



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

**Broadcasting Authority of Ireland**

**Broadcasting Complaint Decisions**

**January 2017**

# 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](http://www.bai.ie), by emailing [info@bai.ie](mailto:info@bai.ie) or by phoning the BAI on 01 644 1200.

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

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

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

In total, 8 complaints were considered by the Compliance Committee of the BAI. Of these, 1 complaint has been upheld in part and 7 complaints have been rejected. The Executive Complaints Forum considered and rejected 6 complaints. The decisions of the Compliance Committee were reached at its meeting held in December 2016. The decisions of the Executive Complaints Forum were reached at meetings held in October and November 2016.

### Upheld in Part by the BAI Compliance Committee

Complaint made by: Mrs Jennifer Ryan

Ref. No. 109/16

**Station:**

Dublin's 98FM

**Programme:**

Dublin Talks

**Date:**

26<sup>th</sup> August 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 the treatment of the complainant who related her story on-air regarding her decision to terminate a pregnancy following a diagnosis of a fatal foetal abnormality.

#### 2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48(1)(b)(offence and harm); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4, Rules 4.1, 4.2, 4.3 and 4.4) and the BAI Code of Programme Standards - Principles, 2, (Importance of Context), 5 (Respect for Persons and Groups in Society) and 7 (Respect for Privacy).

#### 3. Complaint Summary

- The complainant states that she was on holiday with her family when she received a call from the show asking if she would take part in the programme the following day. The complainant states that, having spoken to the production staff, she was assured that it would be a 10-minute chat with the presenter just to relate the story of her and her husband's decision to terminate her pregnancy following a diagnosis of a fatal foetal abnormality.
- The complainant states that the presenter's first question was - "What made you go public with your story?", to which the complainant replied that she wanted to help others in the same situation and hopefully help to change the law in this country. Having outlined her reasons for taking the decision to end the pregnancy, the presenter invited callers to give their views on this decision.
- The complainant states that the first caller, Sarah, told of having a stillborn baby and how it was only after the birth that she learned that the baby had fatal abnormalities. The complainant states that Sarah said that, had she known that the baby had fatal abnormalities, she would not have ended the pregnancy. The complainant states that she was invited to comment on Sarah's views but she was completely unprepared for this but felt obliged to do so as she was live on-air.

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- The complainant states that another caller, Jimmy, then proceeded to cross-examine her on her child's burial and asked whether or not they had a Christian service in a church or in private and queried where the burial had taken place. The complainant states that this caller was then allowed to make several hurtful and grossly offensive comments. For example, he said that she had the "audacity to take that child home", "it's killing an innocent child", "abortion is murder - thou shalt not kill", and "is this just a Walter Mitty pro-abortion story?" The complainant states that the presenter then invited her to comment on this caller's contribution but she felt it difficult to listen to someone calling who she states was calling her a murderer and a liar, live on-air.
- The complainant states that this same caller was allowed back on-air again to say he never called the complainant a murderer per se, but that the doctor who carried out the abortion, killed the child. The complainant states that this caller went on to say to the presenter "You may believe Jennifer [the complainant] but there's people like me who don't...." When the complainant countered that her story was true, the caller asked again "Where is your child buried?" and then said "No Jennifer, your story isn't true."
- The complainant states that, finally, the presenter took control of the discussion but decided to end her participation in the programme. However, he kept on-air the caller who had made offensive comments about her. The complainant states that this caller was permitted to comment on the story of another caller who bravely shared her story of having been raped and who had decided to terminate the subsequent pregnancy.
- The complainant states that, having been subjected to what she describes as horrific abuse and cross-examination from a listener, she was then denied any right of reply by the programme makers. The complainant states that she would never have taken part in the programme had she known it would be conducted in such a disrespectful manner. The complainant further states that the manner in which the programme makers arranged her participation in the show caused her and her family significant distress and financial cost in terms of mobile phone roaming charges.
- The complainant states that the presenter, who it would appear had received a lot of negative feedback about the caller who she states had made abusive comments to her, tried to explain himself away by saying he was required by law to have this caller on-air so as to provide balance.
- The complainant states that allowing this man access to the airwaves and in turn to her, was in the complainant's view, treating her, her family, her child and their personal tragedy as a freak show - the basest form of entertainment poorly dressed up as a current affairs discussion.
- The complainant states that the show also invited Ms. Cora Sherlock from the Pro-Life Campaign on to the programme without informing the complainant. The complainant states that Ms. Sherlock stated that research quoted by the H.S.E. in their recent guidelines show that women when faced with pregnancies like the complainant's, suffer more emotional distress in the short and long term from having abortions and that the outcome is better for them if they continue with their pregnancies.

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The complainant challenges the veracity of that statement and also states that Ms. Sherlock was not challenged about the accuracy of her claims.

- The complainant believes that she was not treated fairly and honestly by the programme and would never have agreed to take part had they set out to her the format and approach to the programme when they contacted her in the first instance. Therefore she believes they did not have her informed consent.
- The complainant refers to the Foreword of the BAI Code of Programme Standards in support of her complaint and cites the following parts:-

"the Code [of Programme Standards]... recognises the entitlement of the audience to have its deeply held convictions respected, its complexity and diversity recognised and reflected and those who are vulnerable protected."

And

"freedom of expression is not absolute and does not include the freedom to defame or unfairly to impugn the character and good name of individuals."

- Under Principle 2, the complainant believes that timely and corrective action was not taken by the presenter when highly offensive content was allowed significant reign unchallenged.
- Under Principle 3, the complainant states that she was invited to take part in the programme as a result of the publication of her story on Dublin Live, therefore it should have been obvious to the broadcaster that she is involved in providing emotional support to women and their families who are going through a similar experience to her own.

The complainant states that no consideration was given to the offensive, hurtful and inaccurate remarks made about her by the caller on this show and the effect on other women in this situation.

- Under Principle 5, the complainant states that there is no justification for allowing accusations of lying nor alluding to women being baby murderers, without any reasonable corroboration.
- Under Principle 7, where, among other requirements the broadcaster is obliged to have due regard to the concept of individual consent and that participants are generally made aware of the subject matter, context and the nature and format of their contribution so that their agreement to participate constitutes informed consent, the complainant believes she was misled into taking part in this programme under false pretences. She states that the caller, Jimmy, was allowed by the presenter to make wild accusations that resulted in the complainant having to defend herself, not from a respectful dissenting opinion but from outright hate and despicable allegations.

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### 4. Broadcaster's Response

#### 4.1 Broadcaster's Response to Complainant

- The Broadcaster takes issue with the complainant's characterisation of being forced to go on the show. The complainant put her own story into the public domain and the broadcaster found this commendable and that is the reason contact was made to invite the complainant to participate on-air. The complainant provided her mobile phone number to the production team and they contacted her through the Facebook page of Terminations for Medical Reasons (TMR).
- The Broadcaster states that the complainant did not have to agree to go on the show. She was informed that it was a caller-based show and there would be other callers involved. Every opportunity was given to the complainant to decline participation.
- The Broadcaster states that the complainant was given 20 minutes, uninterrupted, to discuss her experience and the presenter treated her with respect and sensitivity throughout.
- The Broadcaster maintains that when other callers were introduced, the complainant was given an opportunity to respond to each one. When one caller went too far and questioned the veracity of the complainant's story, the presenter intervened and stated that to suggest such a thing was outrageous. The presenter also made it clear that the only reason this caller was brought on was due to our statutory obligation to provide balance.
- The Broadcaster does not accept the complainant's allegations as set out in her complaint
- As a gesture of good will, the broadcaster offered to pay the mobile roaming charges for the call taken while the complainant was on holiday.

#### 4.2 Broadcaster's Response to BAI

- The Broadcaster informed the BAI that they had nothing more to add to the response above provided directly to the complainant.

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

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 Section 48(1)(b) (offence and harm), the BAI Code of Fairness, Objectivity and Impartiality new News and Current Affairs (Section 4, Rules 4.1, 4.2, 4.3 and 4.4) and the BAI Code of Programme Standards, Principles, 2, (Importance of Context), 5 (Respect for Persons and Groups in Society) and 7 (Respect for Privacy), the Committee has decided to uphold the complaint in part.

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In this regard:

- The Committee noted that the programme is a phone-in show driven by caller interaction. This style of programme is traditionally characterised by often robust exchanges between callers on the topics under consideration and also between the programme presenters and callers. In general, such programmes therefore have a greater potential to offend audiences by virtue of the style and nature of contributions made, particularly where the topics featured are controversial or those which are of a sensitive nature.
- It is for this reason that broadcasters must show due care towards audiences and to take steps to minimise the potential for harm and offence. These steps include the appropriate scheduling of programmes and content that takes account of audience expectations and the likely audience who will be listening. These and other requirements are set out in the BAI Code of Programme Standards, which specifies obligations on broadcasters to avoid undue offence and harm.
- Additional obligations apply where the content in question is one that is of current public debate and/or controversy and which must comply with the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs. This Code includes a range of rules, including rules which are intended to ensure that participants are treated fairly when being interviewed.
- In the case of the programme that is the focus of the complaint, the Committee noted that the programme format is well established and the style and approach of the presenter well known. The Committee also noted that the complainant had agreed to speak publicly on the topic of abortion and fatal foetal abnormalities and should reasonably expect to be questioned about this topic and her views.
- Given the nature of the programme, audience expectations for such a programme, the complainant's agreement to participate in the programme, the Committee did not consider that there were grounds to uphold the complaint further to the Principles 5 (Respect for Persons and Groups in Society) and 7 (Respect for Privacy) of BAI Code of Programme Standards.
- In addition, the Committee noted that there is a difference of opinion between the complaint parties about the nature of the contribution to be made by the complainant. However, based on the information provided, the Committee did not believe it had sufficient grounds to make a determination as to whether or not the complainant was given sufficient information about the nature of the programme and her contribution and whether her consent to participate was fully informed. In view of this, the Committee did not believe there were grounds to uphold the complaint further to Section 4.4 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs.
- Notwithstanding the above, the Committee has concluded that the programme did not meet the obligation for fairness set out in BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Sections 4.1, 4.2 and 4.3) or the obligation included in the BAI Code of Programme Standards to take timely corrective action where unplanned content is likely to have caused offence (Principle 2 – Importance of Context).

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In reaching this view, the Committee had regard to the facilitation during the programme of a caller who made a range of abusive and offensive remarks against the complainant. As noted, the complainant should have expected to be questioned on her personal experiences and on any views she may have on broader issues of abortion. However, the caller in question repeatedly questioned the complainant's honesty, made allusions (both direct and indirect) to her complicity in what he considered to be murder (the termination of her child), made suggestions that her story had the quality of a 'Walter Mitty' tale of fantasy, queried the burial of her child, stated that she was lying about her experience and implied that she was lying so as to advance the cause of those who favour liberalising Ireland's abortion law.

