that these invitations were disingenuous as the complainant regrettably characterises it. They were sincere invitations to come and discuss the Referendum results as they were becoming known.

TV3 state that it has been very careful in its coverage of the Referendum to present fair, impartial and objective coverage of both sides of the debate. They state that, by its nature, it was always going to be difficult to cover the actual Referendum result and maintain fairness to both sides. The timing and context of the programme must be taken into account which was that the programme was in fact live coverage as the Referendum result was becoming clear.

The broadcaster states that, from the wording of the complaint, it appears that the complainant would have been more comfortable had the venue chosen for the coverage been the TV3 studios. TV3 does not accept that broadcasting in the venue chosen resulted in an automatic breach of the codes as complained of. They state that there are many precedents of outside broadcasts which cover political results in Ireland and other countries.

They state that this was a legitimate and transparent broadcast of coverage of the Referendum result. The choice of the venue was an editorial decision that was justified on the basis that it provided entertaining and exciting television. The broadcaster states that the title of the programme made it clear to viewers where the outside broadcast was coming from, such that viewers were aware of the background for the discussion. The broadcaster states that the location also allowed the programme to feature considerable entertainment and live performances which would not have been possible elsewhere.

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

Having reviewed the broadcasts, the submissions from the complaint parties and having and having had 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 & Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.3 and 4.22), the Committee has decided to reject the complaint.

In this regard:-

- It was the view of the Committee that the programme did not constitute a news and current affairs programme. For this reason, the current affairs requirements of the Broadcasting Act 2009 and the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* were not relevant to a determination on the complaint.
- This view was reached by the Committee having had regard to the content of the programme. In particular, the Committee noted that the programme commenced when the results clearly indicated that the 'Yes' vote would be carried and, in this context, the programme focused predominantly on the response of the audience and guests to the results, as well as its impact on the gay and lesbian community in Ireland. Furthermore, the Committee's view was also informed by the presence in the programme of a range of other elements, which included musical and comedic contributions.
- In view of the above, it was the Committee's opinion that the programme did not infringe the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

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**Complaint made by: Mr. Rob Fuller**

**Ref. No. 122/15**

**Station:**

RTÉ Radio 1

**Programme:**

The Ray D'Arcy Show

**Date:**

9<sup>th</sup> June 2015

**1. Programme**

The complaint concerns *The Ray D'Arcy Show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm to 4.30pm. The complaint relates to a discussion with Mr. Colm O'Gorman, *Executive Director* with *Amnesty International* in Ireland, on its report "*She is not a criminal: The impact of Ireland's abortion law*".

**2. Complaint Category**

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b) (harm and offence): the *BAI Code of Programme Standards*, (Principles 1, 4 and 5).

**3. Complaint Summary**

The Complainant states:

- That during the course of the interview, the presenter read out a letter from a listener who spoke about how they received the remains of their child (who had died as a result of a fatal foetal abnormality) stating "*that was our funeral, a fucking envelope handed over the door*". The complainant states that as the programme material had been prepared in advance, the complainant believes the inappropriate offensive word "*fucking*" could easily have been redacted without impact or alternative content used. He states that this violated Principle 1 of the *BAI Code of Programme Standards*.
- The complainant claims that Principle 4 of the Code was also infringed as this topic, which included repeated references to abortion, the death of young babies and the sexual violence of rape and incest, was unsuitable for children. The complainant states that this was an afternoon programme; however, it was immediately followed by an interview with Irish Gymnastics Olympian Mr. Kieran Behan.

The complainant believes that it was likely that many young children would be listening to the programme as most of Ireland's 20,000 or so gymnasts are aged under 12 years.

He states that the content and the tone of the presenter were harmful in that they presented difficult and controversial concepts and moral issues of an adult nature. Furthermore, they asserted with little or no dissent, one side of an argument which, for many children, would be in direct conflict with values they are taught at home by their parents.



- The complainant states that, in reply to a text comment from Ms. Cora Sherlock of the *Pro-Life Campaign*, the interviewee spoke of people who have a religious conviction that unborn babies have a right to life. The complainant states that he said “....on the basis of that conviction, Cora nor anybody else are not permitted and should not be permitted by force of law to require women to suffer catastrophic impact on their lives on their health, and on their families because of what Cora believes. Cora is entitled to her belief but she is not entitled to impose those beliefs on other people no matter what the cost to their lives their families and to their health. She’s not allowed to do that.”
- The complainant believes the above statement, a clear reference to the position of the *Roman Catholic Church*, was a complete misrepresentation of intention and was extremely offensive to a broad section of the Irish population who hold that religious conviction. The statement was left unchallenged by the presenter and therefore neglected to show due respect for religious views and beliefs in programme material.
- The complainant rejects the broadcaster’s citing of a programme broadcast in August, as a related broadcast. This was subsequent to his complaint and has no bearing on it.

#### 4. Broadcaster’s Response

##### 4.1 Broadcaster’s Response to Complainant

The broadcaster states:

- RTE states that the interview with Mr. Colm O’Gorman concerned the report “*She is not a criminal: The impact of Ireland’s abortion law*”, which was authored by *Amnesty International’s* Senior Legal Adviser, Ms. Christina Zampas. They state that it was a significant news story on the day because the group revealed that Ireland was one of the focus countries for *Amnesty’s* global campaign.
- The broadcaster states that audience participation is a hallmark of *The Ray D’Arcy Show* and text and email communication are an integral part of any item.
- A statement by Ms. Cora Sherlock of the *Pro-Life Campaign* was quoted extensively to the interviewee by the presenter, alleging that *Amnesty* was no longer an unbiased defender of human rights principles.
- The broadcaster states that some very robust text and emails were read to Mr. O’Gorman on the day, unhappy with the *Amnesty* campaign, and the presenter also pointed out to the interviewee that there were no dissenting voices within the report.
- The broadcaster states that the purpose of the interview was to explore the thinking behind this report by *Amnesty International*. The presenter was cognisant of fairness, both by putting contrary opinions to the interviewee and using several robust contributions from listeners about the *Amnesty* report.

- The editorial approach does not absolve a broadcaster of its obligations in respect of fairness and impartiality, which can be achieved over a number of broadcasts. In keeping with those principles, the *Pro-Life Campaign* was invited to propose a representative to be interviewed on the programme for a similar duration and in the same way, to explore for the benefit of listeners the thinking behind the *Pro-Life Campaign's* refutation of the *Amnesty* report.

### 4.2 Broadcaster's Response to BAI

RTÉ states the following:-

#### Principle 1

- The language complained of was in the course of direct quotation from the *Amnesty* report. Its use by a contributor to the report reflected his strength of feeling in respect of the manner in which his child's remains were returned to him from Britain. In this context, to have edited that language would have diminished and censored the forcefulness of his testimony and not served the public interest by doing so.
- Listeners to *The Ray D'Arcy Show* will expect the programme's editorial remit of covering adult topics; listeners to the particular item will have been well aware by the time the language complained of was used, that the interview in question was on the adult topic of abortion. The fact that this was one of two complaints received in relation to this use of language from amongst the 190,000 listeners is an indication that while this listener and one other were offended, community standards were not breached.

#### Principle 4

- RTÉ does not claim that the programme item on the *Amnesty* report "*She is not a criminal: The impact of Ireland's abortion law*" was directed towards children. Neither was the interview with an athlete cited in the complaint or the other items in that day's programme with the programme's *Agony Aunt*, and astronaut Al Worden. *The Ray D'Arcy Show* is not a children's programme. Adult listeners to *The Ray D'Arcy Show* will expect the programme's editorial remit of covering adult topics; and listeners to the particular item will have become aware within moments of it being introduced that the interview in question was on the adult topic of abortion. Adult listeners will therefore have been fully informed and equipped to share with the broadcaster their responsibility for the listening of children in their care.

