



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
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, 3 complaints were considered and upheld by the Compliance Committee of the BAI. The Executive Complaints Forum considered and rejected 6 complaints. The decisions of the Compliance Committee were reached at its meeting held in November 2016. The decisions of the Executive Complaints Forum were reached at meetings held in October and November 2016.

Upheld by the BAI Compliance Committee

Complaint made by: Mr. Brendan O' Regan

Ref. No. 84/16

Station:

RTÉ Radio 1

Programme:

The Ray D'Arcy Show

Date:

9th June 2016

1. Programme

The complaint concerns The Ray D'Arcy Show, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm – 4.30pm. The complaint refers to an interview with Mrs. and Mr. Gaye and Gerry Edwards undertaken on the day that the United National Human Rights Committee (UNHRC) made critical findings in respect of Irish law on abortion. The interview focused on their experience of the termination of a pregnancy, where a fatal foetal abnormality was present, and their views on the UNHRC findings.

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 4.3).

3. Complaint Summary

The complainant states that the interview was a personal story with a political campaigning message tagged on. The complainant states that any opposing viewpoint on this controversial and very current issue was treated in a cursory manner. He states that the guests were Mrs. and Mr. Gaye and Gerry Edwards, campaigners with the group Terminations for Medical Reasons. The complainant states that in his opinion it was very obvious from the interview that the guests were campaigning for a repeal of the 8th Amendment to the Irish Constitution. The complainant states that during the interview the guests specifically blamed the 8th Amendment for difficulties they encountered with their pregnancy. He states that the guests welcomed the findings of a UN report that criticised Ireland's laws in respect of abortion and there were references to 'having to' take a case against Ireland. The complainant states that the interview was not very transparent and it was unfair for the presenter to fail to point out that they were part of a campaigning group.

The complainant states that Mr. Edwards made a passing reference to the organisation, Terminations for Medical Reasons but it was unclear to listeners what this stood for, though it did show that he wasn't just there telling a personal story and leaving it at that.

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The complainant states that, further adding to the push for repeal of the 8th Amendment, the presenter read at length from the report of a UN Committee and played an extract from a representative from the UN Committee when she was interviewed on the News at One on RTÉ Radio 1 earlier in the day.

The complainant states that, effectively, this person got two uncontested outings and there was thus there was a huge thrust against the 8th Amendment, and as stated, a cursory treatment of the opposing viewpoint.

The complainant states that if this had just been a personal story, there would have been no issue. However, when this programme has consistently been highlighting views opposing the 8th Amendment, the accumulation of one-sided personal stories and 'pro-choice' political views effectively means the programme is in campaigning mode, pushing a particular 'pro-choice' agenda.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states that the interview was a piece reacting to a story of the day which was the UN Human Rights Committee ruling on fatal foetal abnormalities. The broadcaster states that the UN Committee recommended that the Irish State should amend its law on voluntary termination of pregnancy. They also held that health care providers should be in a position to supply full information on safe abortion services without fearing being subjected to criminal sanctions. The broadcaster states that this followed a case that was taken by Irish woman, Ms. Amanda Mellet, against the Irish State. She was told in 2011 by doctors when she was 21 weeks pregnant that the foetus would die in her womb or shortly after birth.

The broadcaster states that Mrs. and Mr. Gaye and Gerry Edwards were in the same position and spoke to the presenter about their experience. The presenter did not advocate a particular position during the broad-ranging interview relating very much to a topic of current concern in Ireland.

The broadcaster states that recent interviews conducted on this topic on The Ray D'Arcy Show include one with Fianna Fáil T.D., Mr. Jack Chambers, a public representative with clear views on reproductive health. Deputy Chambers was allowed ample time during a one-to-one interview to articulate his view that the current constitutional provisions regarding abortion should be preserved in Ireland.

4.2 Broadcaster's Response to BAI

RTÉ states that it was announced that the Human Rights Committee of the United Nations (UNHRC) had found that Ireland's ban on abortion subjected a woman carrying a foetus with a fatal abnormality to discrimination and cruel, inhuman or degrading treatment. The UN Committee called for the strict prohibition to be reversed, including reforming the right to life of the unborn in the Constitution if necessary, to allow women to voluntarily terminate a pregnancy safely.

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The interview on that day's programme with Mrs. and Mr. Gaye and Gerry Edwards brought listeners their experience of a diagnosis of fatal foetal abnormality which was followed by termination outside the jurisdiction, an experience which mirrored that of the woman whose case had been considered by the UNHRC and who was not available for media interview. The interview therefore had a clear editorial context, responding to news of the day.

RTÉ refutes the allegation in the complaint that opposition to the UN ruling and its support was "cursory". The broadcaster states that, in fact, in his introduction the presenter quoted from the submission on behalf of the Irish State to the UNHRC:

Presenter:

"Now lawyers for the State defended Ireland's laws by saying, and this is a quote, "The country's constitutional and legislative framework reflected the nuanced and proportionate approach to the considered views of the Irish electorate on the profound moral question of the extent of which the right to life of the foetus should be protected and balanced against the rights of the woman".

In addition, the programme returned to the topic after the interview to convey the reaction of listeners, who included listeners with different views to those of the interviewees, and of two organisations opposed to the UNHRC findings, the Pro-Life Campaign and Every Life Counts:

Presenter:

"Now we spoke to Gaye and Gerry Edwards about the UN Human Rights Committee judgement today and there are statements from the Pro-Life Campaign and just an excerpt from that –

The UN Human Rights Committee have become the de facto lobby group for abortion. Every few months they castigate Ireland's abortion laws but are totally silent when it comes to investigating abuses in the abortion industry. I have the utmost sympathy for the woman at the centre of today's story, but honestly I don't believe that abortion is ever the answer. What we need are more supports to be put in place to help women and families in these situations. There is so much more that need to be done on ensuring adequate provision for example peri-natal hospice care services in Ireland to allow families share whatever precious time they will have with their baby diagnosed with a life limiting condition.

And Every Life Counts...Every Life Counts say that the UN had deliberately ignored the experiences of families who had received great joy and love from carrying their baby to term. And added that it was shameful for the UN to ignore the fact that these children were alive and kicking in the womb and deserved equal protection and love".

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Presenter (reading listeners' responses):

And "the UN is in no position to lecture Ireland on human rights. They have shown total contempt for the basic human right to be born".

Presenter (reading listeners' responses):

And "Your guest has courage to speak out about her experience on air. However, I believe that ante-natal hospices need to be what is promoted and not abortions," says Paul in Mayo".

Presenter (reading listeners' responses):

And "There is no way a doctor can be absolutely sure of the diagnosis of an unborn baby. My wife and I were told that our unborn child had Edwards Syndrome. It turned out he didn't have this. Dara, our special needs son, is now seven years old and, thank God, doing very well." And that's Colm. Colm, I would love to talk to you about your story if you are willing to come on air, it would be great. So, we might contact you".

The Ray D'Arcy Show Producer contacted the listener referred to immediately above and over the following weeks discussed with him and his wife the possibility of being interviewed on the programme.

When the couple in the end decided that they were not yet ready to share their story publicly, instead on The Ray D'Arcy Show of 21st July, Ms. Sinéad McBreen was interviewed live in studio and told of the diagnosis during her pregnancy that her baby was incompatible with life and that she would probably not be able to carry her child to full term, of her and her husband's decision to carry on with the pregnancy, and of her giving birth to baby Grace, who is now 20 months old. Ms. McBreen advocated the benefits of carrying to full term and also for the provision of peri-natal hospice care in Ireland.

The broadcaster states the interview with Mrs. and Mr. Edwards was not on the topic of abortion or of the constitutional or legislative provisions in that respect and had just two brief references to matters other than the interviewees' personal experience. One was to a previous referendum on abortion and the other was on the UNHRC ruling published that day.

RTÉ acknowledges that it would have been preferable to have mentioned that the interviewees are members of the group Termination for Medical Reasons, referred to in the interview. However, as the interviewees were not appearing on behalf of the group, putting its point of view or supporting its campaign to change legislation, but simply speaking of their own experience, this information was not required for the listeners' understanding of the item or in the interests of transparency.

