



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

**Broadcasting Authority of Ireland**

**Broadcasting Complaint Decisions**

**February 2018**

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### BAI Complaints Handling Process

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

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

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

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

In total, 11 complaints were considered by the Compliance Committee of the BAI. 3 were Upheld, 2 Upheld in Part and 6 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 on 18<sup>th</sup> October, 15<sup>th</sup> November and 13<sup>th</sup> December 2017, while the decisions of the Executive Complaints Forum were reached at six meetings held from October 24<sup>th</sup> to December 18<sup>th</sup> 2017.

**Upheld/Upheld in Part by the BAI Compliance Committee**



**Complaint made by: BioAtlantis**

**Ref. No. 48/17**

**Station:**

RTÉ One

**Programme:**

Eco Eye

**Date:**

7<sup>th</sup> February 2017

**1. The Programme**

The complaint concerns 'Eco Eye', which is a series of programmes concentrating on environmental issues broadcast on RTÉ 1 TV. The programme in question dealt with the topic of seaweed harvesting.

**2. Complaint Category**

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48(1)(b)(offence and harm); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, (Section 4: Rules 4.1 and 4.2) and the BAI Code of Programme Standards, (Principle 3 - Protection from Harm and (Principle 6 - Protection of the Public Interest).

**3. Summary of Initial Complaint to the Broadcaster**

The complainant states that this programme caused considerable reputational damage to his company with significant repercussions due to the unbalanced report and incorrect statements concerning his business and operations. The complainant states that his company applied for a licence to sustainably mechanically harvest Laminaria (kelp) in Bantry Bay in 2009. The licence was approved in 2014 following extensive consultations with a range of recognised experts in Ireland. The complainant states that a condition of the licence was the engagement of the services of an independent and recognised expert in marine ecology to conduct a series of underwater ecology surveys before harvesting. The complainant states that the baseline survey took place in Bantry Bay in 2016 and harvesting will commence in 2017. The complainant sets out a range of concerns in respect of the content of this programme, including:-

- The presenter stated that "this kelp forest and all the life it supports, undisturbed for centuries, is scheduled to be harvested mechanically for commercial use." The complainant maintains that this statement completely ignores the effects of storm damage and anyone who has walked on a beach after a storm can see evidence of L. hyperborean stocks washed up every year.



The complainant poses the question, therefore, as to how the programme can claim that kelp forests in Ireland have been undisturbed for centuries.

- The complainant states that mechanical harvesting of kelp has taken place in Europe for over 40 years. As it is permitted in France and Norway, the complainant wonders if it is so detrimental to the environment, why these authorities have not banned the practice.
- The complainant states that the sustainability of mechanical harvesting of kelp in Ireland was not mentioned in the programme despite the publication of two independent reports on the topic. One report by Sustainable Energy Ireland shows natural kelp stocks would be a reasonable upper limit to sustainable harvest.
- The complainant states that the programme did not outline how different mechanical harvesting techniques are currently employed in different parts of Europe. He states that Norway uses a dredge system while in France, Scoubidou are permitted. Both systems involved contact with the seabed thus affecting crustaceans, yet both are permitted. The complainant states that the system for Bantry Bay does not involve any contact with the seabed which is significantly and crucially different. The complainant states that this was ignored by programme makers.
- The complainant states that the programme stated that seaweed aquaculture “could provide a solution to the increasing demand in Ireland and ensure we can maintain our wonderful coasts and its delicious bounty.” The complainant states that this comment ignored the significant challenges that seaweed aquaculture faces, the main one being the avoidance of storm damage and licensing requirements.

The complainant states that the programme was a very biased program which made a range of false statements, sensationalist claims. The complainant asserts that BioAtlantis was clearly the target of the criticisms and unfounded fears in the programme. They state that at no time did the broadcaster contact BioAtlantis despite it being the first company in Great Britain and Ireland to be licensed to sustainably mechanically harvest Laminaria. The complainant states that the commitment of BioAtlantis to environmental sustainability and compliance with EU regulations are clear and verifiable. The complainant states that the broadcaster has conveyed the opposite, without regard for the reputation of BioAtlantis and the job creation and industry that the company is striving to build. The complainant believes this demonstrates an alarming lack of care by the persons behind this programme.