### Principle 5

- RTÉ claim that Mr. O’Gorman’s comments on a quotation from a statement by Ms. Cora Sherlock of the *Pro-Life Campaign*, were specifically directed towards, and entirely limited to, her beliefs in respect of abortion and made no mention or assumption whatsoever in relation to any religious views which Ms. Sherlock may or may not hold.
- The interviewee made no mention whatsoever of religion and RTÉ can see no basis on which Principle 5 could be applied to the vigorous but respectful expression of his views to which he is entitled as an interviewee.
- In respect of the complaint to RTÉ of 11<sup>th</sup> June 2015, in addition to the response of 9<sup>th</sup> July 2015, RTÉ wishes to cite the related broadcast of 25<sup>th</sup> August 2015, an interview with Mr. Ben Conroy of *The Iona Institute* of similar duration to the interview of 9<sup>th</sup> June. This interview was clearly associated on-air by the presenter to the interview which is the subject of complaint and the content of the interview was clearly allied to the interview of 9<sup>th</sup> June and the subject of the *Amnesty* report. The interviewee was given the opportunity to address fully the issues raised and views put forward by the *Executive Director* of *Amnesty* in the interview of 9<sup>th</sup> June 2015.
- RTÉ is aware of the 11-week period which elapsed between the two broadcasts. This is in large part due to the difference in interpretation between *The Ray D’Arcy Show* and the *Pro-Life Campaign* as to the nature of the invitation made to the Campaign in a telephone call of 10<sup>th</sup> June 2015 between a representative of the Campaign and a member of the production team.
- Another factor which influenced the period between broadcasts is the correspondence between Ms. Cora Sherlock of the *Pro-Life Campaign* and the *Head of RTÉ Radio 1*. Ms. Sherlock requested a meeting with the *Managing Director RTÉ News & Current Affairs*. In his absence on leave, the *Head of RTÉ Radio 1* offered to meet Ms. Sherlock (*The Ray D’Arcy Show* is a production of RTÉ Radio and not of RTÉ News & Current Affairs), who declined the invitation.
- RTÉ wishes to refer also to its invitation to Professor William Binchy, an advisor to the *Pro-Life Campaign*, to be interviewed on the programme in relation to the *Amnesty* report and Mr. O’Gorman’s interview. Professor Binchy declined the invitation at that time.

Correspondence between the *Pro-Life Campaign* and *Head of RTÉ Radio 1* and between Professor Binchy and *The Ray D’Arcy Show* is provided with the documents attached to the summary of the complaint.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, section 48(1)(b) (harm and offence) and the *BAI Code of Programme Standards* (Principles 1, 4 and 5), the Committee has decided to reject the complaint.

In this regard:

- The Committee noted that Principle 1 of the *BAI Code of Programme Standards* requires broadcasters to take account of general community standards when making programmes. This includes standards relating to the use of language and places an obligation on broadcasters to have due regard to the appropriateness of, and/or justification for, the inclusion of coarse and/or offensive language and to also take care in the context of live programming. This Principle also recognises that in order to reflect the rich diversity, plurality and realities of contemporary Irish society, programmes can include content that may cause offence to viewers and listeners which is justified for creative editorial or other reasons.

In this context, the Committee was of the view that the language used in the programme was justified by the context in which it was placed. The Committee noted that it was not gratuitously used by the presenter but was instead included in an emotional email to the programme sent on behalf of a couple who had travelled to Britain to end a pregnancy on account of a fatal foetal abnormality. The Committee noted that the language was evidently an expression of anger and distress and was understandable based on the writer's personal experiences.

- Principle 4 of the Code also highlights the specific needs and interests of children and places a range of obligations on broadcasters to protect those interests. In particular, broadcasters are required to ensure that broadcasters do not air content that would seriously impair the moral, mental or physical development of children.

The Code also recognises the importance of context (Principle 2) which provides for the broadcasting of content in an appropriate manner, for example by scheduling it when children are not likely to be part of the audience. Appropriate scheduling allows broadcasters to protect the interests of audiences, while also ensuring that they serve the wide variety of audience members, including the typical audience for *The Ray D'Arcy Show*.

In this regard, the Committee noted that *The Ray D'Arcy Show* is broadcast at a time when children are not likely to be part of the audience. Furthermore, the programme and its content is aimed at adults and audiences would expect that it would include content such as that featured on this occasion. In view of this, the Committee did not agree with the complainant that the content infringed Principle 4.

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- Finally, the Committee noted that Principle 5 provides for the critical scrutiny of religion. However, in the case of this programme, the Committee did not agree with the complainant that the comments made by the interviewee constituted a comment on religious belief and this Principle was not considered relevant.
- 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.

### Rejected by the BAI Executive Complaints Forum

**Complaint made by: Ms. Anne Marie Stack**

**Ref. No. 107/15**

**Station:**

Newstalk 106-108FM

**Programme:**

Newstalk Breakfast

**Date:**

20<sup>th</sup> May 2015

**1. Programme**

The complaint concerns an interview with Mr. David Quinn, of *The Iona Institute* on *Newstalk Breakfast*, which is the broadcaster's weekday news and current affairs programme broadcast each morning from 7am – 10am.

**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 4.3 and 4.25).

**3. Complaint Summary**

The complainant states that during an interview on the *Marriage Referendum* with Mr. David Quinn of *The Iona Institute*, the presenter went beyond his remit as '*Devil's Advocate*'.

The complainant states the following:

- During the opening minutes of the interview the presenter posed the question "*David Quinn, a founder of The Iona Institute, do you have a problem with gay people?*" The complainant states that she found this invidious and unfair and left Mr. Quinn having to deny he was homophobic.
- Mr. Quinn was also asked about a tweet he had written regarding the pregnancy announcement of a gay work colleague of the programme presenter. The complainant claims this presented a conflict of interest, given the presenter's working relationship with the lady in question. The presenter departed from maintaining an impartial position.
- The complainant states that at one point the presenter stated "*we're looking at your credentials*" which the complainant found demeaning and gave the impression that Mr. Quinn's credibility was in question.
- The presenter referenced archived material written by Mr. Quinn pertaining to the *Roman Catholic Church's* teaching on the reception of communion for members who had civilly divorced and entered into second relationships. The complainant questions the introduction of this material during this interview on the impending referendum.

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### 4. Broadcaster's Response

#### 4.1 Initial response to complainant

*Newstalk's* response made directly to the complainant is also contained in the reply below to the BAI.

#### 4.2. Broadcaster's Response to BAI

*Newstalk* states that the complaint is in respect of an interview with Mr. David Quinn, founder of *The Iona Institute* and regular columnist for the *Irish Independent* and *The Irish Catholic* newspapers. The interview was carried out two days before the *Marriage Referendum* was held.

*Newstalk* further states:

- The interviewee was clearly a proponent of the 'No' side of the *Marriage Referendum*. The broadcaster states that given that he had 28 minutes to voice his views it was important that the interviewer was challenging in order to provide a fair, objective and balanced interview. The broadcaster states that 'vox pops' on the topic under discussion were broadcast at the outset of the interview and they state that these were a further effort to be fair to all sides concerned.
- At no stage in the interview did the *Newstalk* presenter express his own opinion or views.
- In respect of the part of the complaint relating to archive material that the presenter introduced to the interview, this was done in order to provide some context to Mr. Quinn's social conservatism by exploring other aspects of his attitude to marriage, namely divorce.

To deal with the individual points made by the complainant *Newstalk* states:

#### The Interviewee's position on gay people

- The context for this was Mr. Quinn's remark on *Twitter* about the pregnancy of a presenter on *Newstalk* which they state caused some controversy. They state that the presenter's question about Mr. Quinn's view on gay people should be viewed as the first in a series of three questions. It led up to the central question regarding the presenter's *Newstalk* work colleague: *Would David have asked the same question of a straight person?* *Newstalk* believe that was a fair question.

#### Pregnancy of work colleague

- The Broadcaster states that *Twitter* is a public forum and this was a matter of controversy that was already in the public domain during the campaign. They state that it was appropriate and timely that the presenter discussed it with Mr. Quinn, regardless of the work colleague's position in the station. It did not amount to unprofessionalism or bias.



## Broadcasting Complaint Decisions

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- The broadcaster states that given the topic under discussion it was totally legitimate to bring a public pronouncement by Mr. Quinn into the discussion.

### **The Interviewees views on marriage in general**

- The broadcaster states that Mr. Quinn was one of the most prominent campaigners on the 'No' side. This was a referendum on marriage and his views generally on marriage are editorially relevant and were a legitimate point for discussion during the campaign.
- Mr. Quinn was perfectly able to engage in the heated and spirited interview and was forceful and confrontational himself when he felt the need. The *Newstalk* presenter accepted this and the broadcast ended calmly and was a perfectly informative, well-balanced and trustworthy piece.
- The broadcaster appreciates that the presenter may have been robust in his challenges but is satisfied that that was required to achieve a fair, impartial and balanced broadcast.
- *Newstalk* rejects that the broadcast was in breach of section 4.3 of the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs*. The broadcaster is satisfied that it dealt with the contributor in a fair and appropriate manner. It should be noted that Mr. Quinn made no complaint to the station and has continued to contribute and appear as a guest on *Newstalk* since that interview.
- *Newstalk* reject that the broadcast was in breach of section 4.25 of the Code. A conflict of interest issue did not arise. If the suggestion is that by raising the work colleague's pregnancy issue, that a conflict of interest issue arose, then *Newstalk* wholeheartedly reject this. The matter was addressed as it was relevant to the context of the interview and was dealt with openly and transparently and put to Mr. Quinn for a response.