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)(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 4.3), the Committee has decided to uphold the complaint.

In this regard:

- The Committee noted that the findings of the UN Committee on the Irish legal framework in respect of abortion was an important news and current affairs story that merited discussion on The Ray D’Arcy Show, given the range and mix of items commonly addressed on the programme. The Committee also noted that when covering such matters, it is common to provide some detail of the story and, in this case, the programme presenter provided a summary of the findings and also included an extract from an interview from the News at One, broadcast earlier in the day.

The Committee also noted that the programme included contributions that were critical of the findings of the UN Committee. These were provided by the presenter reading texts from listeners and by reading extracts from statements issued by the Pro-Life Campaign and by the organisation, Every Life Counts. Clearly, it is appropriate that the views of individuals and organisations be afforded airtime so as to fully inform audiences of the differing perspectives on an issue. This is an important function of broadcasters, particularly having regard to the right to free expression and in a context where radio and television remains an important and valued source of information to Irish citizens. The issue to be considered is whether the content as broadcast complies with the Broadcasting Act 2009 and any relevant code or rule developed by the BAI.

- Having considered the broadcast, the Committee was of the view that the programme segment that is the subject of the complaint was predominantly a news and current affairs item rather than a human interest story. The BAI has previously considered complaints about human interest stories on this topic broadcast on this programme. However, in this case, the presenter provided as a context to this interview the findings of the UNHRC in respect of Ireland’s laws on abortion. This was done at length prior to the interview with Mrs. and Mr. Edwards and, over a duration of close to 5 minutes, the presenter set out the background to the case that went before the UNHRC, provided a summary of the findings of the UNHRC and included an extract from an interview with Ms. Sarah Cleveland (elected as the United States’ independent expert on the Human Rights Committee) wherein she set out how the UN Committee reached their decision. Moreover, the interview ended with the presenter inviting the interviewees to set out their views on the UNHRC findings followed by contributions by text and via statements from ‘pro-life’ organisations. As such, the interview was clearly placed and framed in a news and current affairs context.

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In view of this, the Committee considered that the rules provided in the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs were relevant, especially given the fact that the topic of Ireland's laws in respect of abortion was a matter of public debate in Ireland at the time of the broadcast and on the day when the UNHRC findings were published.

- In considering the complaint, the Committee had regard to the fact that, while the interviewees spoke about their own personal experience and the item had clear human interest elements as a result, the interviewees are members of the organisation, Termination for Medical Reasons, whose objectives include changing Irish laws on abortion. The Committee also noted that the individual at the centre of the UNHRC case was a founding member of Termination for Medical Reasons and, therefore, the interviewees' relationship to the case could not simply be seen as an examination of a personal story.
- Given that the segment of the programme was news and current affairs and was not simply limited to the personal story of the interviewees and included their views on Irish abortion law, the Committee was of the opinion that adherence to broadcasting regulations required that the audience be made aware that the interviewees were members of an organisation seeking to change Irish law. In addition, their views on this matter of current public debate should have been examined rather than simply facilitated without other views being presented to the guests.
- Having had regard to the above, the Committee did not agree with the position of the broadcaster that the interview was not on the topic of abortion or of the constitutional or legislative provisions in that respect. In addition, the Committee did not believe that the reading of some texts that were critical of the UNHRC decision or reading extracts from statement of 'pro-life' organisations were given equal prominence or were sufficient to ensure that the item met with the news and current affairs requirements set out in the 2009 Act or the BAI's Code, particularly where the presenter provided very little in terms of counterpoints to those of his interviewee when the discussion turned to the UNHRC decision and where there were no other contributions via interviewees.
- Finally, the Committee had regard to the second programme cited by the broadcaster as a related broadcast. The Broadcasting Act 2009 states that fairness, objectivity and impartiality can be achieved in "two or more related broadcasts...if the broadcasts are transmitted within a reasonable period of each other." It was the view of the Committee that the broadcast did not constitute a related broadcast. It took this view on account of the fact that the presenter did not link the second broadcast to the findings of the UNHRC. In addition, the content of this second interview was focused almost exclusively on the personal experiences of the interviewee and did not discuss in an analogous manner the law in respect of abortion in Ireland or the findings of the UNHRC and their consequences.

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- In view of the above, it was the Committee's opinion that the broadcast did not comply with the fairness, objectivity and impartiality requirements of the Broadcasting Act 2009. Accordingly, the complaint has been upheld.

Further Determination

The Committee, having considered this complaint, noted that this was the third occasion on which complaints have been upheld in respect of coverage on this programme of the topic of Irish law in respect of abortion. This is a matter of concern for the Committee.

In this context, the broadcaster will be issued with a Warning Notice, as provided for in the BAI Compliance and Enforcement Policy. A Warning Notice is issued where the BAI considers the matter to be of a relatively serious nature or where it is a reoccurrence of the same or a similar matter. The rationale for issuing a Warning Notice is to ensure that a broadcaster is aware that the matter is considered to be relatively serious, whilst at the same time providing an opportunity for the BAI and the broadcaster to work together to resolve the issue. If the matter is not remedied to the BAI's satisfaction, the matter may ultimately result in the Compliance Committee determining that an investigation is warranted and the potential application of formal sanctions.

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Complaint made by: Ms. Patricia Donohue

Ref. No. 89/16

Station:

RTÉ Radio 1

Programme:

The Ray D’Arcy Show

Date:

9th June 2016

1. Programme

The complaint concerns The Ray D’Arcy Show, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm – 4.30pm. The complaint refers to an interview with Mrs. and Mr. Gaye and Gerry Edwards undertaken on the day that the United Nations Human Rights Committee (UNHRC) made critical findings in respect of Irish law on abortion. The interview focused on their experience of the termination of a pregnancy, where a fatal foetal abnormality was present, and their views on the UNHRC findings.

2. Complaint Category

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

3. Complaint Summary

The complainant states that the content of over a third of the duration of this edition of the programme was made up of the presenter reading out the statement from the UN Human Rights Commission (UNHRC) on abortion in Ireland and interviewing a couple who went through an abortion.

The complainant maintains that the presenter began this topic at 12 minutes into the show and continued up to 44.27 minutes. This resulted in him giving the couple a total time of 32 minutes and 27 seconds of uninterrupted airtime. Although the presenter stated that he would read out some texts received from organisations following a commercial break, it was approximately 51 minutes and 38 seconds into the programme when he read an excerpt from the prolife statement he received. Therefore, he gave a total of 3 minutes and 15 seconds to the reading of texts and statements compared to 32 minutes of an interview.

The complainant questions where the balance and equality is in this programme and how, given findings by the BAI against this programme, that it remains biased in its coverage of this topic.

The complainant also questions why a couple with the opposite experience was not invited to tell their story and wonders is it because the couple in the programme have already given media interviews on this topic?

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The complainant draws attention in her submission, to other similar complaints considered by the BAI with particular emphasis on the need for the presenter to fulfil the role of those holding opposing views.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states that the interview was a piece reacting to a story of the day which was the UNHRC ruling on fatal foetal abnormalities. The broadcaster states that the UNHRC recommended that the Irish State should amend its law on voluntary termination of pregnancy. They also held that health care providers should be in a position to supply full information on safe abortion services without fearing being subjected to criminal sanctions. The broadcaster states that this followed a case that was taken by Irish woman, Ms. Amanda Mellet, against the Irish State. She was told in 2011 by doctors when she was 21 weeks pregnant that the foetus would die in her womb or shortly after birth.

The broadcaster states that Mrs. and Mr. Gaye and Gerry Edwards were in the same position and spoke to the presenter about their experience. The presenter did not advocate a particular position during the broad-ranging interview relating very much to a topic of current concern in Ireland.

The broadcaster states that recent interviews conducted on this topic on The Ray D'Arcy Show include one with Fianna Fáil T.D., Mr. Jack Chambers, a public representative with clear views on reproductive health. Deputy Chambers was allowed ample time during a one-to-one interview to articulate his view that the current constitutional provisions regarding abortion should be preserved in Ireland.

