



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

Broadcasting Authority of Ireland

Broadcasting Complaint Decisions

November 2016

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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, 3 complaints were considered by the Compliance Committee of the BAI. Of these, 1 has been upheld and 2 rejected. The Executive Complaints Forum considered and rejected 4 complaints. The decisions of the Compliance Committee were reached at its meeting held in October 2016. The decisions of the Executive Complaints Forum were reached at meetings held in August and September 2016.

Upheld by the BAI Compliance Committee

Complaint made by: Mrs. Theresa Finn

Ref. No. 74/16

Station:

FM104

Programme:

The FM104 Phone Show

Date:

13th July 2016

1. Programme

The complaint concerns *The FM104 Phone Show*, which is a phone-in programme covering a wide range of topics, broadcast each weekday night from 9.30pm. The complaint refers to a discussion on the programme about special needs children and their exclusion from summer camps.

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), 3 (Protection from Harm) and 5 (Respect for Persons and Groups in Society).

3. Complaint Summary

The complainant states that the programme contravened the Act and the BAI's rules for the following reasons:-

- The complainant states that she was appalled and disgusted at what she considered to be the vile abuse that was allowed to be broadcast in relation to the topic of special needs children being excluded from summer camps.
- The complainant states that she has personal experience of dealing with autistic children and has experienced exclusion on several occasions. She was therefore interested in listening to peoples' stories.
- The complainant states that although she expected to hear some ignorant and rude comments, she did not expect to hear abusive, hateful comments towards the most vulnerable children in our society.
- The complainant states that broadcasting comments referring to an autistic child as having no mind of their own; not being "*all there*" and calling them the abusive term '*mongos*' is irresponsible.

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- The complainant questions if the broadcaster understands -:
 - What it's like for a child to want to do things but their little body can't cope;
 - What it's like to live in a country where no services are provided for such children.
 - What it's like for your child to have no voice – to never know how their first day at school went or how they feel when sick or in pain.
 - What it's like to get ready to go to the park but then have to drive past because your child can't cope with the loud noises.
- The complainant points out that just as the broadcaster has a responsibility not to air the “N” word in relation to racism, so too is there a responsibility not to air abuse to other minority groups.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

The broadcaster states the following:

- The topic aired on the night in question related to a Facebook status sent to the station by a parent of a special needs child. The parent was informed that the summer project to which she wanted to send her child, does not cater for special needs children.
- The broadcaster maintains that the majority of the calls were either from parents in a similar situation or from people who sympathised with this woman's situation.
- The broadcaster states that, as with any topic, some listeners to the programme will be ignorant in respect of a topic. The broadcaster states that this was displayed by one caller who made remarks regarding people with special needs. The broadcaster states that he was challenged by both presenter and other callers. The presenter called his views “*idiotic*”, “*insulting*” and “*ignorant*” and he was eventually cut-off.
- The broadcaster states that the show contains views and opinions that not everyone agrees with, but these views are always challenged on-air, as was the case on this night.
- The broadcaster denies hyping anyone up before going on-air, to be disrespectful towards children with special needs and further claims that they do not have the time nor the resources to “pre-interview” every caller.

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- The broadcaster claims that the topic as a whole highlighted the need for more acceptance of children with special needs within summer camps, and the ignorance they face.

4.2 Broadcaster's Response to BAI

The broadcaster states that the complainant's concerns will be taken into consideration in the future. However, FM104 points out that this show is aired after the watershed of 9pm and does carry a warning before and during the programme, that the show is unsuitable for anyone under 15 years of age. Notwithstanding this, the broadcaster unreservedly apologises for any upset caused to the complainant by the views of their listeners.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having had regard to the *Broadcasting Act 2009*, Section 48(1) (b)(harm and offence) and the *BAI Code of Programme Standards*, Principles 1 (Respect for Community Standards), 3 (Protection from Harm) and 5 (Respect for Persons and Groups in Society), the Committee has decided to uphold the complaint.

In this regard:

- The Committee noted that the programme in question is a phone-in show, broadcast after the 'watershed'. As such, the content is driven by audience interaction and by those callers who are willing to be placed on-air. Such programmes are likely to have more adult content and are often characterised by controversial and trenchant views, often stated using coarse and offensive language.

Such content is usually in line with audience expectations and audiences are less likely to be offended due to programme style and time of broadcast.