### **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 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 4.3 and 4.25).

In this regard:-

- The Forum noted that the context for this interview was in respect of the then forthcoming *Marriage Referendum* in which Mr. David Quinn, founder of *The Iona Institute* and regular columnist for the *Irish Independent* and the *Irish Catholic* newspapers, was interviewed.

## Broadcasting Complaint Decisions

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- Having reviewed the interview, the Forum noted that it was undoubtedly a robust interview which covered different aspects of issues relating to the Referendum and, in particular, from the viewpoint of the interviewee who was advocating a 'No' vote. In this regard, it was evident that both parties engaged robustly in the discussion with the presenter questioning and challenging the views of the interviewee, and the interviewee challenging the presenter in respect of his line of questioning.
- The Forum noted that the interviewee was afforded ample airtime, at almost 30 minutes, and used it ably to put across his views as to why citizens should vote 'No' in the Referendum.
- The Forum noted that the presenter examined previous positions of the interviewee on topics such as marriage, the role of the family and divorce. The Forum considered this appropriate given that the interviewee's positions on these issues were in the public domain and also because the perspective informing these positions was relevant to the interviewee's position in respect of the *Marriage Referendum*. The Forum also found it likely that the interviewee would expect that his public statements on such matters would arise in the context of an interview such as the one in question and in this context, the Forum believed that highlighting these previous statements could not be considered unfair.
- On the issue of the manner in which a tweet published by Mr. Quinn was handled on-air, the Forum did not believe a conflict of interest arose for the broadcaster. The information in the tweet was in the public domain and had been the subject of previous coverage. The contents of the tweet were also deemed relevant to the programme discussion. Furthermore, the Forum found that the presenter was clear that the tweet concerned one of its programme presenters and also that the interviewee was afforded adequate opportunity to set out his view of the tweet and his reasons for his comments about the *Newstalk* programme presenter who was the subject of that tweet.
- The Forum 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. However, the Code requires the presenter to take care that their approach to an interview, including their tone, does not result in unfairness. Having reviewed the interview, the Forum was of the view that the tone and approach, while robust, did not prevent Mr. Quinn from setting out his reasons as to why citizens should vote 'No' in the Referendum and listeners to the programme would have been clear about his position on the *Marriage Referendum*.
- In view of the above, the Forum was of the opinion that the programme did not infringe the requirements of the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 3 and 25) in the manner specified by the complainant. Accordingly, the complaint was rejected.

## Broadcasting Complaint Decisions

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**Complaint made by: Ms. Lucy Keaveney**

**Ref. Nos. 110/15, 111/15, 112/15 and 113/15**

**Station:**

Newstalk 106 - 108FM

**Programme:**

Newstalk Breakfast

**Date:**

2<sup>nd</sup> June 2015

3<sup>rd</sup> June 2015

4<sup>th</sup> June 2015

5<sup>th</sup> June 2015

**1. Programme**

*Newstalk Breakfast* is the broadcaster's weekday morning news and current affairs programme, broadcast from 7am – 10am.

**2. Complaint Category**

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

**3. Complaint Summary**

The complainant states that she carried out a survey to ascertain the degree of male dominance in current affairs programmes and was offended by the remarks by one of the two programme presenters, Mr. Ivan Yates, which she states he made on four consecutive mornings, as follows:-

**3.1 Complaint No. 110/15 – 2<sup>nd</sup> June 2015**

The complainant states the presenter complained about his *'mother-in-law arriving unexpectedly. She then invited herself and stayed for the entire weekend'*. He then went to the *Bloom Festival* which he referred to as the *'Monaco Grand Prix for buggies. It would drive you insane'*. She states that the presenter complained of looking at top class gardens but then *'you'd feel something rubbing up against your leg, ramming your leg - someone with a buggy trying to knock you over'*. He stated his view that children under 21 years of age should be banned from this event.

**3.2 Complaint No. 111/15 – 3<sup>rd</sup> June 2015**

The complainant states that the presenter, when reviewing a survey published in a newspaper on the subject of women's high heels, stated before the review that wearing high heels can lead to deformed feet, unhealthy walking patterns and back pain. The complainant states that this is fair comment. The complainant states that, however, when the presenter gave his opinion, he stated *'I see these young ones going to the races and they can only take about 6 steps at a time because they have these 10cm high heels – absolutely ridiculous. They should be wearing flip flops or something comfortable. It's farcical. People think they are going to a wedding when they are going to a match or the races. Bring it on ladies – defend high heels if you wish. Apparently you have a better chance of picking someone up if you are a bit taller alright'*. The complainant objects to this remark.

### 3.3 Complaint No. 112/15 – 4<sup>th</sup> June 2015

The complainant states that the presenter again targeted women in another survey from a newspaper. The complainant states that, before the ads, the presenter called out '*Ladies. It's true. You are all liars. You lie more significantly, more often than men. A new survey proves it.*' The complainant further states that before the review of the paper the song '*Tell me sweet little lies*' was played emphasising the survey. During the review the presenter continued '*The veracity of women is called into question on page 3 of the Daily Mail. Most of us admit to telling the occasional little white lie. In fact more than one-in-three people tell at least one lie every day but it turns out the "fairer sex" are the biggest fibbers of us all. They lie about their salaries, their job and their weight.*'

### 3.4 Complaint No. 113/15 – 5<sup>th</sup> June 2015

The complainant states that the presenter found another survey on women; this time about eating their own placenta. The complainant states that the presenter was able to bring in his farming experience here on ewes doing the same. The complainant states that, before leaving, the presenter discussed with the nation his dilemma for this weekend. His wife had booked tickets for the theatre but he wanted to get out of it and go dog-racing.

With respect to all of the above complaints, the complainant states she has a sense of humour but it does not stretch to this type of broadcasting which she describes as sexist and misogynistic.

## 4. Broadcaster's Response

### 4.1 Initial response to complainant

*Newstalk 106–108FM* states that the presenter Mr. Ivan Yates' remarks were made in a clearly humorous fashion, something that is a hallmark of the *Newstalk Breakfast Show*. They state that this jocular and provocative approach is something that the listeners expect and understand. In respect of the four instances mentioned *Newstalk* states:

#### **Complaint No. 110/15 – 2<sup>nd</sup> June – Targeting Women with Buggies**

The broadcaster states that the presenter did not mention women at all during this piece. They state that the only example used was that of a man (Mr. Kieran Cuddihy, his co-presenter) pushing a buggy. The reference to his mother-in-law is a long-running joke in the show and must be understood in this context.

#### **Complaint No. 111/15 – 3<sup>rd</sup> June – The High Heels Item**

The broadcaster states that the background to these remarks was medical research which suggested that it is potentially harmful to wear high heels. The broadcaster states that the presenter responded to the findings by saying that it would be better if women at the races wore more practical footwear. The broadcaster states that this was clearly meant to be flippant and that this presenter makes similar jokes about his co-host, Mr. Chris Donoghue, all the time.

### **Complaint No. 112/15 – 4<sup>th</sup> June – The Survey about Lying**

The broadcaster states that the presenter outlined the reasons supplied in the survey for these lies. He gave his own theories on the subject, referencing both sexes. This continued as a talking point throughout the programme – another hallmark of the show. The broadcaster states that listeners of both sexes texted in to the show on the subject, demonstrating that they understood the spirit in which the comments were made.

### **Complaint No. 113/15 – 5<sup>th</sup> June – Eating Placentas**

The broadcaster states that the context here was scientific research published in the day's newspaper. The presenter expressed distaste for the act of eating placenta. He explained that this originated during his childhood, when he saw ewes eating placentas after birth. This was a personal response from an item in the newspapers, not targeted at women *per se*.

## **4.2. Broadcaster's Response to BAI**

*Newstalk 106-108FM* states the following in respect of each complaint:-

### **Complaint No. 110/15 – 2<sup>nd</sup> June**

The first issue that the complainant has is in respect of the comments made about the mother-in-law of the presenter in question. The broadcaster states that this was clearly intended as a joke and not to be interpreted literally. The broadcaster states that this presenter was engaged in light-hearted banter about the common and often cited joke about in-laws. The broadcaster states that this is a very common joke and they cannot see how this could be seen to be targeting women or could be taken as an insult or derogatory about women specifically.

The second issue was in respect of his comments about how there were too many buggies at the *Bloom* festival. The broadcaster states that this was not specifically directed at women and it should be noted that the stand-in presenter, Mr. Kieran Cuddihy, stated how he had a buggy at the festival and he challenged this presenter's remarks and further stated how there was a children's section at *Bloom* and how the festival actively encouraged children's attendance. He then told the presenter that, as he himself was a person with a buggy at the festival, the only reason buggies were knocking into the presenter was because he was standing in the way. This was plainly light hearted chit-chat between the two presenters and again was not in any way targeting women or being abusive or offensive to women as a group in society.