BioAtlantis states that it employs 58 people in Kerry and Cork, exports to over 35 countries and has invested considerable time, effort and money to build an indigenous industry, yet the broadcaster did not afford the company the right to contribute to the programme.

The complainant states that since the programme was aired, threats have been made online to interfere with and “sabotage” BioAtlantis activities. They also state that, furthermore, that the programme makers have taken recently to social media posting comments which name the company, make accusation against it and called for a ban on their activities.

The complainant states that its licence was granted following almost two decades of research into the potential to harvest Laminaria mechanically in an environmentally sustainable manner. A range of conditions were also attached when the licence was granted, such as the requirement for frequent monitoring programmes to assess the potential impact. This includes the requirement for extensive underwater scientific monitoring before harvesting and for 3 and 5 years post-harvesting.

The complainant states that the programme makers promoted the so-called “health benefits” of seaweeds while ignoring the presence of toxic compounds in kelp and other species. The complainant states that seaweeds such as kelp can contain high levels of carcinogenic compounds, including arsenic. The Department of Agriculture tests the levels of toxic compounds in dried seaweed used by BioAtlantis to manufacture animal feed. The complainant finds it extraordinary therefore that the broadcaster would promote human consumption of kelp, which in many cases, is considered unsafe for pig and poultry use due to the high levels of arsenic.

#### **4. Broadcaster’s Response**

##### **4.1 Summary of Initial response to complainant**

The broadcaster states that the programme under question looked at the potential ecological impacts of mechanical harvesting techniques, which have yet to take place and which have recently been granted licenses in Ireland. It also looked at the history of seaweed harvesting and posed questions about how this might be affected by the recent sale of harvesting rights, specifically along the west coast of Ireland. In addition, the programme looked at the medicinal and culinary benefits of different seaweeds and the growth in the market for the product.





The broadcaster states the following:-

- The reference to kelp being "undisturbed for centuries" is correct, self-evidently all natural eco systems suffer from naturally occurring storm damage which do rip out older, weaker or dying kelp.
- The production team acknowledged that mechanical harvesting takes place in Norway and France, however, they did not have scope within a 25 minute programme to reference other countries. The broadcaster states that at no point did the programme make the suggestion that mechanical harvesting should be banned.
- The broadcaster states that the sustainability of mechanical harvesting was mentioned during the interview with Dr. Karen Dubsky where she outlined the minimum and optimum heights of cutting kelp in order that it can survive and re-grow.
- The broadcaster states that the 2009 SEI study did not look closely at ecological impacts of various types of harvesting as this was outside the scope of the study. It does however, acknowledge that "the sustainability of harvesting natural stocks is a major challenge for these countries" (France and Norway).
- The broadcaster states that no details of the various harvesting techniques were mentioned nor was there any reference to seabed damage. However, the programme did reference the optimal cutting point for kelp below which the kelp dies.
- The broadcaster states that seaweed aquaculture is a proven practice for various types of species and was referred to by another contributor who mentioned that existence of large swimming pool style structures for high yield weed types. The team acknowledges that some species such as kelp are more cost effectively harvested by mechanical harvesting whiles acknowledging that sustainability is crucial.

The broadcaster states that BioAtlantis was not mentioned within the programme. Reference was made to the sale of harvesting rights on the west coast and sought to draw attention to the potential risks of loss of traditional harvesting rights and the potential risks of unsustainable cutting/harvesting of kelp below that optimal range.



## **4.2 Response to BAI**

The broadcaster refers to the response by the Deputy Head of Acquisitions to the initial complaint and also to the additional detailed response which addresses the points raised by the complainant in his complaint referral form dated 21<sup>st</sup> April 2017 in response to the reply of 23<sup>rd</sup> March 2017 by the Deputy Head of Acquisitions.