- While audiences do not have an automatic right not to be offended by programme content, the *BAI's Code of Programme Standards* sets out certain limits in respect of acceptable content. This includes a requirement on broadcasters to ensure that content is in line with general community standards, including standards related to public attitudes to language. Furthermore, content must represent persons and groups in society appropriately and in a justified manner and should not prejudice human dignity. While robust debate is permissible, as is the challenging of assumptions, programming should not stigmatise, support or condone discrimination against persons or groups in society, including on the basis of disability. Moreover, the Code recognises that the use of terms and references of an abusive nature in respect of persons or groups in society, including those with disabilities, requires justification. For example, the use of such language in a drama might illustrate the vulgar nature of a character in such a drama.

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In the case of the programme in question, it was the view of the Committee that it did not meet the requirement to respect community standards nor did it avoid the use of language which was offensive to persons and groups in society and to the audience.

- In particular, the programme included a caller who made repeated use of offensive terms in respect of persons and groups in society, in particular individuals with a disability. The caller in question made the following assertions, amongst others, when referring to children who would need additional support to participate in summer camps or in the education system: -
 - *“What happens if he [a child at a summer camp] spazzes out...”*
 - *“They don’t have a head of their own...they don’t have a mind of their own...”*
 - *“They are kinda...stupid...”*
 - *“At the end of the day, you can’t put a mongo into a camp...”*
 - *“You can’t have a cabbage in a camp...”*
 - *“A cabbage won’t punch the head off of me, no mongo will punch the head off of me...”*
- While the comments of this caller were challenged throughout the programme, it was the view of the Committee that the caller’s views were extremely offensive. While a broadcaster cannot always predict what a caller will say once on-air during a live broadcast, it was evident from early in his contribution that his views were highly offensive. However, the caller was then given repeated opportunities to air these views, views which the Committee believe should not have been broadcast in such an extensive manner, given their offensive nature. It should have also been clear from feedback from listeners that the caller was causing significant offence. The Committee also noted that he was permitted to make the above types of remarks for a considerable period of time before his comments were strongly challenged by the presenter. There was also no evidence from the broadcaster that the presenter or the programme makers ended the call.
- Given the nature of the comments by the caller, the frequency at which these remarks were made, the length of time that the caller was on-air as well as the lack of any significant challenge to these remarks by the presenter until near the end of the caller’s contribution, the Committee has decided to uphold the complaint in respect of Principle 1 (Respect for Community Standards), Principle 3 (Protection from Harm) and Principle 5 (Respect for Persons and Groups in Society).

Further Determination

In view of the content of the programme, the Committee has determined that the broadcaster would be issued with a Compliance Notice, as provided for under the *BAI Compliance and Enforcement Policy*. In addition, the programme will be monitored by the BAI in view of the findings of this complaint.

Rejected by the BAI Compliance Committee

Complaint made by: Mr. Gerry Byrne

Ref. No. 69/16

Station:

Cork's Red FM

Programme:

The Neil Prendeville Show

Date:

5th May 2016

1. Programme

The complaint concerns a discussion on the *Neil Prendeville Show*, which is a current affairs programme broadcast daily from 9am to 12 Noon. The item complained of involved an interview with Dr. Robert O'Connor of the *Irish Cancer Society* about the *Gardasil* vaccine for girls. The vaccine is used with the intention of preventing the contraction of certain strains of human papillomavirus.

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: 17, 19 and 22).

3. Complaint Summary

- The complainant states that the presenter introduced the item by reading a list of ten emails that he said he had received from parents listing what they said were symptoms arising from the administration of the *Gardasil* vaccine, or their fears about its consequences.
- The complainant states that these emails were taken by the presenter at face value and he imputed no doubt as to their veracity or any possible alternative cause for the symptoms or fears expressed in them.
- The complainant maintains that in the subsequent interview with Dr. O'Connor of the *Irish Cancer Society*, the presenter was unhelpful, combative, and argumentative and he publicly expressed disbelief, incredulity or derision at some of Dr. O'Connor's answers.
- The complainant believes that, given the presenter's attitude to Dr. O'Connor, he should have at least expressed appropriate critical attitudes to the reading of the parents' emails.
- The complainant believes that this section of the programme was unbalanced and unfair in that the parents' emails were presented unchallenged as established facts while Dr. O'Connor was critically challenged and disbelieved.