The Committee found that it was evident from feedback during the programme that this caller and his remarks were causing clear offence to the audience. It was the view of the Committee that, given this and given that his comments were made directly to a caller who had undergone a traumatic experience, the programme makers had failed to take appropriate action so as to avoid undue offence to audiences and to the complainant. Moreover, the Committee found that by permitting the caller to direct these remarks to the complainant and by leaving this caller on-air while ending the call with the complainant, the programme makers had failed to deal fairly with the complainant.

- In view of the above, the Committee has decided that the programme did not comply with the Broadcasting Act 2009, Sections 4.1, 4.2 and 4.3 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs and Principle 2 of the BAI Code of Programme Standards. For this reason, the complaint has been upheld in part.

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### Rejected by the Compliance Committee

**Complaint made by: NASC - The Irish Immigrant Support Centre Ref. Nos. 99/16&100/16**

<b><u>Station:</u></b>	<b><u>Programme:</u></b>	<b><u>Date:</u></b>
Newstalk 106-108 FM	The Right Hook	12 <sup>th</sup> & 13 <sup>th</sup> July 16

#### 1. Programme

The complaint concerns an edition of The Right Hook, a news and current affairs programme, broadcast at the time of the complaint on weekdays from 4.30pm-7pm.

#### 2. Complaint Category

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

#### 3. Complaint Summary

- The complainant states that two representatives from the Anti-Racism Network were interviewed on this programme on the topic of racism in Ireland and were treated in a dismissive manner by the programme presenter.
- The complainant notes that the presenter started the interview by stating that the purpose of the interview was to give the Anti-Racism Network airtime to discuss the 'Black Lives Matter' solidarity march and racism in Ireland. He then followed this up immediately by stating he was not made aware, prior to the interview of the attendance of a second interviewee. The complainant claims that the presenter allowed his obvious personal annoyance of the unannounced attendance of the second interviewee to interfere with the impartiality and fairness of the interview.
- The complainant states that the presenter asserted on numerous occasions his own personal beliefs that "Ireland is not a racist country" by giving historical examples of integration in Ireland. The complainant states that while this is a valid topic for debate, he did not give voice to the counter conversation of the real examples of racism currently taking place in Ireland. The complainant states that the presenter allowed his personal annoyance and own beliefs to steer the conversation in an unfair, dismissive and un-objective manner.

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- The complainant maintains that the presenter was dismissive of one interviewee for deferring to the other who, as a person of colour, would be best positioned to speak as to whether racism exists in Ireland. The complainant then states that the presenter dismissed the second interviewee's example of racism in Ireland by saying "I don't know how long you've been living in Ireland". The complainant states that this comment, aside from being dismissive, bears no relevance to whether or not there is racism in Ireland.
- The complainant states that during the follow-up broadcast on the 13<sup>th</sup> July, with Dr. Piaras MacEoinrí, the presenter stated that one of the representatives from the Anti-Racism Network on the previous day's programme, had refused to answer his questions on four occasions. According to the complainant, this is not true. The complainant states that when the representative passed the questions to her colleague, the presenter stated "this was not the point of the interview". The complainant counters that the point of the interview was not to scold the interviewee live on-air and force her to answer questions. The point of the interview was to give the Anti-Racism Network a fair, objective and impartial platform to speak on a topic of public importance, which was not achieved by the presenter.
- The complainant claims that the presenter referred to the other representative as having a 'strong accent' which is never good for radio obviously'. The complainant states that since all speakers have an accent, including the presenter, it was not a fair, objective and impartial assessment of the interviewee's 'suitability' to be on the programme. The complainant states that, in addition, the presenter questioned this interviewee's 'grasp of what was going on', presumably because the interviewee did not respond in the way the presenter wanted. However, the complainant believes, it could be argued that the presenter's unfair and dismissive treatment of both speakers brought about their reticence, rather than a lack of knowledge or willingness to speak.

### 4. Broadcaster's Response

#### 4.1 Broadcaster's Response to Complainant

- The broadcaster states that the presenter clearly explained to listeners during the introduction that he had not expected to have a second interviewee in the studio and consequently was caught a little off-guard. However, with moments to go before the item was about to get underway, the presenter, in consultation with the production team, agreed to continue and provide the second interviewee with a chance to engage in the debate.
- The broadcaster further states that although it was not best practice for an interviewee to arrive accompanied by another without prior approval or for the presenter to enter into an item without a chance to brief himself on the second interviewee's background or point of view, flexibility with live broadcasting is par for the course for presenters and production teams. Any subsequent annoyance or frustration that was evident on the part of the presenter, was not related to the unexpected arrival of a second interviewee. The frustration was due to the fact that when he attempted to question the first interviewee, she deferred to the second on a number of occasions rather than answer herself. When the second interviewee was given the opportunity to answer, he proved, in the broadcaster's view, to be quite inarticulate.

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- The broadcaster states that on the programme the following day, 13<sup>th</sup> July, it was necessary for the presenter to explain the context on protocol for listeners who may not have been aware of it or heard the previous day's discussion when he returned to the topic of whether or not Ireland is a racist country, with Dr. Piaras McEinri, who had sent in a critical email about the interview with the Anti-Racism Network.
- The broadcaster is satisfied that when the presenter referred to one of the interviewees deferring to the other on four occasions rather than answer the question herself, this was a fair summation of what happened. So too was the description of one of the interviewee's having a 'strong accent'.
- The broadcaster maintains that interviewee's skin colour was in no way a factor in the reaction of the presenter to the situation that unfolded on-air.

### 4.2 Broadcaster's Response to BAI

- The broadcaster states that at the time of broadcast The Right Hook was Newstalk's daily drive time talk show presented by Mr. George Hook. The programme's remit was to identify issues of the day of interest to the target audience and explore through robust discussion and debate. This robust approach would have been familiar to audiences as part of the programme format and was intended to engage the audience and generate a response to the programme and programme topics.
- In the broadcast of the 12<sup>th</sup> July, The Right Hook gave the Anti-Racism Network a platform to speak on a topic of public importance. A 'Black Lives Matter' protest was scheduled to take place in Dublin later that day and The Right Hook invited one of the organisers of the march on the programme to discuss why such a protest was being held in Ireland and explore the prevalence of racism in Ireland. The broadcaster states that when the guest arrived at the Newstalk studios for the interview, she was accompanied by a colleague, and was insistent that he be included in the scheduled piece as a second guest. With moments to go before going live, The Right Hook agreed to facilitate this request despite not having the opportunity to be briefed on the second guest's background, point of view or perspective as would be standard practice ahead of any interview. The broadcaster states that the presenter clearly explained these circumstances to listeners and proceeded to give both guests a fair chance to engage in the debate.
- The broadcaster states that far from being dismissive, as suggested by the complainant, the presenter gave both interviewees ample opportunity to put forward their points of view and specifically, to give examples of racism in Ireland and to explain what their experience of "structural racism" has been. The broadcaster states that the presenter did pursue a critical line of questioning as is his duty as a presenter, but his questions were credible, independent and without pre-judgement throughout and he did not adopt a partisan position.
- The broadcaster maintains that alternative viewpoints were expressed on the programme through listener texts and emails. The broadcaster states that Dr. Piaras MacEinrí was one of those listeners critical of the presenter's point of view and he was invited on to the following day's programme to continue the discussion about whether Ireland was a racist country.

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- The broadcaster states that during this interview on 13<sup>th</sup> July 2016, the presenter facilitated Dr. MacEinrí's point of view which was highly critical of the previous day's programme and the critical views adopted by the presenter for the purposes of the interview. In keeping with the programme format this exchange was robust, a vigorous line of questioning was pursued and critical views were conveyed by the presenter. Far from being as the result of a partisan position this was necessary in order to achieve fairness, objectivity and impartiality, to represent the views of those not participating in the content and to ensure that the audience had access to a wide variety of views on the topic. The broadcaster states that by providing Dr. MacEinrí with a platform to challenge the presenter on the 13<sup>th</sup> July programme, this demonstrated a fair, objective and impartial editorial approach to the topic and provided the audience adequately with a variety of views on the topic.

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

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

In this regard:-

- The Committee noted that the editorial responsibility for programme content rests with broadcasters. This process generally entails identifying and confirming contributors who, in the view of the programme makers, are best placed to inform audiences about a particular topic, whether that is a matter of human interest or current affairs. The programme makers will generally engage with the potential guests with a view to preparing the presenter for the interview. In the case of the first programme that is the subject of the complaint, it was evident that the guest who had been arranged to appear had invited a second participant without forewarning the programme makers.

Based on the information provided by the broadcaster, this resulted in the programme makers having to decide whether to scrap the item or proceed on the basis that the item would include an unplanned contributor about whom the programme makers, including the presenter, knew little about and whose participation the programme makers had not had time to prepare for or assess as suitable. Having reviewed the broadcast, it was clear to the Committee that these circumstances impacted on the interview that was broadcast.

- In terms of the interview itself, the Committee found that it was reasonable that the presenter would direct his questions in the first instance to the guest who had been arranged, rather than to the unplanned guest, and the decision of the invited guest to refer a number of questions to the uninvited guest (as well as the manner in which he then responded) clearly frustrated the programme presenter. Notwithstanding this, the Committee found that the guests were given the opportunity to respond to the presenter's questions.

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- In considering the complaint, the Committee also had regard to the style and approach of the presenter. It noted that the programme is a hard hitting news and current affairs programme known for the robust and challenging approach of the programme presenter. In that respect, the presenter's approach and line of questioning, specifically his questioning of the relevance of the U.S. 'Black Lives Matters' campaign in an Irish context and of the extent of racism in Ireland were in line with the programme format and style. It was evident that the guests were not prepared for this type of questioning.

However, the Committee also found that in some instances the presenter's approach was dismissive and particularly argumentative and it considered whether the tone and approach was such that the item infringed the requirements for fairness, objectivity and impartiality. The Committee has decided that, on balance, this approach did not infringe the relevant obligations. In particular, it noted that the apparent decision of the guest to bring along an uninvited participant and to refer to that participant the majority of the presenter's questions played a significant part in the manner in which the interview was conducted. While the presenter could have approached the matter in a better manner, he was dealing with an unexpected guest who had not been briefed by the programme makers and who did not appear to be experienced in dealing with radio interviews. In addition, the Committee also had regard to the fact that the programme returned to the topic on the following day's programme. This programme facilitated criticism of the presenter's approach to the interview on the preceding day and to the views that he expressed. It also provided further opportunity to examine the presenter's comments and to critique these comments.

- In view of the above, it was the opinion of the Committee that the broadcasts did not infringe the Broadcasting Act 2009 or the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs in the manner specified by the complainant. Accordingly, the complaint has been rejected.

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**Complaint made by: Mrs. Philomena Travers**

**Ref. No. 101/16**

**Station:**

RTÉ One

**Programme:**

The Rose of Tralee

**Date:**

23<sup>rd</sup> August 2016

## 1. Programme

The Rose of Tralee is a light entertainment programme featuring young women of Irish descent from around the globe who take part in the competition to be selected as the 'Rose' for the coming year. The complaint concerns comments made by the North Carolina Rose about the Irish Roman Catholic Mass.