4.2 Broadcaster's Response to BAI

RTÉ states that it was announced that the UNHRC had found that Ireland's ban on abortion subjected a woman carrying a foetus with a fatal abnormality to discrimination and cruel, inhuman or degrading treatment. The UN Committee called for the strict prohibition to be reversed, including reforming the right to life of the unborn in the Irish Constitution if necessary, to allow women to voluntarily terminate a pregnancy safely.

The interview on that day's programme with Mrs. and Mr. Gaye and Gerry Edwards brought listeners their experience of a diagnosis of fatal foetal abnormality which was followed by termination outside the jurisdiction, an experience which mirrored that of the woman whose case had been considered by the UNHRC and who was not available for media interview. The interview therefore had a clear editorial context, responding to news of the day. RTÉ refutes the allegation in the complaint that opposition to the UN ruling and its support was "cursory".

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The broadcaster states that, in fact, in his introduction the presenter quoted from the submission on behalf of the Irish State to the UNHRC:

Presenter:

“Now lawyers for the State defended Ireland’s laws by saying, and this is a quote, “The country’s constitutional and legislative framework reflected the nuanced and proportionate approach to the considered views of the Irish electorate on the profound moral question of the extent of which the right to life of the foetus should be protected and balanced against the rights of the woman”.

The broadcaster states that, in addition, the programme returned to the topic after the interview to convey the reaction of listeners, who included listeners with different views to those of the interviewees, and of two organisations opposed to the UNHRC findings, the Pro-Life Campaign and Every Life Counts:

Presenter:

“Now we spoke to Gaye and Gerry Edwards about the UN Human Rights Committee judgement today and there are statements from the Pro-Life Campaign and just an excerpt from that –

The UN Human Rights Committee have become the de facto lobby group for abortion. Every few months they castigate Ireland’s abortion laws but are totally silent when it comes to investigating abuses in the abortion industry. I have the utmost sympathy for the woman at the centre of today’s story, but honestly I don’t believe that abortion is ever the answer. What we need are more supports to be put in place to help women and families in these situations. There is so much more that need to be done on ensuring adequate provision for example peri-natal hospice care services in Ireland to allow families share whatever precious time they will have with their baby diagnosed with a life limiting condition.

And Every Life Counts...Every Life Counts say that the UN had deliberately ignored the experiences of families who had received great joy and love from carrying their baby to term. And added that it was shameful for the UN to ignore the fact that these children were alive and kicking in the womb and deserved equal protection and love”.

Presenter (reading listeners’ responses):

And “the UN is in no position to lecture Ireland on human rights. They have shown total contempt for the basic human right to be born”.

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Presenter (reading listeners' responses):

And "Your guest has courage to speak out about her experience on air. However, I believe that ante-natal hospices need to be what is promoted and not abortions," says Paul in Mayo".

Presenter (reading listeners' responses):

And "There is no way a doctor can be absolutely sure of the diagnosis of an unborn baby. My wife and I were told that our unborn child had Edwards Syndrome. It turned out he didn't have this. Dara, our special needs son, is now seven years old and, thank God, doing very well." And that's Colm. Colm, I would love to talk to you about your story if you are willing to come on air, it would be great. So, we might contact you".

The broadcaster states that The Ray D'Arcy Show Producer contacted the listener referred to immediately above and over the following weeks discussed with him and his wife the possibility of being interviewed on the programme.

When the couple in the end decided that they were not yet ready to share their story publicly, instead on The Ray D'Arcy Show of 21st July, Ms. Sinéad McBreen was interviewed live in studio and told of the diagnosis during her pregnancy that her baby was incompatible with life and that she would probably not be able to carry her child to full term, of her and her husband's decision to carry on with the pregnancy, and of her giving birth to baby Grace, who is now 20 months old. Ms. McBreen advocated the benefits of carrying to full term and also for the provision of peri-natal hospice care in Ireland.

The broadcaster states that the interview with Mrs. and Mr. Edwards was not on the topic of abortion or of the constitutional or legislative provisions in that respect and had just two brief references to matters other than the interviewees' personal experience. One was to a previous referendum on abortion and the other was on the UNHRC ruling published that day.

RTÉ acknowledges that it would have been preferable to have mentioned that the interviewees are members of the group Termination for Medical Reasons, referred to in the interview. However, as the interviewees were not appearing on behalf of the group, putting its point of view or supporting its campaign to change legislation, but simply speaking of their own experience, this information was not required for the listeners' understanding of the item or in the interests of transparency.

RTÉ draws attention in their submission, to other similar complaints considered by the BAI with particular emphasis on the view held by the BAI on the "human interest" aspect of such complaints.

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)(a)(Fairness, Objectivity and Impartiality in Current Affairs) and the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs – Section 4 - Rules 4.1 and 4.2), the Committee has decided to uphold the complaint.

In this regard:

- The Committee noted that the findings of the UN Committee on the Irish legal framework in respect of abortion was an important news and current affairs story that merited discussion on The Ray D'Arcy Show, given the range and mix of items commonly addressed on the programme. The Committee also noted that when covering such matters, it is common to provide some detail of the story and, in this case, the programme presenter provided a summary of the findings and also included an extract from an interview from the News at One, broadcast earlier in the day.

The Committee also noted that the programme included contributions that were critical of the findings of the UN Committee. These were provided by the presenter reading texts from listeners and by reading extracts from statements issued by the Pro-Life Campaign and by the organisation, Every Life Counts. Clearly, it is appropriate that the views of individuals and organisations be afforded airtime so as to fully inform audiences of the differing perspectives on an issue.

This is an important function of broadcasters, particularly having regard to the right to free expression and in a context where radio and television remains an important and valued source of information to Irish citizens. The issue therefore to be considered is not whether it is legitimate to cover a story such as the findings of the UNHRC but rather whether the content as broadcast complied with the Broadcasting Act 2009 and any relevant code or rule developed by the BAI.

- Having considered the broadcast, the Committee did not agree with the position of the broadcaster that the item was predominantly a human interest story. Rather, the Committee found the programme segment to be predominantly a news and current affairs item dealing with a topical news story. The BAI has previously considered complaints about human interest stories on this topic broadcast on this programme. However, in this case, the presenter provided as a context to this interview the findings of the UNHRC in respect of Ireland's laws on abortion. This was done at length prior to the interview with Mrs. and Mr. Edwards and, over a duration of close to 5 minutes, the presenter set out the background to the case that went before the UNHRC, provided a summary of the findings of the UNHRC and included an extract from an interview with Ms. Sarah Cleveland (elected as the United States' independent expert on the Human Rights Committee) wherein she set out how the UN Committee reached their decision. Moreover, the interview ended with the presenter inviting the interviewees to set out their views on the UNHRC findings followed by contributions by text and via statements from 'pro-life' organisations.

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As such, the Committee concluded that the interview with Mrs. and Mr. Edwards was clearly placed and framed in a news and current affairs context.

In view of this, the Committee considered that the rules provided in the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs were relevant, especially given the fact that the topic of Ireland's laws in respect of abortion was a matter of public debate in Ireland at the time of the broadcast and particularly so on the day when the UNHRC findings were published.

- In considering the complaint, the Committee had regard to the fact that, while the interviewees spoke about their own personal experience and the item had clear human interest elements as a result, the interviewees are members of the organisation, Termination for Medical Reasons, whose objectives include changing Irish laws on abortion. The Committee also noted that the individual at the centre of the UNHRC case was a founding member of Termination for Medical Reasons and, therefore, the interviewees' relationship to the case could not simply be seen as an examination of a personal story.
- Given that the segment of the programme was news and current affairs and was not simply limited to the personal story of the interviewees and given also that it included the views of individuals who are members of an organisation campaigning to change Irish abortion law, the Committee was of the opinion that adherence to broadcasting regulations required that the audience be made aware that the interviewees were members of an organisation seeking to change Irish law. In addition, their views on this matter of current public debate should have been examined rather than simply facilitated without other views being presented to the guests.