### **Complaint No. 111/15 – 3<sup>rd</sup> June**

The broadcaster states that this piece that is complained of relates to coverage of a survey that was carried out in the *Daily Mail*. *Newstalk* state that the *Breakfast Show* was covering the daily newspapers and this issue arose as a result of this paper review. The survey was about research which had been done into how wearing high heels was harmful.

The broadcaster states that the first thing they would note is that the complainant fails to include two remarks made by the presenters which provide context for this complaint. In this regard, the broadcaster states that the other presenter disagrees with comments made by Mr. Yates and stated that wearing high heels is about taking care of your appearance. Mr. Yates then asks “*well what about feet?*”

The broadcaster states that Mr. Yates’ comments are clearly about an issue that was raised as a matter of health and not an attack on women as a particular group in society such that it stigmatises or supports or condones hatred against that group. The broadcaster states that it is not threatening, abusive, insulting or threatening.

### **Complaint No. 112/15 – 4<sup>th</sup> June**

The comments that the complainant refers to were made on foot of the daily review of the newspapers. In the course of the review a survey was read out. The broadcaster states that the survey found that 4 out of 5 women admitted to telling white lies on a daily basis. It was beyond clear that this was not a comment that the presenter was proffering but the result of a survey carried out and reported on in a daily newspaper. The broadcaster states that the presenter merely read out the contents of the survey to the listener.

The broadcaster states that the complainant appears to take particular issue with the manner in which it was introduced where the presenter states “*Ladies, it’s true you are all liars.*” This is clearly an exaggerated statement purely for dramatic editorial effect and is made clear by the ensuing statements and explanation.

The broadcaster states that it is clearly not a breach of *Principle 5 – Respect for Persons and Groups in Society*. There was no intent to stir-up hatred against women. There were no terms or references used that could be considered offensive to women. The topic was not even brought up by *Newstalk* - it was only chosen as it was an interesting and provocative survey which is part of our remit as a national broadcaster.

### **Complaint No. 113/15 – 5<sup>th</sup> June**

The broadcaster states that the comments that the complainant refers to were made on foot of the review of the papers. In the course of the newspaper review, they reviewed a story about scientific research into the health benefits or otherwise of eating placentas. The study was read out and the presenter in question simply referred to his own background in farming. There was no comment in relation to women that was even negative never mind offensive or harmful.

*Newstalk 106-108* further states the presenters of the *Breakfast Show* have a particular style and this is popular with many listeners and inevitably others find it not to their taste. The broadcaster states that the presenter’s provocative style stretches across all topics - it is not offensive to women as a group in society and certainly is not tantamount to tabloid sexist misogyny as the complainant contends.

### 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 complaints. In reaching this decision, the Forum had regard to the requirements of the Broadcasting Act 2009, Section 48(1)(b)(harm and offence); the *BAI Code of Programme Standards* (Principle 5 – Respect for Persons and Groups in Society).

In this regard:-

- The Forum was of the view that *Newstalk Breakfast* is a news and current affairs programme, but in saying that, they are also mindful of audience expectation and the format of the breakfast show. In this respect, the Forum noted that regular listeners will be familiar with the approach of presenters, which can be light-hearted, and is one intended to elicit a reaction from listeners with a view to engaging them in the programme. This was evident to the Forum from each of the four broadcasts in question.
- In the case of the first broadcast, the context was a regular feature wherein the presenter details his weekend activities for listeners. It touched on a range of events from attendance at the *Bloom Festival*, the weather, *GAA* games and the unexpected arrival of one of the presenter's Mother-in-Law for the weekend.

The Forum found the presenter's tone light and jovial and there was no particular focus on 'women' in the item. In respect of the presenter's comments about buggies and children at the busy *Bloom Festival*, the co-presenter, a man, noted that he was also 'guilty' of pushing buggies around the festival. His views were also counterpointed by those of his co-presenter who disagreed with his perspective on this matter. The Forum also noted that the relationship between men and their Mother-in-Law is a well established source of comedy and, while not a source of humour to all listeners, the Forum did not find anything in the content of the programmes to indicate that it was anything other than an attempt at humour.

- In respect of the second and third broadcasts, the Forum found that the presenter's remarks on high heels and the issue of whether women told lies more often than men arose from the regular newspaper review. The Forum found that in each case it was clear that the presenter made mildly provocative comments with a view to inviting responses from listeners.  
Such an approach is a regular part of programming, particularly where audience interaction is part of the format. It was evident that in this instance, the intent was to engage female listeners with the programme.
- The final broadcast was again part of the regular newspaper review and included a factual outline of the findings of research indicating that there was no health benefit associated with eating placenta. From its review of the programmes, the Forum found no comments which it considered as being negative towards women.

## Broadcasting Complaint Decisions

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- The members noted the complainant's belief that these broadcasts held a degree of male dominance and the banter between the presenters' could be considered by some listeners to be juvenile, especially from Mr. Ivan Yates. While some listeners may have found the content objectionable, the Forum found that these topics were trivial in nature and were delivered in a light-hearted and jovial way with a view to engaging audiences, who would be familiar with the style and approach of the programme.

The Forum was also of the view that the items in question made up only a very small part of the programming in question and, in view of this and in view of the content, they were not considered to prejudice respect for human dignity or support or condone discrimination against women.

- The Forum was of the view that the programmes did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(b)(harm and offence) or the *BAI Code of Programme Standards* – (Principle 5: Respect for Persons and Groups in Society) in the manner specified by the complainant. Accordingly, the complaint was rejected.



## Broadcasting Complaint Decisions

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Complaint made by: Ms. E. Dixon

Ref. No. 115/15

**Station:**  
RTÉ 2FM

**Programme:**  
Breakfast Republic

**Date:**  
22<sup>nd</sup> June 2015

### 1. Programme

The complaint concerns *Breakfast Republic*, which is a comedy/entertainment programme broadcast each weekday morning from 6am. The subject matter of the item was a discussion on *James Bond* and people with red coloured hair.

### 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 5: Respect for Persons and Groups in Society).

### 3. Complaint Summary

The complainant states the subject matter was *James Bond* and also red heads and was introduced as "*Ginger News*". The complainant states that this was followed by what she describes as '*sneers*' about people with red coloured hair, and with one of the presenters whispering "*that's racist*". The complainant states that the presenters went on to discuss that one of them heard that the next *Bond* will be a red head/ginger. This was met with gasps of "*no*" and "*what?*" and more laughs.

The complainant states that the presenters tried to pick this up and be civil but it was clear to anybody listening that there is disbelief that a man with red hair would be up to the job. This, they claimed, would lead to two problems. Firstly, the red-haired leading man would not be able to get any leading ladies to do the love scenes. Secondly, the makers of the *Bond* movies would have to cut out the scene where *Bond* comes out of the sea. This, the listenership was told (again to a background of sneering), was because people with red hair are allergic to the sun and could not stay in the sun for more than 5 seconds without being sun burned.

The complainant states that there is not a person in Ireland that does not know that people/kids with red hair at times get a hard time. The complainant states the redder the hair and the fairer the skin, the tougher the time.

### 4. Broadcaster's Response

#### 4.1 Broadcaster's Response to Complainant

RTÉ states the programme was not intended to cause upset. Most of the show is meant to be a laugh, cheap or otherwise and none of the crew sets out to upset listeners. Hair colour has been discussed many times on the show. There was never an intention to hurt or upset anyone during this topic and the presenter often provides the necessary balance to the discussion. Despite its regular appearance as a topic on the show, *Breakfast Republic* has never been described as being discriminatory against hair or skin colour.

### 4.2 Broadcaster's Response to BAI

RTÉ states the programme format is based on bantering exchanges between the three presenters, for the entertainment of listeners.

'*Ginger News*', as it did in this instance, involves the two non-red haired presenters making comically exaggerated references to the lives of red-haired people, primarily at the expense of their red- (or auburn) haired colleague Mr. Bernard O'Shea. Mr. O'Shea generally stands up for listeners of his hair colour and complexion.

The editorial goal of *Breakfast Republic* is comedy, regularly featuring '*slagging*' between the presenters, a type of humour which is particularly commonplace and popular in Ireland; and human idiosyncrasies are regularly the object of comedy, whether on stage, on air or on the page.

The broadcaster states that while '*ginger*' might be viewed as an impolite term for red-haired people, its use in the context of comedic banter between presenters on an entertainment programme does not in the view of RTÉ represent the offensive abuse disallowed by Principle 5. RTÉ would not allow editorial content of any type, including comedy, which could, in the words of Principle 5, "*prejudice respect for human dignity*" or would "*stigmatise, support or condone discrimination or incite hatred against persons or groups in society.*" And RTÉ believes that this broadcast had no such intention and could not reasonably be seen as having that effect.