## 2. Complaint Category

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

## 3. Complaint Summary

- The complainant states that the North Carolina Rose was interviewed and was allowed to ridicule, make fun of and generally rubbish the Irish Roman Catholic Mass. During the programme, the North Carolina Rose stated that Mass was really holy and the act of sitting down and standing up was like going to a gym and being given a 'biscuit' at the end. The presenter quipped "was it gluten free?" The complainant states that the Rose said she was a Protestant, but the complainant does not know of any Irish Protestant who would insult the Catholic religion in this manner. The presenter when referring to the Eucharist, quipped "Sorry, is this gluten free?"
- The complainant further states that RTÉ should show some respect for the Catholic religion. The complainant found this segment of The Rose of Tralee programme was insulting, ignorant and grossly offensive towards the Catholic Holy Mass.

## 4. Broadcaster's Response

### 4.1 Broadcaster's Response to Complainant

- RTÉ states it was not their intention to cause offence to anyone's religious beliefs and they regret when this occurs. However, RTÉ does not agree with the complainant's characterisation of the exchange between the North Carolina Rose and their presenter.

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- The broadcaster claims that the North Carolina Rose gave a light hearted, humorous and respectful account of her attendance at Mass, coming from the perspective of a member of the Protestant faith. To describe the brief conversation between the presenter and the Rose as grossly offensive toward the Catholic Mass is not a fair description.

### 4.2 Broadcaster's Response to BAI

RTÉ refers to the response above by the Executive Producer, The Rose of Tralee to the initial complaint. The Broadcaster further responds as follows:

- The North Carolina Rose described her experience of attending a Roman Catholic Mass, as a North American Protestant who had never experienced the ceremony before entering The Rose of Tralee competition. The broadcaster states that she did so in the editorial context of live coverage of an entertainment event which consistently highlights the perspectives of competitors from abroad who, though of Irish descent, are frequently encountering aspects of Irish culture for the first time. Her comments were not directed to any degree whatsoever at the theological or faith significance of the Mass and no disrespect whatsoever was directed towards the beliefs which underpin the ceremony; the comments were purposely and lightheartedly superficial and entirely limited to her own experience of attendance. The presenter's response, as a means to close the segment, was similarly tongue in cheek.
- The principle of freedom of expression must allow space for a playful account of personal experience at a religious ceremony, which did not stigmatise, support or condone discrimination or incite hatred against any person or groups on the basis of religion.

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

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

In this regard:

- The Committee noted the obligation on broadcasters to respect persons and groups in society as set out in the BAI Code of Programme Standards. This obligation is provided for under Principle 5 of the aforementioned code and included under this Principle is an obligation to show due respect for religious views, images, practices and beliefs.
- Having reviewed the programme, the Committee found that the item entailed the standard interview with a participant in The Rose of Tralee, in this case the North Carolina Rose. The approach to the interview reflected the style of the programme, that is, the interviews are done in the style of light entertainment, with a humorous approach intended to show audiences the character and interests of the participant. In this case, the interview touched on the participant's interest in acting, her life in the US and her observations on visiting Ireland. It concluded with a musical performance by the participant.

## Broadcasting Complaint Decisions

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- It was in the context of the participant's observation on her time in Ireland that she commented on her experiences of the Irish Catholic Mass. The Committee found that her comments were those of a visitor to Ireland whose experience of a religious celebration as a Protestant in the US was very different to the Irish Catholic Mass. While noting that her comments were irreverent and humorous and that some audience members may have been offended, participants in a programme have the right to their views and the right to frame their own experiences in their own words.
- What is of concern to the Committee is whether the comments were such that they would be likely to cause widespread offence or to cause harm. In this regard, the Committee did not believe that her comments (or those of the presenter) were of a nature that they would cause widespread offence and could be considered to stigmatise, support or condone discrimination against people on the basis of their religion.
- In view of the above, the Committee did not agree that the programme would infringe the Broadcasting Act 2009 or the BAI Code of Programme Standards in the manner specified by the complainant. Accordingly, the complaint has been rejected.

# Broadcasting Complaint Decisions

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**Complaint made by: Mr. Mike Mannion**

**Ref. No. 102/16**

<b><u>Station:</u></b>	<b><u>Programme:</u></b>	<b><u>Date:</u></b>
RTÉ One	The Rose of Tralee	23 <sup>rd</sup> August 2016

## 1. Programme

The Rose of Tralee is a light entertainment programme featuring young women of Irish descent from around the globe who take part in the competition to be selected as the 'Rose' for the coming year. The complaint concerns the comments made by the North Carolina Rose when interviewed during the broadcast on 23<sup>rd</sup> August 2016.

## 2. Complaint Category

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

## 3. Complaint Summary

The complainant states that the North Carolina Rose was interviewed on the 23<sup>rd</sup> August programme and when the presenter intimated that she was a Protestant, she agreed and then told of attending Mass while in Ireland. She stated that Mass was really holy and the act of sitting down and standing up was like going to a gym and being given a 'biscuit' at the end. The presenter quipped "was it gluten free?" The complainant maintains that it was wrong to describe the Eucharistic Host as a biscuit and this should not have happened. He states that for the presenter to ask was it gluten free was inexcusable, knowing as he does, the pain and suffering of our forefathers to attain religious freedom.

The complainant believes an apology should be issue by the North Carolina Rose, the presenter, the producer of the contest and RTÉ.

## 4. Broadcaster's Response

### 4.1 Broadcaster's Response to Complainant

- The broadcaster states that the exchange between the North Carolina Rose and the presenter involved the contestant giving a light-hearted, humorous and respectful account of her attendance at Mass. There was nothing blasphemous nor was there an abuse of religions during The Rose of Tralee broadcast.

## Broadcasting Complaint Decisions

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- The broadcaster points out that the Roses attend Mass on the Sunday before the programme as a matter of course and they often refer to this in interviews onstage, which serves to show the importance and centrality of their faith in their daily lives.

### 4.2 Broadcaster's Response to BAI

RTÉ refers to the response above by the Executive Producer, The Rose of Tralee to the initial complaint.

The Broadcaster further responds as follows:

- The North Carolina Rose described her experience of attendance at Roman Catholic Mass, as a North American Protestant who had never attended the ceremony before entering The Rose of Tralee competition. The broadcaster states that she did so in the editorial context of live coverage of an entertainment event which consistently highlights the perspectives of competitors from abroad who, though of Irish descent, are frequently encountering aspects of Irish culture for the first time. The broadcaster states that her comments were not directed to any degree whatsoever at the theological or faith significance of the Mass and no disrespect whatsoever was directed towards the beliefs which underpin the ceremony. The broadcaster states that the comments were purposely and lightheartedly superficial and entirely limited to her own experience of attendance. The presenter's response, as a means to close the segment, was similarly tongue in cheek.
- The principle of freedom of expression must allow space for a playful account of personal experience at a religious ceremony, which did not stigmatise, support or condone discrimination or incite hatred against any person or groups on the basis of religion.

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

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

In this regard:

- The Committee noted the obligation on broadcasters to respect persons and groups in society as set out in the BAI Code of Programme Standards. This obligation is provided for under Principle 5 of the aforementioned code and included under this Principle is an obligation to show due respect for religious views, images, practices and beliefs.
- Having reviewed the programme, the Committee found that the item entailed the standard interview with a participant in The Rose of Tralee, in this case the North Carolina Rose. The approach to the interview reflected the style of the programme, that is, the interviews are done in the style of light entertainment, with a humorous approach intended to show audiences the character and interests of the participant.

## Broadcasting Complaint Decisions

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In this case, the interview touched on the participant's interest in acting, her life in the US and her observations on visiting Ireland. It concluded with a musical performance by the participant.

- It was in the context of the participant's observation on her time in Ireland that she commented on her experiences of the Irish Catholic Mass. The Committee found that her comments were those of a visitor to Ireland whose experience of a religious celebration as a Protestant in the US was very different to the Irish Catholic Mass. While noting that her comments were irreverent and humorous and that some audience members may have been offended, participants in a programme have the right to their views and the right to frame their own experiences in their own words.
- What is of concern to the Committee is whether the comments were such that they would be likely to cause widespread offence or to cause harm. In this regard, the Committee did not believe that her comments (or those of the presenter) were of a nature that they would cause widespread offence and could be considered to stigmatise, support or condone discrimination against people on the basis of their religion.
- In view of the above, the Committee did not agree that the programme would infringe the Broadcasting Act 2009 or the BAI Code of Programme Standards in the manner specified by the complainant. Accordingly, the complaint has been rejected.

# Broadcasting Complaint Decisions

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**Complaint made by: Ms. Christine M. Doran**

**Ref. No. 103/16**

**Station:**

RTÉ One

**Programme:**

The Rose of Tralee

**Date:**

22<sup>nd</sup> & 23<sup>rd</sup> August 2016

## 1. Programme

The Rose of Tralee is a light entertainment programme featuring young women of Irish descent from around the globe who take part in the competition to be selected as the 'Rose' for the coming year. The complaint concerns the comments made by both the Sydney Rose and the North Carolina Rose when interviewed during the broadcasts of 22<sup>nd</sup> (Sydney Rose) and 23<sup>rd</sup> August (North Carolina Rose).

## 2. Complaint Category

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

## 3. Complaint Summary

- The complainant states that when interviewed on the 22<sup>nd</sup> August broadcast of the programme, the Sydney Rose was allowed to air her views on the 8<sup>th</sup> Amendment to the Irish Constitution and also asked the Irish people to support the repeal of this amendment.
- The complainant states that the North Carolina Rose was interviewed on the 23<sup>rd</sup> August and the complainant states that she referred to the Mass as 'disgusting'. The complainant states that she compared it to being in a gym and being given a 'biscuit' at the end, which the complainant believes referred to the Eucharist. The presenter quipped "Was it gluten free?" The complainant maintains that this was an abuse of free speech and an insult to Irish Catholics who believe in God's teachings.

## 4. Broadcaster's Response

### 4.1 Broadcaster's Response to Complainant

- The broadcaster states that the contribution from the Sydney Rose in relation to the 8<sup>th</sup> Amendment, was unscripted and not planned. They state that the Sydney Rose, said:-

"I think it's time we give women a say on their own reproductive rights and I would love to see a referendum on the 8<sup>th</sup> coming up soon".

## Broadcasting Complaint Decisions

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The broadcaster states that the production team had no prior knowledge that she was going to make this remark. The above sentence was the totality of what was expressed on the live programme. The presenter, immediately after her remarks, proceeded to the next question and this served to move the conversation away from what is a highly contentious matter of public debate. The broadcaster believes this was reasonable and appropriate in the context of an entertainment show.

- The exchange between the North Carolina Rose and the presenter involved the contestant giving a light-hearted, humorous and respectful account of her attendance at Mass, coming from the perspective of a member of the Protestant faith. The broadcaster states that to describe the brief conversation between the presenter and the Rose as offensive is not a fair description.