Having had regard to the above, the Committee did not agree with the position of the broadcaster that the interview was not on the topic of abortion or of the constitutional or legislative provisions in that respect. In addition, the Committee did not believe that the reading of some texts that were critical of the UNHRC decision or reading extracts from statement of 'pro-life' organisations were given equal prominence or sufficient to ensure that the item met with the news and current affairs requirements set out in the 2009 Act or the BAI's Code, particularly where the presenter provided very little in terms of counterpoints to those of his interviewee when the discussion turned to the UNHRC decision and where there were no other contributions via interviewees.

- The Committee also had regard to the second programme cited by the broadcaster as a related broadcast. The Broadcasting Act 2009 states that fairness, objectivity and impartiality can be achieved in "two or more related broadcasts...if the broadcasts are transmitted within a reasonable period of each other." It was the view of the Committee that the broadcast did not constitute a related broadcast. It took this view on account of the fact that the presenter did not link the second broadcast to the findings of the UNHRC. In addition, the content of this second interview was focused almost exclusively on the personal experiences of the interviewee and did not discuss in an analogous manner the law in respect of abortion in Ireland or the findings of the UNHRC and their consequences.

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- Finally, in considering the complaint, the Committee noted those elements of the complainant's submission that related to airtime. Fairness is not determined by an appeal simply to airtime allocated and that other factors come into play, including through the selection of contributors, the scope of the discussion, the structure of the programme, the presenter's handling of the topic or through other suitable means. In the case of the complaint in question, the Committee's decision was informed by what it considered to be the lengthy focus on one particular aspect of the news story covered and it was considered, when taken together with the other reasons set out above, a relevant factor.
- In view of the above, it was the Committee's opinion that the broadcast did not comply with the fairness, objectivity and impartiality requirements of the Broadcasting Act 2009. Accordingly, the complaint has been upheld.

Further Determination

The Committee, having considered this complaint, noted that this was the third occasion on which complaints have been upheld in respect of coverage on this programme of the topic of Irish law in respect of abortion. This is a matter of concern for the Committee.

In this context, the broadcaster will be issued with a Warning Notice, as provided for in the BAI Compliance and Enforcement Policy. A Warning Notice is issued where the BAI considers the matter to be of a relatively serious nature or where it is a reoccurrence of the same or a similar matter. The rationale for issuing a Warning Notice is to ensure that a broadcaster is aware that the matter is considered to be relatively serious, whilst at the same time providing an opportunity for the BAI and the broadcaster to work together to resolve the issue. If the matter is not remedied to the BAI's satisfaction, the matter may ultimately result in the Compliance Committee determining that an investigation is warranted and the potential application of formal sanctions.

Broadcasting Complaint Decisions

Complaint made by: State Examinations Commission

Ref. No. 90/16

Station:

Cork's 96FM

Programme:

The Nick Richards Show

Date:

6th July 2016

1. Programme

The complaint concerns The Nick Richards Show, which is a music-driven show broadcast each weekday from 6am – 9am. The complaint is submitted on behalf of the State Examinations Commission and refers to a prank call made to a member of the Commission staff during the Ross Browne Spot on this show.

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 7 – Respect for Privacy).

3. Complaint Summary

The complainant states that a prank call was made to a member of the State Examinations Commission staff by Mr. Ross Browne on The Nick Richards Show. The complainant states that neither during nor after the call or prior to the broadcast of the call was this staff member informed that she was being recorded nor was she informed that the material would be broadcast. The staff member would not have consented to participate nor for the material to be broadcast. In addition, the staff member believes the recording of the call was edited prior to the broadcast. With the broadcast of the material, her right to privacy was impinged.

As the staff member's employer, the State Examinations Commission would not have consented to the material being broadcast and has a duty of care to protect the interests of its employees.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

The complainant requested that the complaint be considered in the first instance by the BAI. The BAI was of the view that, given the nature of the complaint, it would be considered by the BAI directly without initially being referred to the broadcaster.

4.2 Broadcaster's Response to BAI

The broadcaster states that the Ross Browne Spot is a daily pre-recorded comedy feature which is largely based around pranks, including phone calls. A key element of the slot is "the reveal" where Mr. Browne tells the subject that they have been pranked. After this, Ross has the opportunity on the recording to get the person's consent to the item being broadcast.

The broadcaster claims that in the episode which is the subject of the complaint, the individual involved stated "I am going to end the conversation with you now" - which she did. The broadcaster states that this happened before Mr. Browne was able to reveal his identity. The broadcaster states that Mr. Browne did not have the caller's name in order to contact her again. The broadcaster states that Mr. Browne wrongly assumed that the rules regarding consent only applied to people within the transmission area.

The broadcaster states that the Ross Browne Spot is designed to be fun and uplifting and not to cause any negativity or upset. The broadcaster apologises for any embarrassment this matter has caused.

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

Having considered the broadcast and the submissions from the complainant and having had regard to the Broadcasting Act 2009, Section 48(1)(b)(harm and offence) and the BAI Code of Programme Standards (Principle 7 – Respect for Privacy), the Committee has decided to uphold the complaint.

In this regard:

- The Committee noted that Principle 7 of the BAI Code of Programme Standards recognises that individuals have a right to privacy. In that context, broadcasters are required to respect the privacy of the individual and not unreasonably encroach upon either in the manner in which programmes are made or broadcast.
- In fulfilment of Principle 7, broadcasters are obliged to have due regard to the concept of individual consent and ensure that participants in a broadcast are generally aware of the subject matter, context and the nature and format of their contribution so that their agreement to participate constitutes informed content.
- Having reviewed the broadcast and having had regard to the acknowledgement by the broadcaster that the recording of the caller was placed on-air without the caller's consent, the Committee was of the view that the caller's privacy was encroached upon unreasonably. In that context, the Compliance Committee has decided to uphold the complaint.

Rejected by the Executive Complaints Forum

Complaint made by: Mr. Paul Casey

Ref. No. 71/16

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ One	The Late Late Show	18 th March 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 refers to an interview with actor and documentarian, Mr. John Connors, on his documentary called, I Am Traveller.

2. Complaint Category

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

3. Complaint Summary

The complainant states that the interviewee, Mr. John Connors, articulated the following three premises:-

- The settled community has a negative perception of Travellers;
- The majority of settled people have not had a personal experience with Travellers;
- The number one source of information on Travellers is the media.

The complainant states that, then prompted by the presenter, the guest said that the Irish media is largely anti-Traveller. The complainant states that this is in fact the case. The complainant states that for the presenter to vehemently describe his guest's comments in respect of the Irish media as 'absolute nonsense' is, in the view of the complainant:

- Most disrespectful to his guest's point of view;
- An expression of the interviewer's own personal and subjective view;
- A display of bias on the part of the interviewer, especially in light of the fact that he subsequently clearly struggled and failed to find any coherent argument to support his assertion.

Broadcasting Complaint Decisions

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

No response was forthcoming to the complainant's letter to RTÉ sent 29th March. This was followed up by an email on 11th May, which was acknowledged by RTÉ with their standard reply.

4.2 Broadcaster's Response to BAI

RTÉ apologises for the lack of response to the initial complaint. They state it is unusual for RTÉ Complaints to receive correspondence by post, rather than email, and unfortunately when the letter was received it was misplaced and, therefore, not replied to. Their process has been reviewed and improved in order to greatly reduce the possibility of this happening in the future.

In response to the complaint, RTÉ states that the documentary highlights Mr. Connor's experiences as a Traveller growing up in Ireland. The interview lasted 19 minutes and over the course of it Mr. Connors was given time to expand on his views regarding the Irish media, the tragedy at Carrickmines and the historical and contemporary attitudes of Irish society toward the Traveller community.

The broadcaster states that the shape and outline of the interview was discussed with Mr. Connors in advance, as was the prospect of the presenter playing 'Devil's Advocate'. The broadcaster states that, as with all live interviews, the pre-discussed framework was the starting point and the conversation evolved during the live programme in several different directions. The broadcaster states that certain parts of the interview, such as the presenter's use of the word 'knacker' were agreed in advance with Mr. Connors also, as he was keen for the word to be used to show its power and its offensiveness to him and his community. Indeed, Mr. Connors said that he would have preferred the documentary to be called 'The K Word' to highlight the power of the term.