### 5. Decision of the Executive Complaint 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 requirements of the Broadcasting Act 2009, Section 48(1)(b)(harm and offence); the *BAI Code of Programme Standards* – (Principle 5: Respect for Persons and Groups in Society).

In this regard:-

- The Forum noted that *Breakfast Republic* is a comedy/entertainment programme in which '*Ginger News*' is an occasional feature. The item, which draws on stereotypes around people with red coloured hair, is constructed around one of the presenters, Mr. Bernard O'Shea, who has red/auburn hair. The item is a regular feature and is part of the in-studio banter between presenters. As part of the programme, Mr. O'Shea generally stands up for listeners of his hair colour and complexion.
- The forum noted the type of programme, audience expectation and humour which was balanced by one of the presenters and found this to be a legitimate approach to the programme. The Forum noted that while not all audience members may find the content humorous and some may find it offensive, it did not consider the content to be such that it would prejudice human dignity in the manner specified by the complainant.

## Broadcasting Complaint Decisions

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- Taking the above into consideration, the Forum was of the view that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(b)(harm and offence) or the *BAI Code of Programme Standards* – (Principle 5: Respect for Persons and Groups in society) in the manner specified by the complainant. Accordingly, the complaint was rejected.

## Broadcasting Complaint Decisions

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**Complaints made by: Mr. Anthony Donnelly**

**Ref. Nos. 92/15, 93/15 and 94/15**

**Station:**

RTÉ Radio 1

**Programme:**

Drivetime

**Date:**

20<sup>th</sup> April 2015

22<sup>nd</sup> April 2015

23<sup>rd</sup> April 2015

**1. Programme**

The complaints concern *Drivetime*, which is a news and current affairs programme broadcast each weekday evening from 4.30pm – 7pm. The complaint related to a discussion on this programme over three afternoons on the issue of domestic violence in Ireland.

**2. Complaint Category**

The complaints are 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 4.17, 4.19, 4.21, 4.22 and 4.24).

**3. Complaint Summary**

The complainant states that a series of reports were presented as an investigation into domestic violence in Ireland and were described by *RTÉ* as follows:

***Monday 20th April*** - Recent reports have revealed serious problems in our handling of domestic violence. In the first in a three part series Della Kilroy examines flaws in our legal system.

***Wednesday 22nd April*** - Recent reports have detailed particular problems with attitudes towards domestic violence within the Gardai...Della Kilroy continues her series investigating issues surrounding our handling of these cases.

***Thursday 23rd April*** - In the final of her series Della Kilroy examines how the housing crisis has affected victims of domestic violence.

- The complainant states that, although issues of accuracy are limited to what was presented, the omission of data is valid with regard to accuracy and the manner in which it may distort understanding. The complainant believes that the absence of any information, except where pertinent to violence against women by men, falls into this category and therefore, does not represent due accuracy.
- Regarding sheltered accommodation, for example, the report provided information on the numbers of women/children who received accommodation and highlighted the percentage which were turned away. Yet, the percentage of men and their children turned away from sheltered accommodation every year is 100%.

The complainant claims that by this omission, the message is conveyed that this is not a problem, which is not a duly accurate presentation of service provision in Ireland. However, information which was presented at the outset by the reporter provides an example of specific error, where the reporter stated that “... *just to put this in context [referring to the series of broadcasts] ... national crime council, in 2005 ... estimated that 213,000 women in Ireland are living with severe abuse ...*” The complainant believes that this is incorrect. The report says that 213,000 women have experienced severe domestic violence *at some point* during their lifetime. Incidence during a lifetime and rate of incidence are not the same thing.

- The complainant claims that the programme description provided was inaccurate as the reports did not address domestic violence *per se*, but more accurately addressed domestic violence against women, and exclusively, domestic violence against women which is perpetrated by men. He states that a cursory reference was made to domestic violence against men, without reference to the perpetrator; no reference to domestic abuse of children by women and no reference to same-sex domestic abuse. Where provided, throughout the broadcasts, overall numbers, relating to cases, incidents etc., were given in gender neutral terms, while examples were selectively specific, to give the impression that the numbers were exclusively describing that specific type of domestic violence, which may not be the case.
- The complainant maintains that the descriptions of the broadcasts do not accurately reflect their content, which, along with the choice of material used, was deliberately misleading for the listener.
- Referring to BAI code, section 21, the complainant states that reference was made to the enactment of sections of legislation and to a document known as the *Istanbul Convention*. A number of countries have concerns about the practical implications of the *Convention* in particular and its implementation is controversial, yet no opinion was provided in relation those problems and only the view of the broadcaster was presented.
- The complainant maintains that the broadcasts had no representation of domestic violence from a same-sex, or male perspective, although such is available. For example, *AMEN* is one of the more well known support groups for men, but there was no indication that a representative of *AMEN* was interviewed or asked to comment. Only a singular view on the subject was provided.
- The complainant believes that the broadcasts had the clear intention to frame domestic violence in a particular way which was further reinforced by the choice of contribution for the reports, which were exclusively from bodies and persons concerned with domestic violence against women by men.

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The complainant claims that this deliberate framing of domestic violence in the mind of the listener is an expression of the broadcaster's/reporter's own view which was not clearly signalled.

- The thrust of the series was to reinforce the popular idea that women do not perpetrate domestic violence or are a negligible anomaly.
- The main point of the complaint is that there was distortion by omission.

### 4. Broadcaster's Response

#### 4.1 Broadcaster's Response to Complainant

*RTÉ* states that contributors to Ms. Della Kilroy's series commented primarily on women, given that many of the sources and much of the research focuses on them. That is not to deny that information relating to domestic violence perpetrated against men exists, however, an absence of specific reference to such data undermines the thrust of the series. This focus was on flaws in the policing and judicial system and those flaws impact on both men and women, seeking protection and redress.

The genesis of the report arose from a period of time spent by the reporter in the family courts and was reflective of the interviews with victims and what she saw. Her reportage around the legal system and the courts was gender non-specific and all issues were pertinent to both sexes.

Addressing specific points raised by the complainant, the broadcaster maintains:

- That there is no evidence to support the contention that 100% of men and their children are turned away from sheltered housing. Temporary refuge accommodation services provided to men have been reported on several times on the programme.
- It is correct to state 213,000 women in Ireland are "*living*" with abuse. The experience of violence is something that victims live with long after they have escaped from direct contact with the perpetrator.
- No representative of *AMEN* was interviewed; however, experts and practitioners interviewed also worked with male victims of violence.
- Drivetime has no "*view*" on domestic violence. The intention of the series was to draw attention to problems within the system that, as a number of contributors to the reports said, further harmed people made vulnerable as a result of domestic violence.

### 4.2 Broadcaster's Response to BAI

RTÉ states that this three-part *Drivetime* series on the topic of domestic violence towards women were clearly presented to the audience as such. This was stated in the presenter's introduction to the series on 20<sup>th</sup> April: *"About one in five women in Ireland have experienced domestic violence but support groups say it's a crime which goes unrecognised, minimised and ignored."* As can be heard, the editorial focus was further underlined at various points throughout the series, which dealt separately with court proceedings, with the policing of domestic violence against women and with issues with accommodation and support of women who have experienced domestic violence.

Listeners will therefore have been aware of the focus of the series and the issues on which it reported and will have understood that the series did not set out to consider the totality of domestic violence. There was, therefore, no *"disjoint between the programme advertisement/description and its content,"* as claimed in the complaints referral.

RTÉ further state the following:-

- While the stated editorial focus of the series was on violence against women, reference was made to violence against men. This included the reporter stating: *"Of course this is an issue which affects both men and women but the majority of cases involving domestic violence concern women"* (20<sup>th</sup> April); and, in relation to accommodation for male victims of domestic violence, *"There have been other calls to set up shelters for fathers with their children"* (23<sup>rd</sup> April). Consistent usage of the gender-neutral term 'partner' is also notable; listening will confirm that gender non-specific language was neither cursory nor limited to reference to statutes.
- RTÉ asserts that to use the term *"living with"* abuse is a fair portrayal of the statistic given by the *National Office for the Prevention of Domestic, Sexual and Gender-based Violence*, namely that *"213,000 women in Ireland have been severely abused by a partner at some point in their lives."* The consequences of such abuse are life-long.
- **Rule 4.17** - The series was accurate in respect of its stated editorial objective of reporting on domestic violence against women and no inaccuracies in that respect are indicated in the complaints.
- **Rule 4.19**- Views and facts in relation to domestic violence against women were not misrepresented or presented in such a way as to render them misleading and no such misrepresentation is indicated in the complaints. Neither do the complaints indicate anything in the language and tone of the presenter or reporter which would have resulted in misunderstanding on the part of listeners.
- **Rule 4.21** - Insofar as domestic violence against women could be described as a topic of public controversy or the subject of current public debate, neither presenter nor reporter expressed views of her own.

