



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
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OF IRELAND

Broadcasting Authority of Ireland

Broadcasting Complaint Decisions

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BAI Complaints Handling Process

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

In line with the complaint process, the viewer or listener should direct their complaint to the broadcaster in the first instance and in the manner detailed in the broadcaster's *Code of Practice for Handling Complaints*, a document which each broadcaster has available on its website. If a viewer or listener is not satisfied with the response from the broadcaster or if the broadcaster does not respond within the timeframe provided for in their *Code of Practice* (usually 21 days), then the viewer or listener can refer the complaint to the BAI for consideration.

In assessing complaint referrals, the BAI will have regard to the relevant codes and rules, the written material submitted by the relevant parties, together with the broadcast material. Complaints are assessed at Executive level by the Executive Complaints Forum and/or by the Compliance Committee of the Authority. Further information may be found on the complaints handling section of the BAI's website: www.bai.ie.

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

In total, 10 complaints were considered by the Compliance Committee of the BAI. Of these, 3 have been upheld and 7 rejected. The Executive Complaints Forum considered and rejected 16 complaints. The decisions of the Compliance Committee were reached at meetings held in May and June 2016. The decisions of the Executive Complaints Forum were reached at meetings held in April, May and July 2016.

Upheld/Upheld in Part by the BAI Compliance Committee

Complaint made by: Mr. Francis Clauson

Ref. No. 26/16

Station:

Advertisement:

Date:

TV3

The Power to Power Ourselves

10th January 2016

1. Advertisement

The complaint concerns an advertising campaign entitled '*The Power to Power Ourselves*', which featured on TV3 in January 2016. The campaign was coordinated by the *Irish Wind Energy Association (IWEA)*.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(d); the *BAI General Commercial Communications Code* (Section 9: Prohibited Communications).

3. Complaint Summary

- The complainant states that this campaign has been coordinated by the *Irish Wind Energy Association (IWEA)*. He states that it is clear that the *IWEA* are a special interest lobby group: *IWEA* is the national body representing the wind energy sector in Ireland. The complainant states that the *IWEA* is committed to promoting the use of wind energy in Ireland and beyond as an economically viable and environmentally sound alternative to conventional generation and promotes awareness and understanding of wind power as the primary renewable energy resource.
- The complainant further states that wind energy is currently a matter of significant political dispute and that campaigns are underway to oppose the further development of wind energy within the country. The complainant states that the *IWEA* are now targeting what their CEO describes as "*a concerning escalation in false and misleading information about wind energy from some quarters*". The complainant states that this dispute is also linked to the ongoing review of the wind energy guidelines being undertaken by Government; the review and proposed revision to the wind energy guidelines has at its heart a battle to set safe setback distances/noise limits between homes and wind farms, something which the *IWEA* has vehemently opposed.
- The complainant also states that, taking into account the content of the advert, the context in which the advert is broadcast, the aims and objectives of *IWEA* and of *The Power to Power Ourselves* advertising campaign, this advertisement is in contravention of the ban on political advertising.

In this regard, the complainant highlights the current political context, in particular the ongoing lobbying and campaigning in relation to the review of the wind energy guidelines and the high volume of political and planning disputes, relating to wind farms, which in many instances have created political activity.

- The complainant states that, finally, it should be noted that the *IWEA*, who are running this campaign, are supported by State and Semi-state organisations.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

- TV3 states that, having carefully reviewed the complaint and considered the application of the Broadcasting Authority of Ireland's guidelines for commercial advertising, it does not accept that this is a political message or advertisement. The broadcaster states that the *Irish Wind Energy Association (IWEA)* is a limited liability company.
- The broadcaster states that political advertising is restricted for political parties, trade unions and charities which they believe the *IWEA* is not.
- The broadcaster states that, separately, Section 41(3) of the Broadcasting Act 2009 states that a "*broadcaster shall not broadcast an advertisement which is directed towards a political end*". Again, having regard to the content, TV3 does not believe that the advertisement in question is one directed towards a political end.

4.2 Broadcaster's Response to BAI

- TV3 states that having reviewed the BAI's Code, they do not believe the advertisement was a political one. They state that the advertisement called "*The Power to Power Ourselves*" was not a call to action in any way. There were no misleading factual claims.
- The broadcaster states that the only text that accompanies the advertisement is as follows:

"Why do we import 85% of Ireland's energy needs, producing only 15% domestically, when we're surrounded by a resource that could move us towards energy independence."

- The broadcaster states that the public records indicate that the *IWEA* is a limited liability company with a registered office in Co. Kildare. Its aim is a commercial one - to promote wind as an energy source from which its members profit. The broadcaster states that the advertisement merely promotes wind energy in general terms, a commercial enterprise not prohibited under the *BAI General Commercial Communications Code*.

- The broadcaster states that the complainant refers to the fact that there are ongoing campaigns to oppose wind energy and an ongoing review of wind energy guidelines is being undertaken by the Government. They state that that may be true and TV3 has no reason to doubt that it is. The *IWEA* advertisement does not make factual assertions about setback distances/noise limits or call for a particular outcome from the Government review.

In conclusion, TV3 does not believe that the advertisement in question is a political one or one directed towards a political end. On the contrary, it is very clearly directed towards a commercial end, namely increasing the use of wind energy for commercial profit.

5. Advertiser's Response

The advertiser (IWEA) was informed of this complaint but informed the BAI they have nothing further to add beyond what the broadcaster stated.

6. 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)(d) and the *BAI General Commercial Communications Code* (Section 9: Prohibited Communications), the Committee has decided to uphold the complaint.

In this regard:

- The Committee had regard to the statutory prohibition on advertisements directed towards a '*political end*', provided for in the Broadcasting Act 2009 and reflected in Section 9 of the *BAI General Commercial Communications Code*. In reaching its decision, the Committee also took account of the content of the advert, the context in which it was broadcast and the aims and objectives of the advertiser and the advertising campaign.
- The Committee also had regard to the definition of a '*political end*' set out in the High Court Case - *Colgan vs the IRTC* - wherein a '*political end*' is not limited to adverts aired by, or on behalf of political parties, but also encompasses, *inter alia*, an advertisement which has the objective of procuring changes in the laws of this country, or countering suggested changes in those laws and/or an advertisement which has the objective of procuring a reversal of government policy or of particular decisions of governmental authorities in this country or countering suggested reversals thereof.
- In respect of the content of the advert, the Committee noted that it included content intended to promote wind as a source of energy and as an avenue to energy independence. It also included an implicit criticism of current energy policy in Ireland.

- These aspects of the advert were evident from the text included in the advert which stated:-

"Why do we import 85% of Ireland's energy needs, producing only 15% domestically, when we're surrounded by a resource that could move us towards energy independence."

- In respect of the context in which the advert was broadcast, the Committee noted that it was broadcast in the immediate run-up to a *General Election* where planning and other issues related to wind energy and to a lesser extent renewable energy, were live and contentious issues in a range of constituencies. In this context, the Committee considered that while wind energy and renewable energy are businesses, they are ones which generated current public debate in the country during the period in which the advertisement was aired.
- In respect of the advertiser and the aim of the campaign, the Committee noted that an objective of the advertiser, the *IWEA*, is to lobby government with a view to supporting the development of wind energy and renewable energy sources in Ireland.
- The Committee also noted that a stated objective of the campaign was to, amongst other things, highlight Ireland's wind and renewable energy resources as well as our dependency on energy imports. This was emphasised in the text of the advert and also via the *#eightfive15* twitter account. It was the view of the Committee that the aforementioned implicit criticism of this dependency was also allied to a call for change. A further objective of the campaign was to counteract what the advertiser described as false and misleading information about wind energy.
- Having had regard to these elements as a whole, it was the view of the Committee that, on balance, the above elements in respect of the content of the advert, the context in which it was broadcast and the objectives of the advert and the advertiser were such that the advert met the criteria as one having the objective of being directed towards a '*political end*', specifically, one intended to influence government policy in respect of energy.
- In reaching this decision, the Committee was mindful that persons and organisations have a right to free expression and to promote themselves. On the other hand, the Broadcasting Act 2009 prohibits persons and organisations from using radio and television advertising to influence government policy, even in the case of causes and issues which might be supported by some or indeed a large portion of the population. In the case of the current advert, the Committee was of the view that it had the nature and characteristics of an advert prohibited by the Broadcasting Act 2009.

Broadcasting Complaint Decisions

Complaint made by: Mr. Francis Clauson

Ref. No. 27/16

Station:

RTÉ One

Advertisement:

The Power to Power Ourselves

Date:

16th January 2016

1. Advertisement

The complaint concerns an advertising campaign entitled '*The Power to Power Ourselves*', which featured on RTÉ One in January 2016. The campaign was coordinated by the *Irish Wind Energy Association (IWEA)*.

2. Complaint Category

The complaint is submitted under the Broadcasting Act, 2009; Section 48(1)(d); the *BAI General Commercial Communications Code* (Section 9: Prohibited Communications).

3. Complaint Summary

- The complainant states that this campaign has been coordinated by the *Irish Wind Energy Association (IWEA)*. He states that it is clear that the *IWEA* are a special interest lobby group: *IWEA* is the national body representing the wind energy sector in Ireland. The complainant states that the *IWEA* is committed to promoting the use of wind energy in Ireland and beyond as an economically viable and environmentally sound alternative to conventional generation and promotes awareness and understanding of wind power as the primary renewable energy resource.
- The complainant further states that wind energy is currently a matter of significant political dispute and that campaigns are underway to oppose the further development of wind energy within the country. The complainant states that the *IWEA* are now targeting what their CEO describes as "*a concerning escalation in false and misleading information about wind energy from some quarters*". The complainant states that this dispute is also linked to the ongoing review of the wind energy guidelines being undertaken by Government; the review and proposed revision to the wind energy guidelines has at its heart a battle to set safe setback distances/noise limits between homes and wind farms, something which the *IWEA* has vehemently opposed.
- The complainant also states that, taking into account the content of the advert, the context in which the advert is broadcast, the aims and objectives of *IWEA* and of *The Power to Power Ourselves* advertising campaign, this advertisement is in contravention of the ban on political advertising.

In this regard, the complainant highlights the current political context, in particular the ongoing lobbying and campaigning in relation to the review of the wind energy guidelines and the high volume of political and planning disputes, relating to wind farms, which in many instances have created political activity.

- The complainant states that, finally, it should be noted that the *IWEA*, who are running this campaign, are supported by State and Semi-state organisations.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ wishes to apologise to the complainant for the failure to reply to his initial complaint; this was simply – and very regrettably – due to misfiling of his email of 26th January.

4.2 Broadcaster's Response to BAI

RTÉ states, in respect of section 41(3) of the Broadcasting Act 2009, that the advertisement is directed towards the commercial end of promoting wind energy and clearly not towards any political end. The commercial is transparently the product of the *Irish Wind Energy Association*, a group of “*companies active in the Irish wind industry*,” whose “*primary purpose is to promote the use of wind power in Ireland*.”

The broadcaster states that the commercial contains nothing in relation to the issues referred to by the complainant: wind energy guidelines or their review; setback distances and/or noise limits in relation to turbines; planning disputes related to wind power; or any other issue which is a matter of political debate or controversy.

The broadcaster states that the commercial promotes, generally, the contribution which wind energy could make to Ireland's energy requirement. That potential is not a matter of political debate or controversy and nowhere in the complaint does the complainant substantiate his claim that “*wind energy is currently a matter of significant political dispute*”, that the use of wind energy is *per se* a matter of such debate or that therefore its commercial promotion necessarily entails a political purpose.

5. Advertiser's Response

The advertisement was created by *Rothco* in conjunction with *IWEA*. Both were informed of the complaint. *IWEA* replied to the BAI stating that they have nothing further to add beyond what the broadcaster stated. *Rothco* acknowledged receipt of the complaint but did not respond further.

6. 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)(d) and the *BAI General Commercial Communications Code* (Section 9 - Prohibited Communications), the Committee has decided to uphold the complaint.

In this regard:

- The Committee had regard to the statutory prohibition on advertisements directed towards a '*political end*', provided for in the Broadcasting Act 2009 and reflected in Section 9 of the *BAI General Commercial Communications Code*. In reaching its decision, the Committee also took account of the content of the advert, the context in which it was broadcast and the aims and objectives of the advertiser and the advertising campaign.
- The Committee also had regard to the definition of a '*political end*' set out in the High Court Case - *Colgan vs the IRTC* - wherein a '*political end*' is not limited to adverts aired by, or on behalf of political parties, but also encompasses, *inter alia*, an advertisement which has the objective of procuring changes in the laws of this country, or countering suggested changes in those laws and/or an advertisement which has the objective of procuring a reversal of government policy or of particular decisions of governmental authorities in this country or countering suggested reversals thereof.
- In respect of the content of the advert, the Committee noted that it included content intended to promote wind as a source of energy and as an avenue to energy independence. It also included an implicit criticism of current energy policy in Ireland. These aspects of the advert were evident from the text included in the advert which stated:-

"Why do we import 85% of Ireland's energy needs, producing only 15% domestically, when we're surrounded by a resource that could move us towards energy independence."

- In respect of the context in which the advert was broadcast, the Committee noted that it was broadcast in the immediate run-up to a *General Election* where planning and other issues related to wind energy and to a lesser extent renewable energy, were live and contentious issues in a range of constituencies. In this context, the Committee considered that while wind energy and renewable energy are businesses, they are ones which generated current public debate in the country during the period in which the advertisement was aired.
- In respect of the advertiser and the aim of the campaign, the Committee noted that an objective of the advertiser, the *IWEA*, is to lobby government with a view to supporting the development of wind energy and renewable energy sources in Ireland.

- The Committee also noted that a stated objective of the campaign was to, amongst other things, highlight Ireland's wind and renewable energy resources as well as our dependency on energy imports. This was emphasised in the text of the advert and also via the *#eightfive15* twitter account. It was the view of the Committee that the aforementioned implicit criticism of this dependency was also allied to a call for change. A further objective of the campaign was to counteract what the advertiser described as false and misleading information about wind energy.
- Having had regard to these elements as a whole, it was the view of the Committee that, on balance, the above elements in respect of the content of the advert, the context in which it was broadcast and the objectives of the advert and the advertiser were such that the advert met the criteria as one having the objective of being directed towards a '*political end*', specifically, one intended to influence government policy in respect of energy.
- In reaching this decision, the Committee was mindful that persons and organisations have a right to free expression and to promote themselves. On the other hand, the Broadcasting Act 2009 prohibits persons and organisations from using radio and television advertising to influence government policy, even in the case of causes and issues which might be supported by some or indeed a large portion of the population. In the case of the current advert, the Committee was of the view that it had the nature and characteristics of an advert prohibited by the Broadcasting Act 2009.

Broadcasting Complaint Decisions

Complaint made by: Intro Matchmaking

Ref. No. 29/16

Station:

Advertisement:

Date:

Sunshine 106.8

'Two's Company'

16th February 2016

1. Advertisement

The complaint concerns an advertisement for *Two's Company* broadcast on Sunshine 106.8, which the complainant states contained false and misleading statements. The advert was for a dating agency.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(d) (*General Commercial Communications Code* – Sections 3.1.1, 3.1.3 and 3.1.5 - *Protecting the Individual and Society*).

3. Complaint Summary

The complainant states that in the advertisement for *Two's Company*, it is stated that the company is "*the only regulated matchmaking agency in Ireland*". The complainant further states that there is no official regulator of matchmaking dating or introductions agencies in Ireland.

The complainant believes that this statement could result in members of the public believing that the agency advertised is subject to government regulation. He states that the 'regulator' they refer to is the *Association of British Introduction Agencies (ABIA)*, which is based in Britain and Northern Ireland and is not registered as a company in the Republic of Ireland. The complainant is of the view that the *ABIA* is a private company to which anybody can subscribe for a fee per annum. He states that the *ABIA* has no jurisdiction in the Republic of Ireland, is not a government body and has no regulatory powers at all. As such, it is not, in his opinion, a regulator. The complainant is of the view that the advertisement is incorrectly implying that *Two's Company* are the only "regulated" introductions agency in Ireland, when in fact no regulator exists.

The complainant is of the view that the advert could lead the public to believe that the service that it provides (*Intro Matchmaking*) is less reputable or trustworthy as it implies that they are not members of this "regulator".

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Sunshine 106.8FM states that they contacted *Two's Company* to let them know that their commercial has been brought to their attention because of some statements made within the advert. The campaign is drawing to a close shortly on Sunshine 106.8.

To this end, the station has suggested to *Two's Company* that they have a look at the ad copy with a view to making changes to the content for any future commercials they run with Sunshine 106.8.

4.2 Broadcaster's Response to BAI

Sunshine 106.8FM states the station investigated the complaint and noted the following points:

- The advertiser operates a dating and introduction agency on the island of Ireland and has offices in Dublin and Belfast. The agency serves the area of Ireland - North and South.
- The advertiser is accredited by the *Association of British Introduction Agencies (ABIA)*, a not-for-profit organisation that dating agencies apply to become members of and adhere to a code of practice. The broadcaster states that it is worth noting that the *ABIA* was founded in 1981 at the instigation of the British *Office of Fair Trading*.
- The broadcaster states that a dating agency must adhere to the relevant codes of practice and operating procedures to be a member of the *ABIA*. By being a member of the *ABIA*, clients can be assured that the agency has provided a commitment to follow the code-of-practice of the *ABIA*. This should act as a point of reassurance for potential clients. The broadcaster states that being a member of the *ABIA* sets the advertisers offer apart from other competing services.
- The broadcaster states that no other dating agency (or equivalent) in Ireland (North and South) is a member of the *ABIA*.
- The claim of 'regulated' is factually correct as '*Two's Company*' is directed by external rules and principles (set by the *ABIA*).
- The broadcaster states that the advertiser promoted only one method for contact in their commercial: via their web site and that no phone number or other means of contact was provided. The broadcaster states that on visiting the web site the advertiser makes it very clear that it is a member of the *ABIA* and provides links and further information to the *ABIA* web site.
- The broadcaster states that it was satisfied that the advertiser had reasonable back-up and support for their claim of being Ireland's only regulated dating agency.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to Broadcasting Act 2009, Section 48(1)(d)(*General Commercial Communications Code* – Sections 3.1.1, 3.1.3 and 3.1.5 - *Protecting the Individual and Society*), the Committee has decided to uphold the complaint.

In this regard:

- The Committee noted that the advertiser in question abides by the requirements of the *Association of British Introduction Agencies (ABIA)* and that this requires those who are members of the association to comply with the *Code of Practice* of the *ABIA*. Moreover, the Committee noted that the association has been established for British agencies, has no role or jurisdiction in the Republic of Ireland and that there is no obligation on any dating agency to be a member of the *ABIA* or to abide by their Code of Practice.
- As such, the Committee considers the *ABIA* to be an industry body and not a regulator, as that term is commonly understood. The Committee also noted that there is no specific regulation of dating services in Ireland and in view of this fact and of the aforementioned, the Committee agreed that audiences would have been misled by that element of the advert which stated that the *Two's Company* dating agency is "*the only regulated Matchmaking agency in Ireland*".

For these reasons, the Committee came to the view that the advert was not in compliance with the Broadcasting Act 2009 or the *BAI General Commercial Communications Code* and the complaint has been upheld.

Rejected by the BAI Compliance Committee

Complaint made by: Mr. Brendan Burgess

Ref. No. 7/16

Station:

Programme:

Date:

RTÉ One

Ireland's Great Wealth Divide

21st September 2015

1. Programme

The complaint concerns a documentary named '*Ireland's Great Wealth Divide*' presented by economist Mr. David McWilliams and broadcast on 21st September 2015. The item complained of refers to key points around wealth accumulation during the recession and recovery which the complainant believes were misleading.

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 19, 23 and 24).

