



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

Broadcasting Authority of Ireland

Broadcasting Complaint Decisions

November 2017

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BAI Complaints Handling Process

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

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

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

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

In total, 10 complaints were considered by the Compliance Committee of the BAI. Of these 1 complaint was upheld in part and 9 were rejected. In addition, 23 complaints were considered and rejected by the Executive Complaints Forum. The decisions of the Compliance Committee were reached at its meetings held 12th July and 13th September 2017, while the decisions of the Executive Complaints Forum were reached at meetings held in June, July, August and September 2017.

Upheld in Part by the Compliance Committee

Complaint made by: Health Service Executive (HSE)

Ref. No. 57/17

Station:

WLR FM

Programme:

Déise Today

Date:

11th April 2017

1. Programme

The complaint concerns 'Déise Today', which is a current affairs programme broadcast daily from 10am to 12 noon. The complaint refers to comments made by the presenter during an interview when discussing the increase in managers employed by the Health Service Executive (HSE).

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs – Section 4, Rules 17, 19, 20, 21 and 22.

3. Summary of Initial Complaint to the Broadcaster

The complainant states that the presenter conducted an interview with Mr. Stephen O'Brien, journalist with the Sunday Times newspaper. The subject of the interview was the increase in management staffing levels in the HSE over the last two years.

The complainant states that he has no issue with the subject matter being discussed. Rather, the complaint centres on what the complainant states was the presenter's disparaging tone towards the HSE and, in particular, HSE management. The complainant cites the following examples:

- In response to Mr. O'Brien's comment that "they (HSE Directors) have gone from 200 to 270", the presenter asks the question - "Are they breeding them in the laboratory or what?" This response elicits a laugh from Mr. O'Brien which the complainant believes, sets the tone for the remainder of the interview.

- Mr. O' Brien outlines the increase at Grade 8 management level and the presenter responds by saying "Stephen...hello!" in a disparaging manner.
- The next comment was "Earth calling", trying to create the impression for listeners that HSE management are somewhat divorced from reality.
- In response to Mr. O'Brien's comments about the increase in the number of frontline workers, the presenter says "that's incredible. So consultants up around 5% roughly, nurse managers again crucial position for lots of reasons, bed management and everything 5% so they're all on the 5% but the number of managers goes up 35% [laughs] they're fantastic; you have to admire them, in fairness. Did you ever see those alien films where they kinda have to breed loads to keep themselves going? – that's what it reminds me of." Mr. O'Brien then laughs and the presenter says "This shower are unbeatable, aren't they?"
- When Mr. O'Brien comments on the increase at Grade 7 management level, the presenter responds "Sure they're all in – a great time for them...Fantastic." On the difficulty recruiting staff nurses the presenter says in a sarcastic tone "Well look Stephen, in fairness, if you can't get a staff nurse let's get in a few more managers. I mean we can never have enough managers can we?"
- After reading texts from listeners the presenter says "Alright, let's see what, let's see are they on the phone line, about what HSE management says about this". At this point the presenter plays the sound of a donkey braying and then quickly adds "sorry, sorry, I pressed the wrong button there."

The complainant states that the interview was not fair to all interests concerned in that the HSE was not asked to take part in the programme or to submit a statement or provide comment.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster refutes the claim by the complainant that the presenter adopted a disparaging tone throughout this interview and believes this is an opinion held by the complainant. Furthermore, the broadcaster maintains that if a comment elicits a laugh from Mr. O'Brien, this does not provide the basis for "setting of the tone" for the remainder of the interview.

The broadcaster states that much of what the complainant sets out as a disparaging tone is in fact an opinion formed by the complainant. The broadcaster also states it is not responsible for Mr. O'Brien's reaction, i.e. laughter, at the presenter's remarks.

Referring to the presenter pressing a button when the sound of a donkey braying could be heard, the broadcaster states that their Breakfast programme, aired directly before the programme complained of, had a competition running for the Copper Coast Mini Farm. As part of this competition, the crew used animal sounds in the mechanic of the competition. The sound of the donkey braying remained in the system after being used by the Breakfast presenters earlier that morning. Mr. Keane did apologise immediately after playing the audio.

With regard to issue of the treatment of current affairs by the broadcaster, including matters that are of public interest, the broadcaster states to have many examples over the years of matters of public interest involving the HSE. Requests have been made for interviewees and other than where a HSE public campaign is being run on something, the broadcaster states to have rarely had contributions from spokespersons. Instead they have been told the HSE has a policy of not commenting on individual cases.

The broadcaster states that this interview was conducted by the presenter with Mr. O'Brien from The Sunday Times newspaper following an article written by Mr. O'Brien relating to the HSE. Given that the content of the interview was based on a document submitted by the HSE to the Joint Health Committee of the Oireachtas, following a request for further information from Senator Colm Burke, the broadcaster is sure there were no inaccuracies in the interview.

4.2 Broadcaster's Response to BAI

The broadcaster refers to the initial reply (above) sent to the complainant and has nothing further to add.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also 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, (Section 4, Rules 17, 19, 20, 21 and 22), the Committee has decided to uphold the complaint in part.

In this regard:-

- The Committee considered the topic in question to be a legitimate subject for discussion on the programme. It found no issue with the facts as presenter by the programme contributor from the Sunday Times newspaper and no evidence from the submissions by the complainant that the figures presented were inaccurate. Moreover, analysis and comment on those figures in the context of the health service and how it serves citizens is part of the role of a programme such as Déise Today and a critical assessment of the performance of an organisation such as the HSE may be warranted where the facts support such an approach. In view of this, the Committee did not agree with the complainant that the programme infringed Rule 4.17 of the BAI's news and current affairs code which requires content to be presented with due accuracy. Separately, as the item was a current affairs programme and not a news programme Rule 4.21 was not relevant. The Committee also found no grounds for upholding the complaint further to Rule 4.20.
- Notwithstanding this, the Committee considered the programme to have infringed Rules 4.19 and 4.22 of the news and current affairs code. Rule 4.19 requires presenters to be sensitive to the impact of their language and tone so as to avoid misunderstanding of the matters covered. Rule 4.22 notes the important role of presenters in providing audiences with access to a wide variety of views on the subject of a programme or programme item. It also prohibits a presenter from articulating a partisan position on a matter of current public debate.
- In this respect, the Committee found that the presenter's comments and the tone of those comments were problematic in a context where the perspective of the HSE was not provided either by the presenter or by another contributor (except for a single comment by the programme guest from the Sunday Times newspaper). The Committee considered the presenter comments to be disparaging in tone and these included:-
 - "Are they breeding them in the laboratory or what?"
 - "Earth calling!"

- “They’re fantastic; you have to admire them, in fairness.”
- “Did you ever see those alien films where they kinda have to breed loads to keep themselves going – that’s what it reminds me of?”
- “This shower are unbeatable aren’t they?”

The item concluded with the presenter stating

- “Let’s see, are they on the phone there...let’s see what HSE management has to say about this...” The presenter then played the sound of a donkey braying.

While the broadcaster stated in its response to the complainant that this was an error, the Committee was of the view that this defence would only have been credible if the programme makers did, in fact, have a response from the HSE. However, it was quite evident that no response had been sought or was available and the only reasonable conclusion that can therefore be reached is that the playing of the sound effect was wholly intentional.

- Taking the above into account, the Committee was of the view that the presenter’s handling of the topic did not provide for a variety of views and entailed the articulation of a partisan position on the part the presenter, contrary to Rule 4.22. The Committee was also of the view that the tone of presentation was such that it would result in a misunderstanding of the matters covered, contrary to Rule 4.19. For these reasons the Committee has decided to uphold the complaint in part.

Rejected by the Compliance Committee

Complaint made by: Mr. Patrick O'Connor

Ref. No. 58/13

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ One	Nationwide	13 th February 2013

1. Programme

The complaint relates to an episode of 'Nationwide' broadcast by RTÉ on 13th February 2013 which contained three stories of Irish women who had found their partners abroad. The first met her Malawian husband in South Africa, the second found her Bangladeshi husband in Australia, while the third met her life partner in Canada. The complaint related to the third story which concerned a same-sex couple.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(harm and offence); and the BCI Code of Programme Standards (2007).

3. Summary of Complaint

The complainant states that the programme segment promoted a same-sex relationship, to children, during family viewing time and before the watershed where the viewing of such matters by children becomes a matter for parental discretion. The complainant states that it was inappropriate for the broadcaster to be relaying homosexuality as the norm on the occasion of St. Valentine's Day. The complainant asserts that the broadcaster was in breach of its duty to protect children, and in its responsibility to adults to allow them to exercise discretion in the material their children are exposed to.

The complainant states that the broadcast was "...aiding and abetting the complication of the minds of the children watching, spoiling innocence, and...psychologically affecting them in what should be their harmless upbringing and healthy development years which every child deserves and has a right to...". The complainant states his view that, in

general, children must be allowed to grow and develop during their vulnerable years peacefully and without undue concerns.

In addition, the complainant relies on the principle that programmes should not offend against commonly held standards considered acceptable in contemporary Irish Society. The complainant submits that if a programme reflects diversity and encourages inclusion but offends against commonly held standards among parents as to what is inappropriate or harmful to children, then it should not be broadcast.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states that, as part of its Public Service Statement, it is responsible for "providing programming and services for majority and minority interests, being inclusive and reflecting the diversity that exists in modern Ireland". It states that this commitment is fundamental to the editorial policy of Nationwide and all RTÉ output.

The broadcaster notes that Nationwide has an exceptionally wide brief which covers a wide range of topics. RTÉ states that all three stories in the programme reflect the lives of a growing number of intercultural marriages and same-sex relationships in modern day Ireland. It states that the selection of these stories echo the RTÉ commitment to inclusiveness and diversity as well as majority and minority interests. It submits that the approach to all three stories were the same; equally curious about the dynamics of relationships and equally respectful of the participants' experience and choices.

The broadcaster also notes that it is very aware that the programme is a much-valued contribution to family viewing time and particular care is taken to ensure that the tone and the language used in reports are not offensive or unsuitable for younger viewers. It states that it is of the view that there was nothing inappropriate or harmful to children in the sensitively told story of the loving relationship.

4.2 Broadcaster's Response to BAI

The broadcaster confirms that it is aware of its responsibilities under the BCI Code of Programme Standards, in this context particularly in relation to the Equality Act 2010 and section 3.4.2 of the BCI Code of Programme Standards. The broadcaster states that the stories reflect the lives of a growing number of intercultural marriages and same-sex

relationships in modern day Ireland and the editorial treatment of these stories was in keeping with section 3.4.2 of the BCI Code.

In terms of the protection of children and section 2.3 of the BCI Code of Programming Standards, RTÉ submits that, although children make up a small proportion of the Nationwide viewership, RTÉ takes particular care to ensure that the tone and language used in reports is not offensive or unsuitable for younger viewers. The broadcaster submits that in keeping with section 2.3, there was nothing inappropriate or harmful to children in the sensitively told story of the loving relationship between the same-sex couple highlighted in the segment.

In conclusion, RTÉ states that it did not breach section 3.4 of the BCI Code and that the programme was in active support of its spirit and principles, that its subject gave no harm or offence to general community standards, and that the editorial handling was in keeping with the protection of children.

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

Having considered all material generated in this matter, including the broadcast and the submissions from the complainant, the broadcaster and the BAI Executive, and having had regard to the Broadcasting Act 2009, Section 48(1)(b)(harm and offence) and the BCI Code of Programme Standards (2007), the Committee decided to reject the complaint.

In this regard:-

- The complaint related to an episode of Nationwide broadcast by RTÉ on 13th February 2013 which contained three stories of Irish women who had found their partners abroad. The first met her Malawian husband in South Africa, the second found her Bangladeshi husband in Australia, while the third met her life partner in Canada. The complaint related to the third story which concerned a same-sex couple where the complainant submitted that the segment promoted a same-sex relationship, during family viewing time and before the watershed, to children.
- The Committee considered Nationwide to be a lifestyle journalism series which would generally include a variety of news, events and human interest stories. It would also have a broad audience appeal. The Committee was satisfied that the three stories were entirely appropriate for this programme format, and broadcast time, and the featured couples reflected the lives of a number of intercultural marriages and same-sex relationships in modern day Ireland.

- The Committee noted the objectives of the BCI Code of Programme Standards. In particular, it noted the intention of the Code to promote responsible broadcasting and to do so in a way that acknowledges the diversity of tastes and interests which exists amongst viewers and listeners, and to facilitate broadcasting that caters for this diversity.

In that context, the Code includes principles applying to all programme content as well as a set of rules which are intended to address programme content which was identified during the development of the Code as having the greater potential to cause undue offence and harm, for example, the manner in which persons and groups in society are presented.

Having reviewed the programme and having had regard to the comprehensive submissions provided, the Committee could not find any evidence of programme material which could be regarded as having infringed the provisions of the Code, including those identified by the complainant.

In particular:-

- (i) The Committee determined that the programme segment would not offend against commonly held standards considered acceptable in contemporary Irish society (Principle 2.1 – General Community Standards). This principle is intended to capture the general prevailing consensus as to what is deemed acceptable in Irish society at any particular time. Rule 3.4 of the Code prohibits programme material that supports or condones discrimination on the basis of marital status, family status and sexual orientation. While noting that some audience members may hold different values, it was the view of the Committee that the portrayal of a same-sex relationship in the programme would not offend against commonly held standards given that same-sex relationships are not illegal in the Irish state. In that context, the Committee noted that at the time of the broadcast, Irish law legally recognised a variety of relationships between opposite-sex couples and same-sex couples, for example, marriage (between opposite-sex couples), civil partnership (between same-sex couples) and cohabitants (applying to both opposite-sex couples and same-sex couples).

- (ii) The Committee noted the complainant's view that the programme segment promoted a same-sex relationship to children, during family viewing time and before the watershed. The Committee noted that the Code recognises the special susceptibility of children and the role of parents/guardians and broadcasters to protect those under the age of 18 from exposure to inappropriate and harmful programme content. Having reviewed the programme, the Committee found that the item portrayed the three relationships from the perspective of women who found their partners abroad. This, and not the sexual orientation of the women in question, was the focus of the programme. In this respect, the Committee could find no evidence of the 'promotion' of any particular type of relationship, whether heterosexual or homosexual, in the programme. The Committee also determined that the tone, language and content of the segment was not inappropriate, harmful or unsuitable for children (Principle 2.3 – Protection for Children).
- (iii) The Committee noted that each of the relationships were portrayed in a consistent editorial manner which was sensitive to, and respectful of, the contributor's experiences and choices. The Committee determined that the manner in which the same-sex relationship was represented in the programme segment was both appropriate and justified (Rule 3.4 – Persons and Groups in Society).
- In view of the above, it was the opinion of the Committee that the programme did not infringe the Broadcasting Act 2009 or the BCI Code of Programme Standards (2007) in the manner specified by the complainant. Accordingly, the complaint was rejected.

Complaint made by: Mr. Patrick O'Connor.

Ref. No. 21/15

Station:
RTÉ One

Programme:
Nationwide

Date:
15th December 2014

1. Programme

The complaint concerns 'Nationwide', a programme consisting of news, views and events from around Ireland. It is broadcast from 7pm to 7.30pm on Mondays, Wednesdays and Fridays on RTÉ One.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(harm and offence); the BCI Code of Programme Standards (2007), Principles 2.1 - General Community Standards and 2.3 - Protection for Children.

3. Summary of Initial Complaint to the Broadcaster

The complainant states the following:-

- The complainant objects to the presentation on Nationwide of the life history and current lifestyle of the actress Ms. Eilish O'Carroll who plays the character 'Winnie' in the production of 'Mrs Brown's Boys.' The complainant states that this editorial decision demonstrated bad judgement, was inappropriate and also comments that it was in his view an unusual aspect of the performer's life to focus on.
- The complainant states that this broadcast was inappropriate and an opportunistic move to introduce material on the promotion of a gay lifestyle to an audience which he states might otherwise be difficult to reach and one which he states it should not reach.
- The complainant states that this piece was followed by an item about a school, in relation to a group of children who were involved in charity and fundraising and who were obviously going to form the audience to this programme.

- The complainant states that it is a matter for parents to decide to what extent their children are exposed to the promotion of gay lifestyles, having regard to the rebellious nature of teenagers, their vulnerability and suggestibility at that age and (widely acknowledged in the gay community) the more difficult path those who travel that road have to face.
- The complainant states that the broadcast was in breach of Principle 2.3 of the BCI Code of Programme Standards, which requires broadcasters to share responsibility with parents and guardians in protecting children. He states that it is also a breach of Principle 2.1, General Community Standards.
- The complainant states that broadcasters must, under their code, have regard to commonly held standards amongst parents as to what is inappropriate or harmful to children, even in circumstances where broadcasters, and/or the individual members of the Compliance Committee might entirely disagree with this commonly held parental view. The complainant states that this question also involves the interpretation of the provision of the Code providing that the individual principles of the Code are indivisible i.e. if a programme promotes one principal but breaches another, then the programme will not be broadcast. The complainant states that he had raised these issues in a previous complaint in respect of Nationwide.
- The complainant states that Ms. O'Carroll is an excellent actress and is free to live her life as she sees fit. Parents are also entitled to apply their authority and judgement to the upbringing of their children. However, where it comes to an interaction between the two rights, the complainant believes that the end of the watershed is the no-man's land between the two.
- The complainant maintains that the promotion of gay lifestyle is a very legitimate subject for adults who are mature enough not to be overly influenced by the subject matter. However, gay lifestyle should not be promoted to children. The complainant states that gay people are well represented in the broadcasting community but this should not give rise to an insular blindness that their views on the promotion of gay lifestyle to children are universally shared.
- The complainant states that in making this complaint, he does not believe he is doing a disservice to the gay community. He states that he is, instead, protecting them from overreaching themselves and the consequence of this.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

RTÉ responds as follows:

- The broadcaster states that this 'At Home with Eilish O'Carroll' was a typical, rounded Nationwide report on the life and times of the actress and is one of many 'At Home with' features, all of which are structure in a similar fashion.
- The broadcaster states that the episode complained of was a look-back at the actress' childhood in Dublin, her adult life in Canada and England, her two marriages, her children and her current life in West Cork with her partner.
- The broadcaster states that to have avoided any reference to Ms. O'Carroll's longstanding relationship with her partner, to conceal it as if it were illegal or inappropriate and therefore should be excluded from coverage on programmes broadcast to a general audience, would be to contravene the code on non-discrimination set down by the BCI under Principle 3.4.2 (Persons and Groups in Society) of the Code of Programme Standards (2007).

4.2 Broadcaster's Response to BAI

RTÉ responds as follows:-

- RTÉ states that Nationwide is not, as suggested in the complaint, "a programme directed towards children" and children between the ages of 4 and 14 make up a very small proportion of the Nationwide viewership. For example, the programme of 15th December 2014 was watched by a total of 383,300 viewers, of whom children (4-14) comprised 44,300, less than 12% of the audience (Young Adults, 15-24, comprised a further 12,200, slightly more than 3 %).
- The broadcaster states that notwithstanding this audience profile, as Nationwide is broadcast before the 9.00pm watershed, its programme team ensures that there is nothing included in the programme which could be deemed inappropriate for a general audience.

- The broadcaster states that this Nationwide feature - 'At Home with Eilish O'Carroll' - was a typically rounded Nationwide report on the life and times of the actor who plays a much loved character on British and Irish television. They state that the approach to this 'At Home with' feature was a carbon copy of the many other similar features covering the lives of various personalities and characters that the presenter, Ms. Mary Kennedy, visits from time to time and which are broadcast on Nationwide. This uniform approach includes a broad focus on the subject's everyday lives off-screen.
- Nationwide has broadcast countless 'At Home with' features, all of which are structured in a similar fashion. Examples of this approach include the recent, 'At Home with Ms. Majella O'Donnell', in which Ms. O'Donnell spoke about her battle with cancer and depression, the breakdown of her first marriage and the inspiring book she has written about her experiences. During this feature she spoke about the importance of the support she received from her partner and husband Mr. Daniel O'Donnell.
- RTÉ states that the complaint appears to suggest that, unlike other 'At Home with' features, the programme should have changed the 'At Home with' format to avoid any reference to Ms. O'Carroll's eleven-year relationship with her partner. The broadcaster states that to conceal their relationship as if it were something illegal or inappropriate and which therefore should be excluded from coverage on programmes broadcast to a general audience would be to breach RTÉ Guidelines and the Code of Programme Standards.
- Alternatively, the complaint implies that persons who are not heterosexual should be excluded by RTÉ and Nationwide from the 'At Home with' format, another form of active discrimination. In this context, RTÉ refers to Principle 3.4.2 of the BCI Code of Programme Standards (2007).
- RTÉ states that the complainant's proposal that homosexual relationships may only be referred to after the watershed would appear to be clearly discriminatory. It is also out of keeping with the community support of equal marriage expressed in the 2015 referendum.

- The broadcaster states that the complaint appears to suggest that the broadcast was in breach of a community standard in respect of material appropriate to children. RTÉ believes there was no evidence whatsoever offered by the complainant to support his view that there is a standard in the community which asserts that homosexual identity or a loving same-sex relationship are in themselves matters suitable only for post-watershed broadcast. RTÉ suggests that, on the contrary, the fact that the complainant's was the sole complaint of any kind made to the broadcaster about this broadcast is significant evidence that there is actually no such standard.

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 BCI Code of Programme Standards (2007), Principles 2.1 and 2.3, the Committee has decided to reject the complaint.

In this regard:-

- While noting that the principles of the BCI Code of Programme Standards require broadcasters to have regard to commonly held standards, to provide for the special susceptibility of children and to recognise the role of parents/guardians and broadcasters in protecting the interests of children, the Committee was of the view that the programme segment did not infringe these requirements.
- While noting that some audience members may hold different values, it was the view of the Committee that the discussion with the programme guest about her same-sex relationship would not offend against commonly held standards given that same-sex relationships are not illegal in the Irish State. The Committee also noted that, at the time of the broadcast, Irish law legally recognised a variety of relationships between opposite-sex couples and same-sex couples, for example, marriage (between opposite-sex couples), civil partnership (between same-sex couples) and cohabitants (applying to both opposite-sex couples and same-sex couples).

- Given this and given that the programme consisted simply of a description of how the guest met her partner and how that experience fitted into her personal history, the Committee did not consider that the tone, language and content of the segment was either inappropriate for a young audience or harmful, such that the broadcaster should have taken particular care with the scheduling of the programme or that it warranted being broadcast following the commencement of the watershed. Furthermore, the Committee could find no evidence of the 'promotion' of any particular type of relationship, whether heterosexual or homosexual, in the programme.
- In view of the above, it was the opinion of the Committee that the programme did not infringe the Broadcasting Act 2009 or the BCI Code of Programme Standards (2007) in the manner specified by the complainant. Accordingly, the complaint was rejected.

Complaint made by: Mr. Conor O'Shea

Ref. No. 61/16

Station:

RTÉ 2

Programme:

Trailer – Queen of Ireland

Date:

19th March 2016

1. Programme

The complaint concerns a trailer for the documentary film, 'The Queen of Ireland', which was broadcast at 4.45pm before the transmission of a Six Nations rugby match.

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 4 - Protection of Children).

3. Summary of Initial Complaint to the Broadcaster

- The complainant states that he was watching RTÉ 2 with his two boys (aged 7 years) when the trailer for The Queen of Ireland was shown. He states that the trailer was shown in the afternoon prior to the broadcast of the international rugby match. The complainant states that showing one or more 'drag queens'/transvestites' displaying what he states were provocative and controversial sexual behaviour during the afternoon period coming up to the rugby match, was not appropriate.
- The complainant also felt this was inappropriate viewing material for boys of his sons' age. The complainant states that he takes responsibility for choosing appropriate content for his children and, as sports fans, he would expect that this time of the afternoon was a safe viewing period.
- The complainant states that he was himself shocked at the content being broadcast on an afternoon during family viewing time.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

- The broadcaster states that The Queen of Ireland is a documentary film following Mr. Rory O'Neill, better known as 'Miss Panti', in the lead-up to the Marriage Referendum held in 2015.
- The broadcaster states that the content of the trailer was edited to ensure that it did not contain elements related to the post-watershed scheduling of the documentary itself, for example, it did not include scenes or references of a sexual nature or contain potentially offensive or harmful language. As a result, the broadcaster believes the trailer was suitable for pre-watershed transmission.
- In addition, when scheduling the trailers, they were placed within or adjacent to programmes whose audience would be predominantly adult, not within or adjacent to programmes aimed at children's or at a family audience.

4.2 Broadcaster's Response to BAI

The broadcaster states the following:

- RTÉ refers to the initial response to the preliminary complaint. RTÉ states that the response includes a misunderstanding in relation to the time of the broadcast complained of, which was during Six Nations Championship coverage on RTÉ 2 on 19th March 2016, and not before the Six-One News on RTÉ One that day; there was confusion with the broadcast of the trailer during the Six-One News of 21st March 2016.
- RTÉ states that there was nothing whatsoever in the trailer which would, in the words of Principle 4 of the Code, "seriously impair [children's] moral, mental and physical development", nor anything which would expose children to "inappropriate and harmful programme material." The broadcaster states that the complaint does not indicate or specify any such content, nor demonstrate any way in which the content could cause impairment or harm to children.