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- The complainant provides several examples of the presenter interrupting Dr. O'Connor as he tried to set out the safety and efficacy of the *Gardasil* vaccine.
- The complainant also provides instances of the presenter using pejorative terms like “*poison*”, “*elements of disease*”, “*collateral damage*” and others in an attempt to pour scorn and cast doubt on Dr. O'Connor's point of view. The complainant states that the presenter failed to offer any proof or explanation as to why he thought his version of the use of *Gardasil* was true.
- The complainant maintains that the continued outbursts, loud interruptions and clear derisions from the presenter, left the listener with the impression that Dr. O'Connor had no clear evidence to support his statements.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

The broadcaster maintains that while acknowledging that the interview conducted was at times challenging and charged, it did not infringe the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*.

4.2 Broadcaster's Response to BAI

The broadcaster states the following:

- Cork's Red FM interviewed Dr. O'Connor from the *Irish Cancer Society* on May 5th to discuss the *Gardasil* vaccine. The broadcaster states that the interview was organised following a previous discussion that the presenter had had with a healthcare practitioner in April, in which the vaccine was discussed. The broadcaster states that at the end of that interview the presenter stated he would return to this item at a later stage.
- The broadcaster states that on both days, when the vaccine item was discussed, the *Neil Prendeville Show* received a large number of correspondence from listeners. They state that the vast majority came from parents of children who received the *Gardasil* vaccine and were negative towards it.
- The broadcaster states that the majority of the parents believed their daughters' ill-health was as a direct result of receiving the *Gardasil* vaccine. The parents contacted the show directly and of their own volition that morning. The broadcaster states that Dr. O'Connor was asked to conduct the interview on the basis of his belief that the HPV vaccination programme represents a vital element of Ireland's cancer prevention programme.
- The broadcaster claims that the interview cannot be analysed in isolation as it was arranged as a result of the calls from Cork parents and needs to be viewed in conjunction with the large number of correspondence received.

They state that almost all of the feedback received was negative towards the vaccine, and for this reason, Dr. O'Connor was deemed to be the appropriate person to interview to ensure balance was achieved.

- The broadcaster acknowledges that the interview was robust and challenging. This was done to ensure the feedback from listeners was expressed to Dr. O'Connor. The interview was informative and Dr. O'Connor was given ample time to express his opinions and expert views. The interview concluded in a very positive and polite way from both sides. The broadcaster states that Dr. O'Connor did not express any difficulty with the interviewer during the broadcast or at any stage subsequent to the interview.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having had regard to the *Broadcasting Act 2009*, Section 48(1)(a)(fairness, objectivity and impartiality) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, (Section 4 - Rules 4.17, 4.19 and 4.22), the Committee has decided to reject the complaint.

In this regard:

- The Committee had regard to the type of programme that was the subject of the complaint. Specifically, the programme is an audience-driven programme where on-air listener contributions form a key part of the programme content. In that context, parents had contacted the programme and had highlighted their concerns about the safety of the *Gardasil* vaccine. These concerns were based on their view that their children had developed unexpected and unwanted side effects following the administration of the vaccine.
- In line with the format for this programme, the presenter set out to examine this topic taking the views of the parents as the starting point. It was evident from the programme that the parents' honestly held the view that the *Gardasil* vaccine was responsible for their children's ill-health and that, regardless of whether the vaccine had a role, the parents were dealing with real issues that were affecting and continue to affect them and their children. As a listener-driven programme, it was therefore appropriate that this topic be examined and that the experiences of these parents would be explored, particularly where there was no apparent explanation for the ill-health that the children had developed.
- In considering complaints relating to news and current affairs, the Committee will have regard to a programme discussion as a whole, taking into account the range of perspectives aired. This includes the perspectives of the presenter, listeners and any other on-air contributors, such as in-studio guests.

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Having regard to this and having regard to the programme content, the Committee was of the view that the contribution of Dr. O' Connor of the *Irish Cancer Society* ensured that the discussion as a whole was fair. Dr. O' Connor was interviewed at length about the purpose of administering the vaccine and the question of whether it was safe and whether the ill-health highlighted by listeners could have occurred because of the administration of the vaccine. The Committee found that this guest was given the full opportunity to set out his expert view that the *Gardasil* vaccine is safe and not responsible for the illnesses that have been reported by some parents. The Committee found that his views provided the suitable counter-balance to those of the parents who had emailed the programme.