### 4.2 Broadcaster's Response to BAI

The broadcaster refers to the response of Executive Producer above and adds the following:

- With reference to the broadcast of the 22<sup>nd</sup> August, the broadcaster states that during the course of the interview with the Sydney Rose, designed, as with all Rose of Tralee contestants, to reveal her life experience and personality to the audience, to TV viewers and to competition judges, the presenter asked:

Presenter: 'You're also a campaigner for women's rights, focusing on domestic violence?'

To which the Sydney Rose responded: 'I am, because in Australia we just had our funding cut for domestic violence shelters so we're having women who are being turned away on a nightly basis, we're having women sleeping on police station floors, and it's just not on and I think we can do better. And I think we can do better here in Ireland, I think it's time to give women a say on their own reproductive rights and I would love to see a referendum on the eighth [amendment] coming up soon, that'd be my dream.'

- The broadcaster states that The Rose of Tralee is a light entertainment programme at the editorial core of which are interviews with contestants designed to elicit their experience, personalities and view of the world. The personal view on the 8<sup>th</sup> Amendment to the Constitution expressed by the Sydney Rose, in a live, unplanned, unscripted and unforeseen supplement to her answer on a question about her work with survivors of domestic violence, certainly related to a topic of public debate. However, not least in the context of the definition of current affairs content in the BAI Code's Guidance Notes and of the right to freedom of expression, the brief articulation of a personal opinion does not, in the view of RTÉ, generate current affairs content from what is essentially human interest entertainment.

## Broadcasting Complaint Decisions

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- The broadcaster states that respecting the editorial context described above, the presenter properly moved on to the next section of the interview, not engaging with the view expressed in a way which would have risked inappropriately transforming the interview into a current affairs debate with the contestant.
- With respect to the interview with the North Carolina Rose (23<sup>rd</sup> August 2016), the contestant described her experience of attendance at Roman Catholic Mass, as a North American Protestant who had never attended the ceremony before entering The Rose of Tralee competition. She did so in the editorial context of live coverage of an entertainment event which consistently highlights the perspectives of competitors from abroad who, though of Irish descent, are frequently encountering aspects of Irish culture for the first time. Her comments were not directed to any degree whatsoever at the theological or faith significance of the Mass and no disrespect whatsoever was directed towards the beliefs which underpin the ceremony.

The broadcaster states that the comments were purposely and lightheartedly superficial and entirely limited to her own experience of attendance. The presenter's response, as a means to close the segment, was similarly tongue in cheek.

- The broadcaster states that the principle of freedom of expression must allow space for a playful account of personal experience at a religious ceremony, which did not stigmatise, support or condone discrimination or incite hatred against any person or groups on the basis of religion.

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

Having considered the broadcasts 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 Section 48(1)(b) (offence and harm), the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4, Rules 4.1, 4.2) and the BAI Code of Programme Standards, Principle 5 (Respect for Persons and Groups in Society), the Committee has decided to reject the complaint.

In this regard:

#### **Rose of Tralee 22<sup>nd</sup> August 2016**

With regard to the interview with the Sydney Rose and her comments on Ireland's laws on abortion:

- Having reviewed the programme, the Committee found that the item entailed the standard interview with a participant in the Rose of Tralee, in this case the Sydney Rose. The approach to the interview reflected the style of the programme, that is, the interviews are done in the style of light entertainment, with a humorous approach intended to show audiences the character and interests of the participant. In this case, the interview touched on her connection to Ireland, how her parents met, her work in the area of journalism and her support for women experiencing domestic violence.

## Broadcasting Complaint Decisions

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- The Committee found that it was in that context that the participant made her reference to Ireland's law on abortion. The Committee considered her comment to be the expression of a personal opinion made in the context of a light entertainment interview whose focus was on her character and her interests. The Committee noted that the presenter did not specifically elicit her views on the topic of Ireland's abortion laws nor did he pursue this topic further.

While the BAI's news and current affairs code may apply to content in a programme that is not itself a news and current affairs programme, the Committee was of the view that the remarks of the participant did not constitute news and current affairs but were rather brief personal opinions given in the context of her participation in a light entertainment contest. For this reason, the requirements of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs did not apply.

### **Rose of Tralee 23<sup>rd</sup> August 2016**

With regard to the interview with North Carolina Rose and her observations on the Irish Catholic Mass:

- The Committee noted the obligation on broadcasters to respect persons and groups in society as set out in the BAI Code of Programme Standards. This obligation is set out in Principle 5 of the aforementioned code and included under this principle is an obligation to show due respect for religious views, images, practices and beliefs.
- Having reviewed the programme, the Committee found that the item entailed the standard interview with a participant in the Rose of Tralee, in this case the North Carolina Rose. The approach to the interview reflected the style of the programme, that is, the interviews are done in the style of light entertainment, with a humorous approach intended to show audiences the character and interests of the participant. In this case, the interview touched on the participant's interest in acting, her life in the US and her observations on visiting Ireland. It concluded with a musical performance by the guest.
- It was in the context of the participant's observation on her time in Ireland that she commented on her experiences of the Irish Catholic Mass. The Committee found that her comments were those of a visitor to Ireland whose experience of a religious celebration as a Protestant in the US was very different to the Irish Catholic Mass.

While noting that her comments were irreverent and humorous and that some audience members may have been offended, participants in a programme have the right to their views and the right to frame their own experiences in their own words.

- What is of concern to the Committee is whether the comments were such that they would be likely to cause widespread offence or to cause harm. In this regard, the Committee did not believe that her comments (or those of the presenter) were of a nature that they would cause widespread offence and could be considered to stigmatise, support or condone discrimination against people on the basis of their religion.

## Broadcasting Complaint Decisions

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In view of the above, the Committee did not agree that the programmes would infringe the Broadcasting Act 2009, the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs or the BAI Code of Programme Standards in the manner specified by the complainant. Accordingly, the complaint has been rejected.

# Broadcasting Complaint Decisions

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**Complaint made by: Ms. Loretto Browne**

**Ref. No. 104/16**

**Station:**

RTÉ One

**Programme:**

The Rose of Tralee

**Date:**

22<sup>nd</sup> & 23<sup>rd</sup> August 2016

## 1. Programme

The Rose of Tralee is a light entertainment programme featuring young women of Irish descent from around the globe who take part in the competition to be selected as the 'Rose' for the coming year. The complaint concerns the comments made on 22<sup>nd</sup> August by the Sydney Rose (and the facilitation by RTÉ of these comments) and comments made by the presenter during the interview with the North Carolina Rose, broadcast on the 23<sup>rd</sup> August.

## 2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48(1)(b) (offence and harm); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4, Rules 4.1, 4.2) and the BAI Code of Programme Standards, Principles 5 (Respect for Persons and Groups in Society) and 6 (Protection of the Public Interest).

## 3. Complaint Summary

- The complainant states that when interviewed on the 22<sup>nd</sup> August, the Sydney Rose was allowed to air her views on the 8<sup>th</sup> Amendment to the Irish Constitution. The complainant states that such blatant support for political change on this issue, constituted unwarranted interference in the internal affairs of the Irish democracy. That the subject of the 8<sup>th</sup> Amendment was deliberately put on the agenda for group discussion in the judging sessions prior to the RTÉ presentation was a tacit promotion of abortion by RTÉ and the Judging Panel.
- The second issue concerns the North Carolina Rose and what the complainant describes as the presenter's mockery of the Eucharist (referring to gluten free hosts while miming) in response to her statement of having to attend Mass and her opinions on same. The complainant states that the presenter's response was a complete mockery of what Catholics hold as most sacred and an offence against The Almighty.

### 4. Broadcaster's Response

#### 4.1 Broadcaster's Response to Complainant

RTÉ stated:

- The exchange between the North Carolina Rose and the presenter involved the contestant giving a light-hearted, humorous and respectful account of her attendance at Mass, coming from the perspective of a member of the Protestant faith. To describe the brief conversation between the presenter and the Rose as offensive is not a fair description.
- The contribution from the Sydney Rose in relation to the 8<sup>th</sup> Amendment, was unscripted and not planned. The broadcaster states that the Sydney Rose, said:

“I think it's time we give women a say on their own reproductive rights and I would love to see a referendum on the 8<sup>th</sup> coming up soon”.

The broadcaster states that the production team had no prior knowledge that she was going to make this remark. The broadcaster states that the above sentence was the totality of what was expressed on the live programme. The presenter, immediately after her remarks, proceeded to the next question and this served to move the conversation away from what is a highly contentious matter of public debate. The broadcaster believes this was reasonable and appropriate in the context of an entertainment show.

#### 4.2 Broadcaster's Response to BAI

The broadcaster refers to the initial response of Executive Producer of the Rose of Tralee and adds the following:

- With reference to the broadcast of 22<sup>nd</sup> August, during the course of the interview with the Sydney Rose, designed, as with all Rose of Tralee contestants, to reveal her life experience and personality to the audience, to TV viewers and to competition judges, the presenter asked:

Presenter: ‘You're also a campaigner for women's rights, focusing on domestic violence?’

To which the Sydney Rose replied: ‘I am, because in Australia we just had our funding cut for domestic violence shelters so we're having women who are being turned away on a nightly basis, we're having women sleeping on police station floors, and it's just not on and I think we can do better. And I think we can do better here in Ireland, I think it's time to give women a say on their own reproductive rights and I would love to see a referendum on the eighth [amendment] coming up soon, that'd be my dream.’

## Broadcasting Complaint Decisions

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- The broadcaster states that, not least in the context of the definition of current affairs content in the BAI Code's Guidance Notes and of the right to freedom of expression, the brief articulation of a personal opinion does not, in the view of RTÉ, generate current affairs content from what is essentially human interest entertainment.
- The broadcaster states that, respecting the editorial context described above, the presenter properly moved on to the next section of the interview, not engaging with the view expressed in a way which would have risked inappropriately transforming the interview into a current affairs debate with the contestant.
- With respect to the interview with the North Carolina Rose on 23<sup>rd</sup> August, the contestant described her experience of attendance at Roman Catholic Mass, as a North American Protestant who had never attended the ceremony before entering The Rose of Tralee competition. The broadcaster states that she did so in the editorial context of live coverage of an entertainment event which consistently highlights the perspectives of competitors from abroad who, though of Irish descent, are frequently encountering aspects of Irish culture for the first time. Her comments were not directed to any degree whatsoever at the theological or faith significance of the Mass and no disrespect whatsoever was directed towards the beliefs which underpin the ceremony; the comments were purposely and lightheartedly superficial and entirely limited to her own experience of attendance. The presenter's response, as a means to close the segment, was similarly tongue in cheek.
- The broadcaster states that the principle of freedom of expression must allow space for a playful account of personal experience at a religious ceremony, which did not stigmatise, support or condone discrimination or incite hatred against any person or groups on the basis of religion.
- In respect of Principle 6, the broadcaster does not agree that there was any breach of this principle; nothing was broadcast which would promote or incite crime or undermining of the authority of the State. The expression of an opinion is not in itself contrary to the public interest. The allegation that RTÉ made use of the Sydney Rose to support changes to Ireland's abortion laws is unfounded and unsupported by any evidence whatsoever.