- The broadcaster states that the complainant refers to "overt sexual content." RTÉ maintain that no such content is shown in the trailer. Indeed, the trailer shows a drag performer (one in a long entertainment tradition including Danny La Rue, Lily Savage and Dame Edna Everage) and nothing of the drag performance shown is aimed at an adult audience.
- The broadcaster states that the trailer also offers a glimpse of the performer's warm and loving relationship with his parents and of his active involvement in the 2015 Marriage Referendum campaign. They state that none of the latter material is of an adult nature and, again, the complaint does not demonstrate in what way this content is alleged to be unsuitable for children.
- The broadcaster states that the programme itself was scheduled for post-watershed transmission (at 10.00pm on 27th March 2016). Bearing in mind the provision of Principle 4 of the Code that programme trailers and promotions should not include material which could reasonably be regarded as unsuitable for children, the trailer purposely did not include any of the elements which could have contributed to the post-watershed scheduling of the programme.
- RTÉ state that without prejudice to the above, in the context of the Broadcasting Act and BAI Code definition of audience profile, it may also be noted that certified viewing figures indicate that at the time of broadcast, 86% of the audience was Adults 18+ and 14% of the audience was Under 18 (4-17).

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 4 - Protection of Children), the Committee has decided to reject the complaint.

In this regard:-

- While noting that the principles of the BAI Code of Programme Standards requires broadcasters to have regard to the particular needs of children, the Committee was of the view that the programme trailer did not infringe these requirements.

- In particular, the Committee noted that the content included a mix of personal remarks and reflections, as well as references to news and current affairs material, which had previously been broadcast. The trailer touched on the campaign for same-sex marriage, the role of Mr. Rory O'Neill in this campaign and more broadly, the issue of homosexuality and discrimination. The Committee found nothing in the trailer which could be considered provocative and/or controversial sexual behaviour and was of the view that the content was in line with material that audiences would commonly see prior to the watershed. The Committee was of the view that the trailer touched on topics that, in the opinion of the Committee, could not be considered to be either harmful or inappropriate to audiences, including children.
- The Committee also noted that it is a common and accepted practice to air programme trailers for post-watershed programming in the pre-watershed period. Broadcasters will often produce different versions of trailers for different day-parts and, in the case of this trailer, the Committee found nothing in its content that would infringe the requirements of the BAI Code of Programme Standards.
- In view of the above, it was the opinion of the Committee that the programme did not infringe the Broadcasting Act 2009 or the BAI Code of Programme Standards in the manner specified by the complainant. Accordingly, the complaint was rejected.

Complaint made by: Mr. Patrick O'Connor.

Ref. No. 63/16

Station:

RTÉ One TV

Programme:

Trailer – Queen of Ireland

Date:

18th March 2016

1. Programme

The complaint concerns a trailer for the documentary film, 'The Queen of Ireland', which was broadcast just before the Angelus and the 6pm evening news on RTÉ 1 TV. The film was subsequently aired on RTÉ 2 on Easter Sunday.

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, 2 - Importance of Context, 3 - Protection from Harm, 4 - Protection of Children and 5 - Respect for Persons and Groups in Society).

3. Summary of Initial Complaint to the Broadcaster

The complainant states that the trailer and the film in question, both promote same sex relationships. The complainant states that he has no objection to the trailer being aired once the watershed period commences, but objects to it being aired prior to this period. The complainant also states that there is no objective justification for airing the trailers before the watershed where the programme itself will be broadcast after the watershed.

The complainant states that he has made two complaints to the BAI in respect of the promotion of same-sex relationships to children prior to the commencement of the watershed, principally on the argument that it offends against the community standards included in the BAI's Code of Programme Standards, and more particularly on the basis that it offends against the commonly held standard of parents who do not want the promotion of same-sex relationships to their children prior to the commencement of the watershed.

The complainant states that the airing of the trailer before the watershed and in conjunction with or directly after children's television deprives a significant proportion of the community of the opportunity to make an informed choice of what their children listen to and view. He states that there was no pre-warning in respect of the trailer and its scheduling was not in accordance with audience, and in particular parental expectations. The complainant states that whatever editorial justification or public interest may apply to the film, there can be no editorial justification or public interest in broadcasting the trailers before the watershed.

The complainant states that he is not objecting to the film in question being shown on Easter Sunday during the watershed period. However, he states that this should not be viewed as an endorsement of the programme content but is rather a recognition by him that once the watershed period commences, parents can exercise appropriate guidance.

The complainant states that the subject of the film, Mr. O'Neill, is on record as having been a very vocal member of the lobby group for same-sex marriage, to the extent that his contribution on this topic during a programme on RTÉ resulted in a settlement for defamation on the part of the broadcaster. The complainant states that Mr. O'Neill identifies himself by this and by later speeches objecting to the defamation settlement as a radical or at least uncompromising campaigner for same-sex relationships and marriage and is known as such.

The complainant states that, in his opinion, the airing of the film itself on Easter Sunday may be unwise, as the choice of day to air it comes across as triumphalist and could be interpreted as mocking those whose religious views put them amongst the 38% who voted against the Marriage Referendum. He states that while this decision is a judgement call for RTÉ to make, that part of the trailer which describes the film as being aired on Easter Sunday endorses and promotes to children this triumphalist message, and the message that the religious views of those who were amongst the 38% who voted against the referendum are no longer relevant.

The complainant states that he would consider his complaint resolved if the broadcaster were to change the scheduling of the trailers to time slots outside the watershed.

In referring the complaint to the BAI, the complainant states that he did not receive a response from the broadcaster by the timeframe set out in RTÉ's Code of Practice for Complaints Handling.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

- The broadcaster states that it provided a response to the complainant in accordance with the timeframes set out in its Code of Practice for Complaints Handling.
- The broadcaster states that The Queen of Ireland is a documentary film following Mr. Rory O'Neill, better known as 'Miss Panti Bliss', in the lead-up to the Marriage Referendum held in 2015.
- The broadcaster states that the content of the trailer was edited to ensure that it did not contain elements related to the post-watershed scheduling of the documentary itself, for example, it did not include scenes or references of a sexual nature or contain potentially offensive or harmful language. As a result, the broadcaster believes the trailer was suitable for pre-watershed transmission.
- In addition, when scheduling the trailers, they were placed within or adjacent to programmes whose audience would be predominantly adult, not within or adjacent to programmes aimed at children's or at a family audience.
- In the case of the broadcast complained of, the trailer was scheduled next to the Six-One news bulletin which is aimed at an adult audience.

4.2 Broadcaster's Response to BAI

RTÉ refers to the initial response to the preliminary complaint (above) and adds the following:

Principle 1

- The complainant asserts that the trailer contains the "promotion of same-sex relationships" but fails to offer any evidence of such "promotion". The broadcaster states that the trailer reflects a factual documentary which accurately depicts a person, their professional and socio-political activities, their relations and their social milieu; the trailer does not 'promote' any person or point of view and the word 'promote' is not understood in this context.

- RTÉ state that the subject of the documentary is a gay man who was active in the campaign to change the Constitutional provisions for marriage. The Constitution was so changed and legislation followed to allow for marriage between persons regardless of gender. The complainant would appear to believe that these factual developments in Irish society should be kept from children and that the wish of a particular parent such as himself, to keep such information from children should override the legislative provision, not confined to adult audiences, contained in section 114 of the Broadcasting Act 2009:-

114. - (3) Without prejudice to the generality of subsection (1), RTÉ shall ensure that the programme schedules of the broadcasting services referred to in that subsection provide a comprehensive range of programmes in the Irish and English languages that reflect the cultural diversity of the whole island of Ireland and include programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of the community generally as well as members of the community with special or minority interest and which, in every case, respect human dignity.

- The broadcaster states that the complainant offers no evidence whatsoever of a community standard which would be infringed by the broadcast before the watershed and gives no indication of the actual content (as distinct from his personal interpretation of the content) of the trailer which would infringe any such standard. The complainant appears to rely on the general idea that parents would be protective of their children but offers no evidence whatsoever that such protectiveness would commonly or communally extend to preventing children viewing the material broadcast in the trailer.

Principles 2, 3 and 4

- The broadcaster states that the complainant claims that there is "no objective justification for airing these trailers before the watershed where the programme is broadcast after the watershed." RTÉ states that the rationale for such advertising is very straightforward: post-watershed, audiences also watch pre-watershed television and the advertising to those audiences of coming attractions is not only common practice across broadcasters, editorially justified and of interest to the public but a crucial marketing tool for the public broadcaster.

- RTÉ states that if post-watershed programmes could only be promoted post-watershed, this would have an impact on almost all of RTÉ's factual and current affairs programmes as well as major Friday and Saturday entertainment. This would dramatically reduce the broadcaster's ability to communicate its programme offerings, and drive ratings and also commercial revenue. The consequences, not just on RTÉ but on all broadcasters, make it inconceivable that Principles 2 and 4 would intend or mandate such a constraint. RTÉ states that if a trailer contained material which would be harmful to the pre-watershed audience, the need to promote the programme would not over-ride the requirement to prevent such harm. Hence, RTÉ ensures that the material included in a trailer is selective and does not include content which would be harmful or unduly offensive (e.g., explicit language, sexual imagery, violence, etc.).
- In the case at issue, RTÉ asserts that no such material was included and there was therefore no infringement of Principles 3 and 4.
- RTÉ believes that the omission from the trailer of elements of the documentary which made post-watershed transmission appropriate, shows that the makers of the trailer took every care to ensure that nothing in the trailer could reasonably be regarded as unsuitable for or harmful to children, or indeed adults.
- In citing Principle 4, the complainant appears to assert that a trailer which contains no pornography, gratuitous violence or other such material intended or specified by the Principle, but showing a gay man and his family, his professional life as a drag performer and his involvement in the Marriage Referendum campaign would, to quote Principle 4, "seriously impair [children's] moral, mental and physical development." RTÉ does not believe that this is the case, nor would this position be widely supported in the community and furthermore it is not a reasonable position. RTÉ notes that the complainant offers no evidence to the contrary.

Principle 5

- RTÉ states that the complainant's interpretation of the significance of the documentary being scheduled on Easter Sunday is entirely his own and has no objective validity. The broadcaster states that it is entirely customary for special programmes to be offered to television audiences over a holiday weekend,

celebrated alike by those of various religious faiths and of none, and the broadcast of The Queen of Ireland on RTÉ 2 clearly falls into this category.

- RTÉ states that nothing in the trailer carried, to children or adults, any "message" such as the one ascribed to it by the complainant and, as a matter of fact, its content contained no references to religion or of a religious nature whatsoever. There was therefore no support or condoning of discrimination or incitement to hatred against persons or groups in society on the basis of religion or any other basis and no lack of respect for religious views, images, practices or beliefs. The broadcaster states that the complainant has offered no evidence whatsoever of any such support, condoning, incitement or lack of respect contained in the broadcast.

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 1 - Respect for Community Standards, 2 - Importance of Context, 3 - Protection from Harm, 4 - Protection of Children and 5 - Respect for Persons and Groups in Society), the Committee has decided to reject the complaint.

In this regard:-

- While noting that the principles of the BAI Code of Programme Standards requires broadcasters to take account of general community standards, to schedule content appropriately, to take steps to avoid harm to audiences and to have regard to the particular needs of children, the Committee was of the view that the programme trailer did not infringe these requirements.
- In particular, the Committee noted that the content included a mix of personal remarks and reflections, as well as references to news and current affairs material, which had previously been broadcast. The trailer touched on the campaign for same-sex marriage, the role of Mr. Rory O'Neill in this campaign and more broadly, the issue of homosexuality and discrimination. The Committee found that this content was in line with material that audiences would commonly see prior to the watershed and touched on topics that, in the opinion of the Committee, could not be considered to be either harmful or inappropriate to audiences, including children.

- As homosexuality is not illegal in the State, and as the content was neither harmful nor inappropriate, the Committee did not agree that the references in the trailer would offend against general community standards or required the broadcaster to take particular care with the scheduling of the programme trailer. The Committee was of the view that the inclusion of references to homosexuality or same-sex marriage were not grounds for scheduling the trailer after the commencement of the watershed. In addition, the Committee noted that it is a common and accepted practice to air programme trailers for post-watershed programming in the pre-watershed period. Broadcasters will often produce different versions of trailers for different day-parts and in the case of this trailer, the Committee found nothing in its content that would infringe the requirements of the BAI Code of Programme Standards. The Committee could also find no evidence of the 'promotion' of any particular type of relationship, whether heterosexual or homosexual, in the programme.
- In view of the above, it was the opinion of the Committee that the programme did not infringe the Broadcasting Act 2009 or the BAI Code of Programme Standards in the manner specified by the complainant. Accordingly, the complaint was rejected.

Station:

RTÉ Two

Programme:

This is Ireland with Des Bishop

Date:

22nd December 2016

1. Programme

The complaint concerns 'This is Ireland with Des Bishop', which is a satirical programme over four episodes broadcast after 9pm. The complaint refers to the topic of abortion, including a report by The Times newspaper (Ireland Edition) about advice given by a clinic, advice which was the subject of controversy.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity & impartiality in current affairs) and under Section 48(1)(b)(harm & offence); the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.3, 4.17, 4.19, 4.20 and 4.22) and the BAI Code of Programme Standards – Principles 5 (Respect for Persons and Groups in Society) and 6 (Protection of the Public Interest).

3. Summary of Initial Complaint to the Broadcaster

The complainant states that the programme was not in compliance principally because of what he states were false claim made by presenter that "There has been controversy recently with clinics being uncovered that give purposely incorrect information about abortion to vulnerable women." The complainant states that it has never been proven that any 'pro-life' clinic gave 'purposely incorrect information', whereas, the complainant states that 'pro-abortion' clinics have given what is considered to have been medically dangerous advice, a point which the complainant states was never raised in this lengthy programme slot.

The complainant states that the claim made by RTÉ and the presenter was a very serious, inaccurate and damaging claim, particularly having been made in the context of the ongoing work of the Citizens' Assembly, which he states was referred to and undermined by this programme.

The complainant states that the subsequent appearance during the programme of Ms. Ellen Coyne, a journalist with The Times newspaper (Ireland Edition) and the interview with Ms. Alison Spittle, both made it very clear that the clinic was a 'pro-life clinic' and was one which was the subject of the much-reported recent articles by Ms. Coyne in the Times (Ireland Edition).

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

There was no response to the complainant.

4.2 Broadcaster's Response to BAI

RTÉ regrets that the complainant did not receive a reply to his initial complaint which was accidentally deleted by the Head of Broadcast Compliance.

RTÉ recognises that the legislation and Code applies to content and not only programmes identifiable as current affairs formats. As stated in the Guidance Notes to the Code:-

"There will be occasions where light entertainment programmes, magazine-style programmes or programmes that are predominantly music-driven may contain current affairs content".

The notes also state:-

"Current affairs programming includes explanation and analysis of current events and issues, including matters which are either of public controversy or the subject of current public debate".

The broadcaster states that 'This Is Ireland with Des Bishop' is neither current affairs content nor current affairs programming. They state that it is a satirical comedy programme, in the long tradition of such programmes, recognised and understood as such by audiences who expect to hear an opinionated point of view on topics of the day, using exaggeration, hyperbole, rude language and other comic techniques.

The broadcaster states that it may be noted that in addition to the fact that the presenter is well-known to audiences for his trenchant comic commentary on Irish social and cultural life and for his robust language, viewers were informed before the programme of the possibility that they would find the programme not to their taste, the continuity announcer stating: -

“But now another chance to absorb the fact-paced satirical analysis of this week’s top stories, filled with passion and strong language, Des Bishop – This Is Ireland”.

The programme also carried the ‘Mature Audience (MA)’ warning to audiences. RTE notes that ‘This is Ireland with Des Bishop’ takes a comically mordant view of topical issues in contemporary Ireland.

The broadcaster states that the complaint refers to an item which looked at the heated nature of the debate around abortion in Ireland, and the occurrence of misinformation when advising pregnant women on their options. The broadcaster states that reports of such practices had appeared in September 2016 as a result of an investigation by reporters for The Times newspaper (Ireland Edition), including Ms. Ellen Coyne who appeared in the programme. The broadcaster states that the result of that investigation was accepted by, for example, the Minister for Justice, who commented adversely on the practices.

The broadcaster states that any references to those reports in the programme were entirely accurate and the complainant has not offered any evidence to the contrary. The broadcaster states that, in the item, the comedian Ms. Alison Spittle did not focus on the core topic itself but on the nature of the debate surrounding it, explicitly not offering any ‘pro-choice’ or ‘pro-life’ opinions, stating:-

“I find it hard as a woman to talk about abortion, or to listen to people talk about abortion because everyone gets very het up about it”.

The broadcaster states that the above view gave rise to the analogy of bees – which underscored how discussing these matters can be like kicking a hornets’ nest – used in the pre-recorded sketch. Both Ms. Spittle and Mr. Bishop acknowledged that the topic of abortion was particularly challenging territory, the latter saying that it is one of the most sensitive topics to attempt to satirise.

The broadcaster states that it fails to find in the broadcast any reference to a person or group protected by Principle 5 of the BAI Code of Programme Standards and no indication in the complaint of the existence of any such reference. Neither can RTÉ find in the broadcast any breach of Principle 6 or in the complaint any evidence of such a breach.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity & impartiality in current affairs) and Section 48(1)(b)(harm & offence), the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.3, 4.17, 4.19, 4.20 and 4.22) and the BAI Code of Programme Standards – Principles 5 (Respect for Persons and Groups in Society) and 6 (Protection of the Public Interest), the Committee has decided to reject the complaint.

In this regard:-

- The Committee had regard to the content and format of the show. In this respect, the programme was clearly flagged as a satirical programme. This type of programming sets out to entertain by focusing, often via exaggeration, humour, irony and ridicule, on various aspects of society. While satire may be topical and have its basis in current events, whether they are political, social, religious or otherwise, this type of programming does not automatically fall under the heading of news and current affairs. For this reason, there may be no requirement for content featured to be treated in a fair, objective and impartial manner.
- Having reviewed the programme content, the Committee noted that while the jumping-off point for the item was reports about misleading advice provided by a clinic on the health impacts of abortion, the item itself was satirical in nature. References to this context for the item were considered by the Committee to be factual and, contrary to the view of the complainant, an accurate representation of the news story in question. The Committee was of the opinion that the item did not require any other contributions to ensure the audience's interests were protected nor were references to advice allegedly given by 'pro-choice' clinics considered relevant.

- Upon viewing the item, the Committee found that the piece itself was focused largely on the question of information and misinformation and this topic was discussed in a form and manner that was exaggerated and using elements of farce and ridicule, for example via references to bees and to cake. More generally, while the complainant cited issues with the programme in respect of various sections of the BAI's Codes, the Committee found that, other than references to the general requirement for fairness, objectivity and impartiality and requirements in respect of accuracy, the complainant did not support his concerns with reference to the programme content in terms of matters of offence and harm or other aspects of the news and current affairs code.
- In view of the above, the Committee did not agree that the content infringed the Broadcasting Act, 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.

Station:
RTÉ One

Programme:
Claire Byrne Live

Date:
16th January 2017

1. Programme

The complaint concerns the 'Claire Byrne Live' programme which deals with current affairs and is broadcast Monday nights from 10.35pm – 11.35pm. The item complained about concerns a report on the running of Animal Heaven Animal Rescue (AHAR) in Co. Kerry.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a) Fairness, Objectivity and Impartiality in current affairs); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, Section 4: Rules 4.1, 4.3, 4.12, 4.19 & 4.22.

3. Summary of Initial Complaint to the Broadcaster

The complainant states that the programme lacked fairness, objectivity and impartiality in respect of its coverage of the AHAR charity and its founder. The complainant refers to a range of elements of the programme in support of this view. These include the following:-

- In the view of the complainant, the programme was poorly researched. She states that the programme did not include any representatives or volunteers of AHAR or other individuals, such as vets, who might have provided a counterbalance to the criticisms in the programme. The complainant also states that, in her view, the source of much of the programme content would appear to have been selected from social media content critical of the founder of AHAR and the organisation itself. The complainant notes the reluctance of the manager to participate and considered this reasonable given what the complainant describes as the abuse, threats and misrepresentations that she has been subject to in print and online. In that context, the exclusion of other representatives and volunteers was unfair.

- The complainant states that the programme incorrectly claimed that animals under the care of AHAR were neglected and treated badly. The complainant states that the various elements of the programme that made this allegation were unfair and incorrect. The complainant cites those elements of the programme dealing with welfare notices and the treatment of sick/dying animals, and their adoption.
- The complainant states that the programme also included incorrect allegations of financial mismanagement and suggestions of financial misappropriation. The complainant states that a volunteer-run organisation will not have perfect accounting procedures and can be expected to make minor accounting errors. The complainant states that the analysis of the financial management of AHAR was incorrect and misleading.
- The complainant also references what she describes as the unfair portrayal of the manager and the infringement of her privacy by decision of the broadcaster to air surreptitiously recorded telephone calls which included the manager. The complainant states that the programme makers took the managers comments out of context and over-stated their meaning.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states that every effort was made to represent the views of both the AHAR Board and Ms. Suzanne Gibbons. They state that repeated offers to include on-screen interviews with the Board and Ms. Gibbons were declined. Both the Board and Ms. Gibbons were written to in great details on two occasions and made aware of the specific content of the piece. The broadcaster states that they responded to RTÉ on both occasions and relevant sections of their responses were quoted on multiple occasions in the broadcast. The broadcaster states that also included in the programme was AHAR's own estimates of their rescue work and the story of a rescued animal was specifically described as 'genuine'.

RTÉ states that the broadcast used multiple sources to underpin its journalism. The evidence presented, including telephone calls, was necessary to underpin the issues of public concern raised in the programme.

The broadcaster also states that reference was made to certain practices at AHAR which included, amongst others, poor corporate governance, poor receipting of cash spending, transportation of animals that were in poor physical condition or that had inadequate documentation, threatening and abusive language used by Ms. Gibbons about certain individuals in her own organisation and misleading fund raising campaigns. RTÉ stands over these reference which are solidly underpinned by their evidence.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the Executive Producer of the programme to the initial complaint. In addition, RTÉ also make a number of additional comments and these include the following:-

- The broadcaster is satisfied that the facts presented in the programme were accurate and supported by a range of sources. This includes facts presented in respect of welfare notices issued by the Department of Agriculture and the stories in respect of the re-homing of rescued animals.
- The broadcaster states that it made a number of attempts to interview members of the Board of AHAR, and the manager. Given that the focus of the programme was the governance and financial management of the organisation, volunteers other than the Board would not have provided adequate responses given that other volunteers would not likely have been in a position to answer questions about the management of the organisation.
- Regarding other elements of the programme, the broadcaster was satisfied that issues highlighted regarding the financial management of the organisation were much more than minor accounting errors and it was in the public interest to examine these issues, including the approach taken to fundraising and to the purchase of animals.
- The broadcaster was also satisfied that the focus on the professional behaviour of the manager was also warranted given her role in the organisation. They also note that they did not edit or take out of context any of the manager's comments and also state that the broadcast of the recordings was in the public interest.

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, Section 4: Rules 4.1, 4.3, 4.12, 4.19 & 4.22, the Committee has decided to reject the complaint.

In this regard:-

- The Committee noted that the programme was an investigation into the governance, management and financial management practices of AHAR. Having reviewed the programme in the context of submissions provided, the Committee was satisfied that the treatment of the issues highlighted was fair, objective and impartial.
- The Committee noted that the subject of a programme is not obliged to participate in the programme and is entitled to refuse to participate in the broadcast via on-screen interviews. It also noted that a refusal to participate does not absolve the broadcaster from their responsibility to reflect, as far as practicable, the views of the absent party and to do so fairly. However, a decision not to participate via on-screen interviews will unavoidably impact on the extent to which the views of the absent party can be represented in the programme. In this respect, the Committee was satisfied that the inclusion by the broadcaster throughout the programme of extracts from written comments provided by the complainant ensured that their views were represented to audiences, as far as practicable, and in circumstances where representatives of AHAR had declined to be interviewed. The Committee was satisfied that this provided adequate counterbalance to the criticisms set out in the programme.
- In terms of the conclusions of the programme makers about financial management and governance, the Committee was satisfied that these were supported by interviews, by documents, by submissions from AHAR and by inputs from experts and other relevant parties, including a forensic accountant. While the programme did not cover each issue exhaustively and focused on some elements in more detail than others, this was a legitimate editorial decision that the broadcaster has discretion to make.

The Committee did not find any evidence from the submissions provided by the complainant that the conclusions presented by the programme makers were inaccurate or misleading. On the issue of the financial management of AHAR, the Committee did not agree with the complainant that the programme implied that money had been misappropriated. Rather, the Committee found that the programme set out weaknesses in the financial management of the charity and this analysis was supported by the content of the programme.

- On the matter of privacy, the Committee did not consider this aspect of the complaint as complaints of this nature may only be made by those who believe their own privacy has been unreasonably encroached.
- On the matter of those aspects of the programme dealing with the management approach of the founder of AHAR; the Committee considered this focus appropriate given the key role of this individual in the establishment and the running of the organisation and how the calls illustrated issues with the governance of the charity. The Committee found no evidence to suggest that the phone calls were taken out of context or edited in a manner that might be misleading. The Committee also noted that the broadcaster had not recorded the conversations. Rather, the recordings were made by a party to the phone calls featured and it is not illegal for a person to record a call if he/she is party to that call.
- In view of the above, the Committee did not agree that the programme infringed the Broadcasting Act 2009 or the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Station:

RTÉ One

Programme:

Claire Byrne Live

Date:

16th January 2017

1. Programme

The complaint concerns 'Claire Byrne Live', a programme which deals with current affairs and is broadcast Monday nights from 10.35pm – 11.35pm. The item complained of concerns a report on the running of Animal Heaven Animal Rescue (AHAR) in Co. Kerry during which, the complainant, Ms. Gibbons, was mentioned.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(Harm and Offence); the BAI Code of Programme Standards, Principle 7 (Respect for Privacy).