The broadcaster states that Mr. Connors also made the assertion that the vast majority of Irish people hold negative views toward the Traveller community and do so because they are brainwashed by the entirety of the Irish media, with one or two very unusual exceptions. RTÉ states that this assertion was challenged as is the norm in interviews and in keeping with Rule 4.22 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs.

The broadcaster states that interviewer's role is to provide an alternative point of view and to assert what others not present, who might take a different view than the interviewees', might argue.

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

In this regard:

- The Forum noted that the context for the interview was a forthcoming documentary produced by Mr. Connors. The documentary, an authored piece, set out to (among other matters) raise the issue of discrimination against Travellers.
- The Forum noted that the interview was lengthy and afforded the guest, Mr. Connors, ample opportunity to set out his perspective on the place of Travellers in Irish life, their experiences of discrimination (both personal and institutional) and consequences of this discrimination on the rights and interests of Travellers, including himself. Mr. Connors elaborated on these experiences of discrimination, highlighting how it was, in his opinion, based on a lack of recognition and understanding of Traveller culture and given institutional support by Government policies, which he said had resulted in ‘cultural genocide.’
- The tone of the interview was robust with Mr. Connors expressing strong views regarding the impact of Government policy on attitudes of the settled community to Travellers, an attitude which he stated was overwhelmingly negative. It was in this context that he made remarks about the role of the media in the portrayal of Travellers and how it was largely responsible, along with Government policy, for discriminatory attitudes towards Travellers. He noted that given that there are only 40,000 Travellers in Ireland, most people learned about Traveller culture not from personal interactions but from media portrayals. The presenter criticised the interviewee’s comment that all Irish media, with few exceptions, portrayed Travellers in a negative manner.
- In considering the complaint, the Forum noted that the BAI’s news and current affairs code does not prohibit the expression of views by presenters, subjective or otherwise. Presenters have a role in examining the views of their guests and where necessary to question, sometimes strongly, those views. The interview in question was with one individual and in that context, the presenter clearly played the role of ‘Devil’s Advocate’ so as to tease out the views of his guest and to question him in a manner that articulated views other than those of his guest.
- Having had regard to the interview as a whole, and the opportunity afforded to Mr. Connors to set out his views at length, the Forum was satisfied that a wide range of perspectives were examined. The Forum did not agree that the comment by the presenter in response to Mr. Connor’s comments about media bias, were themselves evidence of bias on the part of the presenter.

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Rather, the Forum considered them typical of those comments and questions that one might expect during a robust examination of a matter of public debate in Irish society.

- In view of the above, the Forum 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.

Broadcasting Complaint Decisions

Complaint made by: Mr Anthony Hartnett

Ref. No. 72/16

Station:

Programme:

Date:

RTÉ One

Nine O'clock News

1st June 2016

1. Programme

The complaint concerns the Nine O'clock News programme, broadcast each night on RTÉ One television. The complaint refers to a report on the inquests into the deaths of the victims of the 1974 Birmingham pub bombings.

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 4.10 and 4.19).

3. Complaint Summary

The complainant states the following in respect of the programme in question:

- The complainant states that inquests into the Birmingham pub bombings, in which 21 people were murdered and more than 200 maimed, were re-opened on 1st June 2016. He states that the news report dealing with this topic showed clips from the bombings and then one of the 'Birmingham Six', wrongfully convicted of having organised the bombing, was interviewed. He states that, however, at no stage was it made clear that the Provisional IRA (PIRA) was responsible for the bombings and that the PIRA was not mentioned at all during the report. The complainant states that the last part of the report featured Mr. Kieran Conway, a former member of the IRA, who the complainant states excused the bombings away in terms of a British conspiracy. The complainant claims that he was never challenged about his claims during the report.
- The complainant maintains that the whole thrust of the report was to downplay the essential fact that the PIRA was responsible for the massacre, putting the blame on the British.
- The complainant further states that the whole report was a scandalously one sided and disgraceful example of what the complainant states is the broadcaster's pro-Sinn Fein bias.

Broadcasting Complaint Decisions

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ regrets and apologises for the delay in responding to the initial complaint.

- RTÉ state that having looked back at the report, it accepts the criticism that IRA involvement was not mentioned and also accept that it should have been. However, this was not due to any bias or deliberate decision not to mention the IRA but rather to an oversight.
- The inclusion of the clip of Mr. Kieran Conway, speaking about the British authorities, was because the issue of what the authorities knew beforehand was highlighted in the Coroner's comments and was an important part of the story.

4.2 Broadcaster's Response to BAI

- RTÉ refers to the response by the Programme Editor of Nine O'clock News to the initial complaint and apologises for the delay in forwarding the response.
- In reply, the Programme Editor acknowledged that the absence of reference to the IRA responsibility for the bombings was a mistake, which RTÉ acknowledges also. However, RTÉ believe this was not an omission which breached broadcasting legislation or codes in that it did not create unfairness or result in inaccuracy by, for example, ascribing responsibility for the bombings elsewhere. It was an omission arising from the fact that the organisational responsibility for the bombings is such common knowledge and from the focus of the report being the Coroner's decision to re-open the inquests into the deaths of the victims.
- RTÉ maintain that it did not misrepresent the facts in such a way as to lead to misunderstanding, not challenging in any way the wide acknowledgement referred to above, that the IRA was responsible for the bombings, even though the organisation has not claimed responsibility for them. The broadcaster states that there is no public debate about that responsibility and the report did not create or encourage any confusion in relation to it.
- The broadcaster states that the complaint refers to the interview clip with Mr. Kieran Conway, identified onscreen as a former IRA member, in which he asserted that British security forces had foreknowledge of the bombings and allowed them to go ahead. The broadcaster states that, in fact, the concerns of the Coroner in relation to foreknowledge of the bombings lay at the heart of her decision to re-open the inquests, as reported in Nine O'Clock News.

Broadcasting Complaint Decisions

- RTÉ cite the report which stated

“The central reason for re-opening the inquest is a question over what warning the police might have had. The Coroner said that two conversations about a possible bomb in Birmingham had been overheard and reported to the police in the days before the attack. But, she said, there was no indication that police had acted on either alert. It left her with serious concerns that police had had advance warning of the bombings but had failed to take adequate steps to protect life.”

The broadcaster states that the Coroner’s view on the matter was widely reported, for example by the BBC and in newspapers such as The Telegraph, The Irish Times and The Guardian. In this regard, the Coroner was quoted, for example in The Irish Times report, as saying: “I am satisfied that the inquest should be resumed. I have serious concerns that advanced notice of the bombs may have been available to the police and that they failed to take the necessary steps to protect life.”

- RTÉ maintain that the interview clip with Mr. Conway must be seen in the context of the Coroner’s concerns over the possible existence of advance knowledge of the bombings and as a journalistically valid input to the reporting of those concerns.
- The broadcaster states that it may also be noted that the report did not in the slightest way present the interview with Mr Conway as “excusing the bombings” as stated by the complainant. It simply reflected the key reason behind the re-opening of the inquests, the topic of the report.

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 4.10 and 4.19), the Forum has decided to reject the complaint.

In this regard:

- The Forum had regard to the content of the report. It noted that the report arose from a decision of a Coroner in Britain to re-open inquests into bombings in the 1970s that took place in Birmingham and to which responsibility has been generally ascribed to the Provisional IRA. In that context, the report provided historical context, summarised the decision to re-open the inquests and showed reactions from outside the Coroner’s Court.