- The Committee noted that the interview was robust. However, it noted that the presentation style of this programme and the presenter will entail robust engagement on the subjects under discussion. As the programme set out to explore whether the *Gardasil* vaccine was safe (and was driven by the experience of parents who believed it was not), the interview robustly examined the view that the vaccine was safe. The Committee was of the opinion that this approach was appropriate in a context where listeners held the position that the vaccine had had considerable negative effects on the lives of their children.
- In view of the above, the Committee agreed that the programme did not infringe the *Broadcasting Act* or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner stipulated by the complainant. Accordingly, the complaint has been rejected.

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Complaint made by: Fibro Ireland

Ref. No. 80/16

Station:

Classic Hits 4FM

Programme:

The Niall Boylan Show

Date:

29th June 2016

1. Programme

The complaint is submitted on behalf of *Fibro Ireland* and concerns an item on the *Niall Boylan Show*, a programme which is a lifestyle/entertainment programme broadcast Monday to Thursday from 1pm to 3pm. The complaint refers to a text read out in relation to Fibromyalgia and the presenter's response to it.

2. Complaint Category

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

3. Complaint Summary

The complainant states that the subject under discussion referred to whether medical card holders should pay a fee each time they use their card. The complainant states that during the discussion, the presenter then read out a text from a listener who was also a medical card holder and mentioned suffering with Fibromyalgia. The presenter then commented as follows:

"Well there's a whole other show by the way, we could do a whole show on Fibromyalgia and the amount of doctors out there that say that there is no such thing as Fibromyalgia and there's doctors who say that say there is. I know people are going to text in and say now what is Fibromyalgia? Fibromyalgia is when you have a pain, you have some sort of set of symptoms, doctors have done every test known to man and can find absolutely nothing wrong with you. A Doctor, years ago came up with this term Fibromyalgia which basically describes an unidentifiable illness. Now I know there was trouble last year because people who represent people with Fibromyalgia were trying to get it recognised as a disability but sure that's wide open to fraud. You can't have an illness that nobody can recognise open to getting a payment. It would be crazy".

The complainant states that Fibromyalgia is a recognised illness and is included in the Tenth Revision of the *International Statistical Classification of Disease and Related Health Problems (ICD-10)* publish by the *World Health Organisation* in 1992. It is also recognised here by the *Department of Social Welfare*.

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The complainant in their submission also provides a link to a list of symptoms and states that it is vital that any information issued about this condition is correct. The complainant sought an apology from the broadcaster along with a correction of the information already aired.

In response to the broadcaster's assertion that the presenter "*tried to explain in layman's terms what the term referred to and was in no way expressing his personal view*", the complainant queries where the line is drawn between what she believes is a personal opinion and layman's terms.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

The Broadcaster states the following:

- The particular item under discussion was whether medical card holders should pay a small fee when using their cards. Then a text from a listener led to the introduction of Fibromyalgia into the discussion. The presenter outlined to listeners what Fibromyalgia involved and tried to explain in layman's language what the term referred to. The broadcaster claims that this was in no way expressing his personal view on the condition.
- A short time later, the presenter said "*I want to talk to you again about the Fibromyalgia thing because it's a very interesting topic and I know loads of doctors disagree with it and some doctors don't*".
- The presenter invited the complainant or a member of her organisation, to participate in a later discussion on air to explain exactly the Fibromyalgia condition.

4.2 Broadcaster's Response to BAI

The broadcaster states the following:

- 4FM states that the complainant believes the presenter did not take responsibility for the medical mistakes he conveyed in this particular broadcast with regard to his comment on Fibromyalgia. The production team refute this claim as they believe it is a factual statement and not a medical mistake. The presenter simply said some doctors agree Fibromyalgia is an illness while some doctors do not think it exists at all.
- From research according to Dr. John Kincaid, who is a neurology professor at the *Indiana University School of Medicine USA* and a former board member of the *American Association of Neuromuscular and Electro Diagnostic Medicine*, "*There's an extremely wide range of opinions of physicians, ranging from it doesn't exist at all to it's a true illness. At a guess I would say no more than fifty-fifty.*"

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The broadcaster states that, furthermore, Dr. Frederick Wolfe, the director of the *National Databank for Rheumatic Diseases* and the lead author of the 1990 paper that first defined the diagnostic guidelines for Fibromyalgia says he has become cynical and discouraged about the diagnosis. He now considers the condition to be a physical response to stress, depression and economic and social anxiety.