3. Complaint Summary

The complainant believes that the premise of the programme, which was a documentary by the economist Mr. David McWilliams, was not supported by evidence. He also believes that the key points were misleading and infringed several rules under the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

The following is a summary of the points made by the complainant:

- i) The complainant states that the presenter failed to point out that even in a totally equal society where everyone had the same income, the bottom 20% would own less than 1% of the wealth, because most people under 30 have not yet accumulated any wealth, whereas older people who have paid off their mortgage and have built up big pension funds and other savings, own a very big percentage of the wealth.
- ii) The complainant states that no evidence to support the main contention that the rich are getting richer was provided in the programme. He states that the only figure used was that the wealth of the *Top 100* increased by €12b in one year. The complainant also states that there was no context for this position. He states that while the programme showed visuals of *The Sunday Times* newspaper, the figures used came from *The Sunday Independent* newspaper. The complainant states that €7.5 billion of that increase was accounted for by Mr. Pallonji Mistry and Ms. Hilary Weston, most of whose wealth was made abroad and remains abroad.

- iii) The complainant states that it was meaningless to compare the growth in wealth of the rich with the growth in incomes of the Irish people. He wonders, why not compare the growth in the wealth of the rich with the growth in wealth generally? He states that family homes account for a huge proportion of wealth in this country, and all home owners have benefited from rising prices over the past year – not just the super-rich.
- iv) The complainant states that if the presenter had consulted *The Sunday Independent Rich List 2008*, he would have found plenty of anecdotes of how many of the super-rich have been wiped out. For example, he states that the wealth of a number of Irish people (including Mr. Seán Quinn and Mr. Tony O'Reilly) have declined significantly.
- v) The complainant states that the presenter ignored what he states is the only data available - those from the *Central Statistics Office* (CSO) and the *Central Bank*, and that this data flatly contradicts the assertions in the programme.
- vi) The complainant states that comparing the growth in salaries with the growth in the share prices of "*the top 10 multinationals located here*" is not a meaningful comparison and says nothing at all about wealth inequality in Ireland.
- vii) The complainant states that the super-rich have no special access to deals to make them wealthy. The example given, *Hibernian REIT*, is a publicly quoted company so anyone can buy shares in it. He states that from looking at the *Top 100 Rich List*, it seems to him that exploiting Ireland's recession accounts for very little of their increase in wealth.
- viii) The complainant cites a comment in the programme - "*All countries have a choice. Do we tax income or do we tax capital e.g. corporation tax? We have made a decision to tax income and not capital. Take for example, American corporations based here in Ireland.*"

The complainant states that Corporation Tax is not a tax on capital – it is a tax on corporate income. He states that raising the tax on American corporations would have absolutely no impact on the distribution of wealth in Ireland. He states that, as far as he can tell, none of the *Top 100* has made their money through investing in *Google*, *Microsoft* or *Apple*.

He states that some might have shares in them, but so also do many Irish people both directly and via their pension funds.

- ix) The complainant states that the programme failed to mention potential solutions which would reduce wealth inequality e.g. the introduction of a wealth tax or increases in Local Property Tax, Capital Gains Tax, Inheritance Tax, Gift Tax and Income Taxes.

- x) The complainant states that during the programme, Mr. Tom Lyons said that the super-rich got debt write downs and restructurings while the small person struggling with their mortgage haven't got anything. The complainant states that this is a complicated area, but the super-rich did not get debt write downs. Only insolvent people and companies got debt write downs – not the super-rich. And over 100,000 ordinary mortgage holders have had their mortgages restructured by their lender.
- xi) The complainant states that only a brief reference was made to income inequality. This is as important a topic as wealth inequality and is inextricably linked to it.

The complainant also states that the fact that this was an "authored" piece was not signalled clearly at the outset of programme. He notes that the continuity announcer did say "*David McWilliams' authored journey explores Ireland's great wealth divide*". However, he states that in his opinion this did not meet the standard set out in the BAI's rules that authored pieces "*shall be clearly signalled*". He also states that at the end of the programme, there was a graphic saying "RTE Factual", which he believes would indicate that it was a factual piece. The complainant states that the programme was presented as a factual programme presenting what were supposed to be facts. He states that if it were an opinion style programme, one would expect the presenter to make it clear that he was presenting opinions. However, on not one occasion, did he say: "*In my opinion...*" In view of this, the complainant does not believe that anyone who watched the programme would have thought that McWilliams was expressing personal opinions.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Point 1. Regarding the issue of wealth accumulation over time, the broadcaster states that the presenter, Mr. McWilliams, made a documentary on precisely this point of inter-generational wealth unfairness in 2007 called, "*The Generation Game*". One of the functions of an economist is to analyse and interpret what is actually happening right now and to predict future trends based on knowledge, experience and theoretical soundness. The fundamental issue of wealth inequality remains a global issue that is the basis of countless discussion papers and is regularly raised by organisations such as *Oxfam* and indeed the *OECD* which sees this issue as having reached a tipping point and a fundamental problems for societies everywhere.

Point 2. Regarding the contention that the rich are getting richer: the broadcaster states that study and after study – all used as resource material in the documentary - reveal that the rich are indeed getting richer and have been doing so over time. In Ireland the two studies referenced in the programme, the *TASC* report and the *Credit Suisse* report, which is based on *Central Bank* data, support this point. The latest *Central Bank* data on this, compares the division of wealth in the society to the past generation.

Point 3: Regarding the growth in wealth. The broadcaster states that houses were disregarded because of the effect of negative equity, which would make the figures starker than they already are. Comparing the top 20% and 5% with middle cohort is exactly what RTÉ did in the documentary. Comparisons were made of wealth across various categories. Regarding house prices moving up together, this contention is not accurate as not all house prices have raised together in all areas.

Point 4: Regarding the super-wealthy who have lost out. The broadcaster states that the fact that certain over-leveraged individuals, whose assets were located in industries undergoing massive disruptive change and as a result lost out does not suggest that overall the wealthy are worse off. What applies to the individual does not always pertain for the collective. This conflates the individual for the collective which all data points to a growing total wealth and divide with the poor.

Point 5: Regarding *Central Bank* data. The broadcaster states that the *Credit Suisse* data is based on balance sheets and *Central Bank* data amalgamated for comparative purposes. On the critical issue of how much the top 20% own, which is what is shown in the documentary, the difference between the international and the domestic data is 0.02%.

Point 6: Comparing the growth in salaries with the growth in the share prices. The broadcaster states that it is argued here that it is meaningful because it reveals that if you depend on wages for your income you would be considerably less well off than if you had depended on dividends for your income. RTÉ took the multinationals that operate here as a measure as it seems logical rather than use companies that are not based here.

Point 7: Regarding corporate tax. The broadcaster states that corporate income is that proportion of the return on capital and labour that goes to capital. The point is that the owners of capital are doing very well and the owners of labour are not. Raising the tax on American corporations would have an impact on the distribution of wealth in Ireland if our government chose to distribute it accordingly. The point made in the documentary was that successive governments have chosen not to do this.

Point 8: Regarding solutions. The broadcaster states that given the time restrictions an editorial decision was made to focus on the issue of inequality and to suggest solutions would have required too long a time to address in one 52-minute programme.

Point 9: Regarding write-downs. The broadcaster states that the overall pattern and the impression people have, is that given the increasing divide in wealth and access, that the burden overall has fallen disproportionality on the individual tax payer rather than the top 1%.

Point 10: Regarding income inequalities. The broadcaster states that the programme makes it explicit that Ireland does well on income inequality but badly on wealth inequality. This is treated in script and in graphics.

Point 11: Regarding it being an authored piece. The broadcaster states that there was no ambiguity that this programme was an authored documentary. Mr. David McWilliams is a well-known commentator and newspaper columnist where his opinions are regularly shared with the public.

RTÉ states that there was no breach of Rule 4.19 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. Similarly, there was no breach of Rule 4.23 of the Code. In accordance with Rule 4.24, it was signalled with complete clarity that the programme was an authored documentary, a commonplace of broadcasting with whose format audiences are completely familiar.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response of the *Commissioning Editor Factual Programmes TV* (above) to Mr. Burgess' initial complaint and the response of the *Controller RTÉ One* to Mr. Burgess' request for an internal review of his complaint.

RTÉ further states the following:

- *Rules 4.19 and 4.23*

RTÉ states that that, while the programme presented a point of view, it did not do so in a way which was misleading and did not misrepresent facts or encourage misunderstanding. The broadcaster states that this is evident from viewing the programme.

The broadcaster states that the programme offered an analysis designed to stimulate public debate, for example in the panel and audience discussion on the related broadcast *Claire Byrne Live* in which Dáil deputies Aodhan O' Riordan and Paul Murphy debated the topic. RTÉ claim it was the impartial, objective professional view of an economist with whose analysis the complainant disagrees. It was fair to all interests concerned.

- *Rule 4.24*

The broadcaster states that the 'authored' nature of the programme was explicitly and clearly signalled to the audience at the outset, through the continuity voiceover which said:

Now on RTÉ One, David McWilliams' authored journey exploring Ireland's great wealth divide, with follow-up discussion on Claire Byrne Live at twenty-five to eleven.

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 *BAI Code of Fairness Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 19, 23 and 24), the Committee has decided to reject the complaint.

In this regard:

- The Committee noted that broadcasters have the right to choose the editorial focus of a programme and that a particular subject may be tackled from a wide range of perspectives. In this context, the role of the Committee when considering a complaint such as this one is to determine whether the manner in which the topic is treated is fair, objective or impartial.
- In the case of the programme that is the subject of the complaint, the Committee noted that the editorial focus was clear from the outset, as was the approach to be taken. Specifically, prior to the commencement of the programme, the broadcaster identified that it was an authored piece presented by Mr. David McWilliams which would deal with the topic of Ireland's wealth divide. In addition, the presenter set out the editorial focus at the beginning of the programme, namely, that the programme would focus on his view that a small minority became wealthier during the recent recession. As such, the Committee was satisfied that audiences would have been clear about the approach of the programme and the editorial focus to be taken. Audiences would also have been familiar with the style and approach of the presenter and would have borne this in mind when watching.
- The Committee also noted that the topic under consideration is complex and that in the context of a 1-hour television programme, to be viewed by a general, non-specialist audience, it is legitimate to make editorial choices which will involve omitting information and/or simplifying some of the complexities involved. Such choices are not automatically evidence of a lack of fairness, objectivity and impartiality.
- The Committee noted that the complainant set out what he considered to be flaws and omissions in the programme content which he contends results in a programme that lacked fairness, objectivity and impartiality.

Having reviewed the programme, it was the Committee's view that the programme included a range of contestable facts that were open to differing reasonable interpretations and that this was evident from the programme itself, the response by the broadcaster to the complaint and from the conclusions that the complainant believes should have been reached. In this context, the Committee was of the view that the interpretation and analysis provided during the programme was reasonable.

- In view of the above, the Committee did not agree that the programme lacked fairness, objectivity and impartiality in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Mr. Martin Hawkes

Ref. No. 13/16

Station:

RTÉ One

Programme:

Prime Time – What will Climate
Change Cost Ireland?

Date:

3rd December 2015

1. Programme

The complaint concerns *Prime Time – What will Climate Change Cost Ireland?* Prime Time is a current affairs programme broadcast each Tuesday and Thursday evening from 9.35pm. The programme dealt with the issue of climate change, including the implications for Irish agriculture.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 2, 3, 4, 5 and 6).

3. Complaint Summary

The complainant states that in his opinion this edition of *Prime Time* violated the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, as follows:

- **Fairness & Objectivity:** He states that the selection of a known climate change contrarian and retired meteorologist, Professor Ray Bates, on the panel was not a fair or objective representation of the science of climate change. The complainant states that, notwithstanding his protestation to the contrary, Professor Bates' views do not reflect the consensus science of the *United Nations Intergovernmental Panel for Climate Change* (IPCC). The complainant states that RTÉ *Prime Time* would have been aware of Professor Bates' contrarian views on climate – indeed the presenter acknowledged his minority view herself – but nonetheless allowed the 'scientific' view on the subject to be voiced by someone who is outside the global consensus on the issue. The complainant states that to allow the scientific underpinning on climate to be represented by someone they knew to hold a view that is contrary to the scientific consensus on this topic represents a significant failure of fairness by RTÉ.

The complainant states that, as a minimum, balance/fairness required someone from the scientific consensus to be present. The complainant states that other panellists, though generally knowledgeable, were not equipped to challenge the scientific arguments presented by Professor Bates in sufficient detail.

As to objectivity, the complainant states that an analysis of what Professor Bates generally says, would have demonstrated the egregious nature of claims such as *'climate models are overestimating warming by a factor of three'*.

- **Accuracy:** The complainant states that the programme's founding and unqualified premise, that mitigating greenhouse gas emissions will cost Ireland was inaccurate - viz *'It's clear that the cost of acting on climate change will be very steep, and it will cost the agriculture community the most.'* The complainant states that the data showing that a transition to a low carbon society can save Ireland money and create jobs in the long run was elided in this framing. The complainant states that the rationale for including a meteorologist on an episode about cost implications of climate change is unclear viz. *"Ray Bates...this is your area of expertise...what can we afford?"* The complainant states, in his opinion, Professor Bates has no credentials or any related expertise in agriculture or agricultural economics, but was chosen by RTÉ *Prime Time* to present an argument nevertheless. The complainant states that Professor Bates' many assertions about the over-sensitivity of climate models and the absence of a planetary emergency likewise underline that, in giving Professor Bates a platform, RTÉ was failing in its duty to portray the issue accurately.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states that *Prime Time* always ensures that the scientific or expert consensus on any issue is made clear to their viewers and will also attempt to include voices from outside that consensus, and they will act independently in making these decisions, as do other serious media outlets.

The broadcaster states that Professor Bates made it quite clear on their programme that he did accept that man-made climate change was happening, and furthermore that it was *"a very serious threat and justifies action"* to cut back on greenhouse gas emissions. However, based on his examination of the IPCC reports, and his expertise in climate sensitivity, he does not believe that it constitutes *"a planetary emergency"*. Furthermore, he is of the view that Ireland should defend its agriculture as a special case.

The broadcaster states that the audience were not left in any doubt that Professor Bates' views do not reflect the scientific consensus on climate change. The Presenter put it to him that he was *"going against the grain of the vast majority..."*, and at another point that he was *"in a tiny minority of a tiny minority"*. In expressing this view on the *Prime Time* panel, Professor Bates, was, in fact, in a minority of one, since the representative of the Government did not support him, and said so.

The broadcaster further states that the complainant is quite right that there is a potential for substantial numbers of jobs to be created in the area of renewable energy and renewable technologies.

The broadcaster states that, in fact, Mr. Eamon Ryan, the Leader of *The Green Party*, suggested that there were opportunities in combating climate change on their programme. However, whether Ireland will succeed in attracting many of those jobs is a matter of opinion and other experts have suggested that we are unlikely to do so.

RTÉ and *Prime Time* would have been delighted to have had a scientist who was very much part of the consensus view on climate change on their programme to debate the scientific issues with Professor Bates, they asked four such scientists to do just that, but, unfortunately, none were willing to do so. RTÉ does not feel they can be fairly criticised for failing to include in their debate people who specifically declined invitations to take part in it.

Notwithstanding this, the broadcaster states that it is satisfied that lifelong campaigners on this issue, such as *Green Party* Leader, Mr. Eamon Ryan and Mr. Oisín Coghlan of *Friends of the Earth*, demonstrated that they were quite capable of debating these issues with Professor Bates (indeed the suggestion made, that Professor Bates was 'cherry-picking' from the IPCC report, was made on the programme) and ensured that the consensus view on climate change was very well-represented.

RTÉ is satisfied as to Professor Bates' expertise in climate sensitivity. There was no dispute in relation to agricultural economics on the programme. All sides in the debate recognised that the planned expansion of our dairying industry in the wake of the ending of the milk quota system would conflict with attempts to reduce our national emissions. Professor Bates was arguing that, as a matter of principle, Ireland should argue for special treatment of its dairy sector.

4.2 Broadcaster's Response to BAI

RTÉ states, the participants in the studio panel discussion were:

- Mr. Kevin Humphreys T.D., *Minister of State for Employment, Community & Social Support*,
- Mr. Eamon Ryan, Leader of *The Green Party*,
- Professor Ray Bates, *Adjunct Professor Meteorological and Climate Centre UCD*;
- Mr. Oisín Coghlan, *Friends of the Earth*.

The broadcaster states that it should be noted that this discussion was not on the existence or otherwise of climate change but on the extent of the measures required to combat the phenomenon, whose certainty was not denied by any panellist, including Professor Bates.

The broadcaster states that the viewing of the broadcast will confirm not only that Professor Bates did not question the reality of climate change or the human agency in its occurrence but that his view on the rate and extent of change and the measures therefore required was challenged rigorously by two of the other panellists and impartially by the presenter.

RTÉ states that the broadcast – video report and studio discussion – was fair, impartial and objective in structure and presentation. All participants were presented with transparency; the complaint alleges otherwise but presents absolutely no evidence to support its allegation.

The broadcaster states that the complaint alleges that there were inaccuracies broadcast in the programme but offers no evidence whatsoever in support of that claim. All participants were dealt with fairly and with their informed consent.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to Broadcasting Act 2009, Section (48(1)(a) (fairness, objectivity and impartiality in news and current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 2, 3, 4, 5 and 6), the Members have decided to reject the complaint.

In this regard:

- Members considered the programme as a whole, including the pre-recorded segment and the studio debate, and found it to be fair, objective and impartial.

In reaching this view, the Committee noted that the programme set out to examine the impact of global agreements on climate change on Ireland's agricultural sector in the coming years. It found the programme included a broad range of contributors who discussed the need to find a way to transition to a lower carbon economy and how that might be achieved generally, but also in the context of the agricultural sector. The Committee was of the view that the programme would have left audiences with a clear understanding of the scientific and political consensus in respect of climate change, that it is occurring and is a grave and serious threat to society.

- Members also noted that the broadcaster has the editorial freedom to choose the contributors to a programme. In this case, the programme panel included a scientist, two politicians and a campaigner. Each contributor had a different but relevant association with the topic under discussion given that they had a role which interacted with the question of climate change.

While noting that Professor Bates was the only scientist on the panel, the context for the discussion was the then ongoing climate change discussions in Paris and touched on issues other than science.

In that context, the programme discussion was not limited to, or focused, on the scientific reality of climate change but was rather one that dealt with the political, economic and social issues arising from the need to mitigate against climate change, including its impact on the agricultural sector.

- From its review of the programme, the Committee found that it was clear that the views of Professor Bates were those held by a minority of scientists. This was evident from the presenter's description of them as such and it was also evident from the fact that the three other panellists either disagreed with his scientific conclusions and/or with his view that climate change, while a reality, was not a planetary emergency.
- The Committee was of the view that the issue of climate sensitivity was of editorial relevance to the programme topic featured and also that due regard must be had to the right to free expression.

While some viewers may have objected to the airing of Professor Bates' views and may hold the opinion that giving airtime to these views is not in the public interest, the Committee concluded that in the context of the programme as a whole, and having had to regard to how Professor Bates' views were treated by the presenter and other contributors, the programme did not result in a lack of fairness, objectivity and impartiality and complied with the requirements of Rules 4.1 and 4.2 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

- In addition, the Committee found no basis to conclude that contributors were not treated fairly or were not aware in advance of the programme or the subject matter and nature of their contribution. For this reason, the Committee considered the programme compliant with Rules 4.3 and 4.4 of the BAI's news and current affairs code. Rules 4.5 and 4.6, cited by the complainant, were not considered relevant to the programme.
- In view of the above, the Committee did not agree that the programme infringed the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: An Taisce

Ref No.15/16

Station:
RTÉ 1

Programme:
Prime Time

Date:
3rd December 2015

1. Programme

The complaint concerns *Prime Time* broadcast on RTÉ One at 9.30pm. This is an evening current affairs programme broadcast twice weekly. The complaint refers to a panel discussion on the effects of climate change on Ireland, in particular, the potential impacts on Irish agriculture.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 7, 8, 17, 19 and 22).

3 Complaint Summary

The complainant states that RTÉ failed to present climate science fairly, objectively and impartially in the panel discussion on climate change that took place as part of this *Prime Time* programme. The complainant states that this failure undermines the objective context for effective public understanding and debate on crucial national climate policy decisions.