3. Summary of Initial Complaint to the Broadcaster

The complainant states the following:

- The programme used excerpts of recordings made of private telephone conversations with the complainant. The complainant states that these conversations were recorded without her knowledge or permission and are personal data within the meaning of the Data Protection Acts. The complainant states that she also has a reasonable expectation of privacy in personal conversations and this was breached and this was compounded by the recordings being broadcast on national television.
- The complainant states that, furthermore, the excerpts were played without any indication of context and the comments of the other party of the conversation which the complainant states presented a biased interpretation of her comments. She states that by using the one-off excerpts from the telephone conversation, the programme presented a false picture of the circumstances of the calls.

- The complainant states that the conversation regarding the damage to a window in particular was again an excerpt from a private conversation and was taken out of context with no indication as to the comments or contribution of the other person. She states that there is no reference as to how the conversation came about, whether it was said in jest, or indeed whether she was encouraged to make these comments by the other person.
- The complainant states that the comments about the window and the telephone recording taken of the conversation as presented on the programme do not relate to any work or activities at AHAR and were a direct attack on her character and have no relevance other than presenting AHAR and the complainant in the worst possible light. She states that, in her opinion, it is clear that this was an attempt to target her on an extremely personal level and was not relevant to the public interest.
- The complainant states that, having chosen to include this excerpt, the programme made no attempt to outline or mention the various slurs and attacks continually made on her character which may have prompted this conversation. She states that it was not made clear that no such attack ever actually took place, and no attempt to clarify this with the purported potential victims was ever made. The complainant states that this is hardly objective and un-biased reporting and it should not have been included at all.
- The complainant states that there has been a further breach of her privacy, in that, as part of the broadcast a screen shot was used showing what she considers to be an unlawfully obtained copy of her payslip. The complainant states that this document was used for the sole purpose of implying that AHAR was hiding the payment of salaries and ignoring the fact that it had been acknowledged in the AHAR Executive Committee's letters that the complainant was employed. In addition to being another gross invasion of her privacy and publication of documentation in breach of the Data Protection Acts and it was improper for them to publish sensitive information of this nature.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states that given the importance of the subject matter the broadcast was in the public interest. Every effort was made to represent the views of both the AHAR Board and Ms. Suzanne Gibbons herself.

The broadcaster states that the piece used multiple sources, from witnesses to documentary evidence to underpin its journalism. The evidence presented, including telephone calls, was necessary to underpin the issues of public concern raised in the programme.

The broadcaster maintains that, in the programme, reference was made to certain practices at AHAR. These included, amongst others, poor corporate governance, poor receipting of cash spending, transportation of animals that were in poor physical condition or that had inadequate documentation, threatening and abusive language used by Ms. Gibbons about certain individuals in her own organisation and misleading fund raising campaigns. The broadcaster stands over these references which are solidly underpinned by our evidence.

The broadcaster states that it bears no responsibility for how issues in relation to AHAR were reported elsewhere.

The broadcaster states that repeated offers made to include on-screen interviews with the Board and Ms. Gibbons were declined. Both the board and Ms Gibbons were written to in great detail on two occasions and made aware of the specific content of the piece. The broadcast date was delayed to accommodate AHAR in this regard. They responded to RTÉ on both occasions and relevant sections of their responses were quoted on multiple occasions in the piece. RTÉ also states that the broadcast also included AHAR's own estimates of their rescue work and the story of a rescued animal which was specifically described as 'genuine'.

The broadcaster states that the reporter accurately imparted in the live piece following the report the information which the Charities Regulatory Authority (CRA) released in relation to AHAR on Jan 16th.

AHAR has repeatedly claimed it is a voluntary run organisation on its own social media platforms and in media interview. Both were cited in the broadcast. Ms. Gibbons' payslip, with personal details blurred, was presented as documentary evidence that she is paid a salary. As AHAR is a charity in receipt of public funds the broadcaster states that it believes the showing of the payslip was justified in the public interest.

The broadcaster maintains that it specifically stated in the broadcast that "AHAR's Executive Committee is made up of four trustees who are responsible for the corporate governance, oversight and financial control of the charity." The extent of grant money received was accurately reflected on the programme. The broadcaster stated that "Hundreds of thousands of euro of public money has been paid into this account through donations or grants including this grant from the Department of Agriculture, which has given €54,000 to the charity since 2012."

The broadcaster refers to the broadcasting of telephone calls and states that the calls were recorded by one of the parties to the conversations which related to a publicly funded charity, the conversations were not taken out of context nor unfairly edited and as such were broadcast to report on a matter of public importance.

The broadcaster states that ample time was given to both the AHAR Executive Committee and Ms. Gibbons to reply to RTÉ. The broadcast of the programme was delayed several times to accommodate AHAR. The broadcaster states that the programme was originally due to be aired on the 19th December and it did not broadcast till the 16th January. The first letters sent to the AHAR Executive Committee and Ms Gibbons were sent on December 6th 2016.

The broadcaster believes the piece was fair, impartial and in line with the highest journalistic standards which are rightly required and expected of us.

4.2 Broadcaster's Response to BAI

In response to this referral, the broadcaster refers to the response of by the Executive Producer of Claire Byrne Live (above) to the complaint.

They also make the following points:-

- In respect of the alleged breach of Principle 7, the broadcaster notes the recognition in this principle that the right to privacy is not absolute, and that the privacy to which an individual is entitled is that which is reasonable in all of the circumstances and must be balanced against other rights and considerations, such as, most relevantly in the context of this broadcast, the public interest.
- The broadcaster states that AHAR is a charity that relies on public money, donated directly and through State support, and the obligations of a charity to be above board in terms of its management are clearly of huge importance in that context of public trust.
- The broadcaster states that the phone calls used were clear evidence that AHAR was not being run in accordance with good governance and, in the context of the BAI Code, were broadcast in the public interest.
- The broadcaster states that it has ample evidence, including other recordings that the type of intimidating language heard in a recording was used on many occasions by the founder of AHAR, Ms. Gibbons.
- The broadcaster states that it may be noted that the use of a recording in which the complainant stated "*I am AHAR*" and "*I own AHAR*" was of direct relevance to the issues of governance raised in the programme and, again, clearly in the editorial context and the public interest.
- Excerpts from the recordings available to the programme were only used with appropriate editorial judiciousness, in keeping with the requirement for the use of such material to be proportionate and limited to the degree that is required to inform the audience in the public interest.
- The broadcaster states that it may also be noted that the broadcast included the AHAR manager's written defence of the language and attitudes demonstrated in the phone recordings when it stated: -

"In her response Suzanne Gibbons wrote, 'I admit and regret to using these phrases on occasion in the past,' adding that she herself had been 'subject to significant and serious verbal abuse, in the public domain'."

- Although not cited by the complainant, in the context of Rule 4.12 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, it may be noted that the phone calls broadcast were not recorded by RTÉ but were supplied to the programme by a whistleblower.

And notwithstanding that these were not secret recordings by RTÉ, it should be noted that in respect of Rule 4.13, the person recorded was offered the opportunity to participate in the programme and declined to do so.

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

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

In this regard:-

- The Committee noted that Principle 7 (Respect for Privacy) of the BAI Code of Programme Standards recognises that individuals have a right to privacy which broadcasters are required to respect and ensure that it is not unreasonably encroached upon either in the means employed to make the programme or the material broadcast. This principle recognises that the right to privacy is not absolute and must be balanced against other rights and considerations, including the public interest. Where the privacy of a person is encroached upon, it must be proportionate and limited to the degree that it is required to inform the audience in the public interest. In terms of public interest considerations, Principle 6 of the BAI Code of Programme Standards sets out the rights and obligations of broadcasters in respect of content that may be classified as such.
- Having considered the programme content in the context of the submissions provided and the relevant regulation, the Committee was satisfied that the broadcaster did not unreasonably encroach upon the privacy of the complainant and the use of phone calls and other information was justified in the public interest.

- Regarding the inclusion of a payslip of the complainant, the Committee was satisfied that this was necessary to demonstrate the conclusions reached in the programme in respect of whether AHAR had employees despite stating that it was a wholly volunteer run organisation. The Committee noted that the programme makers did not include the address or PPS details of the complainant and therefore limited the extent to which the privacy of the complainant was infringed.
- On the matter of the extracts from phone calls with the complainant, the Committee considered these to be editorially relevant given the key role of the complainant in the establishment and the running of the organisation and how the calls illustrated issues with the governance of the charity. The Committee found no evidence to suggest that the phone calls were taken out of context or edited in a manner that might be misleading. The Committee also noted that it was open to the complainant to participate in the programme and she was also afforded the opportunity to make submissions in respect of the content, including the phone calls, and these were reflected in the programme. The Committee also noted that the broadcaster had not recorded the conversations. Rather, the recordings were made by a party to the phone calls featured and it is not illegal for a person to record a call if he/she is party to that call. The Committee did not agree that the use of these calls raised data protection concerns.
- In view of the above, the Committee did not agree that the programme infringed the Broadcasting Act 2009 or the BAI Code of Programme Standards in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Station:

RTÉ One

Programme:

Claire Byrne Live

Date:

16th January 2017

1. Programme

The complaint concerns 'Claire Byrne Live' which deals with current affairs and is broadcast Monday nights from 10.35pm – 11.35pm. The item complained of concerns a report on the running of Animal Heaven Animal Rescue (AHAR) in Co. Kerry.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the BAI Code of Fairness, Objectivity and Impartiality, Section 4: Rules 4.1, 4.7, 4.8, 4.9, 4.15 and 4.19.

3. Summary of Initial Complaint to the Broadcaster

The complainant states that this broadcast was unfair to AHAR and lacked objectivity and impartiality for a range of reasons, which include the following:-

- Despite the content of the programme, there is no evidence of misappropriation of charity funds, which the complainant states was implied in the programme as broadcast.
- The programme implied that the regulator of charities only became interested in AHAR on account of RTÉ's investigation, whereas, according to the complainant, AHAR were liaising with the regulator prior to the RTÉ programme being broadcast.
- The programme implied that the sanction against AHAR issued by the Charities Regulatory Authority was a first, whereas, it was only from September 2016 that the regulator had the power to issue sanctions and could not have done so any earlier.

- The programme resulted in AHAR and its employees receiving abusive messages, including online via social media. In addition, the PayPal account of the organisation was frozen for 10 days and its manager also received anonymous threats of violence.
- The inclusion of the reference that “no-one from AHAR had made themselves available for interview” was problematic as AHAR had provided extensive letters, the content of which was, in their view, not reflected in the programme.
- Incorrectly represented the status of AHAR as a voluntary organisation rather than a registered charity and inaccurately represented its governance and financial management structures, practices and activities, including with respect to the role and responsibilities of the former treasurer of the organisation and payment of staff.
- Unfairly represented AHAR’s practice of purchasing animals and gave a biased perspective by including only the views of the Irish Society for the Protection of Animals in respect of their practices.
- Unfairly represented the fundraising activities and practices of AHAR, including its solicitation of donations and the manner in which these were sought and spent.
- Implied, incorrectly, that ‘welfare notices’ issued to AHAR related to the poor treatment of animals whereas, they were not issued in relation to animal welfare. More generally, the programme failed to highlight the oversight of the Department of Agriculture in respect of AHAR’s animal welfare.
- Misrepresented the manner in which AHAR cares for animals via cases involving the adoption of a dog and a horse.
- Contained minimal positive comments about the work of the organisation.
- Infringed the privacy of its manager by airing surreptitiously recorded phone calls and by showing the payslip of the manager during the programme.
- Approached the researching and production of the programme in a manner which the complainant states was on the basis of a pre-determined conclusion.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

In response to the complaint, the broadcaster made a range of points, including the following:

- Multiple sources were used to inform the broadcast, including telephone calls and these were all necessary to underpin what the broadcaster considered the issues of public concern raised by the programme.
- The programme dealt with a range of issues, including what they describe as poor corporate governance, inadequate financial management, animal welfare issues and fundraising approaches, amongst others. The broadcaster stands by the reporting and conclusions included in this programme and is satisfied that they are supported by the evidence presented in the programme and gathered as part of the production process.
- The programme did not imply that there was financial misappropriation and clearly stated that the investigation found no evidence of financial misappropriation. The broadcaster states that programme accurately reflected issues with the manner in which finances were being managed and accounted for by AHAR.
- The broadcaster made what they describe as repeated efforts to secure interviews with representatives of AHAR but they were declined. The broadcaster also states that detailed correspondence was sent to AHAR and the programme broadcast was delayed to facilitate engagement by AHAR in the programme.
- The programme clearly reflected AHAR's own estimate of its contribution to animal welfare in Ireland. The broadcaster states that AHAR has repeatedly described itself as a voluntary organisation and the inclusion in the programme of the manager's payslip (with personal details removed) was considered appropriate to demonstrate that the manager was paid a salary and that this raised questions about the voluntary nature of the organisation.

- The programme's examination of animal welfare issues were consider accurate given that the Department of Agriculture, who provide funding to AHAR, has stated formally that the rescue of animals should not incur a fee. As AHAR were paying for some rescued animals, the highlighting of this in the programme was appropriate.
- Regarding the two examples of animals being re-homed, relating to a dog and a horse, the broadcaster stands by the stories as presented and states that it has associated documentation to support the claims.
- Regarding the broadcasting of telephone calls, the broadcaster states that these were recorded by one of the parties to the calls featured and were not taken out of context.

4.2 Broadcaster's Response to BAI

In its reply to the BAI, the broadcaster refers to the response of by the Executive Producer of Claire Byrne Live to the initial complaint and reiterates the points made by the Executive Producer.

The broadcaster in its response to the BAI addresses the issues highlighted in the programme and provides more details to support the research, sources and conclusions reached and broadcast.

The broadcaster states that it is satisfied that the conclusions reached are supported and reiterates that the programme did not suggest that there was any financial misappropriation and that this was clearly stated in the programme itself. It also notes that the complainant was offered repeated opportunities to set out its views by way of an interview but declined.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the BAI the Code of Fairness, Objectivity and Impartiality, Section 4: Rules 4.1, 4.7, 4.8, 4.9, 4.15 and 4.19, the Committee has decided to reject the complaint.

In this regard:-

- The Committee noted that the programme was an investigation into the governance, management and financial management practices of AHAR. Having reviewed the programme in the context of submissions provided, the Committee was satisfied that the treatment of the issues highlighted were fair, objective and impartial.
- The Committee noted that the complainant was not obliged to participate in the programme and was entitled to refuse to participate in the broadcast other than via written statements. It also noted that a refusal to participate does not absolve the broadcaster from their responsibility to reflect, as far as practicable, the views of the absent party and to do so. However, a decision not to participate via on-screen interviews will unavoidably impact on the extent to which the views of the absent party can be represented in the programme. In this respect, the Committee was satisfied that the inclusion by the broadcaster throughout the programme of extracts from written comments provided by the complainant ensured that their views were represented to audiences, as far as practicable, in circumstances where representatives of AHAR had declined to be interviewed.
- In terms of the conclusions set out in the programme, the Committee was satisfied that these were supported by interviews, by the complainant, by documents and by inputs from experts and other relevant parties, including a forensic accountant. While the programme did not cover each issue exhaustively and focused on some elements in more detail than others, this was a legitimate editorial decision that the broadcaster has discretion to make. The Committee did not find any evidence from the submissions provided by the complainant that the conclusions presented in the programme were inaccurate or misleading. On the issue of the financial management of AHAR, the Committee did not agree with the complainant that the programme implied that money had been misappropriated. Rather, the Committee found that the programme set out weaknesses in the financial management of the charity.
- On the matter of privacy, the Committee did not consider this aspect of the complaint as complaints of this nature may only be made by those who believe their own privacy has been unreasonably encroached.

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

Complaint made by: Mr. Conan Doyle

Ref. No. 55/17

Station:

Newstalk 106-108FM

Programme:

High Noon

Date:

3rd May 2017

1. Programme

The complaint concerns 'High Noon', which is a current affairs programme broadcast daily at 12 noon. The complaint refers comments made by the presenter when referring to a text sent in to him.

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).

3. Summary of Initial Complaint to the Broadcaster

The complainant states that the presenter read out a text accusing him of only reading favourable texts on the programme. The presenter immediately called the texter a "shit" and then proceeded to invite the texter in to "say it to my face" whereupon he threatened to assault the texter with a box to the face, or words to that effect. The complainant believes this behaviour by a presenter to be wholly inappropriate and infringes not only the BAI standards on language and violence but also basic common decency.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states that the presenter was deeply upset by the inaccurate comment made by the listener and reacted in a passionate manner in the heat of the moment. However, he did concede afterwards that he would have preferred to have reacted in more temperate tones and certainly did not intend to cause any offence.

The broadcaster states that the complainant's email was forwarded to the presenter and assures the complainant that his email will inform future discussions on such matters.

4.2 Broadcaster's Response to BAI

The broadcaster states that 'High Noon' is Newstalk's daily opinion-led talk show presented by Mr. George Hook. The programme regularly takes issues of interest to its listeners and explores in greater detail through debate and discussion with Mr. Hook. The broadcaster states that the presenter's personality is central to the tone of the programme and the audience would be familiar with his larger than life, gregarious and outspoken persona. They would also know that the programme makes a point of including input from guests, contributors and listeners (through text messages, telephone calls and social media) offering points of view alternative to those expressed by the presenter.

The broadcaster states that on the day in question the presenter had opened the show reflecting on the terrorist attack at the Ms. Ariana Grande concert in Manchester which had occurred the night before. He spoke about the tragedy of the loss of youth and the impact such an attack would have on his own grandson as a fan of Ms. Grande. He played a clip of US President Donald Trump calling the attacker a 'loser' and expressed a view that in the circumstances he felt the strength of Mr. Trump's statement was justified. As the show progressed he engaged with listeners on the issue, reading texts and tweets from listeners who both agreed and disagreed with him. Some listeners accused him of 'crocodile tears' over the attack, others supported his view and expressed sympathy for the families involved.

The broadcaster states that during the course of the programme the presenter received a tweet from a listener which read "Attention seeking radio presenter @ghook has resorted to making up fake texts complimenting himself on Newstalk." Given the circumstances in which this comment was made and the inaccuracy of the accusation that he would first of all read out fake texts and secondly make-up fake texts complimentary to himself, the presenter was understandably upset. He responded to the tweet in his typically blustering manner, an approach with which regular listeners to his opinion-led programme would be familiar.

Newstalk believes that the presenter's response was delivered in keeping with the tone of the programme and piece. While the presenter was passionate and forceful in his response, his tone clearly communicated that, as opposed to any intent to cause offence or engage in aggressive behaviour.

The broadcaster notes that under the BAI Code of Programme Standards, Principle 1 – Respect for Community Standards, under which the complaint is to be considered, it states that broadcasters should “take due care in broadcasting depictions and/or descriptions of violence in programme material.” The broadcaster maintains that it is satisfied that listeners would not have interpreted the presenter’s comments to have been a real threat of violence to the person who tweeted. They state that the presenter’s tone, style of broadcasting and use of words, are part of the persona with which he has long been associated in the Irish broadcasting landscape. The broadcaster states that the presenter has an old fashioned delivery, preserving many phrases and expressions not common in the modern vernacular (e.g. “a knuckleful straight up your nose”).

The broadcaster notes that the BAI Code of Programme Standards also states that broadcasters should be alert to, and guard against, the use of coarse and/or offensive language in live programming and, where such incidents occur, take timely steps to minimise any offence caused such as, acknowledging, clarifying and/or apologising for the language used.” The broadcaster states that, in this instance, it does not feel that the use of the word ‘shit’ in the context it was delivered, was unduly coarse or offensive. With the exception of the complainant in question, no other complaint nor negative feedback to the comment was received, not even from the tweeter to whom the presenter was responding. The broadcaster states that, moreover, immediately after his comments, the presenter chuckled humorously as he went on to his next segment – a clear indication that he wasn’t seriously suggesting a violent exchange with the tweeter.

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

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

In this regard:-

- The Committee considered the programme format and presenter style. Specifically, the programme contains a strong element of audience interaction driven by the content but also driven strongly by the presenter’s style. This style is characterised by a robust ‘devil’s advocate’ approach to interviewing, to commenting and to responses to listener interaction.

The Committee found this approach was evident in the programme that is the subject of the complaint.

- Regarding the specific part of the programme that the complaint focuses on; the Committee noted that it followed an interview and discussion dealing with a terrorist attack in the British city of Manchester. The interview was following by references to contributors from listeners to the programme as well as a comment made via Twitter. The Committee noted that the tweet stated that the presenter was creating fake texts complimenting himself. Given the content of the tweet and given that it was made in a public forum, the Committee considered it legitimate for the presenter to defend himself.

Having listened to the item in context and having had regard to the tone of those remarks, it was the Committee's view that his comments were light in tone and intent and did not amount to a genuine threat of violence. Rather, they had the character of braggadocio and were a deliberately exaggerated response, articulated in the rough and ready style and tone that listeners are used to. While the presenter used coarse and offensive language and the complainant was offended, the Committee did not consider that the language would cause undue offence, such that upholding the complaint was warranted.

- Notwithstanding this, the Committee was of the view that greater care should be taken in the future in respect of the use of coarse and offensive language. While there was a context for the presenter's remarks and they were in line with the programme style and format, programme makers and presenters are advised to take steps to avoid offending audiences needlessly.

Rejected by the Executive Complaints Forum (ECF)

Complaint made by: Gardasil Awareness Group

Ref. No. 07/17

Station:

RTÉ Two

Programme:

This is Ireland With Des Bishop

Date:

12th December 2016

1. Programme

The complaint concerns 'This is Ireland With Des Bishop', a satirical programme broadcast in four episodes at 10pm. The complaint refers to comments made by the programme presenter regarding the HPV Vaccine.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity & impartiality in current affairs) and Section 48(1)(b)(Harm and Offence); the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs (Section 4: Rules 1 & 2) and the BAI Code of Programme Standards (Principle 3 – Protection from Harm).

3. Summary of Initial Complaint to the Broadcaster

The complainant states that:-

- The presenter knowingly broadcast false information with respect to cervical cancer statistics in Australia since 2007.
- That "Direct to Consumer" advertising of pharmaceutical drugs is illegal in Ireland, and that this programme amounted to a free advert for the HPV vaccine, because of its content. This content included what he states were claims during the programme that the vaccine can prevent cervical cancer, a claim which the complainant states has not yet been proven or demonstrated.

- The complainant states that the presenter mischaracterised the reasons as to why REGRET, an advocacy body, refused the care programme proposed by the HSE for those who state that they have suffered serious side effects from use of the vaccine.

The complainant states that the HSE has never explained their care path in public, including the outcomes of a HSE health committee meeting held on 3rd December 2015 – which has yet to release its findings.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

RTÉ states that this production relies heavily on ironic lampooning of aspects of Irish public life and topical matters of debate. The broadcaster states that this is not to everyone's taste, but that the content is well-flagged in the promotion of the programme. The broadcaster states that, as the presenter is well-known in Ireland, most RTÉ Two viewers will know what to expect.

The broadcaster states that this programme included a segment which looked at issues and debates around the HPV vaccine and the activities of the advocacy group, REGRET. The broadcaster states that the segment included a statement by the Minister for Health, Mr. Simon Harris T.D., at the Joint Oireachtas Committee on Health, at his concern that a dramatic drop-off in the uptake of the HPV vaccine was related to 'unsubstantiated' concerns about the safety of the vaccine raised by 'groups'.

The broadcaster states that this piece drew substantially from a report in RTÉ's Prime Time on the HPV vaccine. The broadcaster states that the presenter explored these matters – chiefly the drop-off in the uptake of the vaccine and the relative scientific validity and accuracy of the various claims made in favour for and against the vaccine.

In relation to the points raised by the complainant, RTÉ states the following:-

- While the segment did not specifically mention any research in Australia, it included a portion of the Prime Time report where the Prime Time reporter stated: "now from Australia, where it was first introduced, there is confirmation emerging that the HPV vaccine not only prevents pre-cancers but can prevent full blown cervical cancer as well."

- This was followed by a comment made by a representative of the HSE that “their programme has been running since 2007, and what they have shown is that there has been an up to 75% reduction in these pre-cancers, which you must have to develop cancer, and also a 50% decrease in cancer. So, we know the vaccine works.”

The broadcaster states that the information carried appeared to be quite scientifically credible and RTÉ did not ‘knowingly broadcast false information’, as stated by the complainant.

- The broadcaster states that the programme used satire to explore matters of genuine public concern and, in this case, there is significant level of public discussion about these matters – including a specific statement in an Oireachtas Committee by the Minister for Health. RTÉ does not agree they breached the rules regarding advertising pharmaceutical drugs in Ireland.
- In relation to the statement that the presenter mischaracterised REGRET’s reasons for refusing the HSE care programme, RTÉ asked why should the HSE say that the vaccine was responsible for the reported side effects, when the claims have been discredited the world over. The broadcaster states that this was followed by another clip from Prime Time where the Prime Time reporter states: “We couldn’t find any evidence to validate the parents’ concerns”, and this is followed by a comment by the Director of Human Products Monitoring of the Health Products Regulatory Authority that “there is absolutely no evidence that the vaccine is causing these effects.” The broadcaster states that there was a further comment by a representative of the HSE that “all the national and international bodies say this vaccine is safe and the benefits outweigh any short term risk.”

4.2 Broadcaster’s Response to BAI

RTÉ refers to the response above by the Head of Comedy, Talent Development and Music.

The broadcaster states that, as the title clearly signals to the audience, This Is Ireland With Des Bishop is an authored programme. In it, the presenter takes a satirical view of current topics, with the aim of provoking thought as well as laughter in his audience.

The broadcaster states that the editorial context is therefore both satire and authorship and, in keeping with Principle 2 of the BAI Code of Programme Standards, this post-watershed programme on RTÉ Two, a channel with a well-known reputation and identity as the home for comedy of a challenging nature, meets audience expectations in those respects.