- The production team does not dispute that doctors agree with the diagnosis of Fibromyalgia as the presenter clearly states on-air, some doctors agree with it and some don't and hence most experts will agree that professionals in the medical field are split down the middle on the diagnosis. The production team believe that this information corroborates the presenter's comments that *some doctors believe it exists and some do not*.
- 4FM refutes the claim that the presenter gave his personal opinion on Fibromyalgia. He did not say that Fibromyalgia does not exist, he simply said that some doctors do not believe it does and some do, which the production team deem to be a factual statement.
- The broadcaster states that the programme presenter was simply outlining in lay man's terms what Fibromyalgia was, and in no way gave his personal view on the subject.
- 4FM state that in the original response to the complainant, the production team offered the complainant the opportunity to come on air and discuss Fibromyalgia at length and at a time that suits them. During the broadcast complained of, the presenter had also said on-air that he wanted to talk about Fibromyalgia again at a later date because he believed it was an interesting topic and one that deserved further discussion.
- The complainant referred to the presenter as not being qualified to explain Fibromyalgia in lay man's terms. 4FM maintain that the presenter never claimed to be a doctor or medical professional but as a talk show host he must talk about specific issues raised on air and have a general knowledge of such through research. His job is to relay explanations in lay man's terms to listeners who may not have an understanding of a particular issue. He would regularly talk about topics on national economics and is not a trained economist but would explain such matters in terms that listeners can digest. His explanation of Fibromyalgia was never meant to be a concise or detailed exploration of the condition but a basic summary.
- The broadcaster states that Fibromyalgia is a condition that is usually not diagnosed by any particular test and is based on the sufferer's testimony and experience. The broadcaster believes that is simply what the presenter conveyed in a brief sentence.
- The broadcaster states that, in summary, the production team refute the claims made by the complainant that the presenter made a mistake in his comments as he did not give medical information and simply stated that some doctors believe that Fibromyalgia exists while some others do not. The team believe this to be a factual statement.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having had regard to the *Broadcasting Act 2009*, Section 48(1) (a)(fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2 and 4.17), the Committee has decided to reject the complaint.

In this regard:

- The Committee noted that the programme discussion dealt with the issue of payments linked to the medical card and that the presenter did not introduce the comments out of context but rather made them in response to a text from a listener to the programme who referenced that they had Fibromyalgia.
- Reviewing the comments, the Committee found that the presenter was not questioning the *bona fides* of those who suffer from Fibromyalgia and did not state that Fibromyalgia was not a genuine condition. Rather, he highlighted that there is disagreement within the medical community on this condition and he queried whether, given the range of symptoms linked to this condition, it would be possible for a dishonest individual to falsely claim to be suffering from this condition. As such, the Committee found that the primary focus of the comments were on the potential for an individual to abuse the medical card system, which was in line with the issues discussed during the programme.
- The Committee also noted that while the complainant in their response set out that the condition is recognised as a medical condition and also by the *Department of Social Welfare*, the complainant did not deny in its submission that there were other medical views on this topic. It is legitimate for a broadcaster to reflect other views on a subject matter where such views exist.
- The Committee further noted that the comments were made in line with the style of the programme, where the presenter takes a challenging, often hyperbolic and controversial approach to the topics discussed which is intended to generate engagement by audiences in the topics highlighted. In this regard, it was clear that this topic was raised so as to generate engagement and this was also clear from the presenter's stated openness to discussing this condition on the programme. The Committee noted that the broadcaster in its response to the complainant offered the complainant's organisation the opportunity to respond to the presenter's comments via participation in the programme.
- On the topic of the presenter's competency to comment on Fibromyalgia, presenters are expected to have a general understanding of the issues that they discuss with the issues elaborated upon in more detail by contributors who will often have greater awareness of the subject matter.

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- Presenters are not expected to have a comprehensive knowledge of a topic. Having regard to the item as a whole, the Committee found that the presenter's comments raised no issues.
- In view of the above and noting the offer by the broadcaster to the complainant to respond to the issues highlighted in the programme, the Committee did not agree that the programme infringed the *Broadcasting Act* or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Rejected by the Executive Complaints Forum

Complaint made by: Mr. Frank Murphy

Ref. No. 52/16

Station:

TV3

Programme:

Tommy Tiernan- Crooked Man

Date:

19th March 2016

1. Programme

The complaint concerns *Tommy Tiernan – Crooked Man*, which is a comedy programme. The item complained of refers to coarse and offensive language used when referring to the *Eucharist*.

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 1 (Respect for Community Standards) and Principle 5 (Respect for Persons and Groups in Society).