The complainant states that the programme:

- Failed to reflect the decision of some climate change specialists to decline invitations to appear on the programme and their reasons for declining;
- Introduced during the programme a contributor, whom the complainant states was a non-expert guest, as an expert and accorded this guest expert status;
- Inadequately questioned the personal opinion of this guest, which was compounded by what they state was the presenter's lack of knowledge of basic climate science;
- Misled audiences by emphasising short term and long term costs of mitigating climate change while also downplaying the potential benefits of action and the long term costs of inaction;
- The complainant states that as a result, the programme was contrary to Rules 4.7, 4.8, 4.17, 4.19 and 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

Fairness - Rule 7 and 8

An Taisce states that it is aware of at least two academic specialists who were invited to participate in the panel for this programme, but who declined. The complainant states that it is their understanding that the specialists expressly cited concerns that the presence on the panel of Professor Ray Bates would very likely result in a “*false balance*”. Namely, his participation would result in the issue of climate change being presented as requiring more balance between opposing viewpoints than the evidence actually supported as being necessary. The complainant states that this “*false balance*” undermines public understanding of climate change and promotes an incorrect perception of doubt around extremely strongly established results from state of the art climate science.

The complainant states that, contrary to the BAI rules, *Prime Time* did not make any reference to the fact that these other specialists had been invited to participate (but had refused) or to communicate the reasons given by these individuals for declining to participate. The complainant states that the failure to do so was unfair to the absent parties and failed to highlight to viewers the concerns raised over potential misrepresentation of core scientific findings; misrepresentations which they state did arise in the programme discussion as it unfolded. The complainants states that this information for the audience was required to ensure fairness, objectivity and impartiality.

Objectivity and Impartiality - Rule 17, 19 and 22

The complainant states that the programme's topic was the possible economic effect on Irish agriculture of reducing national greenhouse gas emissions. The complainant states that in the panel discussion, *Prime Time* introduced retired *UCD* Professor Ray Bates stating:

“Ray Bates, this is your area of expertise. What’s your position in terms of what can we afford as a country? Can we afford for our agribusiness and for our farmers to minimise and limit their production for the sake of combating climate change?”

The complainant states that this area of climate policy – how mitigation action might affect the economics of agriculture - is not Professor Bates' field of expertise. They state that his academic career focused on numerical modelling of the physics of weather and to a much lesser extent on modelling the physics of climate. For this reason, the complainant queried whether audiences were fairly served by the inclusion of Professor Bates' and his introduction as an expert on the topic under discussion.

The complainant states that Professor Bates was then allowed by the presenter to divert from the programme topic into a discussion of 'climate sensitivity', which they state was not the topic under discussion and which, being climate science, neither the presenter nor other panellists were qualified to question him on.

The complainant states that it is obvious from the programme discussion that *Prime Time* was well aware that Professor Bates' views are not consistent with the mainstream of climate science. The complainant states that, knowing that Professor Bates' views were outlier views, the programme should have ensured accurate reporting of the mainstream, consensus, understanding of all presented climate science. Instead, the programme failed to ensure these essential balances for objectivity and impartiality.

The complainant states that Professor Bates was also allowed, without challenge, to state that he supported, and was reporting, the consensus scientific findings of the *UN Intergovernmental Panel on Climate Change (IPCC)* when, as a matter of objective fact, he has publicly disagreed with them. The complainant states that Professor Bates is entitled to his personal views, even if they are outside much of the strong consensus among climate scientists as reflected in the *IPCC's AR5* assessment.

The complainant states that RTÉ, when knowingly choosing to give air time to advocates of such outlier views, has a duty to ensure against a bias towards misinformation and misrepresentation, especially if the consensus science is inadequately reported as a result, which they state was the case in this programme. The complainant cites, as an example, comments by Professor Bates that climate change is not a planetary emergency, but rather a long-term threat. The complainant states that the best of currently available scientific understanding indicates that it is far more likely that climate change is both a current and immediate planetary emergency *and* a catastrophic long-term threat.

The complainant states that even the simplest level of understanding of the *IPCC* findings would have been useful and relevant to the editor and presenter of this programme and would appear to be a minimal required to ensure meeting the applicable standards for fairness, objectivity and impartiality in such a discussion. The complainant states that such an improved acquaintance with the headline statements of *IPCC*-assessed climate science would have enabled the "*forceful questioning*" of the statements made by Professor Bates, as called for by BAI Rule 22. They state that such questioning was evidently needed to balance contributor opinions with accuracy and objectivity.

The complainant states that discussing climate change presents great difficulty for news and current affairs programming because its causes and effects are highly dispersed geographically and through time: emissions happen locally but affect the entire world. The complainant states that news and current affairs programmes are biased toward discussing immediate and short-term events, such as the immediate, local, costs of acting to limit climate change, and so are biased against assessing the longer-term and larger scale costs of not acting. In the case of the *Prime Time* programme, the complainant states that this was evident from how the programme was framed as a debate between defending the short-term interest of expanding Irish agri-food business as against supposedly costly emissions reduction action.

The complainant states that this approach prejudiced viewers' thinking towards considering mitigation action as costly to Ireland, and away from considering the likely extremely costly climate impacts from continued high emissions that are likely to hit all parts of the Irish economy in the future, including major probable impacts and cost on Irish agriculture itself. The complainant states that this approach did not serve the interests of the audience.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ state that in relation to BAI Rule 7, it seems clear that the rule refers to people or organisations that are the subject of a programme, that is against whom some charge or allegation is being made, and that, in the normal course of events, they would be expected to take part in the programme to answer that charge.

The broadcaster states that it could not practically refer to campaigners, experts and commentators on an issue, since any programme examining issues like this would approach a very wide range of people and organisations.

The broadcaster states that very many of those people would decline to participate for any number of reasons, including simple practical ones, as well disagreement over the make-up of the panel, the question being posed etc., or the debate simply not suiting the overall strategy of the organisation or person approached. The broadcaster states that it would be neither desirable nor practical to detail all these reasons, and it might imply that a campaigner, expert or commentator was in some sense wrong for choosing not to participate.

RTÉ state that the complainant is quite right that a number of scientists associated with *An Taisce* declined to participate in our discussion on the basis that Professor Ray Bates was also to be part of that debate. The broadcaster states that *Prime Time* is regularly confronted with guests from any number of spheres, who complain about the other guest or guests we may have already invited onto the programme and suggest that they will decline to participate if that other guest or guests is to be part of the discussion. The broadcaster states that it would, of course, be grossly unfair and impractical to allow guests to dictate who might be invited onto the programme with them, once we are satisfied that the original invitee has a worthwhile contribution to make. RTÉ maintain that their general policy in relation to this issue is clear: invitations are issued and if someone declines on the basis that they object to another participant on the panel, RTÉ seeks to replace the person who has declined with someone else who holds a similar view but is prepared to take part in the debate.

RTÉ state that it is quite satisfied that lifelong campaigners on climate change, Mr. Eamon Ryan, former Government Minister and Leader of *The Green Party*, and Mr. Oisín Coghlan of *Friends of the Earth* proved themselves more than capable of debating with Professor Bates, and, of course, had the considerable advantage over him of having a wealth of television experience.

In relation to BAI Rules 17 & 18, RTÉ believes that both the filmed report and the studio discussion were presented with due accuracy and were in no way misleading. The broadcaster states that the complainant also cites BAI Rule 22. In this regard, RTÉ state that its invitation to Professor Ray Bates to participate in the programme was very much in accordance with both the spirit and the letter of that rule, in that it ensured that a variety of views on the subject were heard, including both those in accord with the consensus of campaigners and climate change scientists, and those who might be outside it.

The broadcaster states that the complainant mentions the introduction to Professor Bates. RTÉ believes that it was quite clear that the presenter was saying that climate sensitivity was Professor Bates' area of expertise and then went on to ask what he felt we could afford as a country. The broadcaster states that the presenter was not suggesting he was an agricultural economist, and since he went into some detail as to his precise area of research and expertise, nobody could have been left in any doubt as to what that was. Also, there was no significant disagreement on the panel over the question of whether or not the planned expansion of the dairy industry was in conflict with our climate change objectives - all sides (with the possible exception of Minister Humphreys) agreed that it was.

RTÉ has researched Professor Bates' area of expertise, and is quite satisfied that any objective person would agree that he is eminently qualified to comment on this area, including being Chairman of the *Climate Change Sciences Committee* of the *Royal Irish Academy* from 2009 - 2013. It is also worth mentioning that the *Oireachtas Committee on the Environment* seemed to have no doubt as to his expertise and thought it worthwhile to invite him before it, and to hear his views.

The broadcaster states that, at the heart of the broader debate in relation to climate change (and at the core of much of the debate in Paris) is the question of how much short-term costs countries are prepared to bear in order to try to achieve the longer term benefit of limiting climate change. The broadcaster states that in order to make those judgments, it is reasonable that policy-makers (and voters) should ask, '*how quickly is climate change progressing, how urgent is this problem?*'

The broadcaster states that it is clear that the complainant disagrees with Professor Bates in the most profound way, but that doesn't in itself represent unfairness. The question is whether views which were broadly representative of the complainant's were included on the programme. Any objective viewing of the item as a whole would conclude that not only were those views heard, they were the overwhelmingly dominant view on the item.

The broadcaster states that Professor Bates rejects (and did so on-air) that he was expressing a personal view. In relation to what is long-term, and what is short-term, that is a matter of opinion. The IPCC generally bases its predictions of future warming on what is expected by the year 2100. Generally, human beings might consider that a long-term problem, but in the context of the history of the planet it could be seen as a very immediate one. Professor Bates is quite entitled to take the former view.

The broadcaster states that the complainant quotes the *IPCC* as saying that limiting climate change "*will require sustained and substantial reductions in greenhouse gas emissions*". It is quite clear from Professor Bates' contributions that he agrees with this statement, so it's hard to see what further "*forceful questioning*" would have achieved. The broadcaster states that the entire editorial team on this item were very familiar with the arguments and with the *IPCC* reports, and the presenter's clear placing of Professor Bates' views outside the consensus on this issue demonstrated that this was the case.

The broadcaster states that *Prime Time* chose to do this item, and to do it in this way, because viewers tend to view climate change as a distant problem, both in time and geographically. The question of whether or not the planned expansion of our dairy industry goes ahead, and the fact that that expansion would appear to be in direct conflict with our climate change targets, makes it a much more immediate issue. The broadcaster states that, in fact, the way RTÉ posed this question very clearly pointed to the fact that policy-makers have great difficulty in acting where they may be long-term benefits, but considerable short-term costs. The broadcaster states that the question of whether there may be economic opportunities for Ireland in combating climate change is a matter of opinion, and experts have expressed differing opinions on this question on *Prime Time* in the past, but *Green Party* Leader, Mr. Eamon Ryan, made the point that there were such opportunities.

RTÉ state that the question of '*false balance*' is an interesting one, but one which needs to be treated with great caution, since its use leaves it open to any dominant position to claim that even hearing any other view represents '*false balance*'. In any case, the issue of '*false balance*' did not in any way arise in this programme since the consensus view on climate change dominated throughout. The broadcaster states that, in fact, *Prime Time* clearly gave '*due weight*' to the scientific consensus, while ensuring that a view from outside that consensus was heard, and placed in its proper context.

4.2 Broadcaster's Response to BAI

RTÉ refers to the above response from the Editor of *Prime Time* to the initial complaint to the broadcaster.

The broadcaster states that it notes that no complaint is made in respect of the video report which prefaced the studio discussion. RTÉ requests that in considering the complaint, as is usual, the entire broadcast be taken into account, both report and discussion. The participants in the studio panel discussion were:

- Mr. Kevin Humphreys T.D., *Minister of State for Employment, Community & Social Support*
- Mr. Eamon Ryan, *Leader of The Green Party*
- Mr. Ray Bates, *Adjunct Professor Meteorological and Climate Centre UCD*
- Mr. Oisín Coghlan, *Friends of the Earth*

RTÉ believe that it should be noted that this discussion was not on the existence or otherwise of climate change but on the extent and nature of the measures required to combat the phenomenon, whose certainty was not denied by any panellist, including Professor Bates.

As a matter of broadcast fact, Professor Bates stated: *"I support efforts to cut back greenhouse gas emissions."* In response to Mr Coghlan's statement that:

"The IPCC concluded that we now have the same degree of certainty that human activity is causing climate change as we do that smoking causes cancer." Professor Bates stated: *"I completely agree with you."*

The broadcaster states that, later in the programme, Professor Bates underlined his agreement that climate change is due to human agency, stating:

"I accept the IPCC finding, the central finding of the IPCC report in its 2013 report was: it is extremely likely that more than half of the observed warming since 1950 is due to anthropogenic causes. I completely and absolutely support that statement. I do not disagree with the Intergovernmental Panel for Climate Change but I disagree with people who say that we have to take action now on the basis that this is an absolute planetary emergency."

The broadcaster states that towards the end of the discussion, in response to Minister Humphreys' statement that: *"The whole panel accepts that climate change is happening."* Professor Bates stated: *"Of course."*

RTÉ maintain that viewing of the broadcast will confirm not only that Professor Bates did not question the reality of climate change or the human agency in its occurrence but that his view on the rate and extent of change and the measures therefore required was challenged rigorously by two of the other panellists and impartially by the presenter.

RTÉ claim that the broadcast – video report and studio discussion – was fair, impartial and objective in structure and presentation.

In respect of Rule 4.7, the broadcaster states that it could not be deemed unfair of the broadcaster not to have reported the refusal of a number of scientists to appear on the programme. The broadcaster states that views other than those of Professor Bates were put forward, very strongly, by two panellists, making it unnecessary for fairness to list those who had declined to do so or to take the legal and editorial risks which would have been involved in relaying that their refusal was to debate with Professor Bates. It may be noted that, as indicated by the Editor of *Prime Time*, such reasons are not infrequently given for refusal, they are never, in the context of the risks mentioned, cited as such.

In respect of Rule 4.8, the broadcaster states that the views of those who had refused to participate were reflected, very strongly, by Mr. Ryan and Mr. Coughlan. The broadcaster states that it does appear possible that, while accepting the provision of Rule 4.8 that a refusal to participate will not preclude the broadcast of content, *An Taisce* does support a strategy of using a refusal to participate in combination with the Broadcasting Act 2009 complaints procedures to prevent debate – not on the existence or not of climate change, not on whether or not climate change is due to human agency but on the nature of the measures required by the rate of change.

In respect of Rule 4.17, the broadcast, RTÉ state that both video report and discussion, was presented with due accuracy. Statements made by Professor Bates have been rebutted in the complaint. Similarly, they were rebutted on air by Mr. Ryan and Mr. Coughlan.

In respect of Rule 4.22, the broadcaster states that the audience had access to a variety of views, including of those who had chosen not to participate, expressed by Mr. Ryan and Mr. Coughlan; and no views whatsoever on the topic were expressed by the presenter.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to Broadcasting Act 2009, Section (48(1)(a) (fairness, objectivity and impartiality in news and current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Section 4: Rules 7, 8, 17, 19 and 22), the Committee has decided to reject the complaint.

In this regard: -

- The Committee considered the programme as a whole, including the pre-recorded segment and the studio debate, and found it to be fair, objective and impartial. In reaching this view, the Committee noted that the programme set out to examine the impact of global agreements on climate change on Ireland's agricultural sector in the coming years. It found the programme included a broad range of contributors who discussed the need to find a way to transition to a lower carbon economy and how that might be achieved generally, but also in the context of the agricultural sector. The Committee was of the view that the programme would have left audiences with a clear understanding of the scientific and political consensus in respect of climate change, that it is occurring and is a grave and serious threat to society.
- Members also noted that the broadcaster has the editorial freedom to choose the contributors to a programme. In this case, the programme panel included a scientist, two politicians and a campaigner. Each contributor had a different but relevant association with the topic under discussion given that they had a role which interacted with the question of climate change.

While noting that Professor Bates was the only scientist on the panel, the context for the discussion was the then ongoing climate change discussions in Paris and touched on issues other than science.

In that context, the programme discussion was not limited to, or focused on, the scientific reality of climate change but was rather one that dealt with the political, economic and social issues arising from the need to mitigate against climate change, including its impact on the agricultural sector.

In terms of information to audiences about contributors, the BAI's rules state that a decision not to participate in a programme should be highlighted to audiences where '*...not to do so could be deemed unfair.*' In practical terms, such references are made during a programme where the person or organisation who has chosen not to participate is directly relevant to the topic under discussion and their participation would, in the normal course of events, be expected so as to ensure that their opinion is voiced. For example, this might be where the person or organisation are the subject of criticism.

- In the case of the current programme, contributors said to have declined to participate in the programme were not participants who were directly relevant to the discussion but were rather one or a number of individuals who could have ably contributed but chose not to. They were not referenced in the programme and their absence or reference to their absence was therefore not deemed by the Committee as being something that audiences should have been informed about. For these reasons, the Committee was of the view that no issues arose with the programme in the context of Rules 4.7 and 4.8 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.
- The Committee was also of the view that the issue of climate sensitivity was of editorial relevance to the programme topic featured and also that due regard must be had to the right to free expression.

From its review of the programme, the Committee found that it was clear that the views of Professor Bates were those held by a minority of scientists. This was evident from the presenter's description of them as such and it was also evident from the fact that the three other panellists either disagreed with his scientific conclusions and/or with his view that climate change, while a reality, was not a planetary emergency. In view of this, the Committee found that no issues arose in respect of compliance with Rules 4.17 or 4.19.

- While some viewers may have objected to the airing of Professor Bates views and may hold the view that giving airtime to these views is not in the public interest, the Committee concluded that in the context of the programme as a whole, and having had to regard to how Professor Bates' views were treated by the presenter and other contributors, the programme did not result in a lack of fairness, objectivity and impartiality.

The Committee also found that the presenter did not express her views on a matter of public controversy or current public debate such that a partisan position was advocated and for this reason no issues arose in respect of compliance with Rule 22 of the BAI's news and current affairs code.

- In view of the above, the Committee did not agree that the programme infringed the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Mr. Pawel Rydzewski

Ref. No. 30/16

Station:
RTÉ One

Programme:
The Late Late Show

Date:
22nd January 2016

1. Programme

The complaint concerns *The Late Late Show* which is a lifestyle/entertainment programme broadcast each Friday evening from 9.35pm. The complaint relates to use of live lambs during a segment of the programme.

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 2 (Importance of Context) and 3 (Protection from Harm).

3. Complaint Summary

The complainant states that lambs, just a few days old, appeared on the show and he believes they were distressed by the experience and by the transportation to and from the venue. The complainant claims this was an unnecessary and cruel use of lambs in an alien environment. He believes it would have been more appropriate if the item was filmed on location instead of in a studio.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ's Executive Producer to *The Late Late Show* responded to the complainant. RTÉ state that the annual enterprise segment on *The Late Late Show* celebrates and supports Irish enterprise and innovation. RTÉ state that this segment has previously featured agricultural products. In the case of the specific innovation that was featured - the '*Lamb Carousel*' shown – RTÉ states that it is intended for use in commercial farming and aims to provide a humane way to handle lambs as they are treated for a variety of standard farming practices. RTÉ states that all necessary efforts were made to ensure that the animals on set were treated humanely and remained comfortable before, during and after the segment.

The broadcaster states that the wider issue of animal husbandry is a separate debate for society in general rather than *The Late Late Show* or this particular item, but RTÉ is satisfied that this item simply highlighted an invention that many farmers will find useful in an illustrative, safe and responsible manner.

The broadcaster states that farming experts and representative bodies who have watched the item have been unanimous in their view that the invention is a useful and positive contribution to sheep farming and does not harm or distress the animal involved.

4.2 Broadcaster's Response to BAI

RTÉ refers to the initial response to the complainant by the Executive Producer of *The Late Late Show*.

In addition, RTÉ state that there is no evidence whatsoever that the item had any negative impact on the lamb in question, before, during or after the programme. They state that every effort was made to ensure the lamb was comfortable and well looked after before demonstrating a device specifically designed to reduce the animal's discomfort during a necessary and important procedure.

The broadcaster states that the '*Lamb Carousel*' is a device designed by Mr. T.J. Gormley, an entrepreneur with over 30 years involvement in sheep farming. The broadcaster states that a previous invention of his is used to tag the ears of approximately one third of all sheep in Ireland every year. He is well respected in the industry and his professional approach to animal husbandry is well acknowledged.