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

Having considered the broadcasts 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 Section 48(1)(b) (offence and harm), the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4, Rules 4.1, 4.2) and the BAI Code of Programme Standards, Principle 5 (Respect for Persons and Groups in Society) and Principle 6 (Protection of the Public Interest), the Committee has decided to reject the complaint.

## Broadcasting Complaint Decisions

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In this regard:

### **Rose of Tralee 22<sup>nd</sup> August 2016**

With regard to the interview with the Sydney Rose and her comments on Ireland's laws on abortion:

- Having reviewed the programme, the Committee found that the item entailed the standard interview with a participant in the Rose of Tralee, in this case the Sydney Rose. The approach to the interview reflected the style of the programme, that is, the interviews are done in the style of light entertainment, with a humorous approach intended to show audiences the character and interests of the participant. In this case, the interview touched on her connection to Ireland, how her parents met, her work in the area of journalism and her support for women experiencing domestic violence.
- The Committee found that it was in that context that the participant made her reference to Ireland's law on abortion. The Committee considered her comment to be the expression of a personal opinion made in the context of a light entertainment interview whose focus was on her character and her interests. The Committee noted that the presenter did not specifically elicit her views on the topic of Ireland's abortion laws nor did he pursue this topic further.

While the BAI's news and current affairs code may apply to content in a programme that is not itself a news and current affairs programme, the Committee was of the view that the remarks of the participant did not constitute news and current affairs but were rather brief personal opinions given in the context of her participation in a light entertainment contest. For this reason, the requirements of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs did not apply.

### **Rose of Tralee 23<sup>rd</sup> August 2016**

With regard to the interview with North Carolina Rose and her observations on the Irish Catholic Mass: -

- The Committee noted the obligation on broadcasters to respect persons and groups in society as set out in the BAI Code of Programme Standards. This obligation is set out in Principle 5 of the aforementioned code and included under this principle is an obligation to show due respect for religious views, images, practices and beliefs.
- Having reviewed the programme, the Committee found that the item entailed the standard interview with a participant in the Rose of Tralee, in this case the North Carolina Rose. The approach to the interview reflected the style of the programme, that is, the interviews are done in the style of light entertainment, with a humorous approach intended to show audiences the character and interests of the participant. In this case, the interview touched on the participant's interest in acting, her life in the US and her observations on visiting Ireland. It concluded with a musical performance by the guest.

## Broadcasting Complaint Decisions

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- It was in the context of the participant's observation on her time in Ireland that she commented on her experiences of the Irish Catholic Mass. The Committee found that her comments were those of a visitor to Ireland whose experience of a religious celebration as a Protestant in the US was very different to the Irish Catholic Mass. While noting that her comments were irreverent and humorous and that some audience members may have been offended, participants in a programme have the right to their views and the right to frame their own experiences in their own words.
- What is of concern to the Committee is whether the comments were such that they would be likely to cause widespread offence or to cause harm. In this regard, the Committee did not believe that her comments (or those of the presenter) were of a nature that they would cause widespread offence and could be considered to stigmatise, support or condone discrimination against people on the basis of their religion.
- In view of the above, the Committee did not agree that the programmes would infringe the Broadcasting Act 2009, the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs or the BAI Code of Programme Standards in the manner specified by the complainant. Accordingly, the complaint has been rejected.

# Broadcasting Complaint Decisions

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**Complaint made by: Mr. Philip Bradley**

**Ref. No. 105/16**

**Station:**

RTÉ One

**Programme:**

The Rose of Tralee

**Date:**

23<sup>rd</sup> August 2016

## 1. Programme

The Rose of Tralee is a light entertainment programme featuring young women of Irish descent from around the globe who take part in the competition to be selected as the 'Rose' for the coming year. The complaint concerns the comments made by the North Carolina Rose when interviewed during the broadcast on 23<sup>rd</sup> August 2016.

## 2. Complaint Category

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

## 3. Complaint Summary

- The complainant states that the North Carolina Rose described her attendance at Mass, stating there was lots of standing up and sitting down, with lots of exercise. The complainant found this quite offensive. The Rose stated that the priest gave out a 'biscuit' at the end to which the presenter quipped "Is it gluten free?"
- The complainant maintains that Holy Communion is sacred to Catholics and disparaging it on RTÉ is offensive and hurtful.
- The complainant believes that this was not some off-the-cuff remark during a live interview. He states that it was obvious that the North Carolina Rose going to Mass was one of the topics for her interview. He states that it may have been designed to be funny and just that little bit anti-Catholic, however, it surpassed in being particularly offensive and disrespectful.

## 4. Broadcaster's Response

### 4.1 Broadcaster's Response to Complainant

- The broadcaster states that the exchange between the North Carolina Rose and the presenter involved the contestant giving a light-hearted, humorous and respectful account of her attendance at Mass. There was no intention to undermine in any way, the fundamentals of the Catholic faith.

## Broadcasting Complaint Decisions

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- The broadcaster points out that the Roses attend Mass on the Sunday before the programme as a matter of course and they often refer to this in interviews onstage, which serves to show the importance and centrality of their faith in their daily lives.

### 4.2 Broadcaster's Response to BAI

RTÉ refers to the response above by the Executive Producer of The Rose of Tralee to the initial complaint. The Broadcaster further responds as follows:

- The North Carolina Rose described her experience of attendance at Roman Catholic Mass, as a North American Protestant who had never attended the ceremony before entering The Rose of Tralee competition. The broadcaster states that she did so in the editorial context of live coverage of an entertainment event which consistently highlights the perspectives of competitors from abroad who, though of Irish descent, are frequently encountering aspects of Irish culture for the first time. The broadcaster states that her comments were not directed to any degree whatsoever at the theological or faith significance of the Mass and no disrespect whatsoever was directed towards the beliefs which underpin the ceremony; the comments were purposely and lightheartedly superficial and entirely limited to her own experience of attendance. The presenter's response, as a means to close the segment, was similarly tongue in cheek.
- The broadcaster states that the principle of freedom of expression must allow space for a playful account of personal experience at a religious ceremony, which did not stigmatise, support or condone discrimination or incite hatred against any person or groups on the basis of religion.

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

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

In this regard:

- The Committee noted the obligation on broadcasters to respect persons and groups in society as set out in the BAI Code of Programme Standards. This obligation is provided for under Principle 5 of the aforementioned code and included under this Principle is an obligation to show due respect for religious views, images, practices and beliefs.
- Having reviewed the programme, the Committee found that the item entailed the standard interview with a participant in the Rose of Tralee, in this case the North Carolina Rose. The approach to the interview reflected the style of the programme, that is, the interviews are done in the style of light entertainment, with a humorous approach intended to show audiences the character and interests of the participant. In this case, the interview touched on the participant's interest in acting, her life in the US and her observations on visiting Ireland. It concluded with a musical performance by the participant.

## Broadcasting Complaint Decisions

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- It was in the context of the participant's observation on her time in Ireland that she commented on her experiences of the Irish Catholic Mass. The Committee found that her comments were those of a visitor to Ireland whose experience of a religious celebration as a Protestant in the US was very different to the Irish Catholic Mass. While noting that her comments were irreverent and humorous and that some audience members may have been offended, participants in a programme have the right to their views and the right to frame their own experiences in their own words.
- What is of concern to the Committee is whether the comments were such that they would be likely to cause widespread offence or to cause harm. In this regard, the Committee did not believe that her comments (or those of the presenter) were of a nature that they would cause widespread offence and could be considered to stigmatise, support or condone discrimination against people on the basis of their religion.
- In view of the above, the Committee did not agree that the programme would infringe the Broadcasting Act 2009 or the BAI Code of Programme Standards in the manner specified by the complainant. Accordingly, the complaint has been rejected.

## Broadcasting Complaint Decisions

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### Rejected by the Executive Complaints Forum

**Complaint made by: Mr. Gerald O'Carroll**

**Ref. No. 86/16**

<b><u>Station:</u></b>	<b><u>Programme:</u></b>	<b><u>Date:</u></b>
Newstalk 106FM	The Sunday Show	3 <sup>rd</sup> July 2016

#### 1. Programme

The complaint concerns an item on The Sunday Show, which features a mix of current affairs, news, interviews and general panel discussions, broadcast each Sunday from 10am - 12 noon. The complaint refers to a discussion on a bill, proposed by Deputy Mick Wallace, dealing with fatal foetal abnormalities and abortion, including comments made by, and the treatment of, one of the contributors to the discussion.

#### 2. Complaint Category

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

#### 3. Complaint Summary

The complainant states that this was a panel discussion featuring Senator Ivana Bacik, Minister for Health, Mr. Simon Harris T.D., and Mr. Mark Hennessy, News Editor for The Irish Times newspaper.

The complainant states the following:-

- The topic was the 8<sup>th</sup> Amendment to the Irish Constitution and a text or email was read out by the presenter asking if, for Ms. Bacik, the 8<sup>th</sup> Amendment's removal was the prelude only to legislating widely for abortion in Ireland. The complainant states that Ms. Bacik responded that she has been the object of vile abuse going back to the days of SPUC (the Society for the Protection of Unborn Children). The complainant claims Ms. Bacik was not challenged on this comment nor was she challenged to answer a question put in a text read out by the presenter.
- The complainant states that, at one point, the presenter appeared to the complainant to state, 'we are all agreed (here)?' that the 8<sup>th</sup> Amendment needs to be replaced.
- The complainant believes this was a 'soft interview' given to what he describes as the advocates of abortion. He also criticises what he describes as the insidious normalisation of abortion and the downplaying of the benefits and legacy of the 8<sup>th</sup> Amendment that he believes were evident in this programme.

## Broadcasting Complaint Decisions

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The complainant states that the default approach by which this discussion was framed was that the 8<sup>th</sup> Amendment to the Irish Constitution must be repealed.

- The complainant maintains that another panellist, Mr. Mark Hennessy of The Irish Times newspaper, appeared to begin to put the case for the 8<sup>th</sup> Amendment but Ms. Bacik interrupted and he couldn't be heard. The complainant believes that the presenter should be aware of the need to give a voice to the voiceless, to the opinion not being heard.
- The complainant states that the impression throughout the show was uniformity of opinion. The complainant claims that Ireland is most supportive of life and so the text/email question should have inspired engagement but did not.
- The complainant states that his complaint refers to how one contributor to a radio programme was given an easy time and allowed to set the agenda for the discussion that took place.

### 4 Broadcaster's Response

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

Newstalk states the following:

- The section highlighted by the complainant was a discussion regarding a bill put forward by Mr. Mick Wallace T.D. in the Dáil. It concerned whether the Bill was constitutional or not, and the political process surrounding it. Issues examined included: Who would vote for it? What are the rules concerning advice provided by the Attorney General to Cabinet, and, What commitments were given by the Government concerning a citizens' assembly? The broadcaster states that this was not a discussion about the rights and wrongs of abortion itself. Notwithstanding this, a number of texts from 'pro-life' supporters were read out during the discussion.
- The presenter at all times sought to probe the political intrigue surrounding this story. He did not, as claimed by the complainant, allow Ms. Bacik to set the agenda of the interview, or give her a soft interview. He repeatedly pressed her as to whether The Labour Party would support Deputy Wallace's Bill or not, as well as on other political points. This was the focus of the interview and he pursued that.