3. Complaint Summary

The complainant states that while one expects Tommy Tiernan to use coarse and offensive language, he went beyond the limits of acceptability when he referred to the *Eucharist* as “*that f***** thing*”. The complainant believes that this amounted to blasphemy and nobody should be exposed to this type of remark. The complainant states that while satire and mockery is part of Mr. Tiernan’s routine, blasphemy, profaning the sacred, is an entirely different matter. The complainant claims that it is an offence under the *Defamation Act* to broadcast it.

4. Broadcaster’s Response

4.1 Broadcaster’s Response to Complainant

TV3 apologised for the late reply which was not sent to the complainant until 4th May, following his submission on the 20th March 2016.

In response to the complaint, TV3 state that Tommy Tiernan is a comedian and comedians typically use material that may not be to everyone’s liking. Satire and mockery is part of Mr. Tiernan’s routine. TV3 believe it was quite clear that Mr. Tiernan’s comment was a joke and not meant in the literal sense. His material is of an adult nature and probably to some, unrefined and crude.

4.2 Broadcaster's Response to BAI

TV3 state the following:

- TV3 believe it is clear from viewing the show that the joke was not intended to insult or offend the faith and beliefs of any viewer.
- TV3 understands that Mr. Murphy did not find this particular sketch funny and found it offensive. Aside from the explanation above in relation to the intended meaning of the particular joke, TV3 would like to point out that this programme was aired post-watershed at 10 pm when the audience is almost completely made up of adults.
- The broadcaster states that Mr. Tiernan is a well-known Irish comedian and TV3 believe that the audiences' expectation would be that the material is of an adult nature and to some, crude and unrefined.
- TV3 apologised to Mr. Murphy for the offence caused to him, however the broadcaster firmly believes that the programme did not offend against commonly held standards considered acceptable in contemporary Irish society.

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

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

In this regard:

- Having considered the broadcast in question, the Forum noted that the programme included a reference to the *Eucharist*. However, the Forum noted that the reference was made in the context of a comedy routine and that one of the functions of comedy is to push the boundaries of acceptable speech.

Comedy content, therefore, may be offensive to some viewers or listeners. As such, what is of concern to the Forum is whether the content was offensive in a manner that would infringe general community standards and infringe respect for person and groups in society. The Forum did not agree that this was the case in respect of this programme.

- In particular, the Forum had regard to the fact that the programme was broadcast at 10pm and was therefore aired after the watershed when it is accepted that content of a more adult nature can be broadcast.

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The Forum also had regard to the content of the programme, including the fact that Mr. Tiernan's comedic style is well-known and the content of his stand-up regularly includes coarse and offensive language and addresses various aspects of modern society, including religion.

- In terms of the specific remarks, the Forum found that while the comedian made reference to the *Eucharist*, the focus of the remarks was not on this religious practice but rather on the comedian's personal reflections on his own upbringing in a Catholic country, his own experience as an altar boy and the manner in which Irish society and its social and religious beliefs have changed.
- 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* (Principle 1 – Respect for Community Standards and Principle 5 – Respect for Persons and Groups in Society). Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Peter Kennedy

Ref. No. 58/16

Station:
RTÉ Radio One

Programme:
RTÉ Radio News

Date:
18th March 2016

1. Programme

The complaint concerns an *RTÉ Radio News* item, which was broadcast at 7am and at 8am. The broadcasts complained of refer to news bulletins on the war in Yemen.

2. Complaint Category

The complaint is submitted under the *Broadcasting Act 2009*, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 17 and 18).

3. Complaint Summary

The complainant refers to the news bulletins. He states that in using the term, 'Saudi-led', with reference to the 'Saudi-led' coalition engaged in military activities in Yemen, the broadcaster should have referenced the seven countries that make up this coalition i.e. Saudi Arabia, United Arab Emirates, Qatar, Kuwait, Bahrain, Sudan and Oman.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

No response was forthcoming to the complainant's letter to RTÉ sent 14th April by registered post.

4.2 Broadcaster's Response to BAI

RTÉ states they regret and apologise to the complainant for the lack of response to his initial complaint.

The broadcaster, in its response, states that all countries are included in the phrase 'Saudi-led coalition' used in the broadcast. Accordingly, no issue arises with not specifically listing the countries when referencing the complaint.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster 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 17 and 18), the Forum has decided to reject the complaint.