The broadcaster states that the satirical editorial perspective of the item was the way in which social media, celebrity interviews and other communications techniques can be used to counter scientific fact. In doing so, Mr. Bishop referred not only to the HPV vaccine but to the historical success of vaccines in combating conditions such as polio.

That broadcaster states that, in the context of the editorial focus, it may also be noted that the presenter was not unsympathetic or insensitive to the concerns of parents who believe that their daughters have been affected by the vaccine, saying:-

“Now we’re not saying those poor girls aren’t sick. We want them to get the help that they need.”

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(a)(Fairness, Objectivity & Impartiality in Current Affairs) and Section 48(1)(b)(Harm and Offence), the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs (Section 4: Rules 1 & 2) and the BAI Code of Programme Standards (Principle 3 – Protection from Harm), the members have decided to reject the complaint.

In this regard:-

- The complainant believes that the presenter knowingly broadcast false information with respect to cervical cancer statistics in Australia; that the programme breached the rules regarding advertising pharmaceutical drugs in Ireland and that the presenter mischaracterised the reasons as to why REGRET, an advocacy body, refused the care programme proposed by the HSE for those who state that they have suffered serious side effects from use of the vaccine.

- When considering the complaint, the Forum took into consideration the presenter's style of broadcasting, the type of programme, the time of broadcast and the channel upon which it was broadcast. The Forum noted that this was a satirical programme which included a segment that looked at issues and debates around the HPV vaccine.
- While noting that current affairs content may be included in a variety of programme genres, the Forum was of the view from its consideration of the programme content that the item on the HPV vaccine constituted satire and was therefore not obliged to meet the requirements of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs. In reaching this decision, the Forum noted that the presenter is a well-known comedian who engages in satire when dealing with both serious and not so serious, subject matters. The programme was also broadcast on RTÉ Two, a channel aimed at a predominantly young adult audience and broadcast after the watershed.

Regular audiences of RTÉ Two are familiar with the comedy shows in the schedule, including this programme and have established audience expectations for programming on this channel at this time of day, where comedy programmes are often broadcast. In reviewing the programme, it was evident that the approach to the content that was the subject of the complaint was satirical in nature. Audiences are familiar with this genre of programming and would be aware that facets of society are, and can be, subjected to satirical comment.

- The Forum found that the item, as presented, did not constitute the advertising of pharmaceutical drugs in Ireland, but was a statement of fact. In particular, the Forum had regard to the fact that the item included none of the characteristics of advertising, such as references to slogans, prices or advertising copy promoting the benefits of efficacy of a product or service.
- The Forum also considered the complainant's claim that the presenter knowingly broadcast false information in respect to cervical cancer. The Forum stated that it is not within its remit to verify facts, however, there was no evidence to suggest that what was presented was inaccurate. The Forum were also of the view that this is a very emotive topic for parents of children which they believe were affected and the programme was not unsympathetic to sufferers.

- The Forum also considered the claim by the complainant that the presenter mischaracterised REGRET's reasons for refusing the HSE care programme. The Forum found that the presenter had explored these matters adequately considering the satirical nature of the show. The Forum was of the view that the broadcaster presented the facts from a Prime Time broadcast and understood this information to be reliable.
- In view of the above, the Forum did not agree that the programme infringed 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.

Station:
RTÉ One

Programme:
Prime Time

Date:
24th November 2016

1. Programme

The complaint concerns 'Prime Time', a current affairs programme which is broadcast Tuesday and Thursday evenings at 9.35pm. The complaint refers to comments made regarding the HPV Vaccine.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity & impartiality in current affairs) and Section 48(1)(b)(harm and offence); the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs (Section 4: Rules 1 & 2) and the BAI Code of Programme Standards (Principle 3 – Protection from Harm).

3. Summary of Initial Complaint to the Broadcaster

The complainant states that:-

- Prime Time broadcast what the complainant considers was false information with respect to cervical cancer statistics in Australia since 2007 with the implicit intention to make REGRET, a group representing families campaigning against the HPV vaccine, responsible for girls in the future not getting the vaccine.
- "Direct to Consumer" advertising of pharmaceutical drugs is illegal in Ireland, and, in his opinion, this programme amounted to a free advert for the HPV vaccine, because of its content. The complainant states that this content included claims that the vaccine can prevent cervical cancer, a claim which the complainant states has not yet been proven or demonstrated.
- The complainant states that Prime Time mischaracterised the reasons as to why REGRET, an advocacy body, refused the care programme proposed by the HSE for those who state that they have suffered serious side effects after using the vaccine.

The complainant states that the HSE has never explained their care path in public, including the outcomes of a HSE health committee meeting held on 3rd December 2015 – which has yet to release its findings.

- The complainant states that Prime Time failed to provide information from the HPRA/HSE in relation to the symptoms of many of the girls. He states that many families live in fear of making a connection between their conditions and the vaccine. He also states that no evidence was provided by the European Medicines Agency (EMA) in relation to the number of complaints received across Europe.

The complainant notes that there are similar situations in the past where medical interventions proved to result in health problems, specifically, issues arising from blood transfusions and the spread of Hepatitis C and issues arising from the 2009 H1N1 'swine flu' vaccination. The complainant states that these events provide a useful comparison in respect of the administration of the HPV vaccine which, like these earlier instances, has resulted in health problems.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

RTÉ states the Prime Time report set out to investigate what scientific evidence there was, if any, for the claim that the HPV vaccine was causing serious harm to a substantial number of those who received it. The programme makers' view was that if there was evidence of such harm, it would be in the public interest to detail what it was, and if there was no such evidence, it would be in the public interest to state that that was the case.

RTÉ states that while they have sympathy for families of those who believe the HPV vaccine played a role in their children's ill-health, it is important to examine what evidence there is that the vaccine caused the illness. During the course of lengthy and detailed research, they could find no evidence of a causal link between the illnesses/disorders reported by families and the vaccine.

The broadcaster states that virtually all the research into the vaccine, by some of the world's most reputable authorities, has found that there is no such link. In respect of the information regarding cervical cancer statistics in Australia, the broadcaster states that Prime Time reported the facts as they understood them. They state that the fact that their report accurately reported the facts and statements of the HSE and other competent medical authorities could not reasonably be construed as meaning that their report was in any way 'advertising.'

In respect of REGRET's reasons for refusing the HSE's Care programme, the broadcaster states that a member of the group explained how the group found the HSE's care plan was not appropriate, in part, because it would not investigate what the group felt were links between the vaccine and symptoms. Many symptoms were described and enumerated, both by HSE staff and using HPRA figures. The broadcaster states that as there is no evidence of an actual link between the vaccination and symptoms, it is impossible to see what information could have reliably added to this.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response above by the Deputy Editor of Prime Time. In addition, RTÉ wishes to make the following points.

- With respect to the allegation of broadcasting false statistics on cervical cancer in Australia, the broadcaster states that the research has shown that in that country, where over nine million doses of the vaccine have been given since 2007, in girls under-18 the incidence of high-grade pre-cancerous lesions – without which cervical cancer cannot develop - has halved, and that HPV types responsible for almost 75% of cervical cancer have fallen by 77%.
- With respect to the allegation of mischaracterisation of reasons for REGRET refusing the HSE care programme, the broadcaster states that their spokesperson showed Prime Time communications between the HSE and representatives of REGRET regarding discussions on the HSE care pathway and supports and Prime Time took those exchanges into account in reporting the matter.
- With respect to the allegation that Prime Time did not refer to the number of complaints about the vaccine across Europe, RTÉ points out that the European Medicines Agency (EMA) is the umbrella group for drug regulators including Ireland's Health Products Regulatory Authority (HPRA).

The programme's editorial focus was, therefore, on complaints to the HPRA, including an interview in which the HPRA spokesperson pointed out that those reports are sent to the European (EMA) database.

RTÉ states that this important topic of public interest was covered fairly, impartially, objectively, accurately and rigorously by Prime Time. In asserting this, RTÉ acknowledges, the very real distress of parents dealing with undiagnosed issues affecting their children, and that of the children themselves.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(a)(Fairness, Objectivity & Impartiality in Current Affairs) and Section 48(1)(b)(Harm and Offence), the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs (Section 4: Rules 1 & 2) and the BAI Code of Programme Standards (Principle 3 – Protection from Harm), the members have decided to reject the complaint.

In this regard:-

- The Forum noted that RTÉ states the Prime Time report set out to investigate what scientific evidence there was, if any, for the claim that the HPV vaccine was causing serious harm to a substantial number of those who received it. The broadcaster states that the programme makers' view was that if there was no evidence of such harm, it would be in the public interest to detail what it was, and if there was no such evidence, it would be in the public interest to state that that was the case.
- The Forum considered the complainant's statement that the report was in some way advertising the HPV vaccine. The Forum did not agree with the complainant in regard to this aspect of the complaint. In doing so, it considered the fact that the item included none of the characteristics of advertising, such as references to slogans, prices or advertising copy promoting the benefits of efficacy of a product or service.

- The Forum agreed that the broadcaster provided a wide range of views, facts and statements of the HSE, and other competent medical authorities. The Forum also agreed that both perspectives of the 'for and against argument' were presented and that RTÉ had sought scientific evidence, where relevant. In that regard, the Forum noted that RTÉ accurately reported the facts and statements of the HSE and other competent medical authorities and could not reasonably be construed as meaning that the report was in any way 'advertising'.
- The Forum noted that there was no deliberate misleading content and that reputable contributors from around the world had given their views on the issue.
- With respect to the allegation of mischaracterisation of reasons for REGRET refusing the HSE care programme, the Forum took into account Prime Time communications between the HSE and representatives of REGRET regarding discussions on the HSE care pathway and supports. The Forum agreed that this was dealt with fairly through their wide range of sources and evidence presented throughout the report.
- With respect to the allegation that Prime Time did not refer to the number of complaints about the vaccine across Europe, the Forum noted that the programmes editorial focus was on complaints to the HPRA, including an interview in which the HPRA spokesperson pointed out that those reports are sent to the European (EMA) database.
- The Forum also noted that although RTÉ acknowledges the very real distress of parents dealing with undiagnosed issues affecting their children, and that of the children themselves, they were of the view that this topic of public interest was covered fairly, impartially, objectively and accurately by Prime Time, and that the programme overall in its entirety and context was fair.
- In view of the above, the Forum did not agree that the programme infringed 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.

Complaint made by: Dr. David Barnwell

Ref. No. 11/17

Station:

RTÉ Radio One

Programme:

Today with Seán O'Rourke

Date:

23rd January 2017

1. Programme

The complaint concerns remarks by the presenter on 'Today with Seán O'Rourke', a current affairs programme broadcast from 10am to 12 noon each weekday morning. The complaint refers to an element of the introduction to the programme flagging in advance a discussion about the US president, 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(b)(offence and harm); the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs – (Section 4: Rules 4.1 and 4.2) and the BAI Code of Programme Standards – (Principle 5 – Respect for Persons and Groups in Society).

3. Summary of Initial Complaint to the Broadcaster

The complainant states that early in this programme the presenter referred to President Trump's 'henchmen' and 'henchwomen'. The complainant states that, although the presenter did not identify these people, the complainant believes it is clear that he was referring to Presidential press spokespersons, Mr. Sean Spicer and Ms. Kellyanne Conway.

The complainant found the use of the words 'henchmen' to describe the Press Secretary of the President of the United States, deeply offensive and ill-mannered. The complainant believes that this insult is part of the consistently biased and dishonest reporting which now characterises RTÉ's treatment of President Trump.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

RTÉ states that, having discussed this complaint at a team meeting which included the presenter of the programme, it concluded that no offence was meant. The presenter was simply expressing his awe at the alacrity with which President Trump's press team had operated and was attempting to convey the combative style adopted by the Press team. The broadcaster states that it is their aim to be balanced and fair in their coverage of events in the US and refers to the broadcaster's programme which previewed the Inauguration of the Trump presidency.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the producer of Today with Seán O'Rourke to the initial complaint.

The broadcaster states that the terms complained of were used to convey the confrontational, steadily defensive reaction to criticism or questioning of President Trump by loyal spokespersons such as Mr. Spicer and Ms. Kellyanne Conway, examples of which can be heard in the subsequent interview. The terms were a journalistically vivid and apt means to characterise loyal followers who could be trusted always to defend their leader to the hilt. No other meaning and no offence were intended.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(a)(Fairness, Objectivity and Impartiality in News Content) and Section 48(1)(b) (offence and harm), the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs – Section 4: Rules – Section 4: Rules 4.1, 4.2, and the BAI Code of Programme Standards (Principle 5 – Respect for Persons and Groups in Society), the members have decided to reject the complaint.

In this regard:-

- The Forum found that the use of the words 'henchmen' and 'henchwomen' were contained in the introduction setting out the agenda for the upcoming piece on President Trump.
- The Forum considered the words used were colloquial expressions used for people whose position requires them to defend those that they represent. The Forum was further of the view that listeners would have understood the meaning of the words in the context in which they were used within the programme i.e. to describe the robust defence by the spokespersons for President Trump, Mr. Sean Spicer and Ms. Kellyanne Conway, in relation to any criticism of President Trump.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act, 2009 or BAI Codes, in the manner specified by the complainant.

Complaint made by: Mr. Thomas A. Dowd

Ref. No. 12/17

Station:

RTÉ One

Programme:

The Late Late Show

Date:

16th December 2016

1. Programme

The complaint concerns 'The Late Late Show', which is a lifestyle/entertainment programme broadcast each Friday evening from 9.35pm. The complaint refers to an interview with Mr. Glen Hansard, musician, who spoke about his involvement with the organisation, Home Sweet Home.

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 6 (Protection of the Public Interest).

3. Summary of Initial Complaint to the Broadcaster

The complainant states that Mr. Hansard appeared on the programme on behalf of the Home Sweet Home organisation following the occupation by this group of Apollo House in Dublin, in a protest about homelessness. The complainant states that this occupation was illegal and he feels strongly that, as a national broadcaster, RTÉ should not be seen to collude in the commission of an offence or give a platform to anyone involved in the commission of any offence or illegality.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states that Mr. Hansard was not booked on The Late Late Show as a representative of Home Sweet Home, as suggested by the complainant. The broadcaster states that the programme in question featured musicians who had recorded songs for the 'As Heard on The Late Late Show' double album, which was released last year to raise funds for the St. Vincent de Paul. Mr. Hansard was one of those who features on the album and it was for that reason that he was booked to perform on the show.

The broadcaster maintains that Mr. Hansard requested to speak with the presenter on the show and, as he has a long history of philanthropy and support for charities such as SVP, RTÉ thought it a worthwhile interview to conduct.

While Mr. Hansard and his colleagues that occupied Apollo House did break the letter of the law, all parties accepted that it was done out of a genuine concern for the well-being of Dublin's homeless. As such, the order to vacate the building was delayed until January 11th 2017 and was fully complied with by those occupying the building. No outstanding legal issues remain and the case certainly highlighted the issues involved to a far wider audience than other less direct action. As such, the broadcaster believes it was a perfectly valid item for discussion on The Late Late Show.

4.2 Broadcaster's Response to BAI

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

The broadcaster states that the interview contained no incitement to crime, acknowledging that the Home Sweet Home initiative of "civil disobedience" included action likely to be illegal and not soliciting or encouraging similar action by others. As pointed out by the Executive Producer, Home Sweet Home in fact obeyed the judgement of the courts.

The broadcaster draws attention to a related broadcast on 24th February 2017. In keeping with The Late Late show policy of presenting its audience with a range of views, Councillor Mannix Flynn, primarily a guest on this edition of the programme to discuss his own life and times (but also known to be a critic of Home Sweet Home), was invited to discuss his opinion of this protest.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(b)(harm and offense) and the BAI Code of Programme Standards – Principle 6 (Protection of the Public Interest), the members have decided to reject the complaint.

In this regard:-

- The Forum found that the singer, Mr. Glen Hansard, was invited onto the programme to sing one of his songs from an album he had contributed to, in aid of St. Vincent de Paul. While primarily on the show to sing, Mr. Hansard was interviewed by the presenter afterwards and went on to explain his involvement with the group, Home Sweet Home – a group of volunteers assisting the homeless while occupying Apollo House in Dublin at that time.
- The Forum was of the view that given the time of year and Mr. Hansard's known work in aid of various charities, it was inevitable that the subject of his involvement with the group occupying Apollo House would feature in the show.
- Although Mr. Hansard stated that he was involved with the Home Sweet Home group, the Forum did not agree with the complainant that Mr. Hansard was invited onto the programme as a representative of the Home Sweet Home group. Mr. Hansard admitted that the occupation of the building, Apollo House, was illegal but justified it on the basis of the number of homeless people that could be housed there over the Christmas period.
- The Forum was also of the view that it is the prerogative of the broadcaster as to the choice of guest featured on a programme. The invitation to Mr. Hansard to appear on the programme was not, in the view of the Forum, an indication of the support of the broadcaster for any illegal action.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act, 2009 or BAI Codes, in the manner specified by the complainant.

Complaint made by: Ms. Geraldine Heffernan

Ref. No. 16/17

Station:

TV3

Programme:

Ireland AM

Date:

24th November 2016

1. Programme

The complaint concerns an item on 'Ireland AM', an early morning programme dealing with a range of topics, including issues pertaining to lifestyle and current affairs. The item related to an app which helps find the nearest location for Mass or the Sacrament of Reconciliation.

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).

2. Summary of Initial Complaint to the Broadcaster

The complainant states that she was deeply offended by this item on the 'Sindr' App which alerts believers to the nearest Mass or Sacrament of Reconciliation. The complainant found the piece to be mocking, sneering and totally disrespectful of the Catholic faith and to those viewers who are of this religion.

The complainant believes that the item in question was included in the programme for the sole purpose of mocking the Catholic faith. The mockery was directed in particular at the Sacrament of Reconciliation which was presented as an outdated and laughable practice. It was also a mockery of the Holy Mass with the presenters completely ridiculing the very idea that anyone might want to attend mass while on holidays abroad, thus displaying their own bigotry against the faith and showing no respect for those who do practice their Roman Catholic faith.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states that it was never its intention to cause offence or to upset viewers. During the 'What Caught Our Eye' segment of the programme, the presenter chose the Catholic App designed to help users find their nearest mass and confession services. Nicknamed "Sinder", a play on the popular dating app "Tinder", the name was no doubt chosen to generate publicity in the media worldwide. The broadcaster agrees that the playful nature of the app's name may have carried through to the presenter's conversation on this occasion, however, no insult was intended nor was there any intention to disrespect the Catholic faith.

4.2 Broadcaster's Response to BAI

The broadcaster states that this complaint arises out of a particular segment of this programme which is called 'What Caught Our Eye'. This is a segment that looks at unusual or bizarre stories that caught the presenter's attention in the newspapers that morning. This story was printed in that day's 'Irish Times' and many other daily newspapers and referred to an app which helps to find the nearest location for Mass. Many media commentators had dubbed the app 'Sinder', being the play on words on the popular dating app 'Tinder' and the presenter made it clear that this was the case. This play on words was used by the presenter simply to read out on-air. The broadcaster states that the presenters made it clear that the app was called 'The Catholic App' and was launched by the Archbishop of Edinburgh. The presenter then praised the App and even spoke of how her grandmother would be thrilled at the idea of something like this being available.

The broadcaster maintains that the story was a positive one about how the App was part of a growing trend of using technology in the Church to help and to attract congregations. This was clearly explained to the viewers. The broadcaster states that this was not an attack on the Catholic faith nor was there derision of the Mass or the Sacrament of Reconciliation. The broadcaster rejects the suggestion by the complainant that the piece displayed anti-Catholic bigotry, was mocking and totally disrespectful of the Catholic faith.

The broadcaster accepts that the presenters did refer to the 'Tinder' app and compared the two in a very light-hearted and jovial manner. However, this was not done in a mocking or derisory way. The broadcaster states that it appreciates that the item would not be to everyone's humour or taste and apologise for the upset caused to the complainant.

However, no offence or harm was intended and the broadcaster does not believe Principle 5 of the Code of Programme Standards was infringed.

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

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

In this regard:-

- The Forum found that the piece in question came under the segment “What Caught Our Eye” which features unusual items currently found in the media. The presenter introduced it by saying “you have all heard of ‘Tinder’... well try ‘Sinder’ – the Vatican’s new confession finder app...it’s not actually called ‘Sinder’ ...but you know my granny would have loved this.” The presenter then went on to say that the app was aimed at helping people find their nearest church to attend for confession and Mass.
- The Forum was of the view that the light-hearted banter that followed among the presenters, was meant in a jovial way and not aimed at offending any viewer of the Catholic faith.

Although the Forum would acknowledged that some viewers may have taken offence, it was of the view that the piece itself, would not cause undue offence such that an infringement of the Code of Programme Standards had taken place.

- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act, 2009 or BAI Codes, in the manner specified by the complainant.

Complaint made by: Mr. Joseph Carrick

Ref. No. 19/17

Station:

Newstalk 106FM

Programme:

High Noon

Date:

17th January 2017

1. Programme

The complaint concerns an interview on the programme, 'High Noon', which features a mix of lifestyle, entertainment, current affairs, news and interviews. The programme is broadcast each weekday from 12pm – 2pm. The complaint refers to an interview with Mr. Eamon Ryan, T.D., regarding the plight of Mr. Ibrahim Halawa, an Irish citizen incarcerated in Egypt.

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 during the interview, the presenter made the comment that "Ibrahim is part of a Muslim brotherhood family who are part of an attempt to overthrow the state of Egypt." The complainant believes that this statement was a misrepresentation of the truth and demonstrated an appalling standard of journalism. The complainant states that what the presenter failed to say was that Mr. Mohammed Morsi and the Muslim Brotherhood were democratically elected in 2012, by the people of Egypt and won over 51 percent of the vote. He also states that the presenter also failed to say that it was the Muslim Brotherhood that were overthrown a year later by remnants of the old government.

4 Broadcaster's Response

4.1 Broadcaster's Response to the Complainant:

Newstalk acknowledges that the complainant has raised some important points and more context was desirable in this piece. The broadcaster states that the contents of the complaint have been pointed out to the presenter and Newstalk are confident that he will be clearer in his presentation of any future treatments of the Mr. Halawa's story.

4.2 Broadcaster's Response to BAI

The broadcaster states that 'High Noon' is Newstalk's daily opinion-led talk show presented by Mr. George Hook. The broadcaster states that the programme regularly takes issues of interest to its listeners and explores these in greater detail, via the presenter, through debate and discussion. The broadcaster states that the presenter's personality is central to the tone of the programme and the audience would be familiar with his larger-than-life, gregarious and outspoken persona. They would also know that the programme makes a point of including input from guests, contributors and listeners (through text messages, telephone calls and social media) offering points of view alternative to those expressed by the presenter.

The broadcaster maintains that Deputy Eamon Ryan had just returned from visiting Mr. Halawa in Egypt and was well qualified to discuss the case in detail. The conversation between Deputy Ryan and the presenter was robust and did query the political motives of Mr. Halawa, but providing this questioning was an important part of the role of presenter as outlined in the BAI Code.

Newstalk does not believe that any accusation of misrepresentation of the truth or lack of fairness, objectivity or impartiality stands up when the piece is considered in its totality. Deputy Ryan provided an acceptable level of counter-argument and balance to the presenter on this issue. Newstalk also notes that on receipt of the initial complaint, the complainant was invited to appear on the programme with the presenter to discuss this issue. Unfortunately, the times did not suit the complainant.

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

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

In this regard:-

- The Forum noted that this was an interview with Mr. Eamon Ryan, T.D., on the reasons for his visit to an Irishman, Mr. Ibrahim Halawa, held in an Egyptian prison. The Forum also noted the style of the presenter, which is forthright and driven by a strong 'Devil's Advocate' approach to questioning. In that regard, the Forum found that the interview was robust and challenging, in line with the presenter's style and in line with audience expectations in respect of the programme and its presenter.
- The Forum also had regard to the discussion as a whole and although the presenter did make the comment highlighted by the complainant, Deputy Ryan countered that by making it clear that Mr. Halawa is not part of the Muslim Brotherhood. More generally, in the case of the current complaint, the focus of the interview was on the visit of Deputy Ryan to the Egyptian jail rather than an examination of issues relating to the political situation in Egypt. In that context, it did not cover a range of information in respect of the political situation in Egypt, such as those highlighted by the complainant. Therefore the Forum did not agree that the omission of information highlighted by the complainant led to an infringement of the Code.
- Having considered the programme as a whole, the approach of the presenter in the context of audience expectations and the style of the programme, the Forum found that following a robust exchange of views, those of Deputy Ryan provided a suitable counter-balance to those of the presenter.
- The Forum also noted in the response from the broadcaster that Newstalk invited the complainant onto the programme to discuss the subject further with the presenter. While the time did not suit the complainant, the offer from the broadcaster remains in place and the Forum found that this demonstrated fairness to the complainant.
- 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 and Impartiality in News and Current Affairs, in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Ms. Maura McCaughey

Ref. No. 22/17

Station:

RTÉ Radio One

Programme:

Today with Seán O'Rourke

Date:

11th January 2017

1. Programme

The complaint concerns 'Today with Seán O'Rourke', which features a mix of lifestyle, entertainment, current affairs, news and interviews, broadcast each weekday from 10am – 12 noon. The complaint refers to an interview with Dr. Peter Boylan, Consultant Obstetrician, on the occasion of his retirement.

2. Complaint Category

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

3. Complaint Summary

The complainant states that at the outset of the piece dealing with the Eighth Amendment, Dr. Boylan said "that [the Eight Amendment] really needs to be repealed and we need to introduce legislation." The complainant states that Dr. Boylan's view was then clear – he wants to see the Eighth Amendment removed from the Constitution so that abortion legislation can be introduced.