The broadcaster wishes to note that the numerous references by the complainant to an article on the RTÉ website lie outside the remit of the Broadcasting Act 2009 and the associated codes of the Broadcasting Authority of Ireland.

The broadcaster refers to the complainant's letter of 21<sup>st</sup> April 2017 which accompanied his complaint referral, reflecting the itemising of the letter and makes the following comments.

### **1. Background details relevant to this case**

- The broadcaster maintains that the Eco Eye producers were fully aware of BioAtlantis' licence submissions and carried out research on all of the relevant documentation, including applications made for other areas by BioAtlantis as part of research for this episode. The broadcaster states that the extent of the documentation provided by BioAtlantis in support of their licence was never a factor within the programme. The licence itself is a matter of public record and it is the terms of the licence which were a matter of concern. The broadcaster states that there is an implication by the complainant that the planning documents contain information or evidence contrary to that referred to in the episode, however, the broadcaster maintain that this is not the case. These documents are not research documents; they are official correspondence to a licence submission. In addition many of these bodies have no mandate to address environmental issues and the ones that do, raised the same points made in the episode.
- Of the bodies listed, all those concerned with environmental impact including the MLVC (Marine Licence Vetting Committee) who granted the licence, raised concerns about the impact of mechanical harvesting. It should also be noted that the EPA was not consulted on the application, despite being Ireland's environment agency. The broadcaster maintains that as there are no studies, research or evidence in these documents that supports anything in this complaint, their inclusion is of little relevance to this complaint.



- The need for a baseline study (also a condition of the licence) is also made quite clear and this study is referenced by the complainant numerous times as if it provides evidence or similar. The broadcaster states that this is incorrect, this was and is, a condition of the licence approval, it neither supports the case for mechanical harvesting nor provides evidence for its merits or otherwise. In addition, this study according to BioAtlantis, didn't start until September 2016 (after Eco Eye had filmed) and the results (as of 21<sup>st</sup> April 2017) are still not available. Regardless of this, the broadcaster states, as a baseline study, it would have no impact on the issues raised by various bodies and studies as it is merely a baseline for future studies, nor would it have any impact on the Eco Eye episode for the same reasons. This is a condition of the licence.
- Regarding the comment from the complainant that "The licence was granted following almost two decades of research in Ireland"; the broadcaster states that there has only been one small-scale study (2003) into the potential for sustainable mechanical harvesting in Ireland where actual field research was carried out, and that study raised numerous issues. Subsequent studies in 2004 and 2005, 2009 were broad literature and expert reviews (of existing Irish and international research), all of which had concerns, some serious in regard to the environmental impacts of mechanical harvesting. The broadcaster states that this hardly equates to "two decades of research in Ireland" for an application made in 2009, in addition, much of the research here points to serious issues with mechanical harvesting and all point out the lack of research here. The broadcaster states that it has never been disputed that the complainant met all of the legal requirements of the licence application process and the programme team were aware of the consultation process. RTÉ and the programme team deny that any incorrect statements were made or that it was a biased programme.

## **2. Bias, lack of fairness, objectivity and impartiality exhibited by Eco Eye/RTÉ**

The broadcaster rejects the claim that "Eco Eye produced a very biased program which made a range of false statements, sensationalist claims." The broadcaster states that the complainant claims that "This is outlined in the supporting documents." The broadcaster states that there are no supporting documents and the references given in an earlier complaint do not support what is being alleged here, therefore, the broadcaster asserts that it is unclear as to what the complainant is referencing.

The broadcaster states that the episode briefly discussed some of the risks (to marine ecosystems) of mechanical harvesting, but these have been outlined in studies and by experts alike; (see below).