- **Rule 4.22** - the audience were given access to a wide variety of views on the subject of domestic violence against women. No views on domestic violence against women were excluded and the complaint does not indicate any such absent views on that topic. No partisan position was advocated by the presenter or reporter.
- **Rule 4.24** - These broadcasts were reports on the subject of domestic violence against women from three distinct perspectives, were not '*personal view*' or '*authored*' items and therefore required no such signalling to the audience.

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

Having considered the broadcast and the submissions from the complaint parties and having 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 & Impartiality in News and Current Affairs* (Section 4: Rules 4.17, 4.19, 4.21, 4.22 and 4.24), the Forum has decided to reject the complaints.

In this regard:

- The Forum noted that broadcasters have the editorial freedom to approach a topic from a particular angle and such decisions do not automatically demonstrate evidence of a failure to be fair, objective or impartial. In this regard, the Forum found that the three-part series dealt with the topic of domestic violence towards women, and in particular, from the perspective of cases before the family court, at which the reporter attended.
- The Forum found that this editorial focus was clearly presented to the listeners as such and at the start of the first programme in the series, the presenter stated: "*About one in five women in Ireland have experienced domestic violence but support groups say it's a crime which goes unrecognised, minimised and ignored*".

From this, the audience would have been aware of the focus of the series and the issues which would be highlighted. This approach was reflected in the three broadcasts, which discussed flaws in the legal system, the role of *An Garda Síochána* and issues of accommodation and housing.

- The Forum was also of the view that the editorial focus and content of the programmes were largely informed by the outcomes of court proceedings, which included interviews with various groups and women who had been the victims of violence/abuse and who gave accounts of their personal experience and viewpoint, which did not require a balancing view within the item itself. The Forum noted that the programmes included comments and analysis by the reporter, but considered these to be an analysis of the issues arising rather than an expression of a personal or partisan view.



## Broadcasting Complaint Decisions

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- On the issue of the experience of men as sufferers of domestic violence, the Forum was of the opinion that the item was not derogatory towards men. There was no denial of domestic abuse by men and many of the comments included in the programmes were gender neutral and would have also related to the experiences of men.
- More generally, there is no obligation on a broadcaster to ensure that every angle of a story or topic is covered. Broadcasters may select a particular aspect of a story on which to focus and a decision not to cover other aspects of a story is only problematic when not to do so would lead to unfairness (for example, in circumstances where an individual or group is named in a critical fashion and their perspective is not represented in the programme where it may be necessary so as to ensure fairness). As the series of programmes in question were dealing with domestic violence against women, and not domestic violence against men, the inclusion of only incidental references to violence against men was considered by the Forum to be the result of a legitimate and appropriate editorial decision of the broadcaster to focus predominantly on the experiences of women.

The Forum found that this approach may have not provided a detailed outcome of the experience of men, but this was not required to ensure fairness, objectivity and impartiality.

- It was also the view of the Forum that the broadcast did not contain any content which would substantiate the complainant's argument that the content lacked accuracy or that it was unfair, misleading or partial.

On the issue of the number of women who had experienced or were living with domestic abuse, the Forum was of the view that the figure of 213,000 women, as presented by the broadcaster, is open to interpretation and its presentation in the programme was not considered unreasonable.

- The Members were of the view that the programmes did not infringe the requirements of the Broadcasting Act 2009, the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant.

Accordingly, the complaints have been rejected. In reaching this decision, the Forum noted that the item was not a news broadcast nor was it considered to be a '*personal*' or '*authored*' series of programmes and for this reason, Rules 4.21 and 4.24 were not deemed relevant to a consideration of the complaint.

## Broadcasting Complaint Decisions

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**Complaints made by: Mr. David Walsh**

**Ref. Nos. 95/15; 96/15; 97/15**

**Station:**  
RTÉ One

**Programme:**  
Drivetime

**Date:**  
20<sup>th</sup> April 2015

22<sup>nd</sup> April 2015

23<sup>rd</sup> April 2015

### 1. Programme

The complaints concern *Drivetime*, which is a news and current affairs programme, broadcast each weekday evening from 4.30pm – 7pm. The topic discussed over the three afternoons was the issue of domestic violence in Ireland.

### 2. Complaint Category

The complaints are 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 4.17, 4.19, 4.21, 4.22 and 4.24).

### 3. Complaint Summary

The complainant states that a series of reports were presented as an investigation into domestic violence in Ireland and were described by RTÉ as follows:-

***Monday 20th April*** - Recent reports have revealed serious problems in our handling of domestic violence. In the first in a three part series Della Kilroy examines flaws in our legal system.

***Wednesday 22nd April*** - Recent reports have detailed particular problems with attitudes towards domestic violence within the Gardai...Della Kilroy continues her series investigating issues surrounding our handling of these cases.

***Thursday 23rd April*** - In the final of her series Della Kilroy examines how the housing crisis has affected victims of domestic violence.

- The complainant claims that, although issues of accuracy are limited to what was presented, the omission of data is valid with regard to accuracy and the manner in which it may distort understanding. The complainant believes that the absence of any information, except where pertinent to violence against women by men, falls into this category and therefore, does not represent due accuracy.
- Regarding sheltered accommodation, for example, the report provided information on the numbers of women/children who received accommodation and highlighted the percentage which were turned away. Yet, the percentage of men and their children turned away from sheltered accommodation every year is

100%. The complainant claims that by this omission, the message is conveyed that this is not a problem, which is not a duly accurate presentation of service provision in Ireland.

However, information which was presented at the outset by the reporter provides an example of specific error, where the reporter stated that “... *just to put this in context [referring to the series of broadcasts] ... national crime council, in 2005 ... estimated that 213,000 women in Ireland are living with severe abuse ...*” The complainant believes that this is incorrect. The report says that 213,000 women have experienced severe domestic violence *at some point* during their lifetime. Incidence during a lifetime and rate of incidence are not the same thing.

- The complainant claims that the programme description provided was inaccurate as the reports did not address domestic violence *per se*, but more accurately addressed domestic violence against women, and exclusively, domestic violence against women which is perpetrated by men. A cursory reference was made to domestic violence against men, without reference to the perpetrator; no reference to domestic abuse of children by women and no reference to same-sex domestic abuse. Where provided, throughout the broadcasts, overall numbers, relating to cases, incidents etc., were given in gender neutral terms, while examples were selectively specific, to give the impression that the numbers were exclusively describing that specific type of domestic violence, which may not be the case.
- The complainant maintains that the descriptions of the broadcasts do not accurately reflect their content, which, along with the choice of material used, was deliberately misleading for the listener.
- Referring to BAI code, section 21, the complainant states that reference was made to the enactment of sections of legislation and to a document known as the *Istanbul Convention*. A number of countries have concerns about the practical implications of the *Convention* in particular and its implementation is controversial, yet no opinion was provided in relation those problems and only the view of the broadcaster was presented.
- The complainant maintains that the broadcasts had no representation of domestic violence from a same-sex, or male perspective, although such is available. For example, *AMEN* is one of the more well known support groups for men, but there was no indication that a representative of *AMEN* was interviewed or asked to comment. Only a singular view on the subject was provided.
- The complainant believes that the broadcasts had the clear intention to frame domestic violence in a particular way which was further reinforced by the choice of contribution for the reports which were exclusively from bodies and persons concerned with domestic violence against women by men. The complainant claims that this deliberate framing of domestic violence in the mind of the listener is an expression of the broadcaster's/reporter's own view which was not clearly signaled.

- The thrust of the series was to reinforce the popular idea that women do not perpetrate domestic violence or are a negligible anomaly.
- The main point of the complaint is that there was distortion by omission.

#### 4. Broadcaster's Response

##### 4.1 Broadcaster's Response to Complainant

*RTÉ* states that contributors to Ms. Della Kilroy's series commented primarily on women, given that many of the sources and much of the research focuses on them. That is not to deny that information relating to domestic violence perpetrated against men exists, however, an absence of specific reference to such data undermines the thrust of the series. This focus was on flaws in the policing and judicial system and those flaws impact on both men and women, seeking protection and redress.

The genesis of the report arose from a period of time spent by the reporter in the family courts and was reflective of the interviews with victims and what she saw. Her reportage around the legal system and the courts was gender non-specific and all issues were pertinent to both sexes.