The broadcaster states that the new device, the '*Lamb Carousel*', is designed to hold newborn lambs in place to allow for ear tagging in as painless and efficient manner as possible. The device allows one farmer to tag ears in what to date has often been a two person job. The animals are restrained but not injured and are returned to their mother quicker and with less stress than the conventional method. The device has had widespread support and praise from farmers and animal husbandry professionals.

The broadcaster states that every year *The Late Late Show* highlights new Irish entrepreneurial ideas in its Enterprise Show and this year the programme spoke with T.J. Gormley and selected his *Lamb Carousel* for inclusion.

The broadcaster states that Mr. Gormley brought the lamb, its mother and the device to studio, stayed with the animals all day, feeding and ensuring they were in good health and ensured that at all times the animals were cared for. After the show, the animals were returned to his farm. The lamb in question was subsequently named '*Dynamo*' by Mr. Gormley's family and will be used as a purebred to sire the next generation of lambs and sheep for his farm. As such, RTÉ believes that the animal was well cared for and professionally dealt with throughout and no damage was done at any stage as a result of its appearance on *The Late Late Show*.

The broadcaster states that it may be noted in the context of Principles 2 and 3 of the Code that the programme is broadcast after the watershed and that its large national audience includes a very significant rural audience which will have an immediate interest in animal welfare, of course partly in the context of animal husbandry.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to Broadcasting Act 2009, Section 48(1)(b)(harm and offence) and the *BAI Code of Programme Standards* – Principles 2 (Importance of Context) and 3 (Protection from Harm), the Committee had decided to reject the complaint.

In this regard:

- The Committee noted that the item about which the complaint was made was an enterprise segment dealing with business ideas and inventions. The detailing of the ‘*Lamb Carousel*’ was one of a number of business ideas featured and the segment focused on an explanation and demonstration of the invention/product and how it would assist farming life and business.
- While the complainant highlighted issues around animal welfare, the BAI’s *Code of Programme Standards* is concerned with offence and harm to audiences from content that they see and hear. In this regard, while noting that the device being demonstrated placed the lambs in an unusual position, it was not evident to the Committee that the animals were in any distress or were caused harm such that audience would have been offended or harmed. It also noted that no procedures, such as tagging or tail docking, were undertaken during the segment.
- In view of the above, the Committee did not agree that the item would infringe the Broadcasting Act 2009 or the BAI’s *Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Mr. Séamus Enright

Ref. No. 32/16

Station:

TV3

Programme:

TV3 Leaders' Debate

Date:

11th February 2016

1. Programme

The complaint concerns the *TV3 Leaders' Debate* which was a special live programme broadcast during the 2016 *General Election* campaign. The leaders of the four main political parties took part in a four-way debate co-moderated by Ms. Colette Fitzpatrick and Mr. Pat Kenny.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 2, 17, 19, 21 and 22).

3. Complaint Summary

The complainant states that, in his opinion, this programme violated the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, under the above sections as follows:

- The complainant refers in particular to a section of the debate which dealt with the repeal of the 8th Amendment to the *Irish Constitution* and believes that the manner in which this topic was put to the candidates by one of the two debate moderators was extremely one-sided.
- The complainant states that Mr. Pat Kenny posed the question, whether, if a woman came into the clinics of the leaders' and said she had had an abortion, would they call for an ambulance or the Gardaí. The complainant appreciates the purpose of the question was to highlight the criminal aspect of abortion. However, he objects to comments by the debate moderator that "*Savita Halappanavar springs to mind.*" The complainant states that this comment followed Ms. Joan Burton T.D.'s response concerning the willingness of hospitals in Ireland to treat women who have had an abortion. The complainant claims that this was put to the candidates not as a question, but rather as the moderator's view.
- The complainant states that in his opinion there was no reason for the debate moderator to reference this case at this juncture. The complainant states that independent reports have confirmed that Ms. Halappanavar's death was not found to be due to the ban on abortion in this country.

The complainant states that by mentioning this case, and by not elaborating on the details or allowing the matter to go back to the candidates for their comments, the debate moderator damaged the impartiality of the debate and diminished the audience's opportunity to make up their minds fairly on what the complainant describes as this vital topic.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

- TV3 state that the purpose of this segment of the *TV3 Leaders' Debate* was to expose the anomalies that exist in political discourse with regard to the highly sensitive subject of abortion.
- TV3 accepts that the complainant draws a distinction between the case of Ms. Halappanavar and the particulars of the discussion surrounding the 8th Amendment. However, TV3 believes that her case is relevant because of the impact it had on the public consciousness.

4.2 Broadcaster's Response to BAI

- TV3 state that it should be noted that this entire debate lasted for 100 minutes and the discussion on the 8th Amendment lasted for approximately 10 minutes.
- TV3 is satisfied that the 10 minutes comprised of a fair and impartial debate on the issue of the 8th Amendment to the *Irish Constitution* and the questions were put to the candidates who were given an equal and fair amount of time to answer them.
- TV3 maintains that the candidates were also given ample opportunity to expand on the intricacies of this issue. At the end of that segment, the final minute was made up of the question that one of the moderators posed, namely, whether, if a woman came into their clinics and said she had had an abortion, would they call for an ambulance or the Gardaí.
- The broadcaster states that the case of Ms. Halappanavar has been widely reported on and became a major issue in the context of the abortion debate. They state that it is accepted that there are different views on her death. The broadcaster states that the reason that her case was mentioned by the moderator was because this was a big issue in the context of medical care.
- TV3 is satisfied that this was a fair comment by the moderator but it did not represent an expression of his view. They state that it was an entirely legitimate link to make and it is the moderator's role to stimulate debate in this way. TV3 state that it was unfortunate that the matter could not be debated but time constraints precluded it. This was a function of a live debate rather than any attempt to deprive candidates from a discussion.

- TV3 is satisfied that reference to the case was not misleading and neither moderator offered or expressed their own views on the matter such that a partisan position was advocated.
- Overall the broadcaster states that the 10 minutes that were allocated to this issue were fair, balanced and impartial.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 2, 17, 19, 21 and 22), the Committee has decided to reject the complaint.

In this regard:

- The Committee noted that the topic of Ireland's abortion laws was one of a number of issues dealt with during the programme. In this context, one of the presenters invited the Party Leaders in attendance to set out their position and the position of their political party on the 8th Amendment to the *Irish Constitution*. This was done by examining their views on the termination of pregnancies where a fatal foetal abnormality is present.
- The Committee found that the questioning, as a debate, was robust and this would be expected as part of a debate format, particularly involving guests who were vying to lead the country in the context of a *General Election*.
- Towards the end of the segment on the topic of fatal foetal abnormalities, Mr. Pat Kenny, one of the moderators, asked the Party Leaders how they might deal with a scenario where they knew that a woman had had an abortion illegally.

While noting that the manner in which the question was asked was provocative, the Committee was of the view that the question was relevant to the topic under discussion. They also noted that the moderator also made a passing reference to the case of Ms. Halappanavar which was also considered relevant to the discussion, insofar as that case had ignited a debate about Ireland's abortion laws, with a range of views being expressed, including the view that there was or was not an association between Ms. Halappanavar's death and the denial of an abortion. While noting that the complainant has one view on this issue, there are other views and it was therefore editorially legitimate for the presenter to reflect these other views.

- The Committee did not consider the moderator's comment to be an articulation of a partisan position by the presenter as prohibited by Rule 4.22 of the BAI's news and current affairs code. The Committee also noted that the remark was not pursued and the programme moved on to another topic.

As the remark was not elaborated upon, there was no evidence to support the view of the complainant that the single reference to that case was grounds to deem the programme to be lacking in due accuracy or to have misrepresented facts in a manner that would render them misleading, contrary to Rules 4.17 and 4.19 of the BAI's news and current affairs code.

- In view of the above, the Committee was not satisfied that the programme infringed the requirements of the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Mr. John Flynn

Ref. No. 35/16

Station:
RTÉ One

Programme:
The Late Late Show

Date:
19th February 2016

1. Programme

The complaint concerns *The Late Late Show* which is a lifestyle/entertainment programme broadcast Friday evenings from 9.35pm. The complaint refers to an interview with journalist Mr. Paul Williams and comments that he made in respect of the *Sinn Féin* political party.

2. Complaint Category

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

3. Complaint Summary

The complainant objects to an interview with the journalist, Mr. Paul Williams, who he claims was freely allowed to malign *Sinn Féin* voters as criminals. The complainant believes that in the initial reply he received from RTÉ, the Producer relied on the weak intervention of the presenter and on the hazards of live TV to excuse the failure of the broadcaster to distance itself from Mr. Williams' claim.

The complainant maintains that Mr. Williams stated that only people/organisations opposed to the *Special Criminal Court* were *Sinn Féin* members of criminal enterprises. The complainant states that RTÉ chose not to repudiate the remarks both on the night and later in reply to the complainant. This was especially repugnant during an election campaign.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

The Executive Producer of *The Late Late Show* responded as follows to the complaint.

RTÉ state that this was a wide ranging and lengthy item that told the story of two criminal families and their vast wealth over a number of years. The broadcaster states that towards the end of the item, which, for legal and editorial reasons, had been strictly rehearsed and planned in advance, Mr. Williams unexpectedly started discussing the *Special Criminal Court* and his support for its ongoing existence. The broadcaster states that the presenter attempted to cut him off but Mr. Williams continued and made the accusation that the complainant and several others have found offensive. The interview continued about the feuding families thereafter.

RTÉ state that while it is worth noting that Mr. Williams did not say that anyone who votes for *Sinn Féin* is a drug dealer or killer, he did say that the only people who support that part of their manifesto are. This was unplanned, unscripted and the opinion solely of Mr. Williams.

The broadcaster states that in that context the presenter did attempt to cut him off and point out that this was only Mr. Williams singular view and not a fact. It was also not relevant to the discussion or issue at hand. From time to time in live television, such events occur that from a production point of view are not ideal.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the Executive Producer of *The Late Late Show*.

The broadcaster states that, as indicated in that reply, the discussion was not formatted or presented as one on politics or the *General Election*. They state that it was planned as an interview on the topic of organised crime, particularly in Dublin. The interviewee's reference to the views of a political party on the *Special Criminal Court* and to supporters of such views was unplanned and unexpected. The broadcaster states that, in keeping with Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, the presenter promptly responded to the opinions expressed by the interviewee on the topic, reflecting the views of those – the party and its supporters on this particular issue to whom the interviewee had referred – who were not there to participate. RTÉ claim that it is incorrect to say that the presenter “let [the interviewee’s expression of his views] proceed”.

RTÉ believes that the presenter’s action was in keeping also with Principles 1 and 2 of the *BAI Code of Programme Standards* in relation to live programming, taking “timely corrective action where unplanned content is likely to have caused offence.”

5. Decision of the Compliance Committee: Reject (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 and Impartiality in News and Current Affairs* (Section 4: Rules 1 and 2), the Committee has decided to reject the complaint.

In this regard:

- The Committee noted that the comments that were the subject of the complaint were made during a discussion on crime in Dublin. The Committee also noted that the comments therefore had an editorial context, insofar as the *Special Criminal Court* is a mechanism that has been utilised to deal with criminal activities such as those that were the focus of the programme discussion. In addition, Mr. Williams’ comments about the position of *Sinn Féin* in respect of the *Special Criminal Court* and their proposal to abolish it were factually correct.

- From a review of the programme, it was evident that the comments made by the guest concerned the response of some segments of the electorate, in particular those engaging in criminal activities, to this aspect of the election manifesto of *Sinn Féin*.

While the comments could be reasonably seen as an implied criticism of that aspect of the *Sinn Féin* manifesto, the Committee did not agree that it amounted to a comment on supporters of this party as a whole, as stated by the complainant.

- The Committee noted that the broadcaster had taken steps to ensure the legality of the programme, in particular, by undertaking a rehearsal of the item in advance. The Committee also noted that the programme was live and it was apparent from the response of the presenter that the comments by the guest about the *Special Criminal Court* were unplanned. While audiences would have benefited from a more forthright response from the presenter to the remarks of his guest, it noted that the presenter quickly stated that the proposals of *Sinn Féin* in respect of the *Special Criminal Court* were not relevant to the discussion and also noted that the party, had it been in studio, would disagree with Mr. Williams' analysis.
- Given the focus of the discussion, the factual nature of some of the comments in respect of the *Special Criminal Court*, the response of the presenter, and having also had regard to the right to free expression, the Committee was of the view that, on balance, the programme did not infringe the fairness, objectivity or impartiality requirements of the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner stated by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Enda Fanning

Ref. No. 37/16

Station:

RTÉ One

Programme:

The Late Late Show

Date:

19th February 2016

1. Programme

The complaint concerns *The Late Late Show* which is a lifestyle/entertainment programme broadcast Friday evenings from 9.35pm. The complaint refers to an interview with journalist Mr. Paul Williams and comments that he made in respect of the *Sinn Féin* political party.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48 (1)(b) (offence and harm); the *BAI Code of Fairness, Objectivity and Impartiality*, (Section 4: Rules 1 and 2) and the *BAI Code of Programme Standards* – (Principle 5 – Respect for Persons and Groups in Society).

3. Complaint Summary

The complainant wishes it to be noted that this edition of *The Late Late Show* was broadcast one week before the General Election.

The complainant states that during an interview with the journalist, Mr. Paul Williams, the presenter allowed him to condemn and vilify those who vote for *Sinn Féin*. The complainant believes that there is no doubt that Mr. Williams' comments were an attempt to harm *Sinn Féin* in the then forthcoming *General Election*. The complainant states that *Sinn Féin* was the only political party referred to by the journalist in his comments. The complainant states that this was allowed at a time when broadcasters were using stop watches to ensure a fair and balanced coverage for each party. The complainant claims that the presenter made no attempt to stop Mr. Williams while he was making his comments.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

The Executive Producer of *The Late Late Show* responded as follows to the complaint.

RTÉ state that this was a wide ranging and lengthy item that told the story of two criminal families and their vast wealth over a number of years. The broadcaster states that towards the end of the item, which, for legal and editorial reasons, had been strictly rehearsed and planned in advance, Mr. Williams unexpectedly started discussing the *Special Criminal Court* and his support for its ongoing existence.

The presenter attempted to cut him off but Mr. Williams continued and made the accusation that the complainant and several others have found offensive. The interview continued about the feuding families thereafter.

RTÉ state that while it is worth noting that Mr. Williams did not say that anyone who votes for *Sinn Féin* is a drug dealer or killer, he did say that the only people who support that part of their manifesto are. This was unplanned, unscripted and the opinion solely of Mr. Williams.

The broadcaster states that in that context the presenter did attempt to cut him off and point out that this was only Mr. Williams singular view and not a fact. It was also not relevant to the discussion or issue at hand. From time to time in live television, such events occur that from a production point of view are not ideal.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the Executive Producer of *The Late Late Show*.

The broadcaster states that, as indicated in that reply, the discussion was not formatted or presented as one on politics or the *General Election*. They state that it was planned as an interview on the topic of organised crime, particularly in Dublin. The interviewee's reference to the views of a political party on the *Special Criminal Court* and to supporters of such views was unplanned and unexpected.

The broadcaster states that, in keeping with Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, the presenter promptly responded to the opinions expressed by the interviewee on the topic, reflecting the views of those – the party and its supporters on this particular issue to whom the interviewee had referred – who were not there to participate. RTÉ claim that it is incorrect to say that the presenter “*let [the interviewee's expression of his views] proceed*”.

RTÉ believes that the presenter's action was in keeping also with Principles 1 and 2 of the *BAI Code of Programme Standards* in relation to live programming, *taking “timely corrective action where unplanned content is likely to have caused offence.”*

The broadcaster states that the presenter's observance of the above Principles may also be noted in the context of the alleged breach of Principle 5. In respect of that allegation also, RTÉ maintain that it is questionable whether a group of people holding in common a view on a particular political topic is a group envisaged by the Principle, as it is not defined by “*race, religion, sex, ethnicity, sexual orientation or nationality*.” RTÉ believes that it is also questionable whether the expression of opposition to a political viewpoint is intended to or likely to “*stigmatise, support or condone discrimination or incite hatred*.”

Without prejudice to other points made above in respect of the presenter's response to the interviewee's statement, RTÉ claim that it does not seem likely that Principle 5 is in itself intended to restrict the expression of opinion on political topics.

5. Decision of the Compliance Committee: Reject (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), Section 48 (1)(b) (offence and harm), the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, (Section 4: Rules 1 and 2) and the *BAI Code of Programme Standards* – (Principle 5 – Respect for Persons and Groups in Society), the Committee has decided to reject the complaint.

In this regard:

- The Committee noted that the comments that were the subject of the complaint were made during a discussion on crime in Dublin. The Committee also noted that the comments therefore had an editorial context, insofar as the *Special Criminal Court* is a mechanism that has been utilised to deal with criminal activities such as those that were the focus of the programme discussion. In addition, Mr. Williams' comments about the position of *Sinn Féin* in respect of the *Special Criminal Court* and their proposal to abolish it were factually correct.
- From a review of the programme, it was evident that the comments made by the guest concerned the response of some segments of the electorate, in particular those engaging in criminal activities, to this aspect of the election manifesto of *Sinn Féin*. While the comments could be reasonably seen as an implied criticism of that aspect of the *Sinn Féin* manifesto, the Committee did not agree that it amounted to a comment on supporters of this party as a whole, as stated by the complainant.
- The Committee noted that the broadcaster had taken steps to ensure the legality of the programme, in particular, by undertaking a rehearsal of the item in advance. The Committee also noted that the programme was live and it was apparent from the response of the presenter that the comments by the guest about the *Special Criminal Court* were unplanned. While audiences would have benefited from a more forthright response from the presenter to the remarks of his guest, it noted that the presenter quickly stated that the proposals of *Sinn Féin* in respect of the *Special Criminal Court* were not relevant to the discussion and also noted that the party, had it been in studio, would disagree with Mr. Williams' analysis.
- Given the focus of the discussion, the factual nature of some of the comments in respect of the *Special Criminal Court*, the response of the presenter, and having also had regard to the right to free expression, the Committee was of the view that, on balance, the programme did not infringe the fairness, objectivity or impartiality requirements of the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner stated by the complainant. Accordingly, the complaint has been rejected.

- In considering the complaint, the Committee did not consider Principle 5 of the *BAI Code of Programme Standards* to be relevant insofar as this principle is intended to protect persons and groups in society from discrimination or hatred on the grounds of their age, gender, marital status, membership of the Traveller community, family status, sexual orientation, disability, race, nationality, ethnicity or religion. Those holding particular political affiliations are not the focus of the principle.

Rejected by the Executive Complaints Forum

Complaint made by: Mr. Brendan O' Regan

Ref. Nos. 8/16, 9/16 & 10/16

Station:

Newstalk 106-108FM

Programme:

The Pat Kenny Show

Date:

2nd December 2015

3rd December 2015

4th December 2015

1. Programme

The complaints concern *The Pat Kenny Show*, which is a current affairs programme broadcast each weekday morning from 10am to 12.30pm. The programmes contained reports and discussions on abortion as part of a weeklong special report entitled *Ireland's Abortion Journey*.

2. Complaint Category

The complaints are submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 3 and 22).

3. Complaint Summary

The complainant states that, on the 2nd December, the programme featured what he described as long and unchallenged interviews with two strongly 'pro-choice' speakers – Ms. Mara Clarke, founder of the *Abortion Support Network* and a gynaecologist who carries out abortions in England. The complainant claims that the presenter had several opportunities to challenge the interviewees or robustly question them, but this was not done.

The complainant states that, on Thursday 3rd December, while there was what he describes as an even-handed debate between Ms. Cora Sherlock and Ms. Janette Ní Shúilleabháin, the programme was skewed in favour of the 'pro-choice' side by adding in an interview with Ms. Vanessa O'Sullivan, who he describes as being from the 'pro-choice' side of this debate.

The complainant states that the programme on Friday 4th featured an item on a survey of T.D.s on the issue and an interview with Ms. Sarah Hynes, who he states spoke from a 'pro-life' perspective. He states that in the final segment to the programme Dr. Peter Boylan was given lots of time to push a political perspective that the complainant contends was strongly 'choice' and anti-8th Amendment (of the *Irish Constitution*).