#### 4.2 Broadcaster's Response to BAI

- The broadcast was a panel discussion with Minister for Health, Mr. Simon Harris T.D, Senator Ivana Bacik of The Labour Party and News Editor of The Irish Times newspaper, Mr. Mark Hennessy. The subject for discussion was the private member's Bill proposed by Deputy Mick Wallace on the issue of fatal foetal abnormalities.
- Newstalk maintain that the discussion was a very measured one about whether or not the Government or The Labour Party would vote for the Bill put forward by Deputy Mick Wallace. It also involved a discussion about the possibility of a free vote or a collective vote in the Dáil and the dynamics and issues relating to both these scenarios.

## Broadcasting Complaint Decisions

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The discussion veered into one about political manoeuvrings and how parties could use the situation to their political advantage. It was a discussion about the political elements surrounding the proposed Bill rather than on the actual subject matter of the Bill itself.

- The broadcaster states that it was not a debate about whether or not the 8<sup>th</sup> Amendment to the Irish Constitution should be repealed and the merits or otherwise of doing that. Neither was it a debate about whether a bill of this type should be proposed. It was a discussion about who would be supporting it.
- Newstalk states that having brought this complaint to the attention of the presenter, Mr. Mick Clifford, he has explained what he meant by the comment, “in principle I think everybody would...” At the time the comment was made he was trying to get Senator Bacik to answer whether or not The Labour Party would support the Bill. When she made the comment “in principle all of us would support the need to legislate” you can hear from the audio that the presenter almost spoke over her when he said “in principle I think everybody would...” His comment was incomplete. The broadcaster states that the presenter has confirmed that what he meant by that was not that everybody would support the need to legislate to repeal the 8<sup>th</sup> Amendment, but that the issue of fatal foetal abnormalities is an issue that needs to be addressed or dealt with. He has confirmed that he was absolutely not saying that everyone would support the need to legislate on repealing the 8<sup>th</sup> Amendment.
- Newstalk believes that this is a case where a comment that was made by our presenter - that was maybe unclear as he did not fully complete it - was miss-interpreted by the complainant and he has made a massive leap to suggest it means something that it does not.
- Newstalk is satisfied the debate was handled very fairly and objectively. When Senator Bacik did try to proffer her view on the 8<sup>th</sup> Amendment, the presenter steered the conversation back to the original topic, whether The Labour Party would support the Bill and not the merits or otherwise of repealing the 8<sup>th</sup> Amendment. He did not give Senator Bacik a ‘soft interview’ as the complaints claims.
- Newstalk maintains that it makes huge efforts to ensure that the debate around the 8<sup>th</sup> Amendment happens and when it does, that both sides of the debate are represented fairly and proportionately. However, there are also peripheral and indirect matters that extend from the basic general issue of whether it is right or wrong to repeal the 8<sup>th</sup> Amendment that need to be discussed, particularly as the issue moves on.
- Newstalk believes that the complainant is proposing that every one of those tangential issues should involve a discussion about abortion generally and should deal with questions such as the ones he suggests. This is not appropriate or possible in some contexts and Newstalk believes that this was an example of a discussion where, while it arose from the more general issue of repealing the 8<sup>th</sup> Amendment, it was a sufficiently narrow and specific subject matter arising from the more general issue.

- Later on in the discussion, there were texts messages read out which were carefully chosen in order to provide general balance and both text messages that were read out make the point that the complainant makes. The complainant objects to how one of these texts was responded to. Particularly, he complains that Senator Bacik was not “challenged” regarding her statement that she received “vile abuse in different mail to her office, going back to the days of SPUC”. He also complains that Senator Bacik was “not challenged to answer the question” posed in the text message.

The broadcaster states that as this text came towards the end of the discussion, it was not practical to make this text the focus of further prolonged discussion given what had been said during the previous 20 minutes. Newstalk is satisfied that taking the context of the whole discussion into account, the comment made by the presenter was fair and balance to the discussion was provided as whole, by reading out the two text messages.

### 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), 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 it was a panel discussion on the Bill proposed by Mr. Mick Wallace T.D. The Bill, if enacted would permit terminations in the case of pregnancies where there was a fatal foetal abnormality present. Given the topic, the Forum was of the view that the issue of abortion and the proposals contained in the Bill, which entailed liberalising Irish law in this area, would therefore receive prominence.

- The Forum found that from the outset it was clear that the focus of the discussion would be on how members of the Government would vote on the Bill in question. The panel discussion opened with the presenter posing the following question to the Minister for Health: “you spoke on this Bill – Mick Wallace’s Bill – ordinarily you would be speaking for the Government but that doesn’t seem to be the case here because we have some dissenters there who say they’re not going to vote with the Government on this”. The Forum found that the presenter explored different degrees of support amongst the Government and cabinet members and the political dynamics relating to the Bill, such as the issue of a ‘free vote’. The political impact of different views on the stability of the Government was also explored with the panel.

## Broadcasting Complaint Decisions

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- The Forum found that the discussion widened to look at the position of the Labour Party. When Senator Bacik added her contribution she expressed her support, in principle for the Bill but felt it needed to go a step further and include the repeal of the 8<sup>th</sup> Amendment to the Irish Constitution. The Forum noted that the presenter tried on several occasions to bring Ms. Bacik back to the issue under discussion, that of her and her Party's support or otherwise for the Bill in question. Ms. Bacik persisted with her views on the need for the repeal of the 8<sup>th</sup> Amendment but the presenter challenged her to stay on topic each time. For example, when Ms. Bacik stated the Labour Party supported the Bill in principle, the presenter could be heard interjecting with the comment – “never mind the principle...will you support the Bill?” The Forum noted that the presenter challenged this panellist's to set out clearly whether the Labour Party supported the Bill.
- In relation to the presenter's remark - “I think everybody would agree but...”, the Forum noted that the presenter did not get to the point of finishing his sentence and this may have referred to the fact that there was agreement in principle to support the Bill rather than agreement that the 8<sup>th</sup> Amendment should be repealed. However, the Forum did not believe that the content supported the view that the presenter was expressing a partisan position.
- On the issue of Senator Bacik's comments on abuse she says she has received as a result of her position on abortion, the Forum found that these were references to her own personal experiences that did not need challenging. More generally, the Forum found that the programme included a range of views on the issue of the Bill and the manner in which Irish law might deal with the issues raised in the Bill.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act 2009 or the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs, Rule 4.1, in the manner specified by the complainant. Accordingly, the complaint has been rejected.

## Broadcasting Complaint Decisions

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**Complaint made by: Dr. Damian Mooney**

**Ref. No. 87/16**

**Station:**

RTÉ Radio 1

**Programme:**

Morning Ireland

**Date:**

1<sup>st</sup> July 2016

### 1. Programme

The complaint concerns an item on Morning Ireland, which is a news and current affairs programme broadcast Monday to Friday from 7.00am to 9.00am. The complaint refers to discussion on the support or otherwise of Dáil Éireann in relation to a bill proposed by Deputy Mick Wallace dealing with the issue of abortion and fatal foetal abnormalities.

### 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 the following:

- The coverage that Morning Ireland provided on July 1st 2016 dealt with the Bill proposed by Deputy Mick Wallace. The Bill, if enacted, would permit abortions in the case where a fatal foetal abnormality was present. The complainant states that the discussion on this topic involved four contributors - Ms. Sarah Bardon, political reporter for The Irish Times newspaper, Mr. Conor McMorrow, RTÉ Correspondent, Fine Gael T.D., Ms. Kate O'Connell and Mr. John Halligan, Independent T.D. and Junior Minister.
- The complainant states that these contributors represented the views of those who supported the Bill, the views of those who believed that the Bill did not go far enough, and the views of those who, accordingly, believed that the only way forward was to repeal the 8<sup>th</sup> Amendment to the Irish Constitution.
- The complainant states that the views of those that opposed the Bill were not represented and no views were sought from those who believed that the Bill represented a flawed ethical dichotomy vis-a-vis a foetus with poor prognosis, nor were there any views from those who believe that the status quo is a just and reasonable position.
- The complainant states that there was no challenging questions nor were opposing views sought or expressed to those featured in the programme.

## Broadcasting Complaint Decisions

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- The complainant believes that the programme on this occasion, did not reflect all relevant interests, since the right of life of an unborn child with poor diagnosis was not defended by any speaker, or even by questioning from the presenters, nor did any speaker uphold the reasonableness of the 8<sup>th</sup> Amendment nor indeed were opposing views sought or expressed to those who are in support of this Bill.

### 4. Broadcaster's Response

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

RTÉ contest the assertion that no challenging questioning was engaged in by the presenters, or that no views were sought from those opposing the Bill. RTÉ also state the following:

- The focus that morning was on the political implications of the intention by Independent members of the Government to support the Bill or to abstain, despite advice from the Attorney-General that it was unconstitutional, and a demand by the Taoiseach for collective Cabinet responsibility.
- The broadcaster states that there was a need to explore why members of Fine Gael opposed the Bill, while some of their partners in Government said they would not vote against it, regardless of the possible damage to relations inside the Government.
- Members of the Independent Alliance were on a collision course with their Fine Gael Government colleagues over their support for the proposed legislation and this was therefore an issue considered to be of existential importance for the Government's survival, and the programme looked at the issue through that perspective.
- The broadcaster states that Fine Gael T.D., Ms. Kate O'Connell made an emotional contribution to the Dáil debate, and she was interviewed on the programme. She was challenged on why, if she was in favour of women faced with fatal foetal diagnoses to have a choice to terminate, she was not supporting the Bill. The aim was to explore why Deputies who might on paper be considered to be sympathetic to the aims of the Bill, were not supporting it.
- The broadcaster states that Junior Minister, Independent Mr. John Halligan, was on the programme. The focus of this interview was political and was aimed at establishing why the Independent Alliance were prepared to risk the cohesion of Cabinet collective responsibility by either voting for Deputy Wallace's Bill, or abstaining.
- RTÉ contend that, contrary to the claim by the complainant, challenging questions were posed, and the views sought of those opposed to the Bill.

#### 4.2 Broadcaster's Response to BAI

RTÉ refer to the reply from the Series Editor (above), that the editorial perspective of the programme coverage of the Dáil debate on the Bill, was political in nature and not in any way a discussion or debate on the substantive topic of abortion.