Addressing specific points raised by the complainant, the broadcaster maintains:

- That there is no evidence to support the contention that 100% of men and their children are turned away from sheltered housing. Temporary refuge accommodation services provided to men have been reported on several times on the programme.
- It is correct to state 213,000 women in Ireland are "*living*" with abuse. The experience of violence is something that victims live with long after they have escaped from direct contact with the perpetrator.
- No representative of *AMEN* was interviewed; however, experts and practitioners interviewed also worked with male victims of violence.
- *Drivetime* has no "*view*" on domestic violence. The intention of the series was to draw attention to problems within the system that, as a number of contributors to the reports said, further harmed people made vulnerable as a result of domestic violence.

### 4.2 Broadcaster's Response to BAI

RTÉ states that this three-part *Drivetime* series on the topic of domestic violence towards women were clearly presented to the audience as such. This was stated in the presenter's introduction to the series on 20<sup>th</sup> April: *"About one in five women in Ireland have experienced domestic violence but support groups say it's a crime which goes unrecognised, minimised and ignored."*

As can be heard, the editorial focus was further underlined at various points throughout the series, which dealt separately with court proceedings, with the policing of domestic violence against women and with issues with accommodation and support of women who have experienced domestic violence.

Listeners will therefore have been aware of the focus of the series and the issues on which it reported and will have understood that the series did not set out to consider the totality of domestic violence. There was, therefore, no *"disjoint between the programme advertisement/description and its content,"* as claimed in the complaints referral.

RTÉ further state the following:

- While the stated editorial focus of the series was on violence against women, reference was made to violence against men. This included the reporter stating: *"Of course this is an issue which affects both men and women but the majority of cases involving domestic violence concern women"* (20<sup>th</sup> April); and, in relation to accommodation for male victims of domestic violence, *"There have been other calls to set up shelters for fathers with their children"* (23<sup>rd</sup> April). Consistent usage of the gender-neutral term 'partner' is also notable; listening will confirm that gender non-specific language was neither cursory nor limited to reference to statutes.
- RTÉ asserts that to use the term *"living with"* abuse is a fair portrayal of the statistic given by the the *National Office for the Prevention of Domestic, Sexual and Gender-based Violence*, namely that *"213,000 women in Ireland have been severely abused by a partner at some point in their lives."* The consequences of such abuse are life-long.
- **Rule 4.17** - The series was accurate in respect of its stated editorial objective of reporting on domestic violence against women and no inaccuracies in that respect are indicated in the complaints.
- **Rule 4.19**- Views and facts in relation to domestic violence against women were not misrepresented or presented in such a way as to render them misleading and no such misrepresentation is indicated in the complaints. Neither do the complaints indicate anything in the language and tone of the presenter or reporter which would have resulted in misunderstanding on the part of listeners.

- **Rule 4.21** - Insofar as domestic violence against women could be described as a topic of public controversy, or the subject of current public debate, neither presenter nor reporter expressed views of her own.
- **Rule 4.22** - the audience were given access to a wide variety of views on the subject of domestic violence against women. No views on domestic violence against women were excluded and the complaint does not indicate any such absent views on that topic. No partisan position was advocated by the presenter or reporter.
- **Rule 4.24** - These broadcasts were reports on the subject of domestic violence against women from three distinct perspectives, were not '*personal view*' or '*authored*' items and therefore required no such signalling to the audience.

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

Having considered the broadcast and the submissions from the complaint parties and having 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 & Impartiality in News and Current Affairs* (Section 4: Rules 4.17, 4.19, 4.21, 4.22 and 4.24), the Forum has decided to reject the complaints.

In this regard:

- The Forum noted that broadcasters have the editorial freedom to approach a topic from a particular angle and such decisions do not automatically demonstrate evidence of a failure to be fair, objective or impartial. In this regard, the Forum found that the three-part series dealt with the topic of domestic violence towards women, and in particular, from the perspective of cases before the family court, at which the reporter attended.
- The Forum found that this editorial focus was clearly presented to the listeners as such and at the start of the first programme in the series, the presenter stated: "*About one in five women in Ireland have experienced domestic violence but support groups say it's a crime which goes unrecognised, minimised and ignored*".

From this, the audience would have been aware of the focus of the series and the issues which would be highlighted. This approach was reflected in the three broadcasts, which discussed flaws in the legal system, the role of *An Garda Síochána* and issues of accommodation and housing.

- The Forum was also of the view that the editorial focus and content of the programmes were largely informed by the outcomes of court proceedings, which included interviews with various groups and women who had been the victims of violence/abuse and who gave accounts of their personal experience and viewpoint, which did not require a balancing view within the item itself.

## Broadcasting Complaint Decisions

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The Forum noted that the programmes included comments and analysis by the reporter, but considered these to be an analysis of the issues arising rather than an expression of a personal or partisan view.

- On the issue of the experience of men as sufferers of domestic violence, the Forum was of the opinion that the item was not derogatory towards men. There was no denial of domestic abuse by men and many of the comments included in the programmes were gender neutral and would have also related to the experiences of men.
- More generally, there is no obligation on a broadcaster to ensure that every angle of a story or topic is covered. Broadcasters may select a particular aspect of a story on which to focus and a decision not to cover other aspects of a story is only problematic when not to do so would lead to unfairness (for example, in circumstances where an individual or group is named in a critical fashion and their perspective is not represented in the programme where it may be necessary so as to ensure fairness). As the series of programmes in question were dealing with domestic violence against women, and not domestic violence against men, the inclusion of only incidental references to violence against men was considered by the Forum to be the result of a legitimate and appropriate editorial decision of the broadcaster to focus predominantly on the experiences of women.

The Forum found that this approach may have not provided a detailed outcome of the experience of men, but this was not required to ensure fairness, objectivity and impartiality.

- It was also the view of the Forum that the broadcast did not contain any content which would substantiate the complainant's argument that the content lacked accuracy or that it was unfair, misleading or partial.

On the issue of the number of women who had experienced or were living with domestic abuse, the Forum was of the view that the figure of 213,000 women, as presented by the broadcaster, is open to interpretation and its presentation in the programme was not considered unreasonable.

- The Members were of the view that the programmes did not infringe the requirements of the Broadcasting Act 2009, the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaints have been rejected. In reaching this decision, the Forum noted that the item was not a news broadcast nor was it considered to be a '*personal*' or '*authored*' series of programmes and for this reason, Rules 4.21 and 4.24 were not deemed relevant to a consideration of the complaint.

# Broadcasting Complaint Decisions

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**Complaints made by: Mr. Michael Walker**

**Ref. Nos. 117/15 and 118/15**

**Station:**

RTÉ Radio 1

**Programme:**

The Marian Finucane Show

**Date:**

23<sup>rd</sup> May 2015

24<sup>th</sup> May 2015

**1. Programme**

The complaints concern *The Marian Finucane Show*, which is a news/current affairs/entertainment style programme, broadcast each Saturday and Sunday morning from 11.00am to 1.00pm. The topics discussed on the two mornings were a sexual statement made on the programme of the 23<sup>rd</sup> May and, on the following day, a discussion concerning the deaths of two people.

**2. Complaint Category**

The complaints are submitted under the Broadcasting Act 2009, Section 48(1)(b)(harm & offence); the *BAI Code of Programme Standards* – Principle 1 (Respect for Community Standards) and Principle 3 (Protection from Harm).

**3. Complaint Summary**

**Principle 1 - 23<sup>rd</sup> May (117/15)** – The complaint relates to a caller to *The Marian Finucane Show*, in particular, the complainant objects to what he describes as a sexual statement made on-air. In this regard, one of the guests on the programme stated he would have sex with the caller himself (this was in the context of the caller having the same name as the programme guest and being under 40). The complainant was also shocked by the discussion on sexual orientation included in this programme.

**Principles 1 & 3 - 24<sup>th</sup> May (118/15)** – The complainant cites in this programme a discussion which he states demonstrated a lack of respect on the part of the presenter and her guests in respect of two people found dead in Limerick. He states that the topic was treated in a flippant manner by the programme presenter and guests.

**4. Broadcaster's Response**

**4.1 Broadcaster's Response to Complainant**

RTÉ acknowledged the complaints but no follow-up occurred. The broadcaster states that it was not clear, from the manner in which the complaint was stated, as to the specific content that the complainant objected to. In the case of the second complaint, this was treated as feedback rather than a formal complaint.



### 4.2 Broadcaster's Response to BAI

In respect of both complaints, RTÉ states:-

**23<sup>rd</sup> May** (117/15) - Insofar as discussion of sexual orientation can be defined as 'sexual content', containing no description or depiction of sexual activity, such discussion was editorially appropriate and justified in a discussion of the outcome of the Marriage Referendum which would allow homosexual (and indeed bi-sexual) people to marry.