The complainant maintains that this segment was supposed to look at the legal, medical and political sides of the debate but it was skewed in a 'pro-choice' direction due to including a medical expert who he believes is aligned with one side of the debate. The complainant believes that a neutral medical expert would have been in order here, or if not, then the legal expert should have come from the 'pro-life' side to provide some balance.

The complainant further states that with all these ‘voices’ on the issue, there was one obvious absence – the voice of those women who regret their abortions but these were not featured. The complainant also noted that there is an organisation that represents them, called *Women Hurt*.

4. Broadcaster’s Response

4.1 Broadcaster’s Response to Complainant:

Newstalk respond as follows:

1. The broadcast on Wednesday 2nd December was presented in a fair objective and impartial manner without any expression of the broadcaster’s own views as per the obligations under the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.
2. As the complainant pointed out, contributions were heard across the week from both sides of the debate. It is Newstalk’s belief that when taken as a whole, the coverage of this issue over the week and indeed beyond, provided the appropriate balance and was fair to all interests concerned.
3. The above belief extends to the panel on Friday 4th featuring Mr. Conor O’Mahony, Ms. Niamh Lyons and Dr. Peter Boylan. While some opinions were expressed, Newstalk believes that balance was achieved based on the time allocated to each contributor and the inclusion of a number of listener contributions on their experience of carrying babies with a fatal foetal abnormality to full term.
4. With regard to the ‘*obvious absence*’ as asserted by the complainant, of women who regret their abortions, this is a voice Newstalk did strive to include and continue to do so. *Women Hurt* were unable to provide a suitable interviewee on the week in question. Newstalk has been in correspondence with a number of people in this position since the broadcast but as of yet, have not managed to secure an on the record interview of this kind.

Newstalk has also been in touch with women and the partners of women, who changed their mind at the last minute and went on to have babies with a view to telling their story. Unfortunately getting these voices on air is still a work in progress. Notwithstanding this Newstalk believes that their coverage of this issue on the week in question met all obligations under the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

4.2 Broadcaster’s Response to BAI

Newstalk 106 – 108FM state that *The Pat Kenny Show* this week featured a number of special reports and discussions on abortion as part of a weeklong special report entitled “*Ireland’s Abortion Journey*”.

The broadcaster states that this involved Mr. Pat Kenny, the presenter, travelling to London and Manchester to gain an insight into the journey that almost 4,000 women undertake each year. The broadcaster states that the special report was well publicised and a timetable of the special report was advertised on both the website and on-air for some time prior to the broadcasts.

Broadcast 1 – 2nd December 2015

This broadcast included an interview with a National Health Service consultant gynaecologist who spoke about medical treatments and options available for women terminating pregnancies in Britain.

This was a factual interview with a medical physician on the medical procedures involved in terminations. It did not get into pros and cons of having a termination. Newstalk maintain that the presenter ensured that the interview was balanced by asking questions about the physical trauma of the procedure and the negative side effects involved, both physically and emotionally. It was an interview with a gynaecologist who carries out these procedures and was honest, realistic and factual. It was presented to the listener as a medical professional being interviewed about their job and what it entails.

Newstalk is satisfied that it was a fair and impartial interview with no expression of opinion given by either the presenter or the interviewee.

Newstalk state that the interview with Ms. Mara Clarke was clearly explained to the audience as an interview with the founder of the *Abortion Support Network*. She spoke about her role in that position. The audience were not blindsided or surprised with the content of the interview.

Newstalk maintain that the two interviews were conducted in fair and impartial manner. At no point did the presenter offer his own view or engage in a discussion where his own position was advocated. The questions that were put to the interviewees were pertinent to the subject matter, being *Ireland's Abortion Journey* and what that involves and were constructed in a way to be fair to all sides.

Newstalk believes that both interviews were handled in a credible, trustworthy and entirely transparent manner. The listener, knowing that the whole week was going to be about *Ireland's Abortion Journey* and it was made very clear who was being interviewed at each stage.

Broadcast 2 – Thursday, 3rd December 2015

This programme comprised of three broadcasts on the topic. There were two interviews with women who had had terminations due to fatal foetal abnormalities and rape. These two interviews were very much about the personal circumstances of these women and their experiences / stories as part of the special report into *Ireland's Abortion Journey*. Newstalk state that they were not pushed by the presenter to engage in a debate about the rights or wrongs of abortion.

The broadcaster states that they were two stories that were about women who felt that they had to travel to have abortions for two different reasons and they were legitimate and important stories to tell in the context of the topic generally.

There was then a debate between Ms. Cora Sherlock of the *Pro-life Campaign* and Ms. Janette Ni Shúilleabhain of the *Abortion Rights Campaign*. The complainant acknowledges that the debate was “even –handed” but complains that the show was skewed in favour of the ‘pro-choice’ side by adding in an interview with Ms. Vanessa O’Sullivan who was ‘pro-choice’. Newstalk does not accept this. Ms. Sherlock was given time to present her case as a ‘pro-life’ advocate and indeed even dealt with and refuted comments made the previous day by Ms. Clarke. The two sides of the debate were provided a fair and equitable opportunity to address issues that they wished to address and Newstalk cannot accept that this was anything other than fair and balanced.

Again, there was no expression of a personal opinion made by the presenter.

Broadcast 3 – Friday, 4th December 2015

Newstalk state that on Friday the show began with a survey/vox pop of T.D.s on the issue and this provided a balanced and varied mix of views. The purpose of this was to demonstrate to the listener that there are wide-ranging views on the subject. This was followed by an interview with Ms. Sara Hynes who was ‘pro-life’. This was followed by a three person debate which was with Dr. Peter Boylan, Consultant Obstetrician in the *National Maternity Hospital*, Ms. Niamh Lyons, political editor of the *Sunday Times Irish Edition* and Mr. Conor O’Mahony a lecturer in constitutional law in *UCC*. The objective here was to finish the week by presenting to the listener an overview of the medical, legal and political issues involved in the issue of abortion.

The complainant believes that the whole thrust of the series was ‘pro-choice’ and uses the broadcast on Thursday as an example when, in the view of the complainant, the interview with Ms. Clarke O’Sullivan was “*skewed it in favour of pro-choice*”. Following that logic would mean that the interview with Ms. Hynes, who was ‘pro-life’, skewed Friday’s broadcast in favour of ‘pro-life’. Newstalk state that it is clear that the complainant is being very selective.

Newstalk note that the complainant seems to move on to take particular issue with Dr. Peter Boylan who he says “*got lots of time to push a political perspective that was strongly pro-choice and anti-8th amendment*”. Newstalk believes that once the interview is listened to, it is so clear that this is not the position. The interview was a very informative and edifying discussion on the three areas in which the participants were all experts. Dr. Boylan did discuss how his own views evolved over time from a conservative perspective to more liberal but noted that life is “untidy” and until it affects you it is all in the abstract. He was very measured throughout and noted that both sides need support. The presenter balanced this by asking was there negative pressure on women who may be seen as using resources for months when the baby was going to die once it was born. Dr. Boylan repeated that these women should be supported whatever they do. He spoke about his experience and noted how he cannot speak for women but how he interprets their views based on his experience. It is not reasonable to describe that as pushing or advocating strong ‘pro-choice’ agenda.

Newstalk state that the weeklong special report on abortion featured many reports and interviews on a whole range of issues impacting on the women. The issue is such a divisive and polarising issue and it is difficult to achieve fairness so that all sides are totally happy but as the BAI has pointed out previously, the BAI has never issued a direction that broadcasters must balance a discussion with an opposing view and that fairness can be achieved through a number of ways; the selection of contributors, the time allocated to the issues, the scope of the debate, the structure of the programme and the role of the presenter.

This is an election issue and a massive issue in Irish society today. Newstalk is responsible for addressing it fairly, objectively, accurately and openly. Newstalk is satisfied that the three broadcasts did exactly this. Newstalk believes that they were fair to each contributor, in terms of time allocated and questions asked and general treatment by the presenter. Newstalk is also satisfied that the listener was provided with an honest and accurate account of the range of concerns that arise when dealing with the issue of abortion.

Newstalk state that efforts were made to obtain an interviewee from *Women Hurt* and other avenues were investigated and pursued to secure an interview but this was not possible. Despite this, Newstalk is confident that each broadcast individually and taken together in the week long special report, was presented in an independent and editorially credible manner that the coverage of both the 'yes' campaign and the 'no' campaign was equitable and proportionate.

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 Broadcasting Act 2009, Section (48(1)(a) (fairness, objectivity and impartiality in news and current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 3 and 22), the Forum has decided to reject the complaint.

In this regard:

- The Forum found that this was a week-long special report and discussion on abortion, including an examination of the experiences of Irish women and men dealing with difficult pregnancies and also the experiences of those who travelled to Britain seeking the termination of pregnancies. The Forum noted that the broadcaster has the right to choose the editorial focus of its programming. Given the editorial focus, it would be expected that the programme would have a focus on abortion.
- In view of this editorial focus, the programmes examined the issue from a wide range of perspectives. These perspectives included those who have taken the choice to travel, the legal situation in Ireland, the medical and social issues as well as factual information about those who provide various services to those who seek a termination outside of the Republic of Ireland.

- The broadcasts on another day included interviews with two women who had terminated their pregnancies due, in one case to a fatal foetal abnormality, and in the other, rape. The broadcasts also included an interview with a woman who chose to carry her child to full term and whose baby survived, despite a poor prognosis. The Forum found that these interviewees related personal factual stories which were handled fairly and sensitively by the presenter without any partisan position being taken.
- A debate took place between Ms. Cora Sherlock of the *Pro-Life Campaign* and Ms. Janette Ní Shúilleabhain of the *Abortion Rights Campaign*. The Forum found that both sides were given ample time to put their points across and there was no evidence of any imbalance as claimed by the complainant.
- The interviews finished with a debate featuring Dr. Peter Boylan, Consultant Obstetrician, Ms. Niamh Lyons of *The Sunday Times Irish Edition* and Mr. Conor O'Mahony, lecturer in constitutional law. The Forum was of the view that this was concise, fair and measured debate and again conducted fairly by the presenter.
- Overall, the Forum was of the view that the presenter controlled the interviews with fairness, objectivity and impartiality at all times.
- The Forum acknowledged that abortion is a very divisive subject and finding a balance in relation to fairness can be difficult at times. However, the Forum would emphasise that there is no requirement for the broadcaster to balance a discussion with an opposing view in all cases. This can be achieved using several methods, including the role of the presenter, the selection of contributors and time allocated.
- In view of the above, the members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009, Section 48(1)(a) (*fairness, objectivity and impartiality in current affairs*) or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint was rejected.

Complaint made by: Ms. Patricia Kearney

Ref. No. 19/16

Station:
RTÉ Radio 1

Programme:
When Dave Met Bob

Date:
29th December 2015

1. Programme

The complaint concerns an interview with musician and songwriter Mr. Bob Geldof of the band, *The Boomtown Rats*. The interview was conducted by Mr. Dave Fanning and it had a particular focus on early years of the band. The complaint refers to comments made by another contributor to the programme, the writer, Mr. Joseph O'Connor.

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 (Persons and Groups in Society).

3. Complaint Summary

The complainant states that during this interview Mr. Geldof was reminiscing about his first appearance on *The Late Late Show* and railing, among other things, against what he saw as the hypocrisy and lies of the establishment at the time. The complainant states that Mr. Geldof spoke about being refused permission to perform in Ireland in the 1970s. The complainant states that a guest on the programme, Mr. Joseph O'Connor, said "*unless you were a sheep or a Carmelite nun, you weren't going to have any fun in Ireland in 1977*". The complainant objects to this statement. The complainant states that she remembers the 1970s and life was good for her and for others in Ireland. The complainant acknowledges that what constitutes a good life is relative but she found Mr O'Connor's perspective to be very offensive to her.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ did not reply to the complainant within the required time limit.

4.2 Broadcaster's Response to BAI

In their response to the BAI, RTÉ apologised for the lack of response to the complainant's initial submission which was a fault of the complaints administration department and affected by the Christmas holiday period.

RTÉ state that the writer, Mr. Joseph O'Connor, both critically acclaimed for his novels and notorious as an essayist and columnist for his sense of humour, was a contributor to the programme, expressing his personal view of life in Ireland in the 70s.

He said:-

My name is Joseph O'Connor. When you're in your teens it's a phase of very intense identification in your life. Some teenagers join a GAA club, some join a soccer club and some join a political party and some become very religious and in my case I kinda joined The Boomtown Rats. The level of identification and affinity was so strong that I felt "those guys are articulating what I feel." And Dublin in 1977, for me anyway and for everybody I knew, [was] a fairly grim place where the rain seemed to come down horizontally all the time and everybody was very afraid of authority and very obedient and had a kind of forelock-tugging attitude towards those who would be in power. And there was a general sense that nothing had ever happened in this city or ever would. And you felt you lived in this rainy little kip on the western outposts of Europe, that was a sort of excuse for a capital city and whose guilty secret was that everybody was going to emigrate. So nobody had a stake in the place, nobody believed in the place, because nobody was going to stay very long. Unless you were a sheep or a Carmelite nun, you weren't going to have any fun in Ireland in 1977.

RTÉ maintains that Mr. O'Connor makes it clear that his view is personal and his sentiments about 70s Ireland – which though undoubtedly truthful from that point of view are shaped and exaggerated to a degree for comic effect – are presented in that editorial context.

RTÉ is of the view that nothing in Mr. O'Connor's contribution stigmatises, supports or condones discrimination or incites hatred against persons or groups in society on any basis, including age, gender, marital status, membership of the Traveller community, family status, sexual orientation, disability, race, nationality, ethnicity or religion.

The broadcaster states that if '*people – or a person – who had fun in Ireland of the 1970s*' represent a person or group within the meaning of the code, the very worst that Mr O'Connor humorously suggests is that they would have been temperamentally inclined to complacency or exceptional piety: no stigmatisation, support or condoning of discrimination or incitement to hatred can be heard in his contribution, the genial tone of which suggests that he would actually be delighted to hear that there were people who had fun in the 1970s and were neither sheep nor Carmelite nuns.

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)(b)(harm & offence); the *BAI Code of Programme Standards* - Principle 5 (Persons and Groups in Society), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that this complaint referred to an interview with musician and songwriter, Mr. Bob Geldof. The interview was conducted by Mr. Dave Fanning and focussed on the early years of rock band, *The Boomtown Rats*. The complaint refers to comments made by another contributor, the writer, Mr. Joseph O'Connor.
 - The Forum noted that the comments made by Mr. O'Connor were in the context of Mr. Geldof reminiscing about his life, including his first appearance on *The Late Late Show* and railing against what he saw as the hypocrisy and lies of the establishment at the time. Mr. O'Connor stated that "*unless you were a sheep or a Carmelite nun, you weren't going to have any fun in Ireland in 1977*".
 - The Forum was mindful of the complainant's objection to this characterisation in a context where she believes life in the '70's was good for her and others.
 - While noting that the complainant found the remark personally offensive, the Forum was of the view that Mr. O'Connor's comments were stated in a jocular fashion and were his personal opinion of life in the 1970's and were not stated to cause harm or offence.
 - In terms of the *BAI's Code of Programme Standards*, Principle 5 is concerned with dealing with persons and groups in society who are at risk of suffering from discrimination and not the general public. Accordingly, the Forum was of the view that the Principle wasn't relevant to the complaint in question.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act 2009, Section 48(1)(b)(harm & offence) or the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Ms. Mary Jo Gilligan

Ref. No. 21/16

Station:
RTÉ 1 TV

Programme:
The Ray D'Arcy Show

Date:
14th Nov 2015

1. Programme

The complaint concerns *The Ray D'Arcy Show* which is a lifestyle/entertainment programme broadcast on Saturday nights from 9.50pm. The discussion focused on an interview with the actress, model and animal rights campaigner, Ms. Pamela Anderson.

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 (Respect for Community Standards), 2 (Importance of Context), 3 (Protection from Harm) and 5 (Respect for Persons and Groups in Society).

3. Complaint Summary

The complainant states she makes this complaint because of the behavior of the programme presenter towards his guest, Ms. Anderson, which she states was offensive.

The complainant states that she was appalled at what she describes as the innuendo that she believes was evident in the presenter's interview. The complainant states that the presenter repeatedly referred to Ms. Anderson's sexuality and made what she states were inappropriate references to Ms. Anderson's body and sexuality. The complainant states that these remarks were unjustifiable regardless of whether the guest had posed nude during her career or not.

The complainant cites a number of examples of what she considered the presenter's inappropriate remarks. This included what she states was the inference by the presenter that Ms. Anderson was engaged in a sexual act in a photograph of Ms. Anderson being honored for activism with the presenter saying - "*There you are, on your knees in front of the Prince of Montenegro*". Another remarks cited concerned the presenter saying - "*It was great, I was going to say, having you. I should really rephrase that*" which the complainant states could be considered as a clear sexual innuendo. The complainant states that these remarks and the interview as a whole were offensive.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ's Executive Producer to the Show acknowledges the fact that the presenter made some remarks to Ms. Anderson which caused offense to some of their viewers. The producer states that, however, they comprised a small part of a wide ranging interview which Ms. Anderson told their researcher that she thoroughly enjoyed. RTÉ does not believe that the interview contravened any part of the Broadcasting Act.

4.2 Broadcaster's Response to BAI

RTÉ states that the Executive Producer acknowledges in his reply that some viewers found some of the presenter's remarks offensive. The broadcaster states that, without wishing to diminish and certainly not dismiss their sentiments, they were perhaps imagining themselves in Ms. Anderson's position rather than seeing the interview as a piece of entertainment with which Ms. Anderson would be well accustomed to collaborating throughout her long and successful career. The broadcaster states that Ms. Anderson has, since at least her first appearance on the cover of *Playboy* in 1989 up to her most recent appearance on the magazine's cover in the January/February 2016 edition and through many appearances in television and film, made use of her sexuality and physical attractiveness in pursuit of her career as an entertainer, a strongly influential element of the interview's editorial context. The broadcaster states that it may be noted that Ms Anderson's campaigning as an animal rights and environmental activist was also discussed in the interview. The broadcaster states that, in that context, there was no breach of Principles 2 or 3 and no disrespect to Ms. Anderson as a person or as a woman and no breach of Principle 5.

The broadcaster states that there was no coarse or offensive language used by the presenter and no offence taken by the interviewee from his occasional teasing. The programme was broadcast after the watershed and contained nothing which would have required a particular warning to audiences. Neither in this sense was there any breach of Principles 2 or 3.

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)(b)(harm and offence; the *BAI Code of Programme Standards* – Principles 1 (Respect for Community Standards), Principle 2 (Importance of Context), Principle 3 (Protection from Harm) and 5 (Respect for Persons and Groups in society), the Forum has decided to reject the complaint.

In this regard:-

- Having reviewed the broadcast, the Forum found that Ms. Anderson was introduced as '*a star of Baywatch, a Playboy cover girl, an animal rights activist and a global sex symbol*' and this set up the context for the interview that followed. The Forum found that the interview then examined the different aspects of Ms. Anderson's career.

- The Forum was of the view that, although some members of the audience may have found the comments about Ms. Anderson's sexuality to be puerile and offensive, it did not believe that they were such that they would infringe the requirement to respect *Community Standards*, as set out in the *BAI Code of Programme Standards*.
- The Forum noted that *The Ray D'Arcy Show* is broadcast on Saturday night from 9.50pm and is aimed at an adult audience, so the interview style was in context with its intended audience. The Forum also noted that the audience members and the guest would not have been surprised by the approach to questioning given the different aspects of Ms. Anderson's career. Furthermore, the Forum found no evidence from the programme that the guest was offended by the interviewee's questions.
- The Forum also noted that no case was made by the complainant in respect of the Principle 3 - *Protection from Harm* or Principle 5 – *Respect for Persons and Groups in Society*. The Forum also found no evidence in the programme to support upholding the complaint under these grounds.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act 2009, Section 48(1) (b)(harm and offence; the *BAI Code of Programme Standards* – Principles 1 (Respect for Community Standards), 2 (Importance of Context), 3 (Protection from Harm) and 5 (Respect for Persons and Groups in society), in the manner specified by the complainant. Accordingly, the complaint has been rejected

Complaint made by: Mr. Brendan O' Regan

Ref. Nos. 22/16 and 23/16

Station:

Newstalk 106-108FM

Programme:

**Lunchtime
The Pat Kenny Show**

Date:

**30th November 2015
1st December 2015**

1. Programme

The complaints concern the *Lunchtime* programme and *The Pat Kenny Show*, which are current affairs programmes broadcast each weekday from 12.30pm to 1.30pm and from 10am to 12.30pm respectively. The programmes contained reports and discussions on abortion in the context of a *Belfast High Court* judgement on 30th November 2015.