Broadcasting Complaint Decisions

In this regard:

- The Forum reviewed the broadcast and was satisfied that the term '*Saudi-led*' coalition was sufficient, in the context of a news bulletin, and that it was not necessary to specify the specific countries that make up the coalition in order to ensure that the item was objective and impartial. The broadcast was therefore considered to have due accuracy as required by Rule 17 of section 4 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. The Forum found no evidence to support the relevance of Rule 18 to this complaint and, as a result, this rule was not deemed relevant.
- In view of the above, the Forum did not agree that the bulletins 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.
- The Forum noted that the broadcaster had failed to respond to the complainant and this matter will be raised with RTÉ.

Broadcasting Complaint Decisions

Complaint made by: Ms. Phyllis McGoldrick

Ref. No. 78/16

Station:

Today FM

Programme:

Fergal D'Arcy Show

Date:

7th June 2016

1. Programme

The complaint concerns a discussion on the *Fergal D'Arcy Show* which is a lifestyle/entertainment/music driven programme, which at the time of the complaint, was broadcast each weekday evening from 7pm – 9pm. The item complained of related to two DJ's discussing an insulting term from the German language ('*Schlappschwanz*') and one of the ways in which this term can be translated.

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 1 (Respect for Community Standards).

3. Complaint Summary

The complainant states that, at 8.50pm, two DJ's were discussing an insulting term that can be used to describe a person as a 'wimp' and how it can be literally translated as 'weak cock'. The complainant feels that this type of language is not acceptable live on-air on any Irish radio station.

4. Broadcaster's Response to the BAI

Today FM states that the reference made to a weak male anatomy was made by their presenter that evening, citing a misinterpretation in a translation. The word, while given one meaning, translated to another meaning and this was mentioned once in this broadcast. The broadcaster states that the comment wasn't made without opinion and Today FM are satisfied that no innuendo was used – but the mistranslation was delivered in a mostly factual tone. The broadcaster states that while the presenters did not labour the point, and while the station is satisfied that at the time of day it was broadcast it wouldn't have been a breach of regulations, they have spoken with the team very sternly about having a better content filter and to avoid such a juvenile approach in the future.

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

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

In this regard:

- The Forum noted that the remark was a passing one and made in line with the style and approach of the programme. Regular audience members would therefore be familiar with the approach of the presenters. The Forum also noted that the content was broadcast in the evening, when children were not likely to have made up a significant number of the audience and where programmes can appropriately contain humour that is aimed at an adult audience.
- While noting that some members of the listening audience may have found the humour offensive, the Forum was of the view that the content was not such that it would cause widespread offence and infringe the principle requiring broadcasters to respect community standards.
- In view of the above, the Forum did not agree that the content would infringe the *Broadcasting Act 2009* or the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Ms. Phyllis McGoldrick

Ref. No. 79/16

Station:

Today FM

Programme:

Promo: Ian Dempsey Breakfast Show

Date:

30th May 2016 at
10.58am

1. Programme

The complaint concerns a promo for the *Ian Dempsey Breakfast Show*, which is a lifestyle/entertainment programme broadcast each weekday morning from 7am-9am.

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 1 (Respect for Community Standards).

3. Complaint Summary

The complainant states that the promo for the *Ian Dempsey Breakfast Show* spoke about skimpy shorts, chafing thighs and KY Jelly. The complainant states it was thoroughly disgusting, offensive and degrading for women.

4. Broadcaster's Response to the BAI

Today FM states that in relation to the promo for the *Ian Dempsey Breakfast Show*, it contained a single line about running the *Women's Mini Marathon* and how the chafing caused by excessive running can be helped by *Vaseline* and *KY Jelly*. They say it was in no way offensive or degrading to women. Today FM has spoken to the Show about the concerns of the complainant.

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

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

In this regard:

- The Forum noted that the promo for the *Ian Dempsey Breakfast Show* used an extract from a comedy segment broadcast previously on the programme. The segment was a spoof of the TV3 programme *Xposé* and involved a 'presenter' of that programming giving advice on how to avoid chafing when participating in the *Women's Mini-Marathon*.

Broadcasting Complaint Decisions

- Given the comedic nature of the promo and its time of broadcast, the Forum was of the view that, while it may have offended some listeners, it did not consider the content such that it would cause widespread offence and contravene the principle requiring broadcasters to respect community standards.
- In view of the above, the Forum did not agree that the broadcast would contravene the *Broadcasting Act 2009* or the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