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- Given the focus of the story, the report naturally focused on the reasons as to why the inquests were being re-opened. Namely, the question of what warning of the bombings that the police might have had and what action they took in the context of information provided to them in advance of the bombings. The Forum was of the view that this focus in the report was not evidence of a lack of fairness, objectivity and impartiality but was rather a reflection of the facts of the story.
- In terms of the interviews included in the report; the Forum noted that it included extracts from responses outside the Coroner's Court by a representative of those killed in the bombings and also from one of the 'Birmingham Six' who were wrongly convicted of having carried out the bombings. The report also included a short section with a former member of the IRA who stated that it was his information that warnings had been provided and his view that British security forces permitted the bombs to explode for political reasons. The Forum noted that the information in these reports was presented without comment or analysis by the broadcaster.
- The Forum found the item to be a standard news report setting out the facts of the decision to re-open the inquests. While agreeing that the report would have benefited from the inclusion of information about those who are commonly considered responsible for the bombings, the Forum considered that the omission of this information rendered the report incomplete but not unfair or lacking in objectivity and impartiality.
- The Forum found no evidence to support the view that the report downplayed the purported role of the Provisional IRA in the bombings or that the report put the blame for the bombings on the British. Rather, the report was focused on the decision of the Coroner to re-open the inquests and this, rather than details as to the responsibility for the bombings, was the focus of the report.
- In view of the above, the Forum was of the opinion that the broadcast did not infringe the Broadcasting Act or the BAI Code of Fairness, Objectivity or Impartiality in News and Current Affairs in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Robert Thompson

Ref. No. 73/16

Station:

Programme:

Date:

RTÉ One TV

The Ray D’Arcy Show

12th March 2016

1. Programme

The complaint concerns The Ray D’Arcy Show, which is a lifestyle/entertainment programme broadcast on Saturday nights at 9.50pm. The complaint refers to an impersonation by Mr. Mario Rosenstock of Mr. Michael Flatley during this programme.

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 5 – Persons and Groups in Society).

3. Complaint Summary

The complainant states that the impersonations and humour used by Mr. Mario Rosenstock are great. However, the complainant believes that his misuse of the name of Jesus Christ is blasphemous and unacceptable. The complainant states that Mr. Rosenstock misuses the name of Jesus on a regular basis and this seems to be one of his trademarks. The complainant states that RTÉ is aware of his language and, therefore, having respect to a large number of committed Christians, should not invite him onto shows intended for a wide range of viewers; unless he agrees not to use Jesus’ name inappropriately. By way of applying an equal standard, the complainant would question if RTÉ has a standard with regard to inviting guests with a known propensity to ridicule other faiths, members of the Traveller community, people of different skin colour, other races etc?

4. Broadcaster’s Response

4.1 Broadcaster’s Response to Complainant

RTÉ states that they are sorry that the complainant was offended by some of the content of Mr. Mario Rosenstock’s comedy routine. The broadcaster states that during Mr. Rosenstock’s impression of Mr. Michael Flatley, he used the words "BeJaysus", "Bejaney" and "Jaysus". The broadcaster states that the use of these words during the impersonation were for comedic effect. The broadcaster states that the use of the words "BeJaysus" and "Jaysus" are common in everyday expression and in this context could not be construed as a deliberate attempt to offend or blaspheme.

4.2 Broadcaster's Response to BAI

RTÉ states that the terms in this programme, and which are the subject of the complaint, are commonplace and, certainly in the fashion they were used in The Ray D'Arcy Show, imply no disrespect whatsoever to religious views, practices or beliefs. The broadcaster states that the words 'Bejaysus', 'Bejaney' and 'Jaysus' are colloquial versions of the mild oath 'by Jesus', now so frequently used that they no longer even carry the meaning of that oath but exist in their own right as terms of emphasis, implying no disrespect. The broadcaster states that the use in Mr. Rosenstock's imitation of Mr. Flatley referenced the latter's perceived exaggerated 'Irishness' to comic effect; they were not used in reference to religion in any way. The broadcaster states that the use of 'jaysus' in the story told by Mr. Rosenstock about the late Tony Fenton was a quotation of what Mr. Fenton actually said, again used by him to add emphasis in the colloquial manner, again with no religious reference whatsoever.

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) and 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 use of the words objected to by the complainant were in the context of a comedic performance by Mr. Rosenstock. Specifically, they were part of an impersonation of Mr. Michael Flatley and were used to caricature his accent.
- 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 considered the words to have a context and their use was not gratuitous. Moreover, the words used are common and mild terms 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 terms are not ones that the general public have cited as likely to cause offence. In this context, the Forum was of the view that while some members of the audience may have found their use offensive, their use was unlikely to cause widespread offence, contrary to the requirements of the BAI Code of Programme Standards.
- In view of the above, the Forum did not agree that the programme infringed the Broadcasting Act or the BAI Code of Programme Standards in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Proinsias MacFhionnain

Ref. No. 76/16

Station:

Programme:

Date:

RTÉ Radio 1

Morning Ireland

1st June 2016

1. Programme

The complaint concerns Morning Ireland, which is news and current affairs programme broadcast Mondays to Fridays from 7.00am to 9.00am. The complaint refers to a report on the new Special Garda Crime Taskforce.

2. Complaint Category

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

3. Complaint Summary

The complainant states that journalists are paid to hold power to account. He also states that An Garda Síochána are one of the most powerful organisations in the country. The complainant states that RTÉ news made no effort to hold this power to account during an item, broadcast on Morning Ireland, dealing with the new Special Garda Crime Taskforce and which included an interview with the Garda Representative Association.

The complainant states that the interviewer accepted the framing of the issue by the Garda Representative Association that the only way to get Gardaí for this force was through recruitment. The complainant states that there were other perspectives on this issue that should have been dealt with and, in this regard, he cites an RTÉ News report broadcast on the 9th December 2015 which stated:

"Garda Inspectorate says too many Gardaí sitting behind desks. It said at least 1,500 and possibly up to 2,000 fully-trained Gardaí could be taken out of offices to police the country, with 500 of those in Garda Headquarters.

The report said Garda management is not protecting front-line policing like other police services, with 83% of Gardaí on the front line when compared to 93% in other countries."

The complainant states that a representative of An Garda Síochána will always propose that more members is the solution to any problem, as more members mean more power to the union and more promotion opportunities for its members.

Broadcasting Complaint Decisions

The complainant states that, in his opinion, report after report has highlighted issues with the management of An Gardaí. He states that, in that context, giving more resources would not solve the problem but would exacerbate it.

In summary, the complainant states that:

- RTÉ has a duty to question the proposition that more resources are always the answer;
- RTÉ failed to ensure that the audience had access to a wide a variety of views; and
- RTÉ accepted the frame proposed by the Garda representative, that the only way to get Gardaí for the new unit was to recruit more Gardaí.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ acknowledged receipt of this complaint and stated a reply would be forthcoming within 20 working days, they did not respond. The Series Editor of Morning Ireland responded subsequently to the complainant, as follows:

- RTÉ notes the complainant's concern that, in the course of the interview about Garda numbers, no reference was made to the issue of the civilianisation of desk jobs in the Force, which would free many hundreds of sworn officers for duty on the front line of policing. The broadcaster states that this issue is the subject of discussions between the Garda representative bodies and the Department of Justice. The broadcaster states that under the Croke Park Agreement, the Garda Representative Association agreed to a level of civilianisation in An Garda Síochána. The implementation of this is still on-going.
- RTÉ states that the complainant believes that the interview was unbalanced because it focused exclusively on recruitment of new Gardaí, instead of also raising the possibility of boosting numbers of operational Gardaí by using the maximum number of those already trained and sworn for duty. RTÉ agrees that the complainant makes a very fair point. The issue of civilianisation of desk jobs is a key one in addressing the crisis in maintaining Garda numbers on the beat. It should have been raised in the course of the interview.

4.2 Broadcaster's Response to BAI

RTÉ supports the acknowledgement of the Series Editor above that the question of the civilianisation of Garda desk jobs to allow members of the force to move to frontline policing could usefully have been raised to the benefit of the listener. The broadcaster states that, notwithstanding this, the purpose of the interview was to establish the response of the Garda Representative Association to the proposals in respect of combating organised crime made the previous day by the Minister for Justice; that editorial goal was achieved and in the context of a news (and not current affairs) programme, RTÉ does not believe that the non-raising of the particular question of Garda re-deployment amounted to a breach of the Code.

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 & impartiality in news and current affairs) and the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs - (Section 4: Rule 4.22), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that it was a short interview with a member of the Garda Representative Body (GRA) during which the interviewer sought the perspective of the GRA to the proposed new measures intended to tackle organised crime. The interview included a number of questions about staffing for the actions proposed to tackle crime, whether there was sufficient Gardaí in place, whether additional recruitment is necessary and also the pace at which this recruitment might take place. The Forum found the interview to be factual and it examined the practicalities of providing staff for the new crime fighting measures.
- The approach to be taken to an interview is an editorial matter for broadcasters and audiences will have different views about the adequacy of an interview and whether it examines all of the relevant perspectives on a news topic. In the case of the programme that is the subject of the complaint, the Forum found that a number of questions were asked which examined the issue of recruitment and some of the challenges arising from previous recruitment.