2. Complaint Category

The complaints are submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 3 and 22).

3. Complaint Summary

Lunchtime - 22/16

The complainant states that, on 30th November 2016, the *Lunchtime* programme covered the Belfast Judgement, featuring what he states were four 'pro-choice' voices welcoming the judgement – Mr. Colm O'Gorman, Ms. Virginia McVeigh, Mr. Les Allenby and Ms. Cliona Sadlier. He states that there were no contributors from the 'pro-life' movement or perspective. The complainant states that the content of the show displayed a lack of objectivity, fairness and impartiality in relation to that morning's Belfast Court decision on the abortion issue, which could make abortion more readily available in the North.

The complainant states that the *Human Rights Commissioner* from the North, Mr. Allenby, welcomed it positively as a '*historic decision*', and the complainant states that this demonstrated a 'pro-choice' or 'pro-abortion' viewpoint. The complainant states that there was no consciousness that in this situation there was a baby whose rights needed protecting and states that this right was not covered by the presenter.

The complainant states that Mr. Allenby, when referring to young pregnant women under 16 years of age, talked about protecting '*any child*' like this, however, the complainant states that he was not challenged on why he was excluding the other child, the unborn but living baby, from protection.

The complainant states that there was reference to a '*public consultation trying to change the law*' when surely a public consultation is aimed at considering the law, a very different process, which might lead to a decision to leave the law as is or even to make it more strict.

The complainant states that this point was not made by the presenter and there was no 'pro-life' spokesperson to make the point or draw attention to the inconsistency.

The complainant states that a reporter did make the point that lobby groups will argue that '*abortion ... is against the human rights of the baby*', but he states that this comment was brief, and a point never made by the presenter.

The complainant states that the presenter did make a brief suggestion at this point that perhaps a majority would oppose this measure if it came to a vote in the North, but it was, in the view of the complainant, a brief point and nowhere near enough to counteract the unfairness of having so many 'pro-choice' points made by all the spokespersons and invited guests. The complainant states that Mr. O'Gorman made a number of 'pro-choice' points. The complainant states that as he talked about human rights applying to '*all people*', and wasn't challenged on why he didn't include the baby's human rights – which the complainant states is a rather obvious contradiction. The complainant states that Mr. O'Gorman also said "*we don't get to pick and choose who they [laws like the European Convention] apply to*", but again the presenter failed to point out what the complainant considers to be the irony - that Mr. O'Gorman was in fact excluding the unborn child. The complainant states that Mr. O'Gorman was also allowed, without challenge, to make a similar point to the effect that the majority needs to respect the human rights of minorities - no challenge from the presenter as to why the rights of a particular minority (the unborn) wasn't included.

The complainant states that a large number of 'pro-choice' points were included in the programme. He states that, in addition to the judgement itself (given during headlines at the start of the programme), the programme included no less than 4 'pro-choice' speakers, with no opposing speakers, and only very brief and largely perfunctory counter points from the presenter. The complainant states that the Belfast judgement was reported on but filtered through and commented on from one perspective only - the 'pro-choice' perspective. He states these factors resulted in a lack of fairness, objectivity and impartiality.

The Pat Kenny Show 23/16

The complainant states that on *The Pat Kenny Show*, Mr. Shane Coleman dealt with the Belfast Court Case and gave, in the view of the complainant, a very soft and unchallenging interview to Ms. Kelly O'Dowd of the organisation *Alliance for Choice*, who the complainant describes as a 'pro-choice' campaigner. The complainant states that there were about 8-10 questions put to Ms. Kelly O'Dowd and none of them were seriously challenging, mainly just facilitating her in the expression of her 'pro-choice' views.

He states that later in the show, Fr. Eugene O'Hagan did get to make some 'pro-life' points, but this was primarily an interview about *The Priests* singing group. However, he states that this was not sufficient to ensure fairness in this programme.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Newstalk respond as follows:

- The Belfast Judgement on the issue was a breaking news story and as per their obligation under the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, this was reported and presented in a fair and impartial manner and without any expression of the broadcaster's own views.
- In respect of *The Pat Kenny Show*, Newstalk 106-108 rejects the complainant's views that this was represented in any impartial manner.

4.2 Broadcaster's Response to BAI

Monday 30th November 2015 - Lunchtime

Newstalk 106 - 108FM states that this broadcast was immediately after the Judgment was delivered by the *Belfast High Court*. It was a breaking news story and there was a limited amount of time to arrange for guests. The piece was about the Judgment itself and not a debate on the pros and cons of abortion. The presenter did not express his own view and just because the guests were known to be 'pro-choice' voters does not automatically make this unfair and in breach of the Codes.

The broadcaster states that the discussion was on the Judgment that had been delivered that day and there were a number of suitable and appropriate guests on the show to discuss its implications and potential impact.

Newstalk is satisfied that it was a fair and impartial interview with no expression of opinion given by either the presenter or the interviewee.

Tuesday 1st December – The Pat Kenny Show

Newstalk 106 - 108FM states that the complainant has issued a complaint on the basis that there was a 'pro-choice' campaigner on the Show. However, the broadcaster notes that the complainant acknowledges that there was a 'pro-life' campaigner interviewed who made some 'pro-life' points. The broadcaster believes that the programme was fair when taken as a whole.

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 Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 2, 3 and 22), the Forum has decided to reject the complaints.

In this regard:-

Lunchtime – 30th November

- The Forum noted that this complaint referred to the *Belfast High Court* judgement on abortion laws in Northern Ireland, which was found to breach European human rights laws. The *Northern Ireland Human Rights Commission* (NIHRC) had called for abortion to be legalised in cases of serious foetal malformation, rape or incest.
- The Forum found that this was a breaking news story featuring representatives from groups who supported the case being taken to the High Court. The Forum was of the view that this approach was in accordance with normal reporting standards, which included the views of those who had been successful in their case.
- The Forum was of the view that this was not a debate on abortion *per se* but a factual report on the outcome of a court case in another jurisdiction. The Forum also noted that, as the case being taken concerned the issue of whether abortion should be legalised in cases of serious foetal malformation, rape or incest, the coverage would focus on this issue. The Forum also noted that the court case findings were critical of the laws in Northern Ireland and the reporting would naturally include a factual account of the criticisms and the basis for those findings. The Forum considered that this did not demonstrate a lack of fairness, objectivity or impartiality. Rather, it was a natural consequence of the facts of the story being covered.
- The Forum noted that it is not a requirement when discussing or reporting on the subject of abortion for the broadcaster to balance it with an opposing view in all cases, so as to ensure fairness. Fairness can be achieved using several methods, including the role of the presenter, the selection of contributors and time allocated and a key consideration is whether the content requires balance so as to ensure fairness. The Forum was satisfied that the content was fair.

The Pat Kenny Show – 1st December 2015

- Having listened to the broadcast, the Forum found that the outcome of the *Belfast High Court* judgement was discussed with 'pro-choice' campaigner, Ms. Kelly O'Dowd and the effects it may have on the issue in Northern Ireland. Again, the discussion was on the court case and not, *per se*, on the question of whether abortion should be permitted or not. The Forum found the discussion appropriate from an editorial perspective and the focus on the critical findings of the court case were legitimate given the content and focus of the news story.
- The Forum noted that it not a requirement when discussing or reporting on the subject of abortion for the broadcaster to balance it with an opposing view in all cases, so as to ensure fairness. Fairness can be achieved using several methods, including the role of the presenter, the selection of contributors and time allocated and a key consideration is whether the content requires balance so as to ensure fairness. The Forum was satisfied that the content was fair given the content and context for the story.

Broadcasting Complaint Decisions

- The Forum noted that the presenter did get the views of a priest on the programme later as part of the singing group *The Priests*, who did provide some 'pro-life' points. However, the Forum was satisfied that these were not necessary as a means of ensuring that the programme ensured fairness.
- In view of the above, the Forum did not agree that the programme infringed the requirements of regard Broadcasting Act 2009, Section 48(1)(a) (*fairness, objectivity and impartiality in current affairs*) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, 3 and 22), in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Mr. Robert Thompson

Ref. No. 25/16

Station:

RTÉ One

Programme:

The Late Late Show

Date:

30th October 2015

1. Programme

The complaint concerns *The Late Late Show* which is a lifestyle/entertainment programme broadcast each Friday evening from 9.35pm. The complaint relates to the use of the word, 'Bejaysus' by the presenter, Mr. Ryan Tubridy.

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* - Principle 5 (Respect for Persons and Groups in Society).

3. Complaint Summary

The complainant states that the substance of the complaint is what he states is the continuing misuse of the name of 'Jesus' by the presenter of *The Late Late Show* and his use of the word pronounced as 'bee-jays-us'. The complainant states that this (and any inappropriate use of Jesus' name) is derogatory and should not be used by the national broadcaster. The complainant understands that any host/presenter cannot control language from a guest on a show, but when it comes to their own staff, given the influence of broadcasters it should be incumbent on RTÉ to adopt good socially inclusive standards and direct their staff accordingly.

The complainant believes the following are reasons to address this subject:

- The misuse of Jesus' name (or Christ) is offensive to Christian people. There are many people who come under the general umbrella of 'Christian' who are regular misusers of the name of Jesus and unlikely to be offended. But Christians divide into two very broad categories – Christian by birth/in name and those by conviction i.e. those who have a personal allegiance to Jesus Christ. And it is that latter group who find this offensive, especially on a national and influential forum.
- The complainant states that the principle of '*freedom of speech*' was well acknowledged in Ireland following the tragic *Charlie Hebdo* affair. He states that this is a right in Irish society but that same society places a high value on it being tempered with sensitivity. This is often highlighted in the media when individuals, let alone segments, have been offended – and followed with consequent apologies.

- He states that, in Ireland, we pride ourselves as a socially inclusive and secular society extending to include people of all races and religions. He states that people, organizations and politicians all endeavour to uphold this standard and we never hear ‘O Buddha’ or ‘be-Mohammed’ (or others, and possibly with demeaning tone). He states that such would quickly make news and evoke apologies and he asks whether the same courtesy should not be extended to Christians.
- The complainant states that the *Irish Constitution* recognises that, while delegated to institutions of the State, Jesus Christ is cited as the source of our obligations in pursuit of the common good. The complainant also states that he was very inclusive of other cultures in both action and teaching. The complainant states that to misuse the name of Jesus on public forums is therefore dishonouring a foundational principle of the *Constitution*.

4. Broadcaster’s Response

4.1 Broadcaster’s Response to Complainant

RTÉ’s Producer to *The Late Late Show* states that during this programme, the presenter and guest Ms. Angela Scanlon judged a Halloween costume competition which included a man dressed as the film character, “*Edward Scissorhands*”. While discussing the costume, the presenter said in an unscripted line “*he’s scaring the bejaysus out of me now I have to say, with that look.*” This was meant as a light-hearted compliment to the man’s costume and certainly not meant to cause offence. The broadcaster states that Webster’s dictionary defines “*bejaysus*” as “*a mild oath, used as a noun for emphasis*”, an alteration of “by Jesus” whose use goes back to the 19th Century.

RTÉ does not agree with the complainant’s assertion that the language used dishonoured a foundational principle of the *Irish Constitution*. The broadcaster states that live television conversations at that hour of the night must be free to discuss matters in a forthright manner, even if sometimes the language used is not what everyone watching would ideally choose to hear. In this case, RTÉ believes the language used was relatively mild and unremarkable to the vast majority of those watching.

The broadcaster states that the comment was made during a live television item of a light-hearted nature, well after the 9pm watershed. RTÉ further contends that no offence was meant and certainly no demeaning of either Christianity or any religion was meant.

4.2 Broadcaster’s Response to BAI

RTÉ refers to the response of the Producer of the Show in which he states that the phrase ‘*bejaysus*’ used is a commonplace one which implies no disrespect whatsoever to religious views, practices or beliefs.

The broadcaster states that to say that the ‘*bejesus*’ or ‘*bejasus*’ was scared out of someone is to indicate that the fright was so great that it would cause the person to utter the mild oath ‘*by Jesus!*’. No disrespect is intended by the oath, simply to indicate the degree of reaction.

The broadcaster states that to judge by the absence of reaction to use of the term, no offence was taken by the great majority of viewers and certainly none was intended. In the latter context, while believing firmly that there are no grounds to uphold this complaint on any of the grounds cited or under any provision of broadcasting legislation or regulatory Code, RTÉ regrets any offence taken by the complainant.

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)(b)(harm & offence; the *BAI Code of Programme Standards* – Principle 5 – Persons and Groups in Society), the Forum has decided to reject the complaint.

In this regard:-

- The Forum noted that the misuse of religious views, images, practices and beliefs in programme material has the potential to cause offence and this is recognised as part of the *BAI Code of Programme Standards*. At the same time, the Code recognises that content can be aired which may cause offence but which is justified for creative, editorial or other reasons.
- In the case of the current complaint, the Forum noted that the word has religious origins and that some Christians would regard its use as offensive. However, the Forum was of the view that the word used is a common and mild term used colloquially in Ireland, in everyday vernacular. The Forum noted that, based on research undertaken by the BAI in respect of coarse and offensive language, the term is not one that the general public have cited as likely to cause offence. In this context, the Forum was of the view that its use was unlikely to cause widespread offence in this instance.
- The Forum noted that, in the programme, it was used only once by the presenter as a means of acknowledging what he considered to be the scariness of one of the Halloween costume featured on the programme. Therefore, the Forum found that the use of the word had a context and was not out of place or gratuitous.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act 2009, Section 48(1)(b)(harm & offence; the *BAI Code of Programme Standards* – Principle 5 – Persons and Groups in Society), in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Mr. David Hegarty

Ref. No. 28/16

Station:
RTÉ Radio 1

Programme:
Today with Seán O'Rourke

Date:
21st December 2015

1. Programme

The complaint concerns *Today with Sean O'Rourke* which is a news/current affairs programme broadcast each weekday morning from 10am to 12pm. The complaint relates to an interview with Mr. Simon Carswell, the *Irish Times* newspaper Washington correspondence, which included a reference to abortion in the context of a discussion on North American politics.

2. Complaint Category

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

3. Complaint Summary

The complainant states the programme included Mr. Carswell mentioning how the "*rhetoric*" about abortion in the political debate had been too "*strong*". The complainant states that Mr. Carswell did not, however, make any reference to what the complainant describes as the hideous practices which he states had been exposed as going on in US abortion centres, nor did he make reference to the selling of foetal organs and other neglectful practices occurring in these centres. The complainant states that Mr. Carswell did not mention the attempts to defund such centres which is proceeding in various state legislative assemblies. The complainant states that these endeavours should not be suppressed in the coverage of this topic and that the public deserve to be properly informed.

The complainant states that describing these practices in abortion clinics hardly amounts to mere "*rhetoric*" on any scale be it "*strong*" or otherwise. The complainant states that the failure of this programme to present the facts about the nature of abortion in the USA, when there is a push for the legalisation of abortion in Ireland, is a disservice to the public listenership and a suppression of full and informed debate.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states there was an acknowledgement from the *Today with Seán O'Rourke Show* who advised the complainant to write to RTÉ's designated complaints email. The complainant did so but received no acknowledgement or response.

4.2 Broadcaster's Response to BAI

RTÉ wishes to apologise for the failure to respond to the initial complaint which was entirely due to an administrative error in RTÉ Complaints and not in any way the responsibility of the programme's production team.

In respect of the complaint, RTÉ states that there was no discussion or debate during the course of the interview on the topic of abortion. There was a discussion on gun crime in the United States and the public and political reaction to such crimes, during which the interviewee expressed the view that the debate in their aftermath is frequently focussed on issues other than that of gun control, saying:

"Anytime there's a major shooting, often that you see the debate not actually focussed on the issue of gun control. For example, after the Charleston shootings at that historic Black church in June, after that we saw the debate about the Confederate flag which is seen by many as a symbol of racism and division – the debate was about that. After the killings at the Planned Parenthood Clinic in Colorado, the debate was focussed on whether the rhetoric around abortion in the political debate is too strong. So often in instances when these things happen the actual debate is not on the issue of the availability and the ready access people have to guns."

As can be seen above, no view on the topic of abortion was expressed. The point being made did not relate to abortion but to gun control and to the manner in which, on at least one occasion, debate on the topic of abortion supplanted debate on gun control.

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 & impartiality in current affairs); the *BAI Code of Fairness, Objectivity & 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 Forum noted that the complaint concerned an interview which dealt with current and recent political issues in the USA. This included a discussion on the Berkeley balcony collapse and gun control. In the case of the complaint, the Forum found that it concerned the segment of the interview that dealt with gun control.
- Having reviewed the interview, the Forum found that there was no discussion or debate during the course of the interview on the topic of abortion. Rather, the interview included a reference to abortion in the context of mass shootings in the USA. The Forum found that the reference was made by the interviewee who was expressing the view that the debate in the aftermath of such shootings is frequently focussed not on gun control but on issues other than that of gun control.

The interviewee stated:

“Anytime there’s a major shooting, often that you see the debate not actually focussed on the issue of gun control. For example, after the Charleston shootings at that historic Black church in June, after that we saw the debate about the Confederate flag which is seen by many as a symbol of racism and division – the debate was about that. After the killings at the Planned Parenthood clinic in Colorado the debate was focussed on whether the rhetoric around abortion in the political debate is too strong. So often in instances when these things happen the actual debate is not on the issue of the availability and the ready access people have to guns.”

- The Forum felt that the point being made did not relate to abortion but to gun control and to the manner in which, on at least one occasion, debate on the topic of abortion supplanted the debate on gun control.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act 2009 Section 48(1)(a)(fairness, objectivity & impartiality in current affairs); the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2) in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Mr. Jason Lee

Ref. No. 33/16

Station:
RTÉ One

Programme:
The Late Late Show

Date:
12th February 2016

1. Programme

The complaint concerns *The Late Late Show* which is a lifestyle/entertainment programme broadcast each Friday evening from 9.35pm. The complaint relates to the appearance of a guest who, in the view of the complainant, seemed to have consumed too much alcohol.

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 (General Community Standards), 2 (Importance of Context) and 3 (Protection from Harm).

3. Complaint Summary

The complainant states that a guest on this programme, featuring in a Blind Date competition, appeared to be drunk. The complainant objects to RTÉ choosing what he perceived as a being a young man under the influence of alcohol for entertainment purposes. The complainant states that it was obvious that the man was not coherent or in control of the situation from an early stage in the broadcast. It is claimed by the complainant that the man was quoted in media interviews as being embarrassed following the incident.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ's Producer to *The Late Late Show* states that he disagrees with the assertion that the young man, who featured in the Blind Date competition, was incoherent and not in control of the situation. It is true to say that he had had a couple of drinks before the show, but he was at all times in control of his faculties. RTÉ states that the young man was enjoying his time in the limelight but at least part of what appeared on television was showmanship. RTÉ maintains that the man in question would not have been in a position to drive or operate heavy machinery, but he was monitored throughout his time in studio and backstage. RTÉ is satisfied he was in control of his faculties on each occasion he appeared on television.

RTÉ claims that the young man and those who appeared on the show with him, were very happy with their light-hearted fun item on a St. Valentine's Day special before, during and after transmission. It is true to say that this was a different style of item to a normal *Late Late Show* interview or performance, however, RTÉ took care to ensure the safety and well-being of all participants in this as in all items on the show.

4.2 Broadcaster's Response to BAI

RTÉ refers to the initial response to the complainant by the Executive Producer of *The Late Late Show*.

RTÉ states that this special edition of *The Late Late Show* was clearly formatted and presented to the audience as an entertainment on the topic of personal and intimate relationships between (mostly) younger people. RTÉ believes that there was no breach of Principle 1 and claims that the complainant has not shown how, in the presentation of the young man in question, or in any other way, any such breach occurred.