- The broadcaster states that the few studies on the mechanical harvesting of seaweed all make the same point, that there is a risk to the environment and that the extent of the threat depends on a number of factors, including the technology used, the area itself, and the operator etc. The complainant, in his first complaint, acknowledges this, and that he agrees with the expert we interviewed: "We agree with Karin Dubsky regarding the preferred cutting height of kelp. In fact this is a standard we aspire to. However this may not be technically feasible." This is the point regarding mechanical harvesting that is made in the episode. The broadcaster states that Ms. Karen Dubsky expands on this in the episode as does the literature. That is, if the kelp is cut at the wrong height, it dies and this in turn leads to the main threats to a kelp forest, the biodiversity it supports and the eco system services it provides. The broadcaster states that the complainant makes this case again in a recent newspaper article where he admits that there is a risk to the environment: "Of course there is going to be adverse effects initially but is it significant in the longer term? Probably not. We are not affecting crustaceans, so the only question is will there be re-growth in the areas we harvest," he said." - John O'Sullivan, Irish Examiner. This is the point made by Ms Dubsky in Eco Eye.
- The broadcaster states that no position was taken by the programme on whether mechanical harvesting should happen but to ignore issues that are pertinent to this method would be to suppress information and act outside the public interest. The broadcaster states that the study referenced by the complainant makes this case clearly, "prior to the introduction of mechanical seaweed harvesting in Ireland, an appropriate management strategy needs to be developed and put in place" (Werner, Krann, 2004). The broadcaster states that this has not happened and many of the potential threats identified in this study and others (Kelly et al, 2005) still remain.
- The broadcaster rejects the allegations by the complainant that RTÉ or Eco Eye engaged in any commentary on social media or any other forum which mentions the complainant or makes accusations or calls for a ban on the company's activities.
- The broadcaster further rejects the accusation of the provision of careless advice in relation to the consumption of seaweeds which can contain high levels of carcinogenic heavy metals. The programme contain an interview with Dr. Prannie Rhatigan and the use of small quantities of various seaweeds in medicinal and cookery practice. There was never any suggestion or advice to consume unsafe levels of anything.



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

Having reviewed the broadcast, the submissions from the complaint parties and the requirements of the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48(1)(b)(offence and harm), the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, (Section 4: Rules 4.1 and 4.2) and the BAI Code of Programme Standards, (Principle 3 - Protection from Harm and Principle 6 - Protection of the Public Interest), the Committee has decided to uphold this complaint in part.

In this regard:-

- The Committee noted that the programme focused on the question of the impact that mechanical seaweed harvesting may have on local ecosystems and coastal communities. This focus was set out at the beginning of the programme and examined via different perspectives, including the potential impact on traditional harvesting rights and the long term sustainability of kelp forests.
- While Eco Eye is not a current affairs programme, the content of this programme was considered by the Committee to be current affairs and therefore fell to be considered under the BAI's Code of Fairness, Objectivity and Impartiality in News and Current Affairs. In this regard, the Committee noted that the programme described the matter of seaweed harvesting rights as having become "...a hotly debated topic." As current affairs content, the examination of this topic, including the potential risks to communities and to the eco-system impacted by mechanical harvesting, was editorially legitimate. The inclusion of perspectives that were critical of this type of harvesting was also editorially legitimate. However, the Committee was of the opinion that the views of contributors and the language used aligned to a particular viewpoint on the issue of mechanical harvesting. In particular, the Committee found that the selection of contributors came from the same viewpoint and the programme used emotive language in support of this view, for example, "If you touch that [a part of the seaweed], it's like killing someone through the heart", "It's like clear felling a forest" and when the presenter opined that we "must keep these kelp fields intact". The Committee also noted that towards the conclusion of the programme the presenter stated: - "Perhaps aqua culture could provide a solution to the increasing demand in Ireland [for seaweed] and ensure that we can maintain our wonderful coasts and their delicious bounty." The Committee considered that this further demonstrated that the viewpoint of the programme was singular.