It also looked at the limits on recruitment arising from the current process of training staff in Templemore. It was also evident from the comments by the interviewee that staff necessary to fulfil the remit of the new measures to tackle organised crime would come from the frontline i.e. those whose role does not involve predominantly office-based work. Given this and given that the interview was focused on a specific news story (rather than the broader issue of recruitment in the Gardaí and/or resources), the Forum found the interview to be fair, objective and impartial and conducted without the articulation of a partisan position.

- In view of the above, the Forum did not agree that the broadcast 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.

Broadcasting Complaint Decisions

Complaint made by: Mr. Steven Bieler

Ref. No. 77/16

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ 2	Euro 2016	16 th June 2016

1. Programme

The complaint concerns comments made at the commencement of a game played during European Football Championship 2016, which was broadcast on RTÉ 2 at 8pm on 16th June.

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 5 – People and Groups in Society).

3. Complaint Summary

The complainant states that prior to the commencement of the match, the German national anthem was played. The complainant states that, as a German, he was disgusted at the comment, “Deutschland über alles”, made by the commentator before the playing of the German National Anthem at the Poland v Germany game during Euro 2016. The complainant states that this is a forbidden term in Germany on account of its association with the Nazis and drawing any correlation between Nazis and the German Nationalmannschaft (National Team), is disgusting.

4. Broadcaster’s Response

4.1 Broadcaster’s Response to Complainant

No response was forthcoming to the complainant’s email to RTÉ sent 16th June.

4.2 Broadcaster’s Response to BAI

RTÉ apologises sincerely for the lack of response to the initial complaint. The correspondence was not entered into the formal Complaints Process as it was treated as feedback rather than a complaint.

This should have been acknowledged to the complainant at the time, which would have given him the opportunity to confirm that he intended it as a formal complaint. Unfortunately, due to an administration error it was not acknowledged.

RTÉ states that the complainant is correct that the German National Anthem, the Deutschlandlied, was incorrectly named by the sports commentator as Deutschland über alles, a commonplace, though mistaken titling, based on the misunderstanding that the first line of the Anthem, Deutschland, Deutschland über alles, is no longer sung on official occasions and therefore not before international soccer matches, is still in place.

RTÉ believe that listening to the commentator's reference confirms that the title was simply stated as a matter of – incorrect – fact with no inference whatsoever of the type alleged in the complaint. No connection whatsoever was made between German national football team and the Third Reich or any previous German regime under which the first line of the anthem was sung, and therefore no breach of Principles 2 or 5 of the BAI Code of Programme Standards.

While RTÉ of course regrets that the complainant was distressed by the misnaming of his National Anthem, it believes there is no basis to uphold this complaint on any of the grounds cited or under any provision of broadcasting legislation or regulatory code.

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 8(1)(b)(harm and offence) and the BAI Code of Programme Standards (Principles 2 and 5), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that a factual error in respect of the title of the German National Anthem had been broadcast. The Forum considered this unfortunate but did not find any evidence that it was done with a view to cause offence. The Forum did not believe that the reference was an attempt to draw any correlation between the Nazis and the German national football team.
- While regrettable and while acknowledging that the error caused offence to the complainant, the Forum did not believe that it would have caused widespread offence or that it was harmful to the interests of any group or individual in society as set out in the BAI code. In view of this the Forum did not believe that the broadcast infringed the Broadcasting Act or the BAI Code of Programme Standards in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Thomas Noonan

Ref. No. 83/16

Station:

RTÉ Radio 1

Programme:

Ray D'Arcy Show

Date:

24th June 2016

1. Programme

The complaint concerns The Ray D'Arcy Show, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm – 4.30pm. The complaint concerns an interview with Ms. Pauline McLynn and relates to comments made by her in respect of hare coursing legislation. The programme was presented by Ms. Katherine Thomas.

2. Complaint Category

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

3. Complaint Summary

The complainant states that during an interview on this programme, the guest, Ms. Pauline McLynn, diverted from the topic that she was on-air to discuss to comment on hare coursing and banning this activity. The complainant states that the guest asked listeners to contact their local public representative to have legislation enacted which would ban hare coursing. The complainant states that despite several attempts by the presenter to interrupt Ms. McLynn's comments, the guest continued to promote her views on hare coursing.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ state that they wish to apologise sincerely for the lack of response to the initial complaint. They state that it is unusual for RTÉ Complaints to receive correspondence by post rather than email and unfortunately when the letter was received it was misplaced and therefore not replied to. The broadcaster states that the process has been reviewed and improved in order to greatly reduce the possibility of this happening in the future.

4.2 Broadcaster's Response to BAI

The broadcaster states that the purpose of the interview was to discuss Ms. McLynn's upcoming involvement in a television series, *Painting the Nation*, and almost eight minutes of the nine-minute item were devoted to that topic. To end the interview, the presenter enquired about Ms. McLynn's hens. Ms. McLynn, a longtime campaigner on behalf of animals, is well known through media appearances as a patron of Little Hill Animal Rescue and is actively involved in the rescue of battery hens.

The broadcaster states that the question about her hens led – without notice to the presenter and programme team – to Ms. McLynn, a longtime campaigner on animal welfare, referring to her concern for the passing of a bill to ban hare coursing, due to go to a Dáil vote on Thursday 30th August 2016. Ms. McLynn made clear her hope that the bill would be passed and encouraged listeners to contact their T.D.s to solicit their support for the bill. Rather than enter into debate on this unexpected topic, the presenter brought the interview to a close, as planned.

RTÉ believes that the contributor's right to free expression included her entitlement to express a clearly personal view on the topic. It may also be noted that, as the bill was defeated by 164 to 20 votes, the interviewee's expression of her views would appear to have had no significant impact on the result. RTÉ would also underline that the topic of hare coursing was not the subject of the planned item, nor was it introduced by the presenter. RTÉ believes there is no basis to uphold this complaint on any of the grounds cited or under any provision of broadcasting legislation or regulatory code.

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

The Forum 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: Rule 4.1; 4.2), the Forum has decided to reject the complaint.

In this regard:

- The BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs sets out a number of contextual factors that the BAI will have regard to when assessing complaints. These include, but are not limited to, the content of the programme and the type of programme concerned. In the case of this complaint, the Forum noted that the interview was broadcast live and the topic was a new television programme presented by the interviewee. The programme would entail a televised national competition to uncover the best amateur painters across Ireland. The interview topic was not therefore one that dealt with a news or current affairs topic and the style, approach and tone, including the questions asked, appropriately reflected this fact.

Broadcasting Complaint Decisions

- In that context, the Forum found that the introduction by the interviewee of issues pertaining to a forthcoming piece of legislation dealing with hare coursing had no relevance to the discussion of the programme and little or no relevance to the presenter's question about the interviewee's hens. The presenter could, therefore, not have anticipated that the discussion would veer into current affairs or that her guest would advocate political engagement by the programme listeners in respect of hare coursing legislation. It was also evident that the presenter was surprised by the change in direction of the interview and this, as well as the live nature of the interview, impacted on the response by the presenter.
- The Forum found that the presenter tried to interrupt her interviewee twice, in an effort to end the discussion. However, the interviewee continued to set out her views. The Forum found that the presenter brought the interview to an end and did not engage or encourage further discussion on the topic. However, the Forum was also of the view that a more rapid closing down of the interview would have been helpful.
- In its assessment of the complaint, the Forum did not consider the fact that the hare coursing bill was subsequently defeated in the Dáil was relevant to the substance of the complaint itself.
- In view of the above, the Forum did not agree that the content 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.