The complainant believes that in order to comply with Rule 4.22 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, someone else should have been included in the programme to give their views on this issue. Alternatively, the presenter, should have adopted this position and challenged Dr. Boylan through the use of "forceful questioning". The complainant states this did not happen and as a result, the audience did not received the benefit of a "wide variety of views."

The complainant maintains that Dr. Boylan was given free rein to make comments that were unchallenged by the interviewer. The complainant cites a number of examples from the interview:

- “Nobody should judge couples who make a decision to have a termination of pregnancy”;
- “They respected women’s decisions.”
- “Inevitable what happens in these circumstance where it’s not available is that you get back street abortions and you get septic shock, women dying and so on.”
- “Countries such as France, Spain, Italy, Germany, Scandinavian countries, we regard these as very civilised and we look to them in many cases particularly Scandinavia for their social policy....”

The complainant states that by allowing these comments to go unchallenged, Dr. Boylan was able to reinforce negative stereotypes about ‘pro-life’ supporters. The complainant further states that Dr. Boylan was not challenged at all on the fact that Ireland’s record of caring for women in pregnancy surpasses that of most countries in Europe. There was also no challenge regarding what the complainant sees as some of the horrific effects of abortion in Scandinavian countries, such as Denmark, where so few babies are born with Down Syndrome due to prenatal testing that invariably lead to abortions.

The complainant states that Dr. Boylan mentions meeting people from other jurisdictions, including Canada, who had differing views. The complainant states that he was not asked about what the complainant states is Canada’s record of allowing babies to be born alive and left to die after botched abortions. The complainant believes that the lack of forceful questioning led to an interview where the audience was wholly deprived of receiving a “wide variety of views.”

The complainant refers to decisions taken by the BAI in relation to a 2014 and a 2015 complaint in support of the view that it is the role of the presenter to ensure an “adequate range of perspectives are presented...” in relation to comments on a Referendum.

The complainant states that the presenter referred to the term “fatal foetal abnormalities” and noting this term remarked, that in 1983, “I don’t remember it being in the currency of the conversation at the time”. The complainant states that there was no acknowledgement that this term is not a recognised medical term or the fact that the HSE recently used the term “life-limiting conditions” throughout their newly issued Guidelines.

The complainant states that, instead, Dr. Boylan was allowed to say that the reason why the term was not widely used in 1983, was due to the fact that ultrasound scans were not as good as they are now.

4 Broadcaster's Response

4.1 Broadcaster's Response to the Complainant:

The broadcaster states that Dr. Boylan was asked onto the programme on the occasion of his retirement as an obstetrician, a newsworthy event give his recognisable public profile.

The broadcaster states that the interview with Dr. Boylan was to mark the occasion of his retirement. It was not a discussion of the rights and wrongs of abortion in a variety of countries across the globe. The broadcaster states that it would assume that Dr. Boylan would claim some credit for Ireland's record of caring for women in pregnancy. The complainant instances the use of the word 'fatal foetal abnormality' but the presenter did bring up the use of language during the interview and, in the particular instance referred to - referencing the 1983 Referendum - he was stating a matter of fact, simply that the term was not heard at that time.

The broadcaster draws attention to the complainant's reference to a BAI decision that mentions a Referendum having being called but this interview did not take place in that context. It's also worth noting that the use of text messages during the programme, were from perspectives critical of Dr. Boylan.

The broadcaster states that the complainant refers to 'forceful questioning'. The broadcaster maintains that Dr. Boylan was on-air for nineteen minutes approximately. For just over eight of those minutes the Eighth Amendment and issues surrounding it were discussed. The broadcaster states that during that eight minutes, the presenter:-

- Put it to Dr. Boylan that it was not enough to say that people were free to follow their religious practice;
- Asked him who spoke for the unborn;
- Asked him how he arrived at the position he was taking;

- Asked about the role of the obstetrician in advising a woman undergoing a difficult pregnancy - instancing a woman who had appeared on another radio programme and said that she had been pressurised by the medical profession;
- Pointed out that Dr Boylan had advised the Labour Party on the issue;
- Asked what limitations he would put in place if the Eighth Amendment were repealed;
- Questioned the doctor's position on 'social abortion';
- Argued that much of the language surrounding the issue was disputed;
- Questioned whether the doctor believed 'social abortions' should take place in this country, following up by pointing out that the doctor's opinions did have significance, given his involvement in the debate historically.

The broadcaster states that the non-exhaustive list above, of the challenges raised in the section of the interview about the Eighth Amendment, demonstrates that this interview was detailed, robust and revealing and that 'forceful questioning' as required by Rule 4.22 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, can be completely delivered, as it was on this occasion, without an aggressive or antagonistic tone.

With respect to Rule 4.17 of the Code, the broadcaster notes that while the term 'fatal foetal abnormalities' has been contested, the complainant offers no evidence that it is objectively inaccurate within the terms of this section of the Code. Insofar as the term is contested, in the context of the interview being about Dr. Boylan's career and not simply or solely the topic of the Eighth Amendment, this was not an issue which required to be raised. The broadcaster notes in relation to this that the Broadcasting Authority of Ireland's consistent support across its decisions of a broadcaster's independent editorial right to choose topics or stories for coverage and the editorial perspective on those subjects.

4.2 Broadcaster's Response to BAI

The broadcaster refers to the response by the Producer of 'Today with Seán O'Rourke' to the initial complaint.

In addition, the broadcaster makes the following submission in relation to the subsequent points raised by the complainant:

- The complainant states in her response to the Producer's reply, that "at no stage did [the interviewer] suggest that this is not a religious matter." This is incorrect. The interviewer in fact put the point to Dr. Boylan that it was not solely a question of religious faith but of 'speaking for the unborn child'. He said: "Opponents of abortion will say, 'Look, who's to speak up for the unborn child?'. And that's why, I suppose they would say, it's not just a question of saying, you know, 'People don't have to follow their – or they can be free to follow their own religious practice'."
- The interviewer's accurate and impartial reference to public opinion was to opinion polls which evidence public views on the topic, not to the numbers at 'pro-life' or 'pro-choice' marches. Nor was it a statement of personal views; the data is in the public domain.
- The editorial perspective of this interview was to cover the main issues arising from Dr. Boylan's career as an obstetrician and not to discuss a particular case featured on a different radio programme.
- Dr. Boylan was in fact questioned on 'social abortion', to which he responded: "That [provision of 'social abortion'] I think is a matter for the Oireachtas having listened to an awful lot of opinions to decide upon." He also stated: "Now whether the Irish people would accept [provision of abortion on request up to a specified number of weeks] or not is a matter to be put to the Irish people, I think. My own personal view would not really hold much water if you like because I'm just one individual I'd only have one vote."
- The interviewee's comment that a couple who decide to terminate a pregnancy should not be judged, made no reference whatsoever to the 'pro-life' movement.
- In respect of Rule 4.17 and accurate terminology, the broadcaster states that the HSE National Standards for Bereavement Care Following Pregnancy Loss and Perinatal Death referred to by the complainant state:

"Any terms used in this area are subject to conceptual and practical challenges inherent in defining such terms (Wilkinson et al. 2012). In respect of this, the Standards will use the term 'life-limiting condition', a term consistent with the National Policy on Palliative Care for Children with Life-Limiting Conditions (DOH,

2009). However, it is important to note that although the term 'life-limiting condition' is used, the aim of the Standards is to provide bereavement care to parents who would prefer to use other terms to describe their experience and who would not agree with the use of the term 'life-limiting condition'. Preference for different terms from parents or health professionals [broadcaster's emphasis] should not in any way impact on the type or quality of bereavement care that is provided".

The broadcaster claims that it does appear, particularly from her submission to the BAI, that the complainant would have wished the interviewer to adopt a position closely reflecting her own on the topic, effectively a partisan position which is of course precluded by Rule 4.22 of the Code.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1) (a) (Fairness, Objectivity and Impartiality in News Content) and the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs – Section 4: Rules – (Section 4: Rules 4.17, 4.22), the members have decided to reject the complaint.

In this regard:-

- The Forum found this interview with Dr. Peter Boylan on the occasion of his retirement, to be wide-ranging and dealt with his career to date and how his views had changed on various medical issues over the years. He also spoke of the difficulties associated with any change in the area of medicine.
- The Forum was of the view that the interview was mainly about his retirement, however, given the timing of the interview and Dr. Boylan's profession as an obstetrician, it was inevitable that some reference would be made to the Eighth Amendment to the Irish Constitution.
- The Forum found that when questioning Dr. Boylan on the issues around the Eighth Amendment, the presenter did ask probing questions such as, 'who would speak for the unborn?' and queried Dr. Boylan's position on abortion. The presenter also provided balance when he referred to an interview on The Ray D'Arcy programme where a woman said she had been pressurised by the medical profession when going through a difficult pregnancy.

- The Forum noted the complainant's challenge in relation to the presenter's use of the term "fatal foetal abnormalities" and would acknowledge that the HSE now uses the term "life limiting conditions." However, the Forum was of the view that the term "fatal foetal abnormalities" is commonly used and widely understood by the audience and therefore saw no requirement to challenge it.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act, 2009 or BAI Codes, in the manner specified by the complainant.

Station:

RTÉ Two

Programme:

This is Ireland with Des Bishop

Date:19th December 2016**1. Programme**

The complaint concerns 'This is Ireland with Des Bishop', which is a satirical programme over four episodes broadcast at 10pm. The complaint refers to a discussion on sex education as well as the use of coarse and offensive language.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity & impartiality in current affairs); the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs – Section 4: Rules 4.1, 4.2, 4.3, 4.17, 4.19, 4.20, 4.22, 4.23, 4.25 and 4.26 and Section 48(1)(b)(harm & offence) the BAI Code of Programme Standards – Principles 1, 2, 3, 4, 5 and 6.

3. Summary of Initial Complaint to the Broadcaster

The complainant states that there was excessive use of offensive references and coarse language, even taking the context of the broadcast into account. The complainant cites a number of examples, including that part of the programme when, explaining the difference between 'Millennials' and 'Generation X' persons, the presenter stated, "If you jerked off to Winona Ryder, you're Gen X" and "they tell tax to f*** itself", "We know what position Enda's taking and it isn't doggy style." There was also repeated and excessive use of the word 'sh**'.

The complainant states that offence strayed into the area of harm, when the presenter lampooned An Taoiseach's concern about harmful pornography. The complainant states that the point being that pornography clearly does have harmful effects, as seen from clinical practice and empirical research.

The complainant states that the presenter casually makes what it considers to be several false claims, including that abstinence-only education has been found to be completely ineffective.

The complainant states that the presenter also promoted, in a completely one-sided way, various quasi-ideological positions, including safe sex practices for those under 18 years of age. The complainant states that the presenter also approvingly cited research by a condom manufacturer, as to the reliability of condoms.

The complainant states that by discussing these matters, and by unfairly and misrepresenting and attacking the arguments of interested parties, such as the organisation Pure in Heart, the programme strayed into the news and current affairs area.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster notes that due to some confusion with another complaint about this programme, the initial response from the broadcaster to this complainant did not deal comprehensively with his complaint. That response referred mainly to the topic of abortion which was not the subject of this complaint.

4.2 Broadcaster's Response to BAI

The broadcaster states that this was a satirical comedy programme, in the long tradition of such programmes, recognised and understood as such by audiences who expect to hear an opinionated point of view on topics of the day, using exaggeration, hyperbole, rude language and other comic techniques. The broadcaster asserts that the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs does not apply in such an editorial context and that were it to do so, this would represent an unacceptable limitation on free expression.

The broadcaster states that in addition to the fact that the presenter is well-known for his trenchant comic commentary on Irish social and cultural life and robust language, viewers were informed before the programme of the possibility of offence, the continuity announcer stating:

“For now, This Is Ireland with Des Bishop, complete with strong language.”

The broadcaster states that the programme also carried the ‘Mature Audience (MA)’ warning to audiences.

The broadcaster states that this programme included a segment which looked at issues and debates around sex education, the increase in sexually transmitted diseases, the increasing prevalence of pornography and the approach of the Irish Government, Irish education system and other parties to these matters. The broadcaster states that these matters have received a significant amount of prior media attention in Ireland, and are appropriate for inclusion in a satirical programme like this.

The broadcaster states that the segment commenced with a reference to the statement by An Taoiseach that a national debate is needed about the pernicious influence of pornography, and included some references to the high level of pornography consumption in Ireland, and the highly impactful influence of pornography on teenagers. The segment goes on to explore the current state provision of sex education in Irish schools, against this backdrop of the influence of pornography. It quotes the Department of Education and Skills assessment that the majority of Irish schools showed weakness in their plans for teaching sex education in the Senior Cycles – and states that schools are permitted to bring in external third-party bodies, which are unmonitored, to provide sex education.

The broadcaster maintains that as part of this segment, the host said that the organisation, Pure in Heart, claim to have given presentations to over 125,000 Irish school children, and to promote heterosexual marriage and abstinence-only education; the broadcaster's understanding is that these statements are correct.

The broadcaster states that the host contrasts the figures for the failure levels of condoms quoted in 'On Track' with those of a major condom manufacturer. The broadcaster states that the presenter stated accurately, that 'On Track' also says that sex before marriage leads to guilt, shame, lost innocence and bad reputations – but he goes on to say that organisations that use 'emotional manipulation' are a greater source of guilt, shame and bad reputations.

The broadcaster states that the host then refers to the recent increase in Sexually Transmitted Infections (STIs) in Ireland, interviewed a doctor from an Irish STI clinic and made comparisons with other countries' sex education policies. The piece concluded with recent changes to the law on pornography, and the large numbers of porn companies who are tax resident in Ireland.

The broadcaster maintains that the segment is framed in the context of An Taoiseach's concern at the influence of pornography on the young, and the Department of Education and Skills assessment of 'weakness' in the State's provision of sex education, the different approach of other European states to these matters, and the statistical rise in STIs in Ireland.

The broadcaster states that as a satirical piece, it attempted to focus on (and find irony in), some of the inconsistencies, contradictions, and perceived failings of the actions of key players in this debate. As a programme on RTÉ Two, which has a more irreverent approach to its audience, the satire was delivered in an appropriately acerbic manner.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(a)(Fairness, Objectivity and Impartiality in News Content) and Section 48(1)(b)(harm and offence), the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs – Section 4: Rules – Section 4: Rules 4.1, 4.2, 4.3, 4.17, 4.19, 4.20, 4.22, 4.23, 4.25 and 4.26 and the BAI Code of Programme Standards – Principles 1,2,3,4,5, and 6, the members have decided to reject the complaint.

In this regard:-

- Having reviewed the programme, the Forum was of the view that this complaint should not be considered under the BAI's Code of Fairness, Objectivity and Impartiality in News & Current Affairs. While noting that recent news events were the driver of the content, overall, the Forum considered the programme to be a satirical piece. For this reason, the complaint was considered solely with reference to the BAI Code of Programme Standards.
- The Forum noted that this programme was hosted by Mr. Des Bishop, comedian and satirist and covered various topical issues, using his well-known comedic style. The Forum also noted a warning that the programme contained strong language, was provided prior to the start of the programme. It also carried a 'Mature Audience' (MA) warning and was broadcast well after the watershed. The programme was also broadcast on a channel aimed at younger audiences and in a time slot when programmes containing adult and sometimes offensive content may be broadcast.

- In that context, the Forum was of the view that this was an irreverent look at topical issues in the media over the past week, presented in a satirical fashion and typical for the time slot and the channel. Accordingly, the audience would expect that the content could contain strong language and comic techniques.
- In view of the above, the Forum did not agree that the programme infringed 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.

Station:

RTÉ One

Programme:

RTÉ Nine News

Date:

5th February 2017

1. Programme

The complaint concerns the Nine O’Clock News, which covers news and current affairs items at 9pm each evening. The complaint refers to a news report on the comparison of domestic violence reporting statistics in Northern Ireland and in the Republic.

2. Complaint Category

The complaint is submitted under 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 & Impartiality in News and Current Affairs (Section 4: Rules 4.17 and 4.19) and the BAI Code of Programme Standards – Principles 3 (Protection from Harm) and 5 (Respect for Persons and Groups in Society).

3. Summary of Initial Complaint to the Broadcaster

The complainant states that the report in question showed images of two female victims in a domestic setting, and a poster showed another. He also states that it featured footage of a Women’s Aid office with a helpline worker and interviews with Ms. Orla O’Connor of the National Women’s Council and Ms. Margaret Martin of Women’s Aid. Significant under reporting of domestic violence by women was mentioned.

The complainant states that the images showed no male victims, nor was there any interview with an agency which supports male victims, though it is well-known there are many male victims. The complainant states that it may be the case that offences are much under-reported and that women find it difficult to report, but this is more so the case for male victims as the NCC report of 2005 records.

While noting that the broadcast included reference by Women’s Aid about the need in their view for investment in the IT architecture and infrastructure that supports calls and reports all that data, the complainant states data is urgently needed for male victims and this should have been highlighted.

4.17 The broadcast was not accurate.

The complainant states that the broadcast was inaccurate by omission: male victims were neither shown on film nor mentioned, though they constitute a significant proportion of all victims. The complainant states that the use of film showing female victims only has a powerful effect. He states that there was no attempt at balance and the message conveyed was overwhelmingly clear: women are the sole victims of domestic violence. This is simply false.

4.19 The broadcast was not objective or impartial.

The complainant states that there was no mention of male victims. He states that this is misleading in that the percentage of male victims is significant. In addition, no male support service was interviewed or mentioned while two groups for women were, which adds to the perception that there are no male victims or the number is insignificant.

Principles 3 & 5 of Code of Programme Standards

The complainant states that a whole gender, the male gender, was simply excluded from consideration. This constitutes discrimination. Furthermore, it can be inferred/insinuated from the exclusive focus on female victims that men are the perpetrators and, therefore, solely responsible for domestic violence. This casts a further slur on the male gender.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

RTÉ states they accept the point that there was no mention of male victims of domestic abuse in the report, and in hindsight it should have been mentioned. However, they don't accept that this omission means that the report was inaccurate or unbalanced. The broadcaster states that the point of the report was the discrepancy between the reporting of domestic abuse in the North and the Republic - and they believe that this was the message that came across. Although, women are not the sole victims, available statistics show that women are much more likely than men to be the victims of domestic abuse, that women are more likely than men to suffer physical abuse, and are much more likely than men to require hospital treatment.

RTÉ accepts the point that under-reporting by male victims is a major problem, as is the lack of services and support groups, and this is something that RTÉ hopes to come back to in the future. However, the focus of this report was the discrepancy between reporting in the North and the Republic.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response of the Editor to the initial complaint above. RTÉ further supports the acceptance by the Editor that an explicit acknowledgement of the existence of male victims of domestic violence, perhaps visually in the context of the report's editorial focus, would have contributed to a fuller view, but that the absence of such a reference did not result in the report being inaccurate, unfair or lacking impartiality.

In addition:

Rules 4.17 and 4.19:

RTÉ states that the broadcast was accurate in its editorial purpose of reporting "concerns about how Gardaí are recording domestic violence" in the context of the comparison of domestic violence reporting statistics in Northern Ireland and in the Republic. RTÉ notes the editorial freedom of broadcasters to choose the stories which it wishes to cover and the perspective on those topics.

The broadcaster states that the inclusion of interview excerpts with spokespersons for the National Women's Council and Women's Aid accurately and impartially reflected those organisations' long experience and expertise in the area. Their inclusion could not reasonably be misleading or result in any misunderstanding in terms of male victims of domestic violence.

Principles 3 and 5:

The broadcaster states that the use of terms such as "domestic violence incidents" and "domestic violence victims" did not exclude males from consideration. They state that the broadcast did not misrepresent any group in society or represent any group in an inappropriate or unjustifiable manner. Nor did it stigmatise or support or condone discrimination against or incite hatred of any section of the community, including men, or in any way include harmful content. It may also be noted that the complainant appears to assume that the perpetrators of domestic violence on women are exclusively male; this is not the case.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also 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 & Impartiality in News and Current Affairs (Section 4: Rules 4.17 and 4.19) and the BAI Code of Programme Standards – Principles 3 (Protection from Harm) and 5 (Respect for Persons and Groups in Society), the members decided to reject the complaint.

In this regard:-

- The Forum noted that this was a news report on the comparison of domestic violence reporting statistics in Northern Ireland and in the Republic. The complainant states that the images showed no male victims, nor was there any interview with an agency which supports male victims, though it is well-known there are many male victims. The Forum was of the view that the focus of the report was not on gender balance but primarily about the discrepancy between the reporting of domestic violence in the North and the Republic.
- In that context, the Forum noted that in the broadcaster's response, RTÉ accepted the complainant's point that there was no mention of male victims of domestic abuse in the report, and in hindsight it should have been mentioned. However, the Forum agreed that in its entirety the piece dealt with the statistics available on the issue.
- The Forum was also of the view that the report was presented in a factual and objective manner and was accurate in its editorial purpose of reporting. The Forum noted that the broadcaster retains editorial decision on what stories it covers and their perspective on those topics.
- The Forum agreed the broadcaster could possibly broaden its stock footage to ensure that it is gender balanced when dealing with issues such as domestic violence. The Forum were of the view that a male organization being named may have been welcomed by some audience members but, overall, the report was not misleading in terms of male victims and domestic violence.

- In view of the above, the Forum did not agree that the programme infringed 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 was rejected.

Station:

RTÉ Radio 1

Programme:

Today with Seán O'Rourke

Date:

24th January 2017

1. Programme

The complaint concerns 'Today with Seán O'Rourke', which is a mid-morning current affairs magazine programme broadcast each weekday morning from 10am to 12 noon. The complaint concerns the proposed sexual consent legislation.

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)(harm & offence); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.17 and 4.21) and the BAI Code of Programme Standards) - Principles 3 (Protection from Harm) 5 (Respect for Persons and Groups in Society) and 6 (Protection of the Public Interest).

3. Summary of Initial Complaint to the Broadcaster

The complainant refers to a discussion on the proposed legislative definition of consent in cases of rape or sexual assault. The complainant states that the broadcast focussed on female complainants only with the use of words such as 'she' to describe complainants and with examples of actual cases featuring only female victims. The complainant states that the interviewer did not ask questions that would restore balance, but allowed the interviewee an unchallenged platform. The complainant states that men do suffer as victims of rape or sexual assault, but listening to the broadcast gave the untruthful impression that all complainants are female, with the corresponding impression that males feature only in the role of the accused.

The complainant states that the approach taken by RTÉ appears to discriminate against men by giving the false and misleading impression that they are never victims and that this change in the law affects women only.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states during the interview with Senior Law Lecturer, Mr. Tom O'Malley, the interviewee consistently used generic terms in relation to consent: 'the complainant', 'a person', 'the accused person', 'people who are suffering from mental incapacity', 'children' and 'a child'. The term 'she' was in relation to a ruling by a judge who was asked by the D.P.P. to clarify the law in cases where a man charged with rape claimed the woman agreed to sex.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response of the Producer of Today with Seán O' Rourke to the initial complaint above and further states:

Rules 4.1 and 4.2

The broadcaster states that the language used in the discussion was consistently gender-neutral, clearly including the interests of all potential victims or concerned parties. Occasional references to gender-specific cases did not undermine the impartial presentation of the legislation. The broadcast was fair, accurate, impartial and objective.

Rule 4.17

The broadcaster states that the complainant has indicated no inaccuracy whatsoever in the broadcast. The 'impression' he formed in relation to male victims of consent-related offences is entirely subjective.

Rule 4.21

The broadcaster states that this was a current affairs discussion, not news. Insofar as Rule 4.21 applies, the interviewer expressed no view whatsoever and, again with occasional necessary exceptions by way of real-world illustration, also used gender-neutral language in common with the interviewee.

Principle 3

The broadcaster states that there was no implication that males are not covered under the proposed legislation.

Principle 5

The broadcaster states that nothing in the gender-neutral description of the proposed legislation could possibly have created the impression that it excluded males as potential victims of consent-related offences or could reasonably be found to discriminate against or stigmatise men as a group.

Principle 6

The broadcaster states that there was no 'impression' given or created that the proposed legislation did not apply to men, no suggestion that men enjoyed less legal protection, no incitement to crime against men or any other group.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48(1)(b)(harm & offence); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.17 and 4.21) and the BAI Code of Programme Standards) - Principles 3 (Protection from Harm), 5 (Respect for Persons and Groups in Society) and 6 (Protection of the Public Interest), the members decided to reject the complaint.

In this regard:-

- The Forum noted that this was an interview concerning proposed sexual consent legislation. The complainant states that the broadcast focused on female complainants only, with the use of the pronoun "she" to describe complainants and examples of actual cases featured only female victims.
- Having reviewed the programme, the Forum was of the view that the language used in the discussion was consistently gender-neutral and clearly included the interests of all potential victims or concerned parties. The Forum agreed that the interviewee, Senior Law Lecturer Mr. Tom O' Malley, consistently used phrases such as, 'a person', 'the accused person', and 'a child'.
- In that context, the Forum noted that the term "she" was referenced in relation to a court case ruling. The Forum agreed that this related to a specific case but in the context of the whole interview, the use of this pronoun, "she", did not undermine the impartial presentation of the legislation.

- The Forum noted that the broadcaster, Mr. Seán O' Rourke, is an experienced presenter and there was no deliberate misleading during the interview.
- In view of the above, the Forum did not agree that the programme infringed 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 was rejected.

Complaint made by: Ms. Nóirín Callanan

Ref. No. 44/17

Station:
RTÉ Radio 1

Programme:
Countrywide

Date:
11th February 2017

1. Programme

The complaint concerns 'Countrywide', which is a programme featuring events, people and happenings from communities, towns and villages across the country. It is broadcast each Saturday morning on RTÉ Radio 1 from 8am to 9am.