RTÉ maintains that this was the third *Late Late St Valentine's Day Special* in succession and the event was advertised in advance on previous editions of the programme, on *The Ryan Tubridy Show* on RTÉ Radio 1 and extensively on social media and print newspapers, so post-watershed audiences had a clear expectation of the kind of show involved. There was therefore no breach of Principle 2.

RTÉ believes that there was no breach of Principle 3. None of the participants in the programme had drunk any more – and probably less – than would be normal on a night out. The programme did not encourage the abuse of alcohol.

RTÉ claims that the complaint is based on an unwarranted assumption for which there is no evidence that the young man's performance was entirely the result of alcohol and bore no relation to his personality when completely sober. During his appearance on the programme, it is clear that the man was, in the words of section 9.5 of the RTÉ Content Standards Guidelines a proactive "*part of the joke rather than ridiculed*," not least in his warm rapport with the presenter.

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 Broadcasting Act 2009, Section (48(1)(b)(harm and offence) and *the BAI Code of Programme Standards* – Principle 1 (General Community Standards), Principle 2 (Importance of Context) Principle 3 (Protection from Harm), the Forum has decided to reject the complaint.

In this regard:

- The Forum found that the presenter flagged the item in advance of the appearance of the couples in question and therefore the audience would have been aware of the 'blind date' format and the type of content that would be expected by virtue of this format. The Forum also noted that this is a long established television format that most members of the audience would be very likely to be familiar with.

- Although it appeared that one of the contestant had drink taken, and the broadcaster did acknowledge this, the Forum was of the view that he was coherent and in control. While the guest made lively, enthusiastic and high spirited contributions to the programme slot, this was to be expected given the inherently humorous and sometimes embarrassing nature of the 'blind date' programme format. The Forum also noted that the contributor had volunteered to participate in the programme and had not made a complaint.

The Forum's review of the programme highlighted that he did not offend the host, the audience or the girl he was paired with and all appeared to take his banter in a light-hearted manner. Further, he did not appear to be physically incapacitated in any manner as might be expected if he was inebriated to a significant degree.

- When considering the complaint, the Forum noted several factors, including the channel in question, the time of broadcast and the audience expectation for this show. The Members were of the view that the broadcast was in line with audience expectation and was broadcast after 9pm. The Forum also found that there was no evidence of the broadcast encouraging or justifying the abuse of alcohol.
- Overall the Forum the members were of the view that the programme did not infringe the requirements of the Broadcasting Act 2009 or the *BAI Code of Programme Standards*, in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Ms. Margaret Lee

Ref No. 36/16

Station:
RTÉ Radio 1

Programme:
News At One

Date:
11th January 2016

1. Programme

The complaint concerns an interview on the weekday news programme, the *News at One*, which is broadcast weekdays from 1pm. The complaint specifically concerns a comment made by the presenter when interviewing the then *Minister for the Environment, Community and Local Government*, Mr. Alan Kelly T.D. The comment related to proposals around a state-backed flood insurance scheme.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(harm and offence) and Section 48 (1) (a) (fairness, objectivity and impartiality in current affairs); the *BAI Code of Programme Standards* - Principle 5 (Persons and Groups in Society); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2).

3. Complaint Summary

The complainant states that during an interview with the *Minister for the Environment, Community and Local Government*, Mr. Alan Kelly T.D., regarding the flooding problems experienced in various parts of the country, the presenter referred to “*people who were stupid enough*” to build on flood plains. The complainant found this comment to be highly insensitive. The complainant states that, although the presenter qualified her remarks by saying “*some people might say*”, the complainant believes that this was stated when the presenter realised what she had said. The complainant states that there was no attempt to apologise to members of the public whose homes had been flooded. The complainant states that the comment is an example of presenters abusing power, of harrying and bullying politicians.

The complainant also refers to the fact that, while a reply was provided, it was not provided within the required timeframe.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ's Executive Producer to the show apologised to the complainant for not replying sooner and cited being busy with the *General Election* as the reason for the delay.

The broadcaster states that in relation to the complaint concerning the question put by the presenter - “*people who were stupid enough to build on floodplains*”, RTÉ maintain that this was clearly qualified by saying it's what “*some people would ask?*”

The broadcaster states that in the context of the debate, the "*stupid*" comment was clearly referring to decisions by local authorities who had granted planning permission for dwellings on floodplains. Indeed Minister Alan Kelly replied "*certainly bad planning practices went on*" before explaining there were many "*historical and economic reasons*" why houses were built in such locations.

RTÉ does not agree, and there is no evidence to suggest that the interview was "*an example of presenters abusing power, of harrying and bullying politicians.*" It was a normal, inquisitive *News at One* interview.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the Editor of *News at One* to the initial complaint.

The broadcaster states that, as indicated in that reply, the words used by the presenter were in keeping with Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, reflecting the views of those – taxpayers who might object to state support of flood insurance – who were not there to participate. This was made very clear in the presenter's framing of the question to the interviewee: "*But why is a state insurance-backed scheme a good idea? Because you'll have people saying, 'Well, why should I pay for someone's – for want of a better word – stupidity for building their house on a flood plain?'*" The broadcaster states that at no point in the interview did the presenter address the interviewee in the way described in the complaint's initial complaint.

RTÉ claims that at all times, the interviewing was in keeping with Rule 4.22.

In respect of the allegation of breach of Principle 5, RTÉ believe that it is questionable whether the hypothetical person who had '*built their house on a flood plain*' is a person or group addressed by this principle, as such a person is not defined by "*race, religion, sex, ethnicity, sexual orientation or nationality.*" RTÉ also believe that it is questionable whether the use of such a hypothesis to put to an interviewee an appropriately challenging question, and one reasonably reflecting a viewpoint likely to be held amongst the population, is intended to or likely to "*stigmatise, support or condone discrimination or incite hatred.*"

RTÉ states that without prejudice to other points made above in respect of the presenter's questioning, it does not seem likely that Principle 5 is in itself intended to restrict properly robust interviewing on current affairs topics.

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)(b)(harm and offence) and Section 48 (1)(a)(fairness, objectivity and impartiality in current affairs), the *BAI Code of Programme Standards* - Principle 5 (Persons and Groups in Society) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2), the Forum decided to reject this complaint.

In this regard:

- Having reviewed the programme, it was the Forum's opinion that the presenter was acting in the *Devil's Advocate* capacity whereby an alternative viewpoint is put forward in the form of a challenging question. In this case, the presenter was clearly attempting to put forward the views of some listeners who would not support a levy or additional taxes to support a state-backed flood insurance scheme. In doing so, the presenter qualified her remarks by saying – "*because you will have people saying...*" "*and for want of a better word*", which clearly indicated that she was presenting a perspective on the topic under discussion and not her own personal view. That perspective was of those who might object to paying for what they saw as other people's poor decisions in respect of the planning and building of homes and premises in areas prone to flooding.

The Forum also found that the Minister, in his reply, provided a counterpoint to that position when he said - "*certainly bad planning practices went on but you can't paint everyone with the one brush. Certainly some people have houses in areas which, reflecting back, shouldn't have been put there but in many other cases there are many historical and other reasons why they are located there*". The Forum also noted that the guest was an able and experienced interviewee and found no evidence to support the assertion that the interview entailed an abuse of power by the presenter or any bullying or harrying of the guest by the presenter.

- The Forum was of the view that, while the presenter's use of the word "*stupid*" was poorly chosen, the word was used in the context of a legitimate question intended to articulate a perspective that some listeners to the programme might have, and it was a question which they would have wanted the Minister to answer in the context of the interview.
- In view of the above, and with regard to Principle 5 of the *BAI Code of Programme Standards*, the Forum found from its review of the programme that the comments, while robust, were intended to challenge assumptions and were not considered to be likely to prejudice human dignity or stigmatise, support or condone discrimination or incite hatred against persons or groups in society.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the fairness, objectivity and impartiality requirements of Broadcasting Act 2009, the *BAI Code of Programme Standards* or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Ms. Theresa McMorrow

Ref. No. 42/16

Station:
RTÉ One

Programme:
The Late Late Show

Date:
8th January 2016

1. Programme

The complaint concerns *The Late Late Show* which is a lifestyle/entertainment programme broadcast each Friday evening from 9.35pm. The complaint relates to an interview with the new *Master of the Rotunda*, Professor Fergal Malone and in particular, to aspects of that interview that dealt with fatal foetal abnormalities and life limiting conditions for babies.

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 complaint refers to an interview with Professor Fergal Malone. The complainant states that during this interview, Professor Malone gave his personal opinion on the treatment of babies diagnosed with fatal foetal abnormalities or life-limiting conditions. The complainant states that this is a very topical and sensitive issue which is very much in the news at the moment and as a result, this section of the show was of a current affairs nature.

The complainant does not feel that Professor Malone was asked any challenging questions that would lead him towards an avenue that would provide the viewer with any sort of a balanced discussion of the issue. She states that, on the contrary, the presenter asked some questions which the complainant found very troubling as they introduced a new aspect of the debate which led the discussion still further along one line only. In particular, the complainant cites the section of the interview where the presenter himself introduced a story about a family who were obliged to bring home the remains of their baby by *DHL*. The complainant states that this was a very upsetting aspect of the discussion but it was introduced by the presenter who, she states, guided the interviewee towards describing what happened. The complainant states that it may not be something that viewers would have heard about. She states that this came towards the end of the section, at which point Professor Malone had had ample opportunity to discuss one aspect of the debate, namely the option of abortion if a baby is diagnosed with fatal foetal abnormality or a life limiting condition.

The complainant states that this question gave another opportunity for the Professor to talk more about how he feels the 8th Amendment should be repealed. The complainant found this unacceptable particularly given the fact that there was nobody on the programme (either 'pro-life' campaigner, medical professional opposed to repeal or parent of a baby with fatal foetal abnormalities who continued with the pregnancy) to present the opposite view.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ's Producer to *The Late Late Show* states that the purpose of the interview was not to have a detailed or in-depth conversation about abortion, the Repeal of the 8th Amendment issues etc., but rather to hear his views on a range of views as the new *Master of the Rotunda*.

The broadcaster states that it should be noted that on the 26th February, *The Late Late Show* conducted a long interview with Mrs. Michelle and Mr. Vincent Manley. Their child, Jamie, was diagnosed *in utero* with a condition incompatible with long term life or survival outside the womb. After consideration, they chose to carry their son to term and deliver him into the perinatal hospice in the *Rotunda Hospital* (which as a point of information was under the care of Professor Malone). The broadcaster states that in this interview, as in others, the parents of the boy in question simply told their story and let the audience make up their own mind.

The broadcaster states that with this, and with many other items on the Show, it is RTÉ's standard practice to achieve balance both internally within an interview and in a wider context across a range of interviews within *The Late Late Show*.

4.2 Broadcaster's Response to BAI

The broadcaster states that the interview with Professor Malone was arranged in August 2015 on his appointment to the position of *Master of the Rotunda*, but at his request deferred until his appointment took effect. The broadcaster states that its purpose was to introduce the new *Master* to *The Late Late Show* audience and to discuss with him his own background, his choice to work as an obstetrician, his hopes in his new role and some of the key issues involved, such as ground-breaking *in utero* surgery. The broadcaster states that the topic of pregnancy with an expectation of very limited life after birth was appropriately raised with the *Master* of one of the country's main maternity hospitals.

The broadcaster states that the Professor Malone outlined the procedure which is in place in the Rotunda when supporting parents through such a diagnosis, which includes full support services for parents who continue with the pregnancy as well as support for parents who choose to go to another country, usually Northern Ireland or Britain, to terminate the pregnancy by inducing labour several months early. The broadcaster states that it should be noted that the practice involved – which has included *Rotunda Hospital* practitioners meeting the British surgical teams who carry out such procedures – is of course entirely within Irish legislation on the matter.

The broadcaster states that it should be underlined that, contrary to the assertion in the original complaint to the broadcaster that there was no reference to the experience of families who had not chosen termination, there were indeed such references in the Professor's account of practice in his hospital. This may be noted in the context of the complainant's reference to an *Irish Medical Organisation* motion on perinatal hospice care.

The broadcaster states that the Professor's view that it would be preferable from a clinical and medical perspective if patients could have procedures in Ireland currently only available to them by travelling to Britain was challenged by the presenter. In keeping with Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, it was clearly put to him, a number of times, that there are other views on the issue of termination in the context of such diagnosis, including that there should never be intentional termination of pregnancies and that to introduce termination in such cases would be "*the thin end of the wedge*" and not welcome in this country.

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 1 & 2), the Forum has decided to reject the complaint.

In this regard:-

- The Forum noted that this was primarily a wide ranging interview touching on a number of different subjects linked to the new role of Professor Malone, including a discussion of his plans for the *Rotunda Hospital* and how he sees various key issues being dealt with over the period of his tenure. The Forum noted that the interview had elements of human interest and also elements that constituted current affairs, in particular, those relating to abortion.

The Forum noted that, as an obstetrician, it was inevitable that he would be asked about his views on fatal foetal abnormalities and life limiting conditions that arose during pregnancies.

- In relation to the part of the interview that dealt with the choices faced by parents, in relation to fatal foetal abnormalities and life limiting conditions, the Forum was of the opinion that the discussion was factual in nature and provided a fair view of how such issues are dealt with in this country and abroad and the medical care offered to both those that chose the route of continuing with their pregnancy and those that did not. The Forum noted that the interview set out the practical realities of the choices that are open to parents and which they are legally entitled to take. The interviewee set out the consequences in terms of medical care that arose from Irish law prohibiting abortion in the case of fatal foetal abnormalities and life limiting conditions. It was noted that the focus of the interview was on the issue of patient care and not, as such, on the topic of the rights and wrongs of abortion.
- The Forum noted that the presenter did challenge and provide different viewpoints, including references to people who would not support abortion under any circumstances and those who would consider any proposal to liberalise Irish abortion law as the '*thin end of the wedge*'.

- The Forum found that reference to the remains of a baby being couriered back from Britain to the parents' home in Ireland were raised by the presenter to illustrate how the trauma of having to travel to Britain for a termination can impact on parents. The Forum also found that this was a legitimate issue to raise and that it was dealt with in a sensitive manner by both the presenter and the interviewee.
- The Forum noted that it is not a requirement when discussing or reporting on the subject of abortion, including those involving fatal foetal abnormalities and life limiting conditions, for the broadcaster to balance it with an opposing view in all cases, so as to ensure fairness. Fairness can be achieved using several methods, including the role of the presenter. A key consideration is whether the content requires balance so as to ensure fairness. In this instance, the Forum was satisfied that the content of this discussion was fair on account of its overall content and having had regard to the contributions by the presenter.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act 2009 or *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Mr. Gerald O'Carroll

Ref. No. 44/16

Station:
RTÉ Radio 1

Programme:
The Ray D'Arcy Show

Date:
8th March 2016

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 item complained of refers to an interview with the writer and journalist Ms. Louise O'Neill in respect of the right to life and the 8th Amendment to the *Irish Constitution*.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(harm & offence); the *BAI Code of Programme Standards*: Principles 1 – (Respect for Community Standards, 2 (Importance of Context) and 5 (Persons and Groups in Society).

3. Complaint Summary

The complainant states that during an interview with Ms. Louise O'Neill, which touched on the topic of abortion, no mention was made of the life in the womb, the unborn child, the possible objection of the father or the possibility that the vast majority of women consider an expected child to be a gift and a creation of God.

The complainant further states:

- In his opinion, the impression was given that the generation of a life in the womb is the inconvenient result of what has, in his opinion, become a normalised or accepted activity approved, he states, by programmes such as the one that is the subject of the complaint i.e. casual sex with multiple partners.
- He states that the word 'choice' was used many times in the programme, as if no other factors need be considered. The complainant states that, in his opinion, the message conveyed by the programme was that 'choice' existed in the matter of bringing a child to term. He states that it was communicated in the programme that 'choice' was considered to exist in the matter of bringing a healthy child to term and when the mother was in the full of her health.

He states that it was also communicated in the programme that 'choice' resided with one person only, the bearer of the expected child. The complainant states that there was no challenge from the presenter to the use of the word 'choice' as used and implied. The complainant states that no distinctions were made by the interviewee herself and none were put to her in the form of questions.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

No response was forthcoming from the broadcaster. RTÉ states the complaint was not initially sent to the formal complaints process at RTÉ and, therefore, did not receive a reply by the time the matter was referred to the BAI.

4.2 Broadcaster's Response to BAI

RTÉ states that the editorial approach of *The Ray D'Arcy Show* includes the hosting of interviews conducted in an exploratory, conversational style which is known and expected by the programme's audience. The interview with Ms. Louise O'Neill was a legitimate story of the day as she was a young Irish woman who was obtaining a significant award and is also a new Irish voice as both a columnist and novelist. Her second book '*Asking for It*' is a very successful and critically acclaimed novel about a young Irish girl being raped at a party with her peers which has created widespread discussion amongst teenagers and their parents across Ireland.

The point raised by the presenter about the *The Ray D'Arcy Show* (TV) politicians panel, where the 8th Amendment issue was perceived as something the electorate was apathetic about, was brought up to provide a contrary view to the interviewee's of its importance in the public mind. Texts were also read out that contradicted Ms. O'Neill's opinions, defending the maternity system in Ireland, criticising her voting intentions, and offering contrary views on modern feminism.

In respect of Principle 1 the broadcast complained of represents a contribution to diverse programming "*representing the rich diversity, plurality and realities of contemporary Irish society*".

In respect of Principle 2 of the Code, reflecting the realities of contemporary Irish society is something which audiences of *The Ray D'Arcy Show* will expect. This interview about being a young woman in today's Ireland will have been entirely in keeping with such expectations and the complaint does not indicate anything in the broadcast which would have disrupted or run counter to those expectations of the programme's audience.

In respect of Principle 5 of the Code, the complaint does not indicate any content of the broadcast which would have stigmatised, supported or condoned discrimination or incited hatred against any person or group in society. No such statements were made by either presenter or interviewee.

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)(b)(harm & offence) and the *BAI Code of Programme Standards: Principles 1 – (Respect for Community Standards, 2 (Importance of Context) and 5 (Persons and Groups in Society)*, the Forum has decided to reject the complaint.

In this regard:-

- The Forum noted that this was an interview with journalist and author Ms. Louise O'Neill, who writes a column in *The Examiner* newspaper. Opening the interview, the presenter mentioned the award that Ms. O'Neill was due to receive that evening from *Trinity College, Dublin*, which honours people who have excelled in their chosen field of work. The Forum noted that the interview then broadened out into a wider discussion about being a woman in Ireland and issues relating to feminism and the rights of women in Irish society. It was evident from the interview that many of these issues were addressed in a column that the guest writes for *The Examiner* newspaper and therefore had additional relevance to the discussion.
- In this regard, the interview covered a wide range of these topics which included issues such as rape, conviction rates for rape, sexting, the 8th Amendment to the *Irish Constitution*, maternity care and services in Ireland, paternity leave, under-representation of women in politics, pressures on men in society, revenge porn, amongst others. The interview also covered the two books written by the journalist, both of which have been optioned for films.
- The Forum noted that a range of views, including those which were contrary to Ms. O'Neill's were read out on-air. For example, one text was from a listener praised the maternity services here and others queried the basis on which the guest chose who she would vote for in the then recent *General Election*.
- The *BAI Code of Programme Standards* states that broadcasters are required to have regard to community standards when making programming. They must also schedule responsibly and avoid material that would be stigmatise, support or condone discrimination or incite hatred against persons, particularly on the grounds of age, gender, marital status, membership of the Traveller community, family status, sexual orientation, disability, race, nationality, ethnicity or religion. Having reviewed the complaint and the broadcast, the Forum found the content to be a standard interview with a guest, touching on a range of subjects. While not every listener will enjoy or agree with the contributions of an interviewee, they have a legitimate right to free expression and the Forum found no evidence to support the view that the interview would cause harm or undue offence.

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

Complaint made by: Mrs. Sharon Gardiner

Ref. No. 45/16

Station:
TV3

Programme:
Tonight with Vincent Browne

Date:
7th April 2016

1. Programme

The complaint concerns *Tonight with Vincent Browne*, which is a current affairs programme broadcast from 11pm on Tuesday to Thursday each week.