The broadcaster states that the jocular offer by a panellist to 'have sex' with the caller was clearly a light-hearted metaphorical expression of his delight with the emerging Referendum result to which people such as the caller had contributed. Insofar as it might be viewed as 'sexual content' it was an appropriate metaphor in the context and contained no coarse or offensive language.

**24<sup>th</sup> May** (118/15) - The complainant is inaccurate and incorrect in claiming that the broadcast included "flippancy" in relation to the deaths of the two people who had been found dead in Limerick. Both the presenter, the phone interviewee and a panellist made entirely clear that the deaths were tragic, particularly sympathising with the family and community. What is described in the complaint as "flippancy" was in fact the expression of astonishment at the extended and successful career as a swindler in the USA and Ireland of Ms. Julia Holmes, one of the deceased.

In regard to Principle 1, community standards in respect of the dead and bereaved and of honest behaviour were in fact manifestly upheld in the broadcast. In regard to Principle 3, no material was included which would have been harmful to the audience and due sensitivity was shown in respect of listeners who may have been affected by the issues discussed.

## 5. Decisions of the Executive Complaints Forum

### Complaint No. 117/15: Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(b)(harm and offence) and the *BAI Code of Programme Standards* (Principle 1 – Respect for Community Standards), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that Principle 1 of the *BAI Code of Programme Standards* places specific obligations on broadcasters, including a requirement to ensure that depictions and descriptions of sexual content are handled with due care and are appropriate and justifiable. The Code also states that Irish society has a diversity of views on issues such as sexual content and that in reflecting this diversity, broadcasters will sometimes make programmes that will offend but which are justified for creative, editorial or other reasons.

- Having regard to these requirements, the Forum acknowledged that some people may find sexual references in programming offensive. However, the Code does not preclude references to sex in all contexts. In the case of the broadcast in question, the Forum had regard for the manner in which the comments were made. In this instance, a guest of the programme, Mr. Kevin Myers, made a jocular comment in response to a caller who was also named 'Kevin'. The Forum noted that the discussion in question was in the context of the Marriage Referendum vote, which took place the day before the broadcast. The discussion explored different views on the Referendum in a light-hearted manner and the Forum was of the view that the comment was editorially justified in this context. More generally, the Forum noted that the reference to sex was made in passing and did not contain any details or description that would be likely to cause undue harm or offence.
- The Members also noted that this is a long running programme, and were of the view that audiences would expect discussions which are based on topical issues and aimed at adults.
- The Members were of the view that the programmes did not infringe the requirements of the Broadcasting Act 2009, the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint was rejected.

### **Complaint No. 118/15: Reject (Unanimous)**

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(b)(harm and offence) and the *BAI Code of Programme Standards* (Principles 1 – Respect for Community Standards and Principle 3 – Protection from Harm), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that the topic was a news story about the discovery of two bodies in a house in Limerick, but that the focus of the piece was about one of the deceased, Ms. Julia Holmes, and about her life, including her past criminal behaviour. The topic was explored through a phone interview with journalist Mr. Jimmy Woulfe, who has covered many stories about Ms. Holmes, and an in-studio panel discussion. The Members noted that this was a legitimate editorial approach to exploring the story.
- The Members noted the complainant's view that the discussion regarding the death of two people was treated in a flippant manner, and that this was offensive. The Forum noted that the tone was light hearted at points during the conversation but that the laughter was in relation to some of the stranger elements of the story, and not about the deaths of two people.

## Broadcasting Complaint Decisions

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- The Members noted that one of the guests highlighted that the topic was in-fact serious as people had died, and that the presenter herself stated that she did not mean to be flippant and clarified that the laughter was in relation to certain elements of the story. This including some aspects of the life of Ms. Holmes as well as the unusual situation whereby the burglars who discovered the bodies voluntarily incriminated themselves when reporting their discovery to Gardaí.
- 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 Principle 3 of the *BAI Code of Programme Standards*.
- The Forum Members were of the view that the programmes did not infringe the requirements of the Broadcasting Act 2009, the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint was rejected.

**Station:**

RTÉ Radio 1

**Programme:**

Today with Seán O'Rourke

**Date:**

26<sup>th</sup> June 2015

**1. Programme**

The complaint concerns *Today with Sean O'Rourke*, which is a news and current affairs show broadcast each weekday morning from 10am to 12.poopm. The topic discussed was the migrant crisis which included an interview with Ms. Sue Conlan, Chief Executive of the *Irish Refugee Council* and Mr. Peter Sutherland, *UN Special Envoy on Migration*. The context for the discussion was an agreement by the EU to accept 40,000 refugees in response to the crisis.

**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 the interviewees on the topic discussed (the migrant crisis), were both clearly in favour of the proposal to accept more immigrants and there was no one to counter arguments to the proposal. The complainant states that Mr. Sutherland made repeated references to studies carried out in Britain even though, according to the complainant, the British Government is against accepting more immigrants. The complainant further states that the large numbers of illegal immigrants crossing into Europe is due to the fact that Libya is now a failed state and that Ireland bears no responsibility for this situation. In particular, he states that Ireland did not bomb Libya into a failed state - NATO countries and the United States of America did.

The complainant states that Mr. Sutherland also commented that taking in more emigrants would not be a drag on resources and the complainant is of the opposite view and states that this view was not represented nor was Mr. Sutherland's view challenged.

The complainant feels that the opinions on this programme were one-sided and the stand-in presenter for Mr. O'Rourke only made an occasional interjection so as to put in a small amount of balance.

## Broadcasting Complaint Decisions

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### 4. Broadcaster's Response

#### 4.1 Broadcaster's Response to Complainant

No response was received from RTÉ by the due date.

#### 4.2 Broadcaster's Response to BAI

RTÉ states the interview with Ms. Sue Conlan of the *Irish Refugee Council*, sought her organisation's view on the news which had broken on the previous evening that EU Leaders had agreed to a two-year relocation programme for 40,000 refugees; she suggested that more details were needed on how the plan would work in reality. The broadcaster states that the clear purpose of the interview with Ms. Conlan was to obtain the reaction of the *Irish Refugee Council* to the news of the EU initiative. The broadcaster states that it may be noted in the context of transparency that the presenter pointed out to listeners that the interviewee's organisation was lobbying on the issue.

The broadcaster states that on the same morning, the programme spoke to *UN Special Envoy on Migration*, Mr. Peter Sutherland who had, minutes earlier, left a meeting with Pope Francis. The programme wished to bring its listeners news of what the Pontiff had to say on the crisis.

The broadcaster states that it may also be noted that although the primary purpose of the broadcast was to hear about Mr. Sutherland's meeting in The Vatican, nonetheless the presenter took the opportunity to put to Mr. Sutherland's views of those not participating in the broadcast, which challenged those expressed by him. This included questioning on the capacity of Ireland to receive migrants in the context of 'austerity', on whether studies demonstrated that incoming migrants were a drain on an economy, and on whether there had been any study of Europe's capacity to deal with the number of migrants involved and whether there was a point at which no further migrants could be received into Europe.

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

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

In this regard:

- The Members noted that the topic was discussed in the context of a news story about an E.U. decision regarding the migrant crisis, which had been announced on the previous day. The topic was explored through interviews with two guests and focused on the E.U. decision, as opposed to being a wider discussion on immigration. The Forum noted that broadcasters have the editorial freedom to approach a particular topic from a particular angle; fairness does not require all possible opinions to be addressed.

## Broadcasting Complaint Decisions

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- The first interview was with Ms. Sue Conlan from the *Irish Refugee Council*. The Forum found that the interview was a factual exploration of the impact of the E.U. decision, including in an Irish context and not a debate about the issue and, for this reason, it was not necessary for the presenter to challenge any of the information provided by Ms. Conlan. The Forum also noted the remarks by the presenter where she highlighted that the Irish Refugee Council was lobbying on this issue.
- The second interview was with *UN Special Envoy on Migration*, Mr. Peter Sutherland. The Forum noted that the complainant took issue with many statements made by Mr. Sutherland, but found that while the contributor did provide his own views on the E.U. decision and Ireland's responsibility regarding the migrant crisis, the presenter challenged the contributor on many occasions and in this manner gave the audience access to a wide variety of views. In particular, the presenter highlighted issues that would likely come to mind for some listeners. These included: whether Ireland could financially support migrant relocation so soon after the economic recession; the perception that the migrants would be a 'drain' on the economy; the view that they would impact on the employment market in Ireland; as well as questions about the responsibility of the E.U. to stabilise the countries from which they came.
- The Forum felt that the subject matter was treated fairly, the presenter made the interests of the contributors clear and balance was provided through various questions and challenges put forward by the presenter.
- 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* in the manner specified by the complainant. Accordingly, the complaint was rejected.