- As a result, the Committee was of the opinion that the programme did not include a range of perspective on the topic sufficient to meet the requirements of fairness, objectivity and impartiality, in a context where it was evident that there were other views, including the views of the complainant. In the view of the Committee, these programme elements, together, communicated a clear subtext that mechanical seaweed harvesting is bad and contributions from harvesters were necessary to provide a counterpoint to this view. On this basis, the Committee decided to uphold the complaint in part further to the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs.
- On the issue of harm, the Committee agreed that the complainant, while not named, was identifiable from the content by virtue of the reference to a specific location and the reference to the awarding of the first commercial licence for mechanical harvesting. However, the Committee also agreed that because the complainant was not named, audiences would have been likely to consider the criticisms levelled in the programme to be related to the views of the presenter and contributors on the impact of mechanical harvesting in Bantry Bay rather than being views that were directly critical of the complainant and their business practices. Accordingly, the Committee did not find evidence in the broadcast content of false statements, sensationalist claims or attempts to convey to the audience that BioAtlantis is not committed to environmental sustainability or compliance with EU regulations. For this reason, the Committee did not agree with the view of the complainant that the programme infringed the provisions of the BAI Code of Programme Standards.
- In considering this complaint, the Committee was of the view that audiences would have benefited from being informed of the organisation to which Ms. Karen Dubsky was a member, insofar as this would have provided the audience with the necessary context for her contribution. The Committee recommends that the broadcaster and programme maker have regard to this point so as to ensure that audiences are fully informed when considering programmes dealing with contentious issues.
- In considering this complaint, the Committee did not have regard to comments made on social media.



**Complaint made by: Mr. Dominic Parker**

**Ref. No. 71/17**

**Station:**

Newstalk 106-108FM

**Programme:**

Newstalk Breakfast

**Date:**

27<sup>th</sup> July 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 language used by one of the presenters, Mr. Paul Williams, regarding a protest in Jobstown, Dublin, against the appearance of then Tánaiste, Ms. Joan Burton at a graduation ceremony. The protest led to a subsequent court case.

**2. Complaint Category**

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(offence and harm); the BAI Code of Programme Standards (Principles 1 Respect for Community Standards and 3 Protection from Harm).

**3. Complaint Summary**

The complainant objects to the language used by the presenter, Mr. Paul Williams, on the Newstalk Breakfast Show. The complainant states that the co-presenter, Mr. Kieran Cuddihy, read from an article in the Daily Mail newspaper regarding an incident referring to the then Tánaiste, Ms. Joan Burton, being trapped in her car during a protest in Jobstown. The article indicated that Ms. Burton was attending a graduation ceremony in the area at the time. The complainant states that one of the graduates of An Cosán wrote to Mr. Leo Vardakar T.D. expressing horror at the protests and stated that Mr. Paul Murphy, T.D. destroyed his graduation ceremony. The complainant states that when Mr. Cuddihy had concluded reading the article, the presenter, Mr. Williams, then went on a rant using words to describe the protesters such as "bastards", "assholes", "thugs" and "bullyboys" etc. The complainant states this language is unacceptable from a journalist on air and believes Mr. Williams is not fit to host a live programme.



#### **4. Broadcaster's Response**

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

The broadcaster states in relation to the language used by Mr. Paul Williams it was inappropriate and Newstalk apologised if it caused offence. An apology was read out on air at approximately 7.20am by Mr. Williams.

##### **4.2 Broadcaster's Response to BAI**

The broadcaster states that the complaint refers to the opening comments made on the programme at approximately 7.10am. The broadcaster states that regular listeners to the programme will be aware that a topic of the day is discussed and the views of listeners are invited. The purpose of this portion of the show is to give an authored view, as permitted under the Code, engage the listener and so provoke discussion and debate that will run throughout the programme.

The broadcaster states that, in this case, the matter of discussion was a letter written by a person who graduated from An Cosán on November 12<sup>th</sup> 2014. The letter was carried in one of the daily papers and was the first time it was put in the public domain. The broadcaster states that the co-host, Mr. Kieran Cuddihy, began by outlining certain passages from the piece. This provided context and the framework for comments that followed.