2. Complaint Category

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

3. Complaint Summary

The complainant states that her complaint refers to how, in her view, this programme violated the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, under the above sections. In particular, she states that during the discussion, the presenter, Mr. Sam Smyth, displayed bias in respect of the issue of abortion. In particular, the complainant states that Mr. Smyth constantly interrupted one of the panellists, Mr. Cora Sherlock of the *Pro-Life Campaign*, as she tried to speak while not doing so in the case of the other panellists who, the complaint states, were from the 'pro-choice' side of the abortion debate.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

- TV3 state that the basis for the programme followed the prosecution in Belfast of a young woman for procuring her own abortion by using a poison and to look at whether a similar situation could arise in Ireland.
- The broadcaster states that the panel was made up of three people; Ms. Cora Sherlock, a member of the *Pro-Life Campaign* and someone who has been outspoken on the Belfast case; Ms. Kate O'Connell, T.D. who is in favour of a repeal of the 8th Amendment and has given the issue careful researched consideration due to her personal experience and Ms. Kitty Holland, *Irish Times* journalist with in-depth knowledge of social affairs.
- The broadcaster states that Mr. Smyth's role as presenter on the night, was to facilitate discussion and analysis and that includes challenging all contributors. TV3 claims that the presenter carried out his role as a journalist and disagrees that he consistently spoke over Ms. Sherlock.

4.2 Broadcaster's Response to BAI

- TV3 states that the topic of discussion on the night was not abortion generally but more limited to the issue of the recent prosecution of the woman in Belfast having procured her own abortion.
- Having reviewed the segment carefully, TV3 disagrees with the complainant that the presenter spoke over Ms. Sherlock and agreed with everything said by the other two women.
- The broadcaster states that Ms. Sherlock was given much more time than any other guest on the panel to make her points and discuss the issues. She was also given much more time to respond to points made by the other two guests. She was interrupted by the presenter as is typical in all live debate programmes. However, she was not interrupted any more than the other guests.
- The broadcaster also states that Ms. Sherlock was able to extend the discussion from the limited topic of the recent Belfast prosecution to a more general discussion on abortion and the 8th Amendment and issue such as abortion regret and the media approach to the subject.
- TV3 is satisfied that the presenter did not express his own views. He did what a presenter is supposed to do and that is to moderate and stimulate debate. The role of the presenter is to challenge statements made by every guest and in this case that was done fairly and objectively.
- TV3 point out that Ms. Sherlock herself did not complain about the panel interview. She was aware of the make-up of the panel beforehand and had no issue with it.
- The broadcaster states that the programme ended with the two other contributors, Mr. Shane Beatty and Ms. Sinéad Valentine who supported one of the points made by Ms. Sherlock and commented on how balanced the programme was given that she was on her own as a 'pro-life' campaigner on the panel.

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 Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, and 2), the Forum has decided to reject the complaint.

In this regard:-

- The Forum noted that the programme was a panel discussion on the prosecution of a young woman in Belfast for securing her own abortion through self-medication. It included a free flowing range of opinions, points and counterpoints on the topic under discussion among the three panellists. The Forum noted that the complainant believed the presenter displayed bias when the discussion turned to abortion. The complainant stated that only one of the panellists, Ms. Cora Sherlock, of the *Pro-Life Campaign* represented the 'pro-life' perspective and she was constantly interrupted by the presenter when she spoke while not doing so to other two panellists who she states were 'pro-choice'.
- The Members were of the view that the role of the presenter is to facilitate discussion and debate in the interest of the audience, so as to ensure fairness, objectivity and impartiality. It is also the role of the presenter to challenge significant errors or to facilitate their challenge by programme contributors. In addition, fairness is also provided by contributions from panellists, including views they may have which are challenging or critical of the opinions of other programme participants.
- In this context, while it is acknowledged that there were two others on the panel with opposing views to Ms. Sherlock, the Forum found that Ms. Sherlock, a seasoned campaigner with considerable experience in debating in the media, was given ample time to put her views across.

The Forum also noted that Ms. Sherlock had not expressed any dissatisfaction to the broadcaster with the way she was treated during the discussion.

- Having reviewed the programme, the Forum was satisfied that the discussion in question was moderated in a fair and impartial manner and without any expression of the presenter's own views. In this regard, the Members noted that the presenter challenged the contributors on occasion and questioned the veracity of some comments.
- The Forum was also mindful of the audience and participants' expectations of the programme and found that the discussion itself, including the approach adopted by the presenter, were both in keeping with the more robust style that is characteristic of the programme in question.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1, and 2), in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Ms. Eithne Murray

Ref. No. 46/16

Station:
RTÉ One

Programme:
Today

Date:
23rd February 2016

1. Programme

The complaint concerns the *Today* programme, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 4pm. The complaint concerns a discussion on this programme about breastfeeding.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(Harm & Offence); the *BAI Code of Programme Standards* (Principle 3 - Protection from Harm and Principle 5- Persons and Groups in Society); Section 48(1)(d)(*BAI General Commercial Communications Code* – Section 3.3 Transparency).

3. Complaint Summary

The complainant states that the right to breastfeed in public is protected by law, under prevention of discrimination against the family. She states that this law has been tested in court, and has proven to be effective. In other words, it is against the law to harass a mother who is breastfeeding in public.

The complainant states that the discussion on the *Today* show and the on-screen poll inviting views on breastfeeding carried the tacit implication that it was unacceptable to breastfeed in public, and could conceivably encourage discrimination. The complainant believes that harm was done. She states that, having supported breastfeeding mothers for many years, she is aware how vulnerable new mothers feel. Having also undertaken research in this area, she encountered one woman who sought isolation rather than go to a public place out of embarrassment. The complainant states that if either the programme or the poll influenced even one mother to remain isolated from others, even if it was only for one feed, then harm has been done.

The complainant states that breastfeeding is the optimal mode of feeding a baby, and is the mode promoted by the HSE for both infant and maternal health.

The complainant also states it is worth noting that one of the programme presenters, Ms. Maura Derrane, is an "*ambassador*" for *Danone Nutrition*, a manufacturer of infant formula, an industry whose sales increases when rates of breastfeeding decrease. The complainant states that, while it is not clear if this is a commercial relationship, there, in the view of the complainant, an apparent conflict of interest in facilitating a discussion which could influence women not to breastfeed, as stated above.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states that the complaint referred to came about as a result of a misleading headline in the *Irish Independent* newspaper about an article written by Ms. Amanda Brunner. This resulted in a panel discussion on what Ms. Brunner had actually stated in the article, in which her substantive point was that she felt that women who had not decided to breastfeed, for whatever reason, should not be made to feel guilty. This was Ms. Brunner's personal opinion.

RTÉ further states:

- In the wider panel discussion no one at any time was unsupportive of the principle of breastfeeding as the ideal – this was repeated many times throughout the discussion.
- As no point in the discussion did any of the participants advocate any negative line in respect of breastfeeding - the general tone of the discussion was positive towards breastfeeding, with emphasis placed on the matter being that of the individual to choose.
- In relation to the poll – this is something RTÉ does from time to time on the show, and in no way could be interpreted as anything other than what it is, a snap shot in time of viewers' opinions.
- The *Today* show is very supportive of new mothers – RTÉ run regular slots given by experts on breastfeeding and sleep issues for new-borns as well as broader slots for older children and families.
- Ms. Derrane was an ambassador, along with other high profile parents, for the first 1000 days project until the end of 2015. Therefore, she no longer is involved in this campaign which had the aim of promoting nutritional wellbeing in the first 1000 days of a child's life. In any event, RTÉ judges these additional engagement requests from freelance presenters together with any potential conflicts of interest very carefully and under strict guidelines. As this broadcast happened after Maura's involvement with the 1000 days campaign ended, it is not relevant to the broadcast in question.

4.2 Broadcaster's Response to BAI

RTÉ states at the top of an edition of *Today*, the news of the day is discussed, with guest journalists invited to express their honest opinions. The discussion in question arose from an arguably misleading headline to an article written by Ms. Amanda Brunner – a guest on the show.

The broadcaster states that this resulted in a panel discussion on what Ms. Brunner had actually stated in the article, in which her substantive point was that she felt that women who had not decided to breastfeed, for whatever reason, should not be made to feel guilty.

It may be noted that this was Ms. Brunker's personal opinion as a guest contributor; she is not one of the show's presenters.

The broadcaster states that, in the wider panel discussion, no one at any time was unsupportive of the principle of breastfeeding as the ideal – this was repeated many times throughout the discussion. Also at no point in the discussion did any of the participants advocate any negative line in respect of breastfeeding – the general tone of the discussion was positive towards breastfeeding with emphasis placed on the entitlement of the individual to choose how to feed their baby.

The broadcaster states that the Facebook poll complained of asked *Today* Facebook followers to give their opinion on breast-feeding in public. The purpose of the question was simply to measure public attitudes as represented by *Today* Facebook followers. It was in no way discriminatory or undermining of legal rights. The result indicated that 91% of those polled supported the right to breastfeed in public, indicating that an insignificant number of the programme's viewers were not supportive of the legal right to do so.

In respect of section 3.3 of the *BAI General Communications Code*, the broadcaster states that the presenter in question no longer has (and did not have at the time of broadcast) any association whatsoever with any manufacturer of infant formula.

There was no commercial or other arrangement or relationship of which viewers should have been made aware and neither was there any endorsement in the broadcast of any products or services whatsoever.

RTÉ wishes to emphasise that *Today* is consistently supportive of new mothers and runs very regular slots given by experts on breastfeeding, helping viewers if they are finding it difficult.

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)(b)(harm and offense), *the BAI Code of Programme Standards* – Principle 3 (Protection from Harm) and Principle 5 (Persons and Groups in Society) and the *BAI General Commercial Communications Code* (Section 3.3. Transparency), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that the complainant believes that the discussion on the show about breast feeding carried a tacit implication that it was not acceptable to breastfeed in public.
- Upon their review of the programme, the Members found that this was a discussion on breastfeeding that arose from a headline over an article by journalist, Ms. Amanda Brunker. The headline stated "*The sight of toddlers being breastfed unsettles me*".

Ms. Brunker explained that beyond the headline, her article was about women who can't or don't wish to breast feed and her view that they should not be made feel a failure by society because of this. She believes that this is society's view at present.

- The Forum was of the view that Ms. Brunker was very clear in her explanation of what her article was and was not about. They noted that she emphasised that she was not questioning the value of breast feeding but was putting the spotlight on what she considers the pressure placed upon women who, for whatever reason, don't breastfeed.
- The Forum found that all of the contributors in the discussion, including the presenter, stated more than once the benefits of breast feeding while at the same time emphasising that women should not be made feel uncomfortable for breast feeding in public. They also stated that neither should women be pressurised and labelled a failure for not breastfeeding.

The Forum found that there was nothing to support the view that the programme included the '*tacit implication that it was unacceptable to breastfeed in public*' as contended by the complainant. Rather, the Forum found that the conversation was more nuanced and clearly cited the benefits of breast feeding.

- The Forum noted that reference was made by the complainant to a poll being carried out by the broadcaster during the programme to establish viewers' thoughts on breast feeding in public. The Forum was of the view that it is common for broadcasters to carry out such "straw" polls to ascertain their audience preferences. While not all audience members would have approved of the question posed in this instance, the broadcaster has the editorial freedom to choose their content. The Forum did not believe, based on the complaint, that there was evidence to support the view that harm was caused by this poll. It also noted that the respondents to the poll overwhelmingly supported breast feeding in public.
- Overall the Members were of the view that the programme did not infringe the requirements of Broadcasting Act 2009, *the BAI Code of Programme Standards* or the *BAI General Commercial Communications Code* in the manner specified by the complainant. Accordingly, the complaint has been rejected.
- In considering this complaint, the Forum found that there was nothing in the broadcast that constituted a commercial communication as stated by the complainant, therefore section 3.3 was not considered applicable to the complaint.

Complaint made by: Ms. June Twomey

Ref. No. 47/16

Station:
RTÉ One

Programme:
The Late Late Show

Date:
8th January 2016

1. Programme

The complaint concerns *The Late Late Show* which is a lifestyle/entertainment programme broadcast each Friday evening from 9.35pm. The complaint relates to an interview with the new *Master of the Rotunda*, Professor Fergal Malone, in particular, aspects of that interview that dealt with fatal foetal abnormalities and life limiting conditions.

2. Complaint Category

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

3. Complaint Summary

The complainant states that having Professor Fergal Malone on the show provided an opportunity to present a biased programme on the issue of abortion in the case of unborn babies diagnosed with fatal foetal abnormalities or life-limiting conditions. The complainant states that *The Late Late Show* has a responsibility to ensure that the public is given both sides of the story. She states that there were no range of perspectives provided. She states there was no 'pro-life' organisation or contrary obstetric opinion included in this programme (or any subsequent *Late Late Show*) or any representative from the organisations, *One Day More* or *Every Life Counts*, to offer balanced and fair broadcasting to audiences.

The complainant further states that the interview was very much an exploration of Professor Malone's personal opinion i.e. that abortion should be legalised for cases of fatal foetal abnormalities or life limiting conditions, without any mention of the dangers that abortion entails to the woman. The complainant states, in her opinion, this interview optimised the opportunity to sanitise the issue with the subliminal use of gentle/empathetic language and exceptional examples, such as the alleged *DHL* story which concerned the delivery of the ashes of a couple's child in circumstances where the couple had had a termination outside of the State.

The complainant states that no exploration was given to methods of abortion and the subsequent delivery of the baby in an abortion procedure, bearing in mind the horrific fact that abortions here in Ireland can be carried out up to full term under the 2013 legislation. The complainant states that Professor Malone said the abortion flood gates were not opened after the 2013 legislation, and this was not challenged in any way by the presenter, who did not mention that while the flood gates did not open immediately in other countries either, such as British/US, abortion is nonetheless available on a widespread basis there today.

The complainant states that this topic is one of current public debate and controversy and, therefore, some balanced debate/personal interviews with opposing experiences or opinions/challenging interviewer questions should have provided format and context for such an issue being aired on prime time television.

While RTÉ can say this was a personal interview of an individual, it must be known by RTÉ in planning the interview, that Professor Malone's professional standing and position would carry weight and easily influence public opinion.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states the purpose of the interview was not to have a detailed or in-depth conversation about abortion, the Repeal of the 8th Amendment to the *Irish Constitution* and other issues, but rather to hear Professor Malone's views on a range of issues as the new *Master of the Rotunda*.

The broadcaster states that when the presenter did ask specific leading questions regarding the DHL package or to elicit a direct answer on the 8th Amendment from Professor Malone, he followed up by pointing out that others would disagree with him and that there were many other views available on this topic. The broadcaster states that this was done specifically to ensure that it was clear where Professor Malone was coming from and for there to be no doubt as to his opinion on this topic, while ensuring that the show's audience were aware that this opinion was the subject of controversy.

The broadcaster states that over the course of 37 live two-hour television shows across a season of *The Late Late Show*, RTÉ endeavours to have a range of views on a range of topics and the presenter's job is to elicit the views of his guest and while ensure that they don't go unchallenged. It is not always necessary in those cases to engage in a confrontational interview to do this.

The broadcaster states that, with that in mind, it should be noted that on the 26th February 2016, *The Late Late Show* conducted a long interview with Mrs. Michelle and Mr. Vincent Manley. Their child, Jamie, was diagnosed *in utero* with a condition incompatible with long term life or survival outside the womb. After consideration, they chose to carry their son to term and deliver him into the perinatal hospice in the *Rotunda Hospital* (which as a point of information was under the care of Professor Malone). In this interview, as in others, the parents of the boy in question simply told their story and let the audience make up their own mind.

The broadcaster states that with this, and with many other items on the Show, it is RTÉ's standard practice to achieve balance both internally within an interview and in a wider context across a range of interviews within *The Late Late Show* and across RTÉ programming in general.

4.2 Broadcaster's Response to BAI

RTÉ states that the interview with Professor Malone was arranged in August 2015 on his appointment to the position of *Master of the Rotunda* but, at his request, deferred until his appointment took effect. They state that its purpose was to introduce the new *Master* to *The Late Late Show* audience and to discuss with him his own background, his choice to work as an obstetrician, his hopes in his new role and some of the key issues involved, such as ground-breaking *in utero* surgery. It was a profile interview of wide-ranging editorial scope, as planned and as broadcast, marking Professor Malone's appointment.

The broadcaster states that, in that editorial context, the topic of pregnancy with an expectation of very limited life after birth was appropriately raised with the *Master* of one of the country's main maternity hospitals. Professor Malone outlined the procedure which is in place in the *Rotunda Hospital* when supporting parents through such a diagnosis, which includes full support services for parents who continue with the pregnancy as well as support for parents who choose to go to another country, usually Britain, to terminate the pregnancy by inducing labour several months early. The broadcaster states that it may be noted that the practice involved – which has included *Rotunda Hospital* practitioners meeting the British surgical teams who carry out such procedures – is of course entirely within Irish legislation on the matter.

The broadcaster states that it should be underlined that, contrary to the assertion in the original complaint to the broadcaster that there was no reference to the experience and perspective of families who had not chosen termination, there were indeed such references in the Professor's account of practice in his hospital. As a matter of broadcast fact, the Professor's view that it would be preferable from a clinical and medical perspective if patients could have procedures in Ireland currently only available to them by travelling to Britain was challenged by the presenter.

The broadcaster states that, in keeping with Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, it was clearly put to Professor Malone, a number of times, that there are other views on the issue of termination in the context of such diagnosis, including that there should never be intentional termination of pregnancies and that to introduce termination in such cases would be "*the thin end of the wedge*" and not welcome in this country. Contrary to the statement in the complaint that "*there was absolutely no range of perspectives provided*", other perspectives on the topic were put to the interviewee.

The broadcaster states that, insofar as the interview with Professor Malone touched on an area of public debate, appropriate challenge to the views expressed was offered by the presenter; and the related broadcast of 26th February offered *Late Late Show* viewers another perspective on the topic.

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 1 & 2), the Forum has decided to reject the complaint.

In this regard:-

- The Forum noted that this was primarily a wide ranging interview touching on a number of different subjects linked to the new role of Professor Malone, including a discussion of his plans for the *Rotunda Hospital* and how he see various key issues being dealt with over the period of his tenure. The Forum noted that the interview had elements of human interest and also elements that constituted current affairs, in particular, those relating to abortion.

The Forum noted that, as an obstetrician, it was inevitable that he would be asked about his views on fatal foetal abnormalities and life limiting conditions that arose during pregnancies.

- In relation to the part of the interview that dealt with the choices faced by parents, in relation to fatal foetal abnormalities and life limiting conditions, the Forum was of the opinion that the discussion was factual in nature and provided a fair view of how such issues are dealt with in this country and abroad and the medical care offered to both those that chose the route of continuing with their pregnancy and those that did not. The Forum noted that the interview set out the practical realities of the choices that are open to parents and which they are legally entitled to take. The interviewee set out the consequences in terms of medical care that arose from Irish law prohibiting abortion in the case of fatal foetal abnormalities and life limiting conditions. It was noted that the focus of the interview was on the issue of patient care and not, as such, on the topic of the rights and wrongs of abortion.
- The Forum noted that the presenter did challenge and provide different viewpoints, including references to people who would not support abortion under any circumstances and those who would consider any proposal to liberalise Irish abortion law as the '*thin end of the wedge*'.
- The Forum found that reference to the remains of a baby being couriered back from Britain to the parents' home in Ireland were raised by the presenter to illustrate how the trauma of having to travel to Britain for a termination can impact on parents. The Forum also found that this was a legitimate issue to raise and that it was dealt with in a sensitive manner by both the presenter and the interviewee.

- The Forum noted that it not a requirement when discussing or reporting on the subject of abortion, including those involving fatal foetal abnormalities and life limiting conditions, for the broadcaster to balance it with an opposing view in all cases, so as to ensure fairness. Fairness can be achieved using several methods, including the role of the presenter. A key consideration is whether the content requires balance so as to ensure fairness. In this instance, the Forum was satisfied that the content of this discussion was fair on account of its overall content and having had regard to the contributions by the presenter.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act 2009 or *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