2. Complaint Category

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

3. Summary of Initial Complaint to the Broadcaster

The complainant states that she was shocked to hear what she considered to be offensive comments made by a contributor to this programme when dealing with a lady who wanted to boost her self-esteem. The contributor is involved in providing courses in etiquette.

The complainant states that the contributor requested the lady to walk around the room while he watched her and then said "you're well-endowed in the bust....has to be said. If you stand up too straight, you might knock somebody over." The complainant believes that by allowing this content to be broadcast, RTÉ implies that it is perfectly acceptable for this person to use derogatory comments about the size of the lady's breasts. The complainant claims that this man offended the dignity of any lady who is well-endowed as he suggested that they should not stand up straight. The complainant states that this implies that breasts should only be a certain size to be acceptable in society. The complainant believes that by mentioning on-air that courses on etiquette are run by this contributor, the broadcaster is implying that his behaviour is acceptable in polite society.

The complainant states that the word 'etiquette' is defined in the Oxford Dictionary as "decorum, propriety...observance of the formal requirements governing behaviour in polite society... decorum suggests dignity and a sense of what is becoming or appropriate for a person of good breeding: a fine sense of decorum." The complainant questions whether the contributor's comments conform to the meaning of the word 'etiquette.' The complainant further questions whether the claim that the comment was meant to put the lady at ease, is acceptable. The complainant believes that if the comment was made in this lady's workplace, it could be seen as sexual harassment. The complainant also questions if this comment would be acceptable if used by some teenage boys on a bus about a girl who just got on the bus. The complainant states that for a man in a position of power to be allowed to make derogatory comments which the complainant states were highly insulting to all women. The complainant believes this is body shaming at its worst.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states that the lady in question wanted to take an etiquette course to boost her self-esteem and confidence. In the case of this report, the subject was deportment and poise, and not the full gambit of what might be covered by the term "etiquette."

The broadcaster states that the man who made the comment is both a well-known and respected coach, and expert in poise and deportment, working as he does for one of the biggest model agencies in Ireland. There is no doubt that his manner is very bright, chatty and full of little jokes. Clearly, this is his way of relaxing his clients, putting them at ease, and we have to assume that, with his track record, he knows what he is doing. The broadcaster described the lady as 'a fine looking woman', on meeting her. His next comment, on asking her to walk up and down, was to say "You're not at Leopardstown races..." meaning that she needed to slow down, not that she was like a horse. This established the tenor of this contributor's commentary. Thereafter followed the piece objected to, which in full is:

"Confidence is all about keeping your eyes up and your head up... You're well-endowed in the bust – has to be said- if you stand up too straight you might knock somebody over...and I mean that with respect..."

The broadcaster states that this was followed up by full-hearted laughter from the lady, which the reporter edited much shorter in the broadcast.

The broadcaster states that there is not the slightest indication from the lady involved, or the other women present, that this comment was either intended to be, or taken as derogatory, demeaning, offensive, belittling, or, even, plain rude. The broadcaster cannot see how these comments, in the presence of two confident adult women, could be likened to body shaming, which is a serious problem for adolescent girls/young women. As a programme that goes out of its way to use female contributors and reporters, women farmers and entrepreneurs and not to exclude women by overdue attention to what could be regarded as “male” topics, the broadcaster is particularly upset with any suggestion that it condones body shaming.

4.2 Broadcaster’s Response to BAI

The broadcaster refers to the response by the Producer of Countrywide to the initial complaint.

The broadcast topic was deportment, which naturally has a physical focus; the comment objected to, was therefore pertinent to the editorial context (in which the programme guest’s participation was completely voluntary). The broadcaster states that it was neither ‘mocking’, ‘lewd’, ‘derogatory’, nor ‘harassment’ but must be seen in its context. Transliterating it to other scenarios – such as the suggested ‘bus’ or ‘workplace’ – is not relevant to the actual broadcast.

The broadcaster notes that, as indicated by the Producer in his reply, the laughter following the comment is not from ‘some woman in the background’, as alleged by the complainant, but from the lady in question.

It may also be noted that the lady’s final comment was:

“I’ve enjoyed it, I feel already I have benefitted.”

The broadcaster states that the complainant does not indicate the manner in which a comment on physical appearance in the context of a deportment lesson, offends any community standard.

The broadcaster states that transposing the comment into other social contexts (including a scenario imagining a male as the object of comments completely unrelated to deportment), in which references to physical appearance could be (unlike the one broadcast) malign or designed to cause discomfort or worse, the broadcaster states that there is no evidence of a breach of Principle 1 of the code. Neither was there any lack of respect for any person or group in society.

The broadcaster states that the programme guest was treated with friendly professionalism in a context in which she had requested observations on her physical deportment. The feedback of the deportment teacher was directed towards her as an individual and for her benefit, without reference to any other person or social group.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section (1)(b)(Harm and Offence) and the BAI Code of Programme Standards – Principle 1 (Respect for Community Standards and Principles 5 (Respect for Persons and Groups in Society), the members have decided to reject the complaint.

In this regard:-

- The Forum noted that the complaint refers to comments made by a contributor to the programme when dealing with a lady whom he described as “well-endowed.” The contributor stated:-

“Confidence is all about keeping your eyes up and your head up....You’re well-endowed in the bust – has to be said- if you stand up too straight you might knock somebody over....and I mean that with respect.”

- The Forum found that although the complaint refers to the issue of offensive comments made by the contributor about the guest’s self-esteem, this was not the overall nature of the piece. The Forum was of the view that the light-hearted banter between the contributor and the guest, was meant in a jovial way, with no offence intended. The Forum noted that the guest herself did not appear to be offended and laughed at the comment highlighted by the complainant.

The Forum also noted that the contributor immediately followed this comment by stressing that he did not mean any disrespect. Similarly, at the end of the show, the lady said, "I've enjoyed it, I feel I have benefitted."

- The Forum found that the contributor's comments may been considered lewd and in poor taste by some listeners but it was of the view that in the context of the item overall, the comments were not unduly offensive.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act, 2009 or the BAI Code of Programme Standards, in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Station:
RTÉ One TV

Programme:
Nine News

Date:
5 February 2017

1. Programme

The complaint concerns 'RTÉ's Nine News', which is a nightly news and current affairs programme which airs each night. The complaint concerns a report examining the higher numbers of reported cases of domestic violence complaints in Northern Ireland compared to the Republic.

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)(harm & offence); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.17 and 4.21) and the BAI Code of Programme Standards) Principles 3 (Protection from Harm) 5 (Respect for Persons and Groups in Society) and 6 (Protection of the Public Interest).

3. Summary of Initial Complaint to the Broadcaster

The complainant refers to a news report on figures for the number of reported cases of domestic violence which he states focussed entirely on female victims; giving the false impression to viewers that there are no male victims of domestic violence. The complainant states that, in doing this, the programme was doubly unfair because it left in his opinion only the silent presumption that males feature in domestic violence as perpetrators.

The complainant states that male victims suffer disproportionately from lack of support and from unfair public perception. He states that statistics show that men are far less likely to report domestic violence than women. The complainant states that, given that this item suggested under-reporting in the Republic, it would seem especially unfair to airbrush out the heavily under-reported male victims in this context. He states that some statistics show that there are similar numbers of male and female victims and men have suffered assaults, whose seriousness is at the top end of the scale.

The complainant states that the programme had in his opinion the effect of reinforcing the difficulties experienced by male victims, when it would have cost nothing to have been even-handed. He states that the approach taken by RTÉ appears to discriminate against men by giving the false and misleading impression that they are never victims.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states the issue of domestic abuse, and the reporting of it, is very complex and that there are different types of abuse and that men as well as women are victims. The broadcaster accepts that there was no mention of male victims of domestic abuse in the report and states, in hindsight, it should have been mentioned.

The broadcaster does not accept that this was 'airbrushing, or that the report was inaccurate or unbalanced. The point of the report was the discrepancy between the reporting of domestic abuse in the North and the Republic and that was the message that came across. Available statistics show that women are more likely than men to be the victims of domestic abuse, that women are more likely than men to suffer physical abuse and are much more likely than men to require hospital treatment.

The broadcaster accepts that under-reporting by male victims is a major problem as is the lack of services and support groups. However, the focus of this report was the discrepancy between reporting in the North and the Republic, which does apply to male as well as the many more female victims.

4.2 Broadcaster's Response to BAI

RTÉ supports the acceptance by the Editor that an explicit acknowledgement of the existence of male victims of domestic violence, perhaps visually in the context of the report's editorial focus, would have contributed to a fuller view, but that the absence of such a reference did not result in the report being inaccurate, unfair or lacking impartiality.

In addition:

Rules 4.1, 4.2, 4.17 and 4.21

The broadcaster states that the item was accurate, impartial and objective in its editorial purpose of reporting “concerns about how Gardaí are recording domestic violence” in the context of the comparison of domestic violence reporting statistics in Northern Ireland and in the Republic.

It may be noted that the account of the statistics which formed the bulk of the report was not gendered, referring exclusively to “domestic violence incidents” and “domestic violence victims.”

The inclusion of interview excerpts with spokespersons for the National Women’s Council and Women’s Aid accurately and impartially reflected those organisations’ long experience and expertise in the area. Their inclusion could, therefore, not reasonably be seen as misleading or resulting in any misunderstanding in terms of male victims of domestic violence. The broadcaster states that there was no expression of the reporter’s own views and the complainant offers no evidence of any such expression.

Principles 3, 5 and 6

The use of terms such as to “domestic violence incidents” and “domestic violence victims” did not exclude males from consideration. The broadcast did not misrepresent any group in society or represent any group in an inappropriate or unjustifiable manner. Nor did it stigmatise or support or condone discrimination against or incite hatred of any section of the community, including men, or in any way include harmful content.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48(1)(b)(harm & offence); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.17 and 4.21) and the BAI Code of Programme Standards) Principles 3 (Protection from Harm), 5 (Respect for Persons and Groups in Society) and 6 (Protection of the Public Interest), the members decided to reject the complaint.

In this regard:-

- The Forum noted that this was an interview regarding the reporting of domestic abuse, in relation to Northern Ireland and the Republic. The complainant states that the interview was entirely focussed on female victims and this gave the false impression to viewers that there are no male victims of domestic violence. The Forum agreed that while some viewers may have welcomed some reference to male examples regarding the issue, that the interview focus was on the discrepancy between reporting in the North and the Republic and not gender based.
- In that context, the Forum noted that in the broadcaster's response to the complainant, RTÉ accepts that there was no mention of male victims in the report and states, in hindsight, it should have been mentioned. However, the Forum agreed that the absence of such a reference did not result in the report being inaccurate, unfair or lacking impartiality.
- The Forum noted that the broadcaster could consider updating the stock images that are used for this issue to ensure that it gives a fair reflection of this issue.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act, 2009, the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs or the BAI Code of Programme Standards, in the manner specified by the complainant. Accordingly, the complaint was rejected.

Complaint made by: Mr. Gerald O'Carroll

Ref. No. 47/17

Station:

Radio Kerry

Programme:

Radio Kerry News @8am

Date:

8th March 2017

1. Programme

The complaint concerns an interview with Ms. Ailbhe Smyth, a 'Strike 4 Appeal', spokesperson, during a report in the 8am news bulletin, on events being held to coincide with International Women's Day. The Strike 4 Appeal group campaigns for changes in Ireland laws on abortion.

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 in an interview on the 8am News, Ms. Smyth promoted abortion. The complainant maintains that there was no mention at all that a child might be born or that being with child was anything other than an instance of oppression against women. The complainant states that this piece was 'pushing the envelope' and 'soft' advocacy by means of linkages to values like compassion. The complainant states that it exploited something called 'Women's Day' to promote abortion among poor women. The complainant recalled the imposition of what he calls the Left orthodoxy about abortion by 'well-heeled and articulate women', represented on this occasion by Ms. Smyth, an academic. The complainant states that the failures of journalism on this occasion clearly gave the message that Ms. Smyth may not be opposed or questioned when she claims to represent women.

4 Broadcaster's Response

4.1 Broadcaster's Response to the Complainant

The broadcaster states that this item coincided with the fact that there was a 'Strike 4 Repeal' event on that day and the short clip featured one of the organisers, Ms. Ailbhe Smyth, who stated why she is against the prohibition on abortion. The broadcaster states that had an event been organised by the 'pro-life' movement that day, Radio Kerry would have featured it on their news. The broadcaster states that it has broadcast bulletins in the past featuring the views of 'pro-life' groups without a corresponding contribution from 'pro-choice' organisations.

In a further reply, the broadcaster states that given the complexities of the issues involved, it is not practical for any one news bulletin to address all the issues involved for both sides. To ensure balance over the totality of their coverage, the broadcaster states that a decision was made to make listeners aware of both events after which time it is a matter for listeners to inform themselves on the issues involved and make their own decisions.

4.2 Broadcaster's Response to BAI

The broadcaster states the following:

- The complainant refers to a single story in one news bulletin. It is taken in isolation of other coverage provided by the broadcaster in relation to this issue.
- The report in question was factual and related to a series of events being held that day to coincide with International Women's Day.
- A similar report on a planned conference by Catholic Voices Winning the Pro-Life Battle was carried previously.
- The broadcaster made listeners aware of both events.
- Given the complexities of the issues involved, it is not possible for the broadcaster to always include views from opposing sides in a 4 minute segment in a news bulletin.
- The broadcaster believes that as we live in a democracy, a broadcaster has a duty to make information on opposing views available to listeners and not just viewpoints that are in keeping with the complainant's own personal views.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also 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 members have decided to reject the complaint.

In this regard:-

- The Forum noted that this complaint was submitted for consideration under 'fairness' but that 'fairness' is not a requirement in news broadcasts. The Forum agreed that the report was factual and related to a series of events being held that day to coincide with International Women's Day.
- The complainant states that an interview with Ms. Ailbhe Smyth on the 8am news promoted abortion. This was in relation to an event at which she was one of the organisers, 'Strike 4 Repeal'. The broadcaster states in the response to the complainant that this item coincided with Women's Day and if an event had been organised by the 'pro-life' movement that day, then Radio Kerry would have featured it on their news too.
- The Forum also noted that in the broadcaster's response to the complainant, Radio Kerry states that a decision was made to make listeners aware of events promoting both sides, after which time it is a matter for listeners to inform themselves on the issues involved and make their own decisions. In that regard, the Forum found the report was not promoting abortion.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act, 2009, the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs, or the BAI Code of Programme Standards, in the manner specified by the complainant. Accordingly, the complaint was rejected.

Complaint made by: Mr. John F. Fanning

Ref. No. 49/17

Station:

RTÉ One

Programme:

The Tommy Tiernan Show

Date:

2nd February, 2017

1. Programme

The complaint concerns 'The Tommy Tiernan Show', which incorporates interviews sketches, live music and stand-up comedy broadcast at 10.15pm, over a 6-week period.

2. Complaint Category

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

3. Summary of Initial Complaint to the Broadcaster

The complainant states that he was offended by remarks made by Mr. Tommy Tiernan when he compared Jesus to a dog. The complainant states that Mr. Tiernan went further and posed the question - "Why not nail a dog to a cross and put it into a church?" The complainant believes this displayed a lack of respect for him and fellow Christians. The complainant questions if the broadcaster would stand over airing similar remarks regarding the holy prophet Mohammed or Islam.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states that this production relies heavily on an absurdist comic voice, and ironic lampooning of Irish life and culture. The broadcaster states that, clearly, this is not going to be to everyone's taste, but care is taken to ensure that the irreverent and satirical nature of the content is well-flagged in advance. The broadcaster states that Mr. Tiernan is relatively well-known in Ireland, so most RTÉ One viewers will know what to expect when he appears on television. The broadcaster states that the tone and nature of the specific episode referred to is in line with his well-established pointed comic personality.

The broadcaster states that the format of the programme mixes improvised interviews with sketch and stand-up comedy. Each show commences with a comic monologue delivered by Mr. Tiernan and is performed in front of a studio audience. This monologue has generally mixed surrealist comedy with warm-hearted observations about Irish public life – often dealing with topics which have become recurring themes in Irish national discourse – e.g., racism, Travellers, religion and gender.

The broadcaster states that it is the intention of this opening sequence to be wilfully playful (but not provocative or disrespectful) with themes that are sometimes considered difficult to discuss on television. The broadcaster feels that it is important to facilitate this form of surrealist satire. Further, Mr. Tiernan's comic voice and prominence in Irish public life have generated a level of understanding and trust from Irish audiences.

The broadcaster states that in this case, Mr. Tiernan was performing a surrealist monologue to establish his special bond of love with his dog. The aim of the comedy was to establish how important and loving this relationship was for Tommy (in ever more absurdist escalating terms - culminating with the idea of Tommy seeing his relationship with the dog as being analogous with his relationship with Jesus Christ).

The broadcaster maintains that the material was founded on Mr. Tiernan's elevating of a domestic relationship of love and (perceived) mutual understanding to something that should be worshipped – rather than denigrating images and icons which are worshipped and considered sacred by Christians. The broadcaster believes that the material was clearly flagged as being based on an impossibly surreal and silly concept (a talking dog), and throughout based on increasingly daft expressions of love and respect – rather than negativity or abuse. The broadcaster states that while it is a very imperfect gauge, the broadcaster felt that the studio audience who heard the material, reacted in a way that accepted this interpretation of the material, rather than seeing it as malign, unpleasant or offensive.

The broadcaster appreciates that this can often be a fine line to tread and runs the risk of being misconstrued, however, carrying relevant and challenging satirical voices is an important part of the job of broadcasters and in this specific case the broadcaster was satisfied that the nature of the scene was so absurd and satirical (and affectionate) that viewers would clearly understand the nature of the point being made.

4.2 Broadcaster's Response to BAI

The broadcaster refers to the response by the Head of Comedy, Talent Development and Music, to the initial complaint.

The broadcaster also refers to and quotes from, two past BAI decisions rejecting complaints about 'Tommy Tiernan – Crooked Man' broadcast on TV3. In particular reference is made to context, content and time of broadcast in rejecting these complaints.

The broadcaster further states that Mr. Tiernan is a very popular comedian in Ireland, far from being a peripheral or marginal figure, who could not have achieved such popularity without reflecting, albeit with a comic approach, also well known to his audience, the widely held standards of his community. The broadcaster notes the programme was broadcast after the watershed at 10.15pm.

In the context of previous decisions reached by the BAI in relation to Mr. Tiernan programmes, the broadcaster refers to Mr. Tiernan's remark during the routine that "*Jesus is a fine man, one of the best we ever came up with,*" and asserts that his remarks were not focused on religion but on the nature of patience, humility and unconditional love, as exemplified by his dog.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section (1)(b)(Harm and Offence) and the BAI Code of Programme Standards – Principles 5 (Respect for Persons and Groups in Society), the members have decided to reject the complaint.

In this regard:-

- In considering the complaint, the Forum had regard to the programme format. In this regard, it noted that one of the functions of comedy is to push the boundaries of acceptable speech. Comedy content, therefore, may be offensive to some viewers or listeners.

As such, what is of concern to the Forum is whether the content in this instance was offensive in a manner that would infringe the Principle of Respect for Persons and Groups in Society. The Forum did not agree that this was the case in respect of this programme.

- In terms of the specific remarks, the Forum found that while the comedian made reference to Jesus Christ, the focus of the remarks was on the comedian's personal reflections on his declared love for his pet dog. In this context, he found his dog provided him with the unconditional love and friendship he values. Using the analogy of Jesus on the Cross, the Forum found that Mr. Tiernan then used his comedic style to encourage the audience to imagine a surreal situation where that unconditional love comes instead, from a dog on a cross rather than Jesus. The Forum also noted that prior to this surreal description he made a number of positive comments about the person of Jesus, saying "Jesus is a fine man, one of the best we ever come up with..."
- The Forum had regard to the fact that the programme was broadcast at 10.15pm and was therefore aired after the watershed when it is accepted that content of a more adult nature can be broadcast. The Forum also had regard to audience expectation, including the fact that Mr. Tiernan's comedic style is well-known and the content of his stand-up addresses various aspects of modern society, including religion. This regularly includes coarse language which, the Forum acknowledges, can be offensive to some.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act, 2009 or the BAI Code of Programme Standards, in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Station:
RTÉ 2 FM

Programme:
Game On

Date:
4th March 2017

1. Programme

The complaint concerns a comment made on 'Game On', which is an interactive sports magazine programme featuring daily sports news and analysis. The programme is broadcast weeknights from 7pm to 8pm.

2. Complaint Category

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

3. Summary of Initial Complaint to the Broadcaster

The complainant states that while discussing the team line-up for the Ireland v Wales soccer match, the presenter used the phrase "straight in; no kissing." The complainant states that she was shocked to hear such a sexualized, vulgar comment used as a throw-away remark in this context. The complainant believes that this type of locker room talk has no place on a national broadcast station and at a time when children could be listening. The complainant states that this remark displays a lack of awareness by the presenter of the impact of the choice of words used in live broadcast situations.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

RTÉ states that the programme team strongly rejects the assertion that the phrase was used in a way that connotes sexual behaviour of any kind – particularly not violent or offensive behaviour.

The phrase may have had its origins in describing sexual behaviour but is now simply taken to mean getting directly to the point, or abrupt/unexpected developments.

The programme was broadcast on 2FM - a station aimed at 18-35 year olds and if there were children listening we do not believe that the phrase as used would have constituted a threat to the "physical, mental or moral development of children".

RTÉ state that it is never their intention to offend in our sports coverage and therefore regret that the complainant found the phrase insensitive.

Noting, however, that this is the sole complaint the broadcaster has received about the broadcast, RTÉ is conscious of the statement in the BAI Code of Programme Standards that:

"Those matters which cause offence can, and frequently do, differ from person to person and are largely subjective in their nature. Acknowledging this, there can be no guarantee that programme material will be free from offence. There is no right not to be offended and, for broadcasters, it is to be expected that, in fulfilling their duty to provide a diverse range of programming that caters to a diverse audience, there will be programming that causes offence to some members of the audience."

4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the Deputy Head Radio Sport and News to the initial complaint (above).

RTÉ states that there was no sexual or sexualised reference intended or made. The meaning of the phrase was simply 'getting to the point' (in this case of being sent onto the playing field). Neither was there any sexist reference implied in the phrase, which can be and is used in relation to all genders.

While recognising that the initial reply from the broadcaster was unsatisfactory from the complainant's point of view, RTÉ rejects the assertion in her referral to the BAI that her complaint was 'brushed off' or treated with insincerity, or that the response was indicative of any generally sexist attitude.

The broadcaster also notes that, contrary to the implication that response was not 'timely', that the complainant received a response within the time allowed and with no threat to the entitlement to refer the complaint to the BAI.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(b)(Harm and Offence) and the BAI Code of Programme Standards – Principles 1 (Respect for Community Standards) and 4 (Protection for Children), the members have decided to reject the complaint.

In this regard:-

- The Forum noted that this complaint specifically related to a reference made by a presenter during the discussion before a soccer match, Ireland v Wales. The presenter used the phrase, "straight in, no kissing". The complainant states that she was shocked to hear such a sexualized, vulgar comment used as a throw-away comment in this context.
- The Forum agreed that the phrase was not used in a way that connoted sexual or vulgar behaviour of any kind. The Forum also noted that the phrase may have had its origins in describing sexual behaviour but is now simply taken to mean getting directly to the point, or abrupt/unexpected developments.
- The Forum was of the view that although the programme was broadcast on 2FM, a station aimed at 18-35 year olds, this was an international game on the radio and thus may have had a wider audience. Therefore, in this instance, the broadcaster's audience expectation could have been considered in relation to the scale of the game but the Forum agreed that the programme itself was not unduly offensive or likely to cause harm.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act, 2009 or the BAI Code of Programme Standards, in the manner specified by the complainant. Accordingly, the complaint was rejected.

Complaint made by: Mr. Val Martin

Ref. No. 51/17

Station:

RTÉ One

Programme:

Eco Eye

Date:

21st February 2017

1. Programme

The complaint concerns Eco Eye, which is a series of factual environmental programme dealing with a range of issues relevant to the Irish and broader environment and is broadcast Tuesdays at 7pm. The complaint refers to a discussion with Dr. Cara Augustenborg and Ms. Lara Dungan on the topic of climate change and, specifically, carbon dioxide.

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. Summary of Initial Complaint to the Broadcaster

The complainant states that the first part of his complaint relates to a comment made by Dr. Augustenborg as she and Ms. Dungan travelled in a hot air balloon. The complainant states that Dr. Augustenborg said:

“Our carbon footprint is all the carbon dioxide (CO₂) we release into the atmosphere. How we heat our homes, power our homes, our transport systems, also the food we eat. This CO₂ lasts in the atmosphere for hundreds of years.”

The complainant states this is untrue, a myth. He states that the scientific fact is that CO₂ is part of the carbon cycle and that carbon is essential for life and is an essential gas for plant and animal life. He also states that CO₂ does not last for hundreds of years. The complainant states that the amount of the elements which form the compound CO₂ is fixed permanently and they cannot be produced by man.

The complainant states that carbon dioxide has been produced by various ways from the formation of the Earth and the type Dr. Augustenborg spoke about is from the process of combustion by burning fuel. He states that the CO₂ produced is absorbed by plants which fix the carbon and emit oxygen. The complainant states that oxygen is a perfectly healthy beneficial gas and that CO₂ is a perfectly healthy gas essential for life. The complainant states that no mention was made of this in the programme.