## Broadcasting Complaint Decisions

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RTÉ maintain the following:

- The report by Mr. Conor McMorrow of RTÉ and the interview with Ms. Sarah Bardon of The Irish Times newspaper were factual, journalistic accounts of the proceedings in the Dáil and the positions adopted by various parties inside and outside Government.
- The interviews with Deputies O'Connell and Halligan were with two significant figures in the political story which was unfolding. The former is a Fine Gael T.D. who supports the principle of termination of pregnancy being available and yet was opposed to the proposed Bill; the contradictions in her position were explored. The latter is a Junior Minister who had not yet decided whether or not to support the Government view of the Bill; again, insofar as it was necessary to do so in order to examine for listeners the tension within his position, his views on termination were raised.
- In neither case was in the context of discussion of the substantive issue of abortion but in that of drawing out the political tensions involved, not least their potential to stabilise the government.

### **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 Forum noted the topic under discussion was a Bill being put forward by Independent T.D., Mr. Mick Wallace dealing with the issue of abortion and fatal foetal abnormalities and whether or not several members of the Government would support it.
- When considering a complaint under the Code of Fairness, Objectivity and Impartiality in News and Current Affairs, the Forum had to take account, among other things, the need for a broadcaster to demonstrate an even-handed approach in the presentation of the subject matter. Having listened to the broadcast, the Forum was of the view that the topic under discussion referred, in the main, to the support or otherwise among T.D.s in the Dáil for the Deputy Wallace's Bill on fatal foetal abnormalities. Although the subject of the 8<sup>th</sup> Amendment was mentioned, it was not the focus of the discussion. The substantive debate was on the fallout of the potential voting preferences of members of the Cabinet and the affect this might have on the future of the Government.
- The Forum found that Ms. Kate O'Connell, T.D. Fine Gael, shared her personal story of being told that her unborn baby could have fatal foetal abnormalities and how she felt before getting the full diagnosis. She explained the difficulties she and her husband encountered while waiting for the outcome of tests.

## Broadcasting Complaint Decisions

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While she would support women who would not want to go through with such pregnancies, she stated she could not support the Bill as it is considered by the Attorney General to be unconstitutional.

Mr. John Halligan, Independent T.D. was also pressed on how he would vote in relation to the bill and the other two contributors, journalist, Ms. Sarah Bardon, Irish Times newspaper and Mr. Conor McMorrow, RTÉ correspondent, provided the background to the Bill and the reluctance of some members to declare how they would vote.

- Having had regard to the content, the Forum noted the provisions of the BAI Code of Fairness, Objectivity in News and Current Affairs. The Forum also noted that the principle of fairness does not necessary require that all possible opinions on a subject are addressed or that they should receive equal air-time. In that context, the Forum found the programme to include a range of perspectives on the topic that was the focus of discussion (Deputy Wallace's Bill). While other issues could have been included in the discussion, the broadcaster is free to choose the editorial focus and the Forum found that the issues highlighted by the complainant that were not included were not directly relevant given the focus of the discussion on the specific Bill and its provisions, including its constitutionality.
- In view of the above, it was the opinion of the Forum that the programme did not infringe the requirements of the Broadcasting Act 2009 or the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs in the manner specified by the complainant. Accordingly, the complaint has been rejected.

# Broadcasting Complaint Decisions

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**Complaint made by: Mr. Jim Carson**

**Ref. No. 91/16**

**Station:**

RTÉ One TV

**Programme:**

Claire Byrne Live

**Date:**

29<sup>th</sup> February 2016

## 1. Programme

The complaint concerns Claire Byrne Live, which is a live panel discussion programme broadcast on Monday nights at 9.30pm on RTÉ One TV. The complaint refers to comments and language used by a guest on the programme when referring to the Government and some individual politicians.

## 2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(Fairness, Objectivity and Impartiality in news and current affairs); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2 and 4. 19).

## 3. Complaint Summary

The complainant states that his complaint refers to comments made by a panellist on the Show, Mr. Eamon Dunphy, regarding the recently concluded General Election campaign. The complainant believes Mr. Dunphy's presentations consisted mainly of unfair and inaccurate comments, which the complainant states were couched in extreme and/or emotive language. The complainant states that this kind of language does not lend itself to balanced debate and when it is incorrect and is not substantiated by fact, it is particularly offensive and harms.

In support of his complaint, the complainant cites a range of comments made by Mr. Dunphy during the programme. These include the following:-

- 'I am glad that the Labour Party is back in its box and may never get out again'.
- 'This Government has done everything to weaken the State'.
- 'Rural Ireland is being savaged'.
- 'The Irish media blackguarded Sinn Féin'.
- 'The Government imposed austerity and cruelty with relish on the public of this Country'.

## Broadcasting Complaint Decisions

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The complainant also notes that Mr. Dunphy made remarks about Cllr. Chris Andrews, the former Fianna Fáil T.D. who represented Sinn Féin in Mr. Dunphy's constituency during the 2016 General Election. The complainant states that these remarks were not challenged and were unfair in circumstances where Mr. Andrews was not involved in the programme in question.

The complainant further notes that while some of Mr. Dunphy's comments were challenged, some of his most problematic comments were not. The complainant also states that he is not satisfied with the response from RTÉ, which he believes not only failed to address some of the main issues of his complaint but failed to even mention some of them.

### 4. Broadcaster's Response

The complainant made the complaint on the 19<sup>th</sup> March 2016 but did not receive a response until the 8<sup>th</sup> of August 2016.

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

RTÉ states the following:

- The views expressed by Mr. Eamon Dunphy are his own and do not represent the views of RTÉ. This is acknowledged by the complainant in his letter. The fundamental principles of RTÉ are those of fairness, accuracy, impartiality, honesty and transparency. They are satisfied that the programme reached those standards throughout.
- RTÉ are satisfied that the programme was conducted in a fair, honest and balanced manner. The programme began with a number of diverse comments from members of the studio audience and the panel consisted of former Fine Gael Taoiseach, Mr. John Bruton and journalist and commentator Mr. Eamon Dunphy with further substantial comments from the audience, reflecting many different political hues. The broadcaster states that different political loyalties were represented, all speakers declared their allegiances in a forthright way. Criticisms of certain political parties (The Labour Party, Fine Gael, Fianna Fáil etc.) were counterbalanced with comment and response from members (successful and unsuccessful candidates) of those parties in the audience.
- RTÉ stands by the right of Mr. Dunphy to express his opinions and offer fair comment in a situation where he was challenged by a former Fine Gael Taoiseach who was well briefed and robust and challenged by audience members consisting of ordinary citizens and politicians.
- The broadcaster states that General Election candidate, Ms. Lorraine Higgins, then a Labour Party Senator, was in the audience and eloquently responded to the issues raised by the panel and other audience members about The Labour Party.

## Broadcasting Complaint Decisions

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- RTÉ contests the statement by the complainant that Mr. Dunphy's comments went unchallenged. The programme presenter challenged both of the panellists, and the studio audience were given the opportunity to challenge the panellists and they did so. In what was a very measured, calm and at times good humoured debate, the presenter took the comments made by Mr. Dunphy and put them to Mr. Bruton to address. The complainant states in his complaint that "It was heartening to hear some of the members of the audience challenge the veracity and logic of...Mr. Dunphy". [Some of those challenging his points included Senator Lorraine Higgins, Ms. Sandra Fay, Deputies Eoin O'Broin, Gary Gannon etc.]
- With reference to the comment by Mr. Dunphy that 'the Government imposed austerity and cruelty with relish on the people of this country', RTÉ states that this was fair comment from Mr. Dunphy, said in the presence of Mr. John Bruton who was there and permitted to counter should he have wished.

### 4.2 Broadcaster's Response to BAI

RTÉ notes that on numerous occasions the BAI Compliance Committee has upheld the right to free expression and asserts that the contributions of Mr. Dunphy on the programme in question falls squarely within that context.

The presenter not only facilitated but actively invited response to Mr. Dunphy's views – impartially characterised by her as his own – notably from the other panelist, former Taoiseach John Bruton. Insofar as Mr. Dunphy's most critical remarks were directed at the outgoing coalition parties, it may in addition be noted that then Senator Lorraine Higgins of The Labour Party also had the opportunity to respond.

As stated by the Deputy Editor in her reply to the initial complaint, there was trenchant criticism of Mr. Dunphy's views from other participants in the discussion. This resulted in a worthwhile discussion of voting strategy in the context of the right-centre-left political landscape.

The broadcaster states that the discussion was presented with fairness, impartiality and objectivity and there was no breach of the cited rules.

### 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; 4.19), the Forum has decided to reject the complaint.

## Broadcasting Complaint Decisions

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In this regard:

- The topic under discussion in front of a studio audience was the outcome of the General Election. The panel consisted of two contributors, Mr. John Bruton, former Fine Gael leader and Taoiseach and Mr. Eamon Dunphy, sports journalist and broadcaster. The discussion featured contributions both from the panellists and from members of the audience.
- The Forum found that the presenter opened the discussion by asking Mr. Dunphy who he voted for in the General Election and his reasons for doing so. Mr. Dunphy outlined his motives for voting for Fianna Fáil and referred to the previous government of Fine Gael and Labour as arrogant. He went on to claim that this Government was responsible for rural Ireland being savaged, for the closure of post offices and schools and that it imposed austerity and cruelty with relish on the Irish people. Mr. Bruton responded by claiming that the last Government was honest about the difficulties they had to deal with and agreed that they had made mistakes but so also had the previous Government.
- The Forum found that several members of audience were highly critical of Mr. Dunphy and many challenge his decision to vote for Fianna Fáil. Other audience members challenged remarks made by Mr. Bruton.

Overall, the Forum was of the view that this was a robust debate on the outcome of the General Election with views from all sides included, as would be expected in a debate programme. Mr. Dunphy's use of language when referring to the last Government such as "arrogant" "cruel" "savage" was typical of his provocative style when contributing to a debate. The Forum was of the view that it is important to allow free speech in all debates providing this is moderated well by the presenter and balanced with views from other contributors and/or a mixed audience. The Forum found that in the case of this programme, a range of contributions was evident.

- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act 2009 or BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs, in the manner specified by the complainant. Accordingly, the complaint has been rejected.
- The Forum members voiced their concerns that the broadcaster failed to follow the agreed complaints procedure when dealing with this complaint. The members expressed their view that the inordinate delay in providing responses to the complainant was regrettable and this will be conveyed to the broadcaster.

# Broadcasting Complaint Decisions

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**Complaint made by: Mr. Stephen Hollinshead**

**Ref. No. 92/16**

**Station:**

RTÉ Lyric FM

**Promo:**

Promo for TV Licence Fee

**Date:**

19<sup>th</sup> August 2016

## 1. Promotional Broadcast

The complaint concerns a promotional broadcast for the Licence Fee, broadcast on a number of dates but specifically on 19<sup>th</sup> August. The broadcast promotes the value of the television licence fee.

## 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 6 (Protection of the Public Interest).

As this promotion was a public service announcement broadcast free of charge, it fell outside of the definition of a commercial communication contained in the BAI General Commercial Communications Code. It was therefore considered under the BAI Code of Programme Standards.

## 3. Complaint Summary

The complainant states that this promo encourages people to obtain a television licence. The complainant states that, in one section, children were described as watching cartoons and this activity was described as 'interactive'. The complainant states that this suggested that there is an educational element arising from the payment of the licence fee. The complainant states 'interactive' means a two-way communication and to describe watching cartoons as such is misleading and inaccurate.