Broadcasting Complaint Decisions

Complaint made by: Ms. Kate Butler

Ref. No. 88/16

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
98FM	Dublin Talks	5th July 2016

1. Programme

The complaint concerns Dublin Talks, which is a talk and phone-in show derived mainly from topical issues and broadcast each weekday morning from 10am to 12pm. The complaint refers to a discussion about adoption by Irish couples of children with a different racial or ethnic background to their adoptive parents.

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 3 (Protection from Harm) and 4 (Protection of Children).

3. Complaint Summary

The complainant states that this show was broadcast at 10am on the first week of the summer holidays and was hosted by Mr. Adrian Kennedy and Mr. Jeremy Dixon. The complainant states that the programme focused on the childhood experience of those who didn't look like their parents or who came from different ethnic backgrounds and who were adopted by white Irish couples. The complainant objects to the following:

- The way that the subject was framed during the programme – the complainant states that the implication of this programme was that there was an element of irresponsibility in parents who adopt children from different ethnic backgrounds to themselves;
- The pejorative language that was used in the programme to discuss this subject – the complainant cites one example where it was stated that, in the past, a black child in an Irish classroom would “have stuck out like a sore thumb”;
- The discussion between the hosts about what Mr. Kennedy's personal views were on the matter. The complainant states that Mr Dixon stated that Mr. Kennedy was against inter-racial adoption, a claim which the complainant states Mr. Kennedy denied. The complainant states that Mr. Dixon went on to say that Mr. Kennedy was afraid to say that he disapproved because it would be seen to not be politically correct to have such a view, and;
- What the complainant describes as the irresponsibility of the timing of the programme – in the morning of the first week of school holidays, when children are much more likely to be exposed to it.

Broadcasting Complaint Decisions

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

98FM states that, by way of context, the show is a lively and spirited talk show that is well-known for its discussion of controversial topics. The topics are chosen to spark and encourage debate and are often divisive and/or provocative topics.

The broadcaster states that the topics that are chosen for discussion often arise from news items and, on this day, a comment by the Scottish radio and television presenter, Mr. Nicky Campbell, who currently presents the show Long Lost Families on ITV, initiated the debate. He was adopted and stated that growing up, he had experienced an identity crisis and that, in his view, inter-racial adoptions create an added layer of identity crisis for children. The presenters then posed this question to the listeners. Neither of the two presenters expressed a viewpoint nor a personal opinion on the matter. 98FM rejects that there were any implications in the discussion of the sort suggested by the complainant and further states that many of the specific complaints made are in respect of "implications" in the programme which, the broadcaster states, the complainant incorrectly purports to attribute as a view of one of the presenters.

The broadcaster states that the discussion was a topic that is a matter of public importance and interest, was an issue that was featured heavily in the media that day and, therefore, a perfectly appropriate subject matter to discuss on a talk show. The broadcaster states that the audience was informed of the topic and invited to participate, as was the complainant.

98 FM states that the contributions from the public were fair and balanced and were testament to how the predominant public view was that this opinion proffered by Mr. Nicky Campbell was not correct. The presenters moderated all views and maintained balance throughout.

4.2 Broadcaster's Response to BAI

98FM states Dublin Talks is well-known for its provocative, and sometimes controversial, content but they are very aware of the boundaries that have been laid down by the BAI and is cognisant of its obligations under the various Codes. The broadcaster states that neither of the two presenters expressed a viewpoint or personal opinion on the matter as the complainant contends. The broadcaster rejects that there was an implication as stated by the complainant. They state that the topic was treated carefully and the specific complaints made were in respect of "implications" which the broadcaster states that the complainant incorrectly purports to attribute a view to one of the programme presenters. The broadcaster states that the topic was handled very considerately and sensitively by the presenters and all the callers were treated with sensitivity and care.

The broadcaster points out that the complainant also states that the discussion was one concerning the experience of adopted children in Ireland but was conducted without any foundation in truth or real experience. 98FM state that they cannot accept this in circumstances where the whole premise of the debate was the comment made by Mr. Nicky Campbell who was adopted and which was followed by a number of guests who called into the show who spoke about their real life experiences of the subject matter.

Broadcasting Complaint Decisions

The broadcaster states that the discussion was a topic that is a matter of public importance and interest, was an issue that was featured heavily in the media that day and therefore a perfectly appropriate subject matter to discuss on a talk show. The audience was informed of the topic and invited to participate, as was the complainant.

The broadcaster states that, taking into account that the show does deal with issues that are controversial and provocative, 98FM broadcasts a warning at the start of every show – “The following show is controversial and contains content you may find offensive. Listener discretion is advised”.

The broadcaster states that, by way of general background and audience profile, the show Dublin Talk’s is not a children’s programme. According to the most recent JNLR report, 99.2% of the audience is over 18.

The broadcaster states that the show is clearly presented and identified as a talk show that deals with issues that are totally standard and typical of talk shows that are on radio and television during the day time. The broadcaster states that if you were to turn on the television at this time on any given day, there are daily talk shows on the mainstream television channels that discuss similar content. The broadcaster states that it does not broadcast children’s programmes. 98FM states that it fully believes that the material broadcast was not such that it would be likely to seriously impair the physical, mental or moral development of children.

98FM states that they are careful to ensure that there are safeguards in place to cater for people of a more sensitive disposition, and in this case; the show was clearly presented as a talk show, the topic was signalled in advance and with forewarning to allow the station to be changed, and the warning was provided to signal the controversial nature of the content.

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

The Forum 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)(offence and harm); the BAI Code of Programme Standards (Principle 3 - Protection from Harm and Principle 4 - Protection Children), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted the topic under discussion was adoption. The subject was raised following a comment made by BBC presenter, Mr. Nicky Campbell, who was adopted, and who had recently stated that he had changed his view on inter-racial adoption as he believes it adds an extra layer of identity crisis for children.
- When considering the complaint, the Forum was mindful of Principles 3 and 4 of the BAI Code of Programme Standards which requires Protection from Harm and the Protection of Children. Principle 3 requires, amongst other things, that broadcasters take due care to ensure that audiences are not exposed to harmful content and provide adequate information to audiences to allow them to make informed choices about what they listen to and watch.

Broadcasting Complaint Decisions

Principle 4 requires that broadcasters ensure that children are not exposed to programming that would seriously impair their moral, mental and physical development. Particular care is also required where programming will be broadcast during school holidays.

In this context, the Forum found that the programme was broadcast at 10a.m on the 5th July and although this was during school holidays, the broadcaster provided information to the audience via a warning that was aired before the start of the programme, to the effect that it “is controversial and contains contents you may find offensive. Listener discretion is advised”. Given this warning and the fact that there was no child participation in the programme, the Forum was of the view that it was unlikely that children were part of the audience and that information was provided that would guide parents about the content to be aired.

- In terms of the content of the programme itself, the Forum, in assessing a complaint will have regard to the programme discussion as a whole and the totality of contributions made. In this respect, the Forum did not agree that the programme included content that would cause harm or undue offence.

The Forum found that several callers were featured offering both sides of the argument which provided for a fair discussion and debate. A gentleman from South Africa, for example, related his positive experience with his two adopted black children, followed by the opposite view from a lady from Belfast who told of her experience of being adopted.

- While the Forum noted the comment by the presenter that a black child in an Irish classroom in the past would have “stuck out like a sore thumb”, this statement had to be taken in context of a time when immigration to this country was very rare. The choice of metaphor, however, could have been more sensitive to the subject matter. While acknowledging that the complainant considered the presenter's contributions to be offensive and that this is a view that may have potentially be held by other listeners, the Forum, having had regard to the programme discussion as a whole and the programme style and format (which is robust and controversial), did not believe that the programme would have caused undue offence or harm in general or to children.
- In view of the above, the Forum did not agree that the content infringe the Broadcasting Act, Section 48(1)(b)(offence and harm) or the BAI Code of Programme Standards (Principle 3 - Protection from Harm and Principle 4 - Protection Children in the manner specified by the complainant. Accordingly, the complaint has been rejected.

In considering this complaint, the Forum noted that JNLR audience listenership figures, referred to by the broadcaster, does not measure the number of under 15-year-old listeners to a programme. For this reason, the broadcaster is advised not to overly rely on these figures when assessing whether a programme will abide with principle 4 of the BAI Code of Programme Standards.