The complainant's also refers to a segment in the programme filmed in Germany and which deal with the production of electricity by means of roof mounted solar panels. He notes that the programme stated that the electricity produced can be sold into the grid system. The complainant states that while it can be sold into the grid, it is of no benefit because it is a non-synchronous direct current fed into an alternating current system. He states that the two are not compatible. The complainant also states that Germany has the second highest electricity prices in the world and is seeing no reduction in the burning of fossil fuel for electricity capacity in the world. He states that the programme should have stated this and should have been checked by an independent electrical engineer.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster stated that having reviewed the report, they believe that there was no breach of the Broadcasting Act or any of the BAI Codes.

4.2 Broadcaster's Response to BAI

RTÉ states it is correct that carbon dioxide (CO₂) is part of the carbon cycle and this was never questioned in the broadcast. The science of climate change is concerned with the changes to the natural carbon cycle caused by anthropogenic (man-made) sources, which are altering the chemistry of our atmosphere, in turn altering the 'natural' balance of CO₂ in the atmosphere.

The broadcaster states that the complainant is incorrect to assert that it is 'a myth' that CO₂ lasts in the atmosphere for hundreds of years. There is a natural carbon cycle in which CO₂ is absorbed by plants and the oceans but that has been altered by human activity, (this is extensively researched, measurable and verifiable) leading to warmer and more acidic oceans and more carbon in our atmosphere.

However, approximately 45% of the CO₂ released into the atmosphere, is not absorbed by the oceans or land and remains there, and this imbalance remains in the atmosphere for up to hundreds of years. NASA estimates 20% will remain for thousands of years. It may be that the complainant is referencing the life span of an individual molecule (average residence time) of CO₂; nevertheless, CO₂ is known as a long-lasting greenhouse gas. The broadcaster states that scientific bodies worldwide and a wealth of peer-reviewed studies disagree with the complaint on this point and the complainant has failed to provide any scientific evidence whatsoever to back this claim.

The broadcaster states that CO₂ is essential for plant life, for animals it's a waste product (inhale oxygen, exhale CO₂). However, this was never referenced in the episode, this is basic elementary biology.

The broadcaster states that this statement by the complainant that "*none of these elements can be altered by man*" is correct but no such other assertion was made in the episode nor would have been. This is a basic scientific fact and was never called into question. The atmosphere's greenhouse gas concentrations have and are being altered by humans. This has been measured and verified by almost every major scientific institution in the world.

The broadcaster states that Dr. Augustenborg is a well-recognized environmental scientist, eminently qualified to discuss this topic, a published author on the subject and lecturer in climate science in UCD. Nothing stated by Dr. Augustenborg in the subject episode is disputable or controversial. All points raised are measurable and verifiable facts, well researched within the scientific community and elsewhere.

The broadcaster states that it is incorrect to say that because the current produced by solar panels is direct current it is of no benefit to the grid. Converting from direct to alternative current is a straightforward process that uses technology as old as electrical infrastructure and the invertors that are used are as common as solar panels. In addition, the programme was named Climate Friendly Living and was about ways we could reduce our carbon footprint whilst maintaining our current lifestyles. The concept covered was the use of solar panels to power your home, and whether they connect to the grid or not is of benefit to the environment, not to mention financially.

The broadcaster states that the assertion that Germany has the second highest electricity prices in the world has no relevance to the programme in which no claims were made to support or oppose this position.

The broadcaster states that it is incorrect to state that “Germany . . . is seeing no reduction in the burning of fossil fuel for electricity.” Germany’s use of fossil fuels has fallen dramatically (by 27%) between 1990 and 2014 when coal was the largest part of its energy mix; in that same period renewables, have increased sevenfold (to 33%). The broadcaster states that it should be noted that in recent years Germany has started moving away from nuclear power (following the accident at Fukushima) and the result is there has not been as dramatic a fall in fossil fuels as there was in the years previous.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(a)(Fairness, Objectivity & Impartiality in Current Affairs) and the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs (Section 4: Rules 1 & 2), the members have decided to reject the complaint.

In this regard:-

- In considering this complaint, the Forum noted that this was a factual broadcast dealing with a range of issues relevant to the Irish and broader environment. The complainant claims that statements made within the programme were untrue in relation to climate change, particularly in relation to carbon dioxide.
- The Forum were of the view that the information broadcast during the programme was verifiable and well researched within the scientific community and elsewhere. The Forum also agreed that the complainant did not support his argument.
- In that regard, the Forum noted that a wide range of views had been provided from contributors in the field and that the programme context had been dealt with fairly. The Forum agreed that the complainant may have wished for counter arguments to be included in the programme, however, the Forum found that the programme was handled with fairness, objectivity and impartiality.
- 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 and Impartiality in News and Current Affairs in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint made by: Mr. Dave Alvey

Ref. No. 52/17

Station:

RTÉ Radio 1

Programme:

The Marian Finucane Show

Date:

2nd April, 2017

1. Programme

The complaint concerns 'The Marian Finucane Show', which is a magazine style programme that includes 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 discussion on Brexit.

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. Summary of Initial Complaint to the Broadcaster

It is the complainant's contention that the breach of the fairness, objectivity and impartiality regulation arose from the presenter's comments on Brexit. The complainant states that the presenter strongly supported the idea of a close relationship between Ireland and Britain before the Brexit result and since that result she has become increasingly critical of the EU. The complainant states that this is evident in the broadcast that is the subject of the complaint.

The complainant states that in the third part of the April 2nd programme (a discussion on Brexit in which the main guests were Ireland's permanent representative at the EU, Ms. Lucinda Creighton of Vulcan Consulting and Ms. Lisa O'Carroll of the Guardian newspaper), the presenter's questioning and commentary showed, in his opinion, a clear bias. He states that the presenter's first question to the Ambassador was:-

"We were talking earlier on that, do we have to play by the rules?
Should we look to our own national interest or should we place our
entire trust in the negotiators and be part of a larger group?"

The complainant states that this was a leading question which reflected the presenter's own view that Ireland should differentiate itself from the EU position and in that way prevent a united EU front in the negotiations.

The complainant states that the presenter's next question to the Ambassador led to the response - "Marion, I would make the point that the European Union is not an alien body; we are part of the European Union." The complainant states that, that it was necessary for the Ambassador to point out that reality, reflects what the complainant considers to be the stridency with which the presenter was pressing her own opinion regarding Ireland's dependence on Britain.

The complainant states that, a little later when Ambassador Kelleher was in the process of saying that over forty years Ireland has had a good relationship with the European Commission, the presenter interrupted to say: "Yeah we've also had a good relationship with Britain and we have established a good trading relationship with Britain. That is the concern really. If the rest of our partners get all hostile to Britain it's not in our interest to be hostile to Britain." The complainant believes that this was a clear instance of the programme host exhibiting her opinion that Ireland should be aligned with Britain more than the EU.

The complainant states that the next speaker to be questioned was Ms. Creighton. The complainant cites that part of the interview which he states the presenter interrupted Ms. Creighton. The complainant maintains that these interruptions by the presenter again betray her opinion that since Britain is leaving, Ireland should become much less supportive of the EU. The pattern was that the presenter interrupted on any occasion that a speaker was speaking positively about the EU.

The complainant states that, later in the discussion the presenter brought in Ms. O'Carroll of the Guardian newspaper. The complainant states that the questioning of Ms. O'Carroll was much less vigorous than that of Ambassador Kelleher. The complainant states that this contribution reflected a hope of Britain and of the Guardian as a British paper, that Ireland will dissent from the EU negotiating position and in that way assist the UK in the negotiations. The complainant maintains that Ms. O' Carroll was allowed to turn the idea of cherry picking on its head to suit her defense of the British interest without being challenged in any way by the presenter.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states that the first interviewee in question in the segment referred to – Ambassador Declan Kelleher, Ireland's permanent representative at the EU – was obliging with his time and insights in what was a very rare live interview from such a representative at senior EU level, given the sensitivity of the ongoing negotiations. This is a viewpoint both presenter and team deemed very central and necessary to be conveyed in the round of the analysis on that particular day.

The broadcaster states that the interview lasted over 7 minutes and due to Mr. Kelleher's role as an Ambassador, it was requested to be conducted as a one-to-one interview with the presenter. The broadcaster accepts that a knock-on effect of this was a challenging tone in the presenter's questions at certain points, however, it was not possible for other guests to interject in this agreed format. In relation to the counterpoints made to the Ambassador by the presenter, the broadcaster does not agree that they were put forward as her own views.

The broadcaster maintains that in the earlier part of the programme it was conveyed by other panellists, the viewpoint in favour of continued membership of the EU, for example, Lord Henry Mountcharles' reference to a Late Late show audience straw-poll which was in favour of Ireland staying in the EU, or Mr. Harry McGee pointing out that Ireland needs to negotiate as a 27-state bloc.

The broadcaster states that in discussion with former Minister of State for European Affairs, Ms. Lucinda Creighton, the presenter also emphasised that Ireland leaving the EU would be a 'scary prospect' and moreover, both Ms. Creighton and Ms. Patricia King of SIPTU, highlighted the 'huge progress' made by Ireland as a result of EU membership.

The broadcaster states that while it accepts that points and counterpoints are suggested by the presenter to panellists and guest in the wide-ranging nature of the Sunday programme, the broadcaster claims to consistently bring voices to air that represent the division of public opinion among commentators upon the multiple issues surrounding Brexit and shall continue to do so in an honest manner for the benefit of public discourse.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the Executive Producer of The Marian Finucane Show to the initial complaint.

The broadcaster notes that, notwithstanding the complainant's reference to other editions of the programme, the complaint as referred is in respect of one specific edition, that of 2nd April 2017.

The broadcaster states that the complaint is based on the assumption that in putting points of view to interviewees, the presenter was representing her own views. The broadcaster claims there is no evidence that this is the case.

The broadcaster asserts that characterisation of properly challenging questioning as "sustained pressure as to whether he would agree that Ireland should break away from the EU" is a subjective interpretation.

The broadcaster notes that the complainant acknowledges that he is an "activist" in the debate on Brexit (on which he has corresponded with newspapers on behalf of the Irish Political Review Group). With respect, both to his entitlement to hold his views and their integrity, the complaint would appear to arise in that context rather than from an objective analysis of the broadcast. As the presenter was putting to panelists and interviewees, perspectives with which the complainant does not agree, he may have assumed that she was articulating them as views of her own and expressing a partisan position, which was not the case.

The broadcaster maintains that the discussion and interviews were conducted in a manner which is typical of this weekend magazine programme and both familiar to and meeting the expectation of listeners. They were also conducted in the presenting style with which listeners will be familiar, as recognised in the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs – Guidelines:

It is acknowledged that some current affairs output can be synonymous with personalities, where the manner in which the presenter presents or interviews contributors can be keenly anticipated by audiences. Often the nature and style of the presenter is a key factor in what engages audiences and draws them into consideration and debate on matters of public controversy and current public debate.

It may also be noted, in the context of Rule 4.3 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs [A broadcaster shall deal fairly with contributors to current affairs content or with persons or organisations referred to in that content] that all interviewees were given full opportunity to respond.

In his referral to the BAI, the complainant lays out an editorial approach to the interview with Ambassador Kelleher which he would like to have seen taken in the programme. The broadcaster asserts not only that the approach taken was valid, fair, impartial and objective but was so in the context of the broadcaster's editorial freedom to choose topics for coverage and the editorial perspective on those topics.

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

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

In this regard:-

- The Forum noted that the item about which the complaint was made was the treatment by the presenter on the topic of Brexit. The complainant believes the presenter strongly supported the idea of a close relationship between Ireland and Britain before the Brexit result and since then has increasingly become critical of the EU.
- The Forum noted that the format of the Sunday edition of The Marian Finucane Show is one driven by the stories of the day, in particular those highlighted by the guest panellists and the programme presenter and producers. As such, the focus of this programme was on Brexit as this was the main story of the day.
- The Forum noted that in the earlier part of the programme, contributors included a range of guests from Ms. Patricia King, of ICTU to Mr. Harry McGee, journalist and, Lord Henry Mountcharles, all of whom provided differing points of view in relation to the debate on Brexit.

- In the 3rd section of the programme, a one-to-one interview between the presenter and the Irish Ambassador to the EU, Mr. Declan Kelleher took place followed by contributions from Ms. Lucinda Creighton, of Vulcan Consulting and Ms. Lisa O'Carroll of the Guardian newspaper. The Forum found that all participants were given ample time to put their views across on the subject while the presenter countered some statements with questions and opposing views. This was found by the Forum to be in line with this type of programme and one with which the audience would be familiar.
- On the issue of the contributions by the programme presenter, the Forum found that the presenter's style is to challenge her contributors on a subject and to cross examine them on elements that she believes needs highlighting. It is the job of the presenter and programme makers to ensure a programme is fair in the treatment of the topic under discussion. In this regard, the Forum found that this was achieved through the contribution by both the panellists and the presenter without imparting views as her own in an impartial manner. The Forum noted that programme presenters are allowed give their own opinions.
- The requirement of the Act and the BAI's regulations is for fairness in the treatment of a topic and this can be achieved by the presenter and/or by contributions from other guests who may not have a stated position in favour or against an issue being discussed but who, as in the case of this programme, give voice to the views of those who may oppose, or have difficulty with Brexit. In the context of the treatment of the subject in general, the Forum was of the view that it was handled in an even and fair manner.
- 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 in the manner specified by the complainant.

Station:

RTÉ One

Programme:

The Late Late Show

Date:

7th April, 2017

1. Programme

The complaint concerns 'The Late Late Show', which is a lifestyle/entertainment programme broadcast Friday evenings from 9.35pm. The complaint refers to a discussion with actor, Mr. Colm Meaney on the life of the late Northern Ireland politician, Mr. Martin McGuinness, who he portrays in a movie that was to be released shortly after the date of the interview.

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. Summary of Initial Complaint to the Broadcaster

The complainant states that, in his opinion, the programme presenter broke every rule of balance, objectivity and fairness in facilitating what he believe was Mr. Colm Meaney's description of Mr. Martin McGuinness as a heroic figure. The complainant maintains that, disgracefully, there was not one mention of the thousands of victims of the Troubles or Mr. McGuinness' involvement with the IRA. The complainant states that murders and maiming in Northern Ireland and elsewhere all happened within living memory in this country, North and South.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states that the movie in which Mr. Meaney portrays Mr. McGuinness is not a historically accurate portrayal of Mr. McGuinness, but rather a road movie that posits a theory about how a physical journey might reflect the political journey both Mr. McGuinness and Dr. Ian Paisley had to travel to become political partners following the signing of the Good Friday Agreement.

The broadcaster states that the interview took place three weeks after the death of Mr. McGuinness and two weeks after his funeral.

The broadcaster states that Mr. McGuinness's political career and journey from street protestor to terrorist to politician was well-documented during his life and reflected upon widely following his death. However in this case, this was not a political interview, but rather the exploration of an actor's view of a part he played. The broadcaster states that, nonetheless, during the interview, Mr. Meaney discussed his own historical support for Sinn Féin, his support for Mr McGuinness's Presidential campaign and his interest in Mr. McGuinness's political career.

The broadcaster states that viewers would have been fully aware of the context of this acting performance and therefore a harder edged political type interview, was not necessary.

4.2 Broadcaster's Response to BAI

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

The broadcaster states that the interview was not on a news or current affairs topic. The human interest/entertainment subject was the life of the actor Colm Meaney, focusing at first on his portrayal of M. Martin McGuinness in the current film entitled, The Journey.

The broadcaster states that Mr. Meaney's support of the real-life Mr. McGuinness's presidential campaign was mentioned, as was his membership many years ago of Sinn Féin, both references being in the context of his preparation to play the role and his knowledge of Mr. McGuinness.

The broadcaster states that notwithstanding the fact that the discussion was not of a political topic, the presenter acknowledged different perspectives on the public life of Mr. McGuinness in statements such as: "An extraordinary figure whatever your politics," "One man's peacemaker is another man's terrorist" and "Isn't that the media's role, to question [Martin McGuinness] about [his military past]?"

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(a)(Fairness, Objectivity & Impartiality in Current Affairs) and the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs (Section 4: Rules 1 & 2), the members have decided to reject the complaint.

In this regard:-

- The Forum noted that this was a discussion with actor, Mr. Colm Meaney, on the life of the late Northern Ireland politician, Mr. Martin McGuinness, who he portrays in his then upcoming movie. The complainant states that Mr. Meaney described Mr. McGuinness as a heroic figure and that there was no mention of the thousands of victims that were indirectly or directly affected by him or his organisation, the IRA.
- In that context, the Forum was of the view that the interview was not meant as a political interview but related to the actor's journey when taking on the role. The Forum noted that the Troubles in Northern Ireland were mentioned and that Mr. Meaney could share his own views regarding Sinn Féin, while also declaring that he was a former member of the party. The Forum agreed that these references were made in the context of his preparation to play the role, however, this was not the focus of the interview.
- The Forum found that the conversation was around the film's character and although the presenter commented on the merits of Mr. McGuinness as "an extraordinary person regardless of your political views," the topic was primarily about the actor's portrayal of Mr. McGuinness in the film and not about the politics of Northern Ireland.
- The Forum noted that the complainant would have wished for an acknowledgement to be made to the victims of the Northern Ireland Troubles, however, this was not the focus of the interview. The interview concentrated on the part the actor plays as a fictional character within a movie and his views on this role. The Forum found that Mr. Meaney provided the background to how he prepared for and acted the part of Mr. McGuinness in the movie.

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

Complaint made by: Ms. Maureen Sheehan

Ref. No. 54/17

Station:
RTÉ Radio 1

Programme:
Ray D'Arcy Show

Date:
13th April 2017

1. Programme

The complaint concerns 'The Ray D'Arcy Show', which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm – 4.30pm. The complaint concerns an interview with two medical experts on the topic of vaccination, including the HPV vaccine.

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) 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 4.17) and the BAI Code of Programme Standards - (Principle 3 – Protection from Harm).

3. Complaint Summary

The complainant states that the content of this item was not fair, objective or impartial. The complainant states that the programme was poorly researched, full of what they considered to be misinformation about the Human Papilloma Virus (HPV) vaccine ingredients, side effects and benefits. The complainant states that these were allowed to go unchallenged / uncorrected by the presenter.

The complainant believes that the panel of guests was unbalanced. It consisted of Dr. Paul Offit, a Vaccine Expert, Dr. Brenda Corcoran, Health Service Executive (HSE) responsible for all National Immunisation Programmes in Ireland, together with the presenter, whom, the complainant states was not impartial and was quite dismissive of listener's concerns. The complainant queries why parents who have campaigned for years to highlight concerns about the vaccine were not allowed to be part of the panel. The complainant believes the Health Products Regulatory Authority (HPRA) should have been represented to discuss the large number of cases of serious adverse reactions to the HPV vaccine reported to them together with the number of cases they have investigated over the last 7 years and their findings to date.

The complainant maintains that Dr. Offit made several incorrect statements about the vaccine ingredients, safety testing and side effects/benefits. The complainant states that Dr. Brenda Corcoran also cherry picked the mildest of side effects reported to the HPRA and cherry picked information from Cancer Australia Government website to suit her own purpose which was allowed to go unchallenged by the presenter.

The complainant maintains that children will be injured because of this type of misinformation being broadcast on national radio and for this reason RTÉ should clarify/correct any misinformation broadcast. The complainant further states that questions submitted by listeners before/during the show were either not asked/not addressed or were dismissed by the presenter. The complainant further asserts that the presenter was not impartial as he failed to hide his contempt for anyone who raised concerns about the safety of the vaccine. He went on to pose the question - "How would you feel if you didn't get the vaccine for your daughter and she got cervical cancer in 10 years?" The complainant states that this was posed twice during the item and asked did the presenter ever think about the parents who got the vaccine and witnessed its horrible effects immediately?

In her submission, the complainant outlines several questions that she believes the presenter should have asked and by not doing so failed to show fairness and balance. The complainant also takes issue with several statements made by the medics on the programme in relation to the side effects of the HPV vaccine. For example, Dr. Offit stated that the "only side effect that the vaccine caused is fainting" – the complainant states that this is not true – the manufacturer of the vaccine has listed 25 possible side effects. The complainant states that Dr. Corcoran stated that the majority of cases reported were as expected, the sore arm and fainting. The complainant states that over 1000 cases of suspected adverse reactions to the HPV vaccine were reported to the HPRA. The complainant submitted a sample of 190 of these cases to the BAI and for this reason questions how anyone could say these are as expected. The complainant states that while both doctors mention deaths from measles and diphtheria, they failed to mention deaths from the HPV vaccine.

Further questions that the complainant believes should have been posed to the doctors are set out in the complainant's initial complaint to the broadcaster.

The complainant states that the Irish State should not be recommending the HPV vaccine until worldwide safety concerns have been investigated and safe practices are put in place by the HSE.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

The broadcaster states that it is important to note at the outset that this item from April 13th did not intend to focus on the issue of the cervical cancer HPV vaccine but rather on broader themes of public trust in vaccination, the resurgence of diseases like measles and pertussis, as well as the declining rates of HPV vaccine uptake. The broadcaster states that the context of the item was about the decline in vaccination rates generally, the international concern about disease outbreaks, such as measles and the declining uptake in the cervical cancer HPV vaccine for teenage girls in Ireland.

The broadcaster states that the item complained of featured Dr. Paul Offit from a studio in Philadelphia. Dr. Offit is the Director of the Vaccine Education Centre at the Children's Hospital of Philadelphia as well as the Maurice R. Hilleman Professor of Vaccinology and a Professor of Paediatrics at the Perelman School of Medicine at the University of Pennsylvania. He is a recipient of many awards and has published more than 160 papers in medical and scientific journals in the areas of rotavirus-specific immune responses and vaccine safety. He is also the co-inventor of the rotavirus vaccine, RotaTeq. Also featured was Dr. Brenda Corcoran, a consultant in Public Health Medicine and the person responsible for all national immunisation programmes in Ireland.

The broadcaster states that Dr. Offit referred to measles outbreaks in 2014 in the United States and 2015, and a death in Washington State. Dr. Corcoran referenced a measles outbreak in Ireland in 2000 on the back of a drop in vaccination rates due to controversy about the MMR vaccine, stating there were 2,000 cases and three deaths. The broadcaster states that the item also focused on the uptake of the cervical cancer vaccine, with rates forecast to dip to 50% among teenage girls in 2017, and health concerns surrounding its administration.

The broadcaster states that the presenter challenged the two guests on many of the issues that the general public have about vaccination. The presenter immediately asked Dr. Offit about the times when vaccines have gone wrong. What followed was a long discussion about the Cutter incident in 1955. In relation to this, Dr. Offit admitted that 120,000 children

were inoculated with live polio and ten were killed. He termed it the worst biological disaster and an example of something going wrong. The broadcaster states that Dr. Offit also admitted to the presenter that medicine is a process of evolution. The Cutter Incident led to better government oversight of vaccines, and triggered the creation of a better system of regulating vaccines.

The broadcaster states that the presenter then addressed the same issue to Dr. Corcoran, about the times that the administration of vaccines have gone wrong and proved to be harmful rather than health protecting. There was a discussion about the Swine Flu vaccine in Ireland in 2009/10 and the realisation that it was linked to narcolepsy. The pandemic was milder than feared but parents were strongly urged by public health experts to have children vaccinated. However, some 80 children who received the vaccine went on to develop the sleeping disorder narcolepsy. The broadcaster states that this is still an ongoing public controversy and the focus of civil legal actions in Ireland.

The broadcaster states that during the interview there was a thorough interrogation of the issues surrounding the HPV vaccine by the presenter with the invited guests, and there were many contributions from listeners via email and text, who were variously sceptical about vaccines, concerned about the HPV vaccine, and from listeners who supported public vaccination.

There was frequent reference to the Health Products Regulatory Authority (HPRA) and the role they have in the assessment of health risk and side effects from vaccines. It was stated clearly by Dr. Corcoran that should any member of the public have health concerns about any vaccine, they should immediately report those issues to the HPRA.

The broadcaster states that the vaccination issue is one of continuing public concern and the broadcaster promised to return to this topic, exploring some of the other angles and issues surrounding general vaccination issues, as well as specifics regarding the HPV vaccine in future programmes.

4.2 Broadcaster's Response to BAI

The broadcaster states that on this important matter of public health, and in the interest of protecting public health, the programme presented two reputable and responsible medical experts who were in a position to accurately inform audiences of the overwhelming scientific evidence from all national and international bodies that vaccines are an effective protection.

RTÉ maintains that the presenter put challenging questions to the interviewees, both directly and in the form of reading from listeners' texts and emails (solicited in advance on a previous edition of the programme). Among the examples are the following:-

- Presenter's question: "Historically a number of vaccines have gone wrong?"
- Presenter's question: "The swine flu – did we make mistakes on that in this country?"
- Presenter reading an email proposing that vaccines don't work for everybody – "not an ironclad solution" and following up with the question: "Isn't that a key thing – it doesn't work for everybody?"
- Presenter's question: "If you go to YouTube you will see young teenage girls, some in wheelchairs some obviously sick, saying this happened to them because they got the HPV vaccine?"
- From a listener: "Amazed at your condescending and stupid comments about vaccination. If a child is vaccinated why does it matter if another child is not? The vaccinated child is safe."
- From a listener: "If you're presenting a balanced programme why are you not presenting both sides of the argument. There is now scientific evidence that vaccination can damage the health of our children. If you need more information, I have plenty of scientific data to corroborate this. Why are pharmaceutical companies indemnified from liability for vaccine damage? You should be asking these questions."

The broadcaster states that the presenter ended the item by acknowledging the difficulty for parents of the decision to have children vaccinated and encouraging them to seek information.

The broadcaster states that this was a responsible, accurate and fair broadcast, respectful of the weight of scientific knowledge while also respectful and expressive of the concerns of listeners.