## 4. Broadcaster's Response

### 4.1 Broadcaster's Response to Complainant

RTÉ states having listened to the promo in question, they are satisfied that it is not misleading or inaccurate.

### 4.2 Broadcaster's Response to BAI

RTÉ states on a point of clarification that the broadcast does not promote RTÉ itself. It promotes the value of the licence fee which, besides RTÉ, funds TG4 and the Sound and Vision Fund of the BAI. The broadcast features a number of 'vox pop' comments by members of the public, one of whom says:

"I switch on the cartoons and they're so full of life, like they really like bring the kids in, you know, they get so involved, it's really interactive."

RTÉ further states the speaker is clearly using the term 'interactive' to convey the high level of engagement with the animated programmes by the children in her care. The broadcaster states that the nature of this engagement is not surprising considering that when commissioning animation series such as Punky, Fluffy Gardens, HavanAnimal and Nelly & Nora, RTÉjr does so with the goal not just of entertaining young viewers but of encouraging their creative imaginations and contributing to the development of the emotional and social capacities they will need to survive in the world.

### 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) (Harm and Offence) and the BAI Code of Programme Standards – Principle 6 (Protection of the Public Interest), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that the complaint referred to a promotion for the TV licence fee which the complainant believes infringed Principle 6 of the BAI Code of Programme Standards. The part of the promo complained of refers to a mother relating how her children enjoy watching cartoons and how they react to them.
- The Forum found that this promotion, encouraging people to obtain a television licence, featured people from various walks of life who extol the merits of having a licence.

One of the contributors tells of the benefit to her children from watching cartoons on television and states "...they get so involved – it's real interactive". It is the use of the word "interactive" that the complainant believes infringed the Code.

- The Forum was of the view that while the word "interactive" was used and a more appropriate word would perhaps have been engaging or absorbing, the Forum was of the opinion that there was no deliberate intention to mislead. It was clear from the contribution of the mother that she was conveying her children's enjoyment and participation in watching cartoons on a licensed television and that this was the primary message being communicated.

## Broadcasting Complaint Decisions

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- In considering the complaint, the Forum found no basis to consider matters pertaining to Principle 6 of the BAI Code of Programme Standards as there was no evidence that the content deliberately misled the audience. Accordingly, the complaint was rejected.

# Broadcasting Complaint Decisions

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**Complaint made by: Mr. James Ryder**

**Ref. No. 94/16**

**Station:**

RTÉ Radio 1

**Programme:**

Ray D'Arcy Show

**Date:**

21<sup>st</sup> July 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 remarks made by comedian Mr. Al Porter.

## 2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(harm and offence); the BAI Code of Programme Standards, (Principle 1 –Respect for Community Standards and 4 – Protection of Children).

## 3. Complaint Summary

The complainant states that he found remarks of a sexual nature made by Mr. Al Porter on the programme, to be offensive. The complainant found these remarks were inappropriate for a programme whose audience include children.

## 4. Broadcaster's Response

### 4.1 Broadcaster's Response to Complainant

RTÉ state that the programme consistently covers items of national and international importance suitable for a broad Irish audience. Frequent interviews with entertainment personalities and comedians such as Mr. Al Porter are also conducted. The style of the programme includes the hosting of interviews in line with audience expectations for the programme.

The broadcaster states that the interview in question with Mr. Porter discussed topics varying from his relentless nationwide touring, his fondness for 'old school' comedy and his medical problems regarding his deviated septum. There was a brief and frank discussion about issues involved when adults live at home with their parents and a line from the guest involving double entendres about the surnames of some of his work colleagues.

### 4.2 Broadcaster's Response to BAI

The broadcaster maintains that the interview with Mr. Porter, a small part of which was adult in nature, was not inappropriate to the editorial remit of the channel and the programme or to its adult target audience and will not have been unexpected to listeners.

The broadcaster states that, in addition, Mr. Porter himself is also well known to Irish audiences – not least through his appearances on highly watched TV programmes such as The Late Late Show – for risqué humour of a traditionally vulgar nature; listeners will not have been surprised by his reference to aspects of his living arrangements with his parents.

The broadcaster claims that a colloquial term used by Mr. Porter to indicate sexual activity, is one which most Irish listeners would not find unduly offensive unlike, for example, the f-word, to which a proportion of them might take exception. The absence of undue offence may also be indicated by the fact that this referral to the BAI was the sole complaint about the interview received by RTÉ.

### 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)(harm and offence) and the BAI Code of Programme Standards, (Principle 1 – Respect for Community Standards and 4 – Protection of Children), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that The Ray D'Arcy Show covers items of national and international importance suitable for a broad Irish audience. Frequent interviews with entertainment personalities and comedians such as Mr. Al Porter are also conducted. The style of the programme includes the hosting of interviews conducted in an exploratory, irreverent and conversational style which is known and expected by the audience.
- The Forum noted that the interview with Mr. Porter discussed topics varying from his nationwide touring, his fondness for 'old school' comedy and his medical problems regarding his deviated septum. There was a brief and frank discussion about issues involving adults who live at home with their parents and managing sexual relationships in that context. The item also included a line from the guest involving double entendres. The Forum found that there were some mild sexual references which the Forum agreed were not explicit and would not cause widespread offence, such that Principle 1 would be infringed.
- The Forum were also mindful that The Ray D'Arcy Show is not aimed at a young audience and is not a children's programme and that the interview was carried out in an innocuous way which was jocular and juvenile in parts, but not in an offensive way. In that context, the Forum did not believe it included content likely to cause harm to children.

## Broadcasting Complaint Decisions

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

# Broadcasting Complaint Decisions

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**Complaint made by: Mr. Aidan McArdle**

**Ref. No. 96/16**

**Station:**

RTÉ Radio 1

**Programme:**

The Marian Finucane Show

**Date:**

7<sup>th</sup> August 2016

## 1. Programme

The Marian Finucane Show is a magazine style programme, including elements of current affairs, lifestyle and human interest topics. The programme is broadcast every Saturday and Sunday morning from 11am to 1pm. The complaint concerns a statement made by the presenter regarding remarks made by US Presidential candidate, Mr. Donald Trump.

## 2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48(1)(b)(offence and harm); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4, Rules 4.2, 4.17 and 4.20 and the BAI Code of Programme Standards, (Principle 5 – Respect for Persons and Groups in Society).

## 3. Complaint Summary

The complainant claims the statement made by the presenter that Mr. Trump said that all Mexicans are murderers and rapists, was inaccurate. The complainant states that he heard Mr. Trump say “Mexico is sending us its worst, including murderers, drug dealers and rapists”. The complainant believes that unless the presenter can show the accuracy of her comment, then the statement should be retracted and an apology issued to listeners and Mr. Trump for what could provoke resentment, hysteria and hatred.

## 4. Broadcaster’s Response

### 4.1 Broadcaster’s Response to Complainant

RTÉ state that the quote was part of a longer and considered discussion about the American Presidential Election. One of the panellists referred to the increase in key segments of the US electorate turning away from Mr. Donald Trump.

The broadcaster states that, to counter this, the presenter reflected that Mr. Trump had real support and despite what he said (referencing some of his quotes) his rating in the polls was increasing. The other candidate, Ms. Hillary Clinton was also criticised in this exchange.

### 4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the Producer of the Marian Finucane Show to the initial complaint. They further state that, in his announcement of his candidacy for the Republican presidential nomination on 16<sup>th</sup> June 2015, as reported for example in The Washington Post, Mr. Trump stated:

“When Mexico sends its people, they’re not sending their best. They’re not sending you...they’re not sending you... They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people. But I speak to border guards and they tell us what we’re getting. And it only makes common sense. It only makes common sense. They’re sending us not the right people.”

The broadcaster states that to paraphrase accurately, Mr. Trump asserts that Mexico is “sending” to the USA, people with problems, people bringing drugs, criminals and rapists. He qualifies this to a degree by saying that he ‘assumes’ that some are good people but then goes on to reiterate that, based on conversation with border guards, Mexico is “sending us not the right people.”

In the programme of 7<sup>th</sup> August 2016, when discussing the extent of Mr. Trump’s support, the presenter refers to Mr. Trump’s statement:

“But the more he oversteps the line, it seems, the better he does. And, I mean, we talk about disaffected young white males, but it has to be more than that if he’s nearly up at fifty per cent. I mean, it’s - he’s got real support. All Mexicans are rapists, his rates go up. You know, build the wall, his ratings go up.”

The broadcaster maintains that the presenter’s focus was on the continuing rise in the polls of Mr. Trump, notwithstanding the nature of some of his statements. While her reference to his documented belief that Mexico is sending rapists to the United States was not entirely accurate, it was said in the context of juxtaposing rhetoric which would not previously have been customary from a US presidential candidate with his rising support. In that context, and that of a live programme of a conversational nature to which listeners would be accustomed, the inaccuracy is not of a significance which represents a breach of the Broadcasting Act 2009 or of Rules 4.2 or 4.17 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, or which warrants correction under Rule 4.20 of that code.

The broadcaster believes that the presenter was not unfaithful to Mr. Trump’s statement of 16<sup>th</sup> June 2015 to the extent that it resulted in unfairness to Mr. Trump or breach of Rule 4.2 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs or Principle 5 of the BAI Code of Programme Standards.

RTÉ notes with some surprise, not least in the context of a number of Mr. Trump’s statements since his announcement of 16<sup>th</sup> June 2015, the complainant’s allegation that the broadcast “could provoke resentment, hysteria and hatred,” and refutes that allegation.

### 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 & Impartiality in Current Affairs) and Section 48(1)(b) (offence and harm), the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.2, 4.17 and 4.20) and the BAI Code of Programme Standards (Principle 5 – Respect for Persons and Groups in Society), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted the topic under discussion was the upcoming American Presidential Election and statements made by the presenter, regarding the Presidential Nominee, Mr. Donald Trump. The complaint centres on a statement made by Mr. Trump i.e. that “Mexico is sending us its worst, including murderers, drug dealers and rapists” and that the presenter could be considered to have misquoted what Mr. Trump said.
- When considering a complaint under the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, the Forum takes into account, among other things, the need for a broadcaster to demonstrate an even-handed approach in the presentation of the subject matter. In this regard, the Forum found the presenter was paraphrasing what was said by Mr. Trump so as to illustrate that, despite making comments that many found offensive, his ratings increased. The Forum noted that the presenter made an error in her paraphrasing but, given the general point that she was making, the error was not considered one that would result in a lack of fairness, objectivity and impartiality.
- The Forum were of the view that the presenter did not deliberately misquote Mr. Trump but was merely quoting comments already made by Mr. Trump in the public domain and despite these statements, he seemed to have continued support from the American people.
- It was the view of the Forum, therefore, that the programme did not infringe the requirements of the Broadcasting Act 2009, the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs or the BAI Code of Programme Standards in the manner specified by the complainant. Accordingly, the complaint has been rejected.