The broadcaster asserts that, far from breaching Principle 3 of the BAI Code of Programme Standards, the broadcast was in fact an important contribution to the protection of the public from harm.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in news and 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 4.17) and the BAI Code of Programme Standards - (Principle 3 – Protection from Harm), the Forum has decided to reject the complaint.

In this regard: -

- The Forum noted that the context in which the discussion referenced the HPV vaccine was that of a broader discussion about vaccine take-up. The immediate context was a reported decline in the take-up of the HPV vaccine, with the presenter opened the programme by stating that the ‘...uptake of the HPV vaccine will have plummeted from over 80% to 50% this year...’ There then followed a wide discussion of the various vaccines for measles, mumps, German measles, rubella and chicken pox, etc. The Forum noted that the discussion was 45 minutes in duration and it was only after 10-minutes that the programme turned to a discussion on the HPV vaccine. During this 45-minute period, the programme examined the importance of vaccines, tragedies that had happened due to mistakes in the formulation and administration of vaccines (including in Ireland) and the impact on public health when vaccine take-up declines. More broadly, the programme examined the importance of public trust in vaccination and the consequences of mistakes which can erode this public trust and lead to a decline in vaccinations
- Regarding the issue of balance, neither the Broadcasting Act nor the BAI’s news and current affairs code include a mandatory obligation for balance. Rather, both regulations oblige current affairs content to be fair, objective and impartial. This can be accomplished by the contributions from the presenter, from callers and texters and via other contributors, such as programme guests.

In terms of the content of this programme itself, the Forum, having had regard to the programme discussion as a whole and the totality of contributions made, found that the presenter challenged the two experts Dr. Paul Offit, a Vaccine Expert and Dr. Brenda Corcoran of the HSE and read out various texts which provided for a fair discussion and debate. More generally, as the discussion was focused predominantly on issues of science and public health which were factually based, the Forum did not consider a contra view via other on-air guests, such as parents of children who argue that the HPV vaccine has damaged them, was required.

- In considering this programme, the Forum noted that it is not unfair to take a critical position in instances where the facts as known at the time of broadcast overwhelmingly support one position. In the case of the HPV vaccine, the Forum noted that the scientific consensus at this time is that there is no proven link between the vaccine and significant negative health impacts. It was therefore, not unfair, to allow the studio guests to criticise those arguing against the take-up of the vaccine. The Forum also noted that the Forum aired the views of those who do believe the vaccine has damaged their children and the presenter acknowledged this viewpoint while also looking at the facts fairly.
- On the issue of the contributions by the programme presenter, the Forum found that the presenter's style is to challenge his contributors on a subject and to cross examine them on elements that he believes needs highlighting. It is the job of the presenter to ensure fairness in a programme and the Forum found that this was achieved through the contribution by both the panellists and the presenter without imparting views of his own in an impartial manner.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act, 2009, the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs or the BAI Code of Programme Standards in the manner specified by the complainant.

Station:

Newstalk 106-108FM

Programme:

Newstalk Breakfast

Date:

15th May 2017

1. Programme

The complaint concerns 'Newstalk Breakfast', which is a news and current affairs programme broadcast daily from 7am -10am. The complaint refers to an interview with Ms. Kitty Holland, journalist, about her experiences of terminating two of her pregnancies.

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. Summary of Initial Complaint to the Broadcaster

The complainants protest in the strongest terms at what they believe was Ms. Holland being allowed free rein on this programme to describe her experience of terminating two pregnancies. The complainants found very disturbing what they considered to be Ms. Holland's description of the terminations. The complainants maintains that Ms. Holland's description completely disregarded what they consider to be the natural, biological, maternal instinct that most women experience. The complainants believe that the broadcaster should have given equal air-time to someone who espouses a 'pro-life' mindset.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states that the item in question was a personal story from the guest with the intention of highlighting the complex issue of abortion and the difficult decision on whether or not to have the procedure. They state that the guest outlined her conflicting feelings around terminating two pregnancies.

The broadcaster states that the aim of the piece was to highlight that the decision to have a termination is rarely straightforward – the same person may and may not, have regrets about their choice, as evidenced by Ms. Holland's story.

The broadcaster states that balance is not only achieved by the presence of an alternative point of view. It can also be achieved by the conduct of the presenter and the inclusion of text messages etc., from both sides of the debate. In this case, the presenter, Mr. Paul Williams, conducted the interview in a fair, objective and impartial manner.

4.2 Broadcaster's Response to BAI

The broadcaster states that the piece in question was an interview with Ms. Holland where she discussed her personal experiences of terminating two pregnancies.

The broadcaster does not accept that this discussion automatically falls under the heading of news and current affairs and is subject to the requirements of the Code as it was an interview dealing with a personal story and was a human-interest piece.

If, however, it is determined that the Code applies to this piece, then the broadcaster rejects that it was in breach of the Code for the following reasons:-

- The content was simply an exploration of a perspective on a topic. Ms. Holland was not introduced as a 'pro-choice' advocate nor was she there to pursue that agenda.
- There was no active engagement on the issue of the rights or wrongs of an abortion. Ms. Holland did express her view when she said "her take would be" that women should have the right to make the decision but this was not in the context of engaging in a debate about the merits or otherwise of abortion – it was in the context of her own personal story on her own experience.
- She did not mention the 8th Amendment nor did she mention the Citizen's Assembly or the upcoming referendum.

The broadcaster states that there were no expressions of the broadcaster's own views.

- The complainant stated that the presenter was impartial. The broadcaster states that the premise of the complaint appears to be the following:

“..surely it behoves Newstalk, in the interests of Impartiality, Fairness and Objectivity, to give equal air-time to someone - probably a woman - who espouses a pro-life mindset as exemplified by her life experiences.”

This has been expressly acknowledged by the BAI as not being the case. We note that the BAI has previously held that a discussion on a current affairs topic does not automatically require the presence of another party holding opposing views, because the presenter can fulfil this role or because the content is simply an exploration of a perspective on a topic.

- The broadcaster is satisfied that the item was in line with the Code and was a 'personal view' or 'authored' segment pursuant to Rule 23. It was subject to editorial controls and was fair and impartial. It was clearly introduced as Ms. Holland "candidly sharing her personal story of abortion" so listeners were given advance notice of the subject matter.
- The broadcaster maintains that the listener was provided with an honest and accurate account of the range of concerns that arise when dealing with the issue of abortion to include good and bad, based on the personal experiences of the interviewee. The broadcaster states that abortion was not encouraged or glorified in any way. In fact, the interviewee noted the negative affect of her second termination and how she was in counselling for over a year afterwards.
- The broadcaster believes the coverage was transparent and accountable and was presented in an independent and editorially credible manner. Furthermore, the broadcaster is satisfied that the programme complained of did not breach any of the Codes.

- The broadcaster states that editorially, it would have been inappropriate and insensitive to introduce grounds for not having an abortion. The broadcaster maintains that both sides of the debate were covered in a balanced manner. One example of this is a broadcast on the 24th April where a debate was broadcast featuring Ms. Cora Sherlock, a well-known 'pro-life' advocate, discussing the Citizen's assembly and other issues arising.

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

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

In this regard:-

- In considering the complaint, the Forum had regard to the fact that there is no automatic obligation to balance contributions on a programme with an alternative guest or with alternative perspectives.
- The Forum found the complaint referred to an interview with journalist, Ms. Kitty Holland in relation to her abortion experience. From its review of the programme, the Forum found that the interview focused on Ms. Holland's personal experiences, in particular, the background to her pregnancies, her decision to have the first termination given her insecure financial position at that time and having no regrets in relation to that. Later, having become pregnant again, Ms. Holland described the anguish she suffered this time while taking the decision to have another termination.
- The Forum was of the view that Ms. Holland's very diverse experience between the first and second abortion, illustrated how differently woman can view their situation depending on their personal circumstances at the time.

The Forum found that, in describing her experience in relation to the later termination, her own emotional and psychological response to the situation, it was clear Ms. Holland had gone through a very difficult period in her life which required counselling for a long period.

- The Forum was of the view that while there was some reference to the broader political discussion on abortion, this was not a debate on the 8th Amendment. Rather, the Forum considered this as a human interest story and, as a result, the interviewer posed questions to tease out the affect the decision to have the terminations had on Ms. Holland. He also facilitated the free expression of her experiences and how these impacted on her. The Forum was therefore of the view that the requirements for fairness, objectivity and impartiality did not apply in respect of this human interest story.
- 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 in the manner specified by the complainant.

Complaint made by: Mr. Eamonn McKiernan

Ref. No. 58/17

Station:

Newstalk 106-108FM

Programme:

Newstalk Breakfast

Date:

15th May 2017

1. Programme

The complaint concerns 'Newstalk Breakfast', which is a news and current affairs programme broadcast daily from 7am -10am. The complaint refers to an interview with Kitty Holland, journalist, about her experiences of terminating two of her pregnancies.

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. Summary of Initial Complaint to the Broadcaster

The complainant states that this interview with Ms. Kitty Holland regarding her two terminations provided only a one-sided debate on the issue and demonstrated a lack of balance. The complainant believes this is unacceptable in an environment where a referendum on the issue is likely.

The complainant believes that the general tenor of the piece was that in relation to abortion, people make choices which they sometimes regret. However, at all times the context was that she believed the decision was her own regardless of the possibility it was one she might later regret.

The complainant acknowledges that balance is not only achieved by the presence of an alternative viewpoint and can be achieved by the conduct of the presenter. However, the presenter did not express an opinion or viewpoint on abortion. At no point was any counterpoint put to Ms. Holland by the presenter. The complainant believes balance is not about giving two different or difficult choice scenarios of the same 'pro-choice' position i.e. in one case Ms. Holland regretted her choice and in the other she did not, citing her social and financial circumstances as a reason.

4. Broadcaster's Response

4.1 Summary of Broadcaster's Response to the Initial Complaint

The broadcaster states that the item in question was a personal story from the guest with the intention of highlighting the complex issue of abortion and the difficult decision on whether or not to have the procedure. The guest outlined her conflicting feelings around having two abortions. The broadcaster states that the aim of the piece was to highlight the decision to have a termination is rarely straightforward – the same person may and may not, have regrets about their choice, as evidenced by Ms. Holland's story.

The broadcaster states that balance is not only achieved by the presence of an alternative point of view. It can also be achieved by the conduct of the presenter and the inclusion of text messages etc., from both sides of the debate. In this case, the presenter, Mr. Paul Williams, conducted the interview in a fair, objective and impartial manner.

4.2 Broadcaster's Response to BAI

The broadcaster states that the piece in issue was an interview with Kitty Holland where she discussed her personal experiences of having two abortions.

The broadcaster does not accept that this discussion automatically falls under the heading of news and current affairs and is subject to the requirements of the Code as it was an interview dealing with a personal story of a personal story and was a human-interest piece.

If, however it is determined that the Code applies to this piece, then the broadcaster rejects that it was in breach of the Code for the following reasons:-

- The content was simply an exploration of a perspective on a topic. Ms. Holland was not introduced as a pro-choice advocate nor was she there to pursue that agenda.
- There was no active engagement on the issue of the rights or wrongs of an abortion. Ms. Holland did express her view when she said "her take would be" that women should have the right to make the decision but this was not in the context of engaging in a debate about the merits or otherwise of abortion – it was in the context of her own personal story on her own experience.

- She did not mention the 8th Amendment nor did she mention the Citizen's Assembly or the upcoming referendum.

There were no expressions of the broadcaster's own views.

- The complainant acknowledged that the presenter was impartial. The broadcaster states that the premise of the complaint appears to be the following:

“..surely it behoves Newstalk, in the interests of Impartiality, Fairness and Objectivity, to give equal air-time to someone- probably a woman- who espouses a pro-life mind-set as exemplified by her life experiences.”

This has been expressly acknowledged by the BAI as not being the case. We note that the BAI has previously held that a discussion on a current affairs topic does not automatically require the presence of another party holding opposing views, because the presenter can fulfil this role or because the content is simply an exploration of a perspective on a topic.

- The broadcaster is satisfied that the item was in line with the Code and was a 'personal view' or 'authored' segment pursuant to Rule 23. It was subject to editorial controls and was fair and impartial. It was clearly introduced as Ms. Holland “candidly sharing her personal story of abortion” so listeners were given advance notice of the subject matter.
- The broadcaster maintains that the listener was provided with an honest and accurate account of the range of concerns that arise when dealing with the issue of abortion to include good and bad, based on the personal experiences of the interviewee. The broadcaster states that abortion was not encouraged or glorified in any way. In fact, the interviewee noted the negative affect of her second abortion and how she was in counselling for over a year afterwards.
- The broadcaster believes the coverage was transparent and accountable and was presented in an independent and editorially credible manner. Furthermore, the broadcaster is satisfied that the programme complained of did not breach any of the Codes.

- The broadcaster states that editorially, it would have been in appropriate and insensitive to introduce grounds for not having an abortion. The broadcaster maintains that both sides of the debate were covered in a balanced manner. One example of this is a broadcast on the 24th April where a debate was broadcast featuring Ms. Cora Sherlock, a well-known 'pro-life' advocate, discussing the Citizen's assembly and other issues arising.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1) (a) (Fairness, Objectivity and Impartiality in news and current affairs) and the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs –Section 4: Rules 4.1 and 4.2, the members have decided to reject the complaint.

In this regard:-

- In considering the complaint, the Forum had regard to the fact that there is no automatic obligation to balance contributions on a programme with an alternative guest or with alternative perspectives.
- The Forum found the complaint referred to an interview with journalist, Ms. Kitty Holland in relation to her abortion experience. From its review of the programme, the Forum found that the interview focused on Ms. Holland's personal experiences, in particular, the background to her pregnancies, her decision to have the first termination given her insecure financial position at that time and later becoming pregnant again. Having had no regrets about her first termination, Ms. Holland described the anguish she suffered the second time while reaching the decision to have another termination.
- The Forum as of the view that Ms. Holland's very diverse experience between the first and second abortion, illustrated how differently woman can view their situation depending on their personal circumstances at the time. The Forum found that, in describing her experience in relation to the later termination, her own emotional and psychological response to the situation, it was clear Ms. Holland had gone through a very difficult period in her life which required counselling for a long period.

- The Forum was of the view that while there was some reference to the broader political discussion on abortion, this was not a debate on the 8th Amendment. Rather, the Forum considered this as a human interest story and, as a result, the interviewer posed questions to tease out the affect the decision to have the terminations had on Ms. Holland. He also facilitated the free expression of her experiences and how these impacted on her. The Forum was therefore of the view that the requirements for fairness, objectivity and impartiality did not apply in respect of this human interest story.
- 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 in the manner specified by the complainant.

Complaint made by: Mr. Dermot Hickey

Ref. No. 60/17

Station:
RTÉ One TV

Advertisement:
Airwick VIPoo

Date:
8th May 2017

1. Advertisement

The complaint concerns an advertisement for Airwick VIPoo, which is designed to eliminate toilet odours. The advert which was shown during the Six One News on 8th May 2017.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(d)(General Commercial Communications Code – Sections 3.2.1 and 3.2.4 Offence, Harm and Human Dignity).

3. Complaint Summary

The complainant states that the advertisement related to a spray product which would remove the aromatic by-product of toiletry waste disposal. The complainant states that the advert was very well and, no doubt, expensively produced. He states that it was most informative to the extent that there were graphics included. The complainant states that the graphics left nothing to the imagination. He states that it depicted two substantial lumps of human faeces being swirled around in a toilet bowl. He states that it showed this process both from above, and through the side of a glass toilet bowl.

The complainant states that he found the sight of the graphic of the swirling faeces in the transparent toilet bowl to be offensive and inappropriate for the time of day at which it was broadcast, a time that many, including himself enjoy their evening meal.

4. Advertiser's Response

The advertising agency, Williams Lea Tag, apologise for the discomfort felt by the complainant when viewing the commercial for VIPoo. The advertiser further states that the tone of the commercial is light and funny and through this approach the aim was to make a little talked about bodily function/everyday situation memorable and relatable to the viewer, provide them with an option to resolve it, which would then incentivise them to purchase the product.

The advertiser states that it was part of their brief to ensure, as it was a new product launch for Reckitt Benckiser, that it was clear what the functionality was within this creative approach, hence the graphics the complainant has objections to.

The advertiser states that, in producing the commercial, it went through rigorous creative development, testing, feedback and analysis. It was also deemed suitable for transmission apart from the breaks immediately before, during or after any children's programme and was scheduled and played out accordingly.

5. Broadcaster's Response

5.1 Broadcaster's Response to Complainant

The broadcaster states that prior to going to air, all commercial communications must first be cleared for broadcast by RTÉ's internal Clearance Committee, who consider both the verbal and visual content of the commercial along with its suitability for broadcast and its compliance with all existing Broadcasting Codes.

They state that the TV commercial for Airwick VIPoo was approved for broadcast on their services as the product is a genuine and real product specifically designed to eliminate toilet odours that can often cause embarrassment for some. The creative agency designed a commercial that was tongue-in-cheek and tastefully executed for what is a difficult product to promote given the nature of the product and its use. RTÉ state that their Clearance Committee felt that the commercial was humorous and the graphics used to display the use of the product was animated and not real, however RTÉ appreciates that matters of taste can be subjective.

5.2 Broadcaster's Response to BAI

The broadcaster refers to the response of the Copy Clearance Administrator to the initial complaint.

RTÉ wishes to underline that, contrary to the complainant's assertion, the commercial does not depict "two substantial lumps of human faeces being swirled around in a toilet bowl." In fact, the animation shows three doughnut shapes, representational of the 'devil's dumplings' referred to in the voiceover but not, as alleged, such dumplings themselves.

The broadcaster states that no evidence is given in the complaint of any content prejudicial to human dignity or of any harm caused by the content. RTÉ points to the fact that this is the sole complaint received about the commercial, broadcast on at least one occasion to the very sizeable TV News audience, as a strong indication that any offence was neither serious nor widespread. Similarly, RTÉ asserts that this sole negative response supports our belief that there was nothing inappropriate about the scheduling of the commercial.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the Broadcasting Act 2009, Section 48(1)(d)(General Commercial Communications Code – Sections 3.2.1 and 3.2.4 (Offence, Harm and Human Dignity), the Forum has decided to reject the complaint.

In this regard: -

- In considering the complaint, the Forum took into account section 3.4.2 of the BAI General Commercial Communications Code. This sets out a number of contextual factors that the BAI will have regard to when assessing compliance with this code. This includes, the time of broadcast, the type of programme, the nature of the product or service and the likely composition of the audience listening to, or watching, the programme.
- With these factors in mind, the Forum noted that the advertisement was scheduled during the Six One News on RTÉ One, which is an adult oriented news programme. This programme will include a range of content from everyday matters, such as sports, business news and cultural events to serious and significant news stories such as murder, natural disasters and serious crime.
- The Forum also noted that the advert related to a common and natural human function and that adverts linked to this function are a regular feature of advertising whether for bleach, cleaners, disinfectants and other products or services. In the case of the advert in question, the Forum found that the tone of the commercial was light and humorous and included the use of graphics and animation.
- Having regard to the scheduling, the product and content of the advert, the forum was of the view that it would not cause widespread offence, such that it infringed the relevant regulations.

- In view of the above and taking into account the type of programme, the Forum did not agree that the advertisement infringed the requirements of the Broadcasting Act, 2009 or the BAI General Commercial Communications Code in the manner specified by the complainant.

Station:
RTÉ Radio 1

Programme:
Callan's Kicks

Date:
6th May 2017

1. Programme

The complaint concerns 'Callan's Kicks', which is a satirical comedy programme broadcast on RTÉ Radio 1. The content complained of refers to the then outgoing Taoiseach, Mr. Enda Kenny T.D.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(Harm & Offence); the BAI Code of Programme Standards, (Principles 1 - Respect for Community Standards, 3 - Protection from Harm and 5 - Respect for Persons and Groups in Society).

3. Complaint Summary

The complainant states that this programme was a political diatribe against the then outgoing Taoiseach, Mr. Enda Kenny T.D. The complainant states that this was the last programme in the series and was titled - 'An Enda Kenny Special'.

The complainant states that the programme contained references to the history and policies of the Fine Gael party and An Taoiseach which he found offensive. He states that there were references such as there being 'more hospitals to nuns', 'blueshirts, getting people to rat on cheats', references to Mr. Kenny's performance during the 2007 Election Debate, references to Mr. Michael Lowry T.D and to the Moriarty Report (which the complainant states that the public record will show that An Taoiseach had passed to the DPP and Gardaí). He states that the programme also referenced cuts to pensions for the Blind (which the complainant states Mr. Kenny's Government restored).

The complainant states that, in the past, RTÉ have defended Mr. Callan's comments about An Taoiseach as being made under his role as journalist, when RTÉ picked him to do an assessment of Mr. Kenny's 40 years in public life. The complainant states that the presenter sometimes writes in the Irish Times newspaper, and that much outrage has been made of his recent articles on An Taoiseach, which the complainant states RTÉ should be aware of.

The complainant states that RTÉ seeks to defend this programme as satire and comedy. The complainant submits it is political comment, made under the guise of comedy and satire. He states that while no one can criticise satire, this programme was deeply political, offensive and venomous in the extreme.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant:

The broadcaster states that Callan's Kicks is in its fifth season on RTÉ Radio 1 and has grown in popularity with the Irish audience over this time. Listeners are very fond of the show. The array of writers for the show has grown and developed over that time, offering the first writer's room for comedy writers in radio in Ireland.

The broadcaster states that the programme on the 6th May was the final programme of a commissioned twelve for the 2017 spring schedule on RTÉ Radio 1. It was widely reported around the time that An Taoiseach, Mr. Enda Kenny T.D. was to shortly step down as leader of Fine Gael. The broadcaster states that since Mr. Callan's early days on 2FM, Mr. Enda Kenny T.D. has been a character that he has returned to again and again.

The broadcaster states that the programme, of half-hour duration, was structured that week in such a way that An Taoiseach and Deputy Michael Ring, were travelling home on the government jet from a state visit to Canada. This scene was returned to three times within the show and the characters' conversations with each other allowed for a jumping-off into career flashbacks from An Taoiseach and a final duet, by characters Enda Kenny and Michael Ring, to a Pogues tune as the show and the season's finale. The broadcaster states that the imagined dynamic between both men has been a central tenet of the writing on Callan's Kicks for the last few years.

The broadcaster states that RTÉ presenters were also made fun of during the programme, including Mr. Nicky Byrne, Mr. Marty Morrissey, Mr. Des Cahill, Mr. Marty Whelan, Ms. Marian Finucane, Mr. Ryan Tubridy, Mr. Ray Darcy and Mr. Dave Fanning (standing in for the sports day presenter). The broadcaster states that the Dublin Luas cross city works also got a look-in with a fake radio ad which described extending a light rail system as looking more complicated than putting a man on the moon.

Regarding the humour around An Taoiseach's character, the broadcaster states that this took the form of three flashbacks – in 1975 as a new T.D. being interviewed by Mr. David Hanley, in 2007 in a public televised debate against Mr. Bertie Ahern chaired by Mr. Pat Kenny and finally a duet with Mr. Michael Ring at his retirement party.

The broadcaster states that the programme covers politicians and others who are in the public eye, across entertainment, media and sport. It doesn't satirize the weak or the vulnerable and when public figures, including politicians retire, it stops featuring them as regular characters on the show.

The broadcaster states that over the course of a season, the programme would cover and give attention to many public figures and politicians, national or international, or at least their "character" which is a type of creation by the writers. All of this is comedy, with an aim to raise a smile on a Saturday after a week of news. Not everyone will find the same things funny at the same time but that is the nature of comedy and it can be very subjective.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the Editor of Callan's Kicks above.

The broadcaster states that Callan's Kicks is a comedy programme which satirises and pokes fun at public figures from the worlds of sport, media, news, politics and entertainment. It is presented as such and known as such by its audience since it first went on air in 2011, meeting their expectations. The programme's high profile and reputation make it extremely unlikely that any listeners could be unaware of the nature of its content or be unintentionally exposed to it.

In the context of free expression, RTÉ asserts that a programme such as Callan's Kicks represents the editorially independent delivery to the audience of satirical political comedy and a contribution to such expression in a democracy. The broadcaster states that evidence of the fact that this series is not beyond the bounds of acceptable community standards is indicated by the tiny number of complaints about the series received by RTÉ since its inception. Indeed, the complaint was the only one received in respect of this edition. The broadcaster states that the adult audience of Callan's Kicks will tune in for and expect satirical comedy which will be consistently and impartially disrespectful to contemporary and historical figures alike.

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

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

In this regard: -

- The Forum had regard to the programme content in the context of the entire programme and audience expectations. In particular, the Forum noted that the programme was a satirical comedy show and, as such, in attempting to scrutinise or comment on facets of Irish political society, comedy programmes such as this often do so through the format of highlighting, in an exaggerated and farcical manner, such facets.
- Reviewing the programme, the Forum found that the programme included a wide range of individuals and organisations who were the subject of satire. This included the Fine Gael and Fianna Fáil political parties and the leaders of both, including Mr. Enda Kenny T.D. The Forum found that Mr. Kenny T.D. was treated neither better nor worse than other individuals impersonated in the programme.
- The Forum took into account that audiences are familiar with this genre of programming and would be aware that political figures in society are, and can be, subjected to parody. While such humour may not appeal to all tastes, the Forum must respect the right to freedom of expression.
- The Forum was of the view that these sketches were based on the comedian's or writer's perceptions and it was evident that the comments were not meant to be taken seriously or literally. While some audience members may have found the content not to their taste, the Forum was of the view that it did not infringe community standards nor was it broadcast without context.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act, 2009 or the BAI Code of Programme Standards - Principles 1, 3 and 5 in the manner specified by the complainant.