The broadcaster states that the point put forward was that this graduate, who complained of having their day ruined by the protesters on the day, was an example of a 'working class hero'. The protest on the day was carried out by groups and people opposing water charges and said it was representing the working classes yet this 'working class hero' had their day ruined.

The broadcaster maintains that comments made by Mr. Williams after having quotes read out on air, echoed those of the letter writer i.e. that those who protested should question their actions as they negatively impacted on the graduates that day, people who come from the area and worked hard to improve their opportunities which is something a number of elected representatives present that day, claim to do for their constituents. It was claimed that it was ironic that these graduates were called 'traitors' (as the letter writer highlighted and as is evidenced from video footage from that day) and this was a point put forward by the presenter.





The broadcaster states that it is common place for a point to be put forward for discussion at the beginning of the programme. Kieran Cuddihy asked listeners to text in their views and a number of them, both those in agreement and those who disagreed, were read throughout the morning thus giving balance and fairness to the piece.

In relation to Principle 1, the broadcaster respectfully submits that the language was not in breach. The broadcaster believes it was justified for editorial and creative reasons, being the well-known style of the presenter and the heated topic being discussed. This, taken together with the fact that the audience is an adult audience and also the fact that the language used was on the less coarse end of the scale. To deny the presenter his innate style would be to work counter to the editorial output of the programme which explained in the initial letter, has the express intention of stimulating debate from the authored pieces and seeking the opinion of the listener and the public.

The broadcaster is mindful of the principle and that it has, as one of its main points the following:

'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 it therefore took immediate steps to issue an unequivocal apology at the first available opportunity (approximately 10 minutes after the language was used, thus ensuring that many of the audience who heard the initial words would have heard the apology). In this sense, the broadcaster claims to have followed the guidance of the principle and sought to minimise any offence that may have been caused. Notwithstanding that apology, we do not believe that the piece was in breach of Principle 1.

The broadcaster accepts that the language used by Mr. Williams in offering these comments was inappropriate and caused offence to some. This point was made and an apology was read at the first available opportunity which was approximately 7.20am. An apology was also given to the complainant, promptly upon receipt of his email.



The broadcaster states that Principle 3 of the BAI Code of Programme Standards highlights the need to protect the listener from harm. The broadcaster believes that the piece in question did not endanger the audience; the topic of the discussion was one which was widely held in the public domain and the issues were newsworthy, relevant and formed part of a political discussion.

The guidance on the principal also states:

"Broadcasting can be a force for public good. In enriching people's lives through entertainment, information or other programming, broadcasters must be free to make programmes that may be provocative or deal with sensitive issues."

The broadcaster states that the piece adhered to this guidance for the reasons outlined above; the piece discussed and challenged a widely held public view, it was a newsworthy and comment worthy event and new information had come to light in the form of the letter written by the An Cosán graduate. The comments complained of were made in an impassioned and over-the-top in nature, however, the broadcaster does not accept that it caused harm to the listeners.

The broadcaster notes that the BAI has also stated that not only is there no right not to be offended, it will be unavoidable that a programme service that captures the full richness of life and that seeks to address the entire range of topics of concern to the audience will contain material which will be a source of offence to some.

Newstalk states that the broadcast was at 7am and during school holidays. Only 2.28% of Newstalk's total audience is under 18 years of age and of the entire audience of the breakfast show less than 1% are under 18 years of age.

The broadcaster states that adult listeners will be aware of the particular style of this presenter. They state that he is known to have a robust, emotive and at times intense style of presenting. While the broadcaster accepts that some people may have been offended by the language used and have apologised for that, it does not accept that the broadcast was such that it caused harm in breach of Principle 3 of the BAI Code of Programme Standards.

The broadcaster accepts that the language used may have been unacceptable to some listeners and for that Newstalk took immediate steps to apologise to listeners.



## **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(b)(offence and harm) and the BAI Code of Programme Standards (Principles 1 Respect for Community Standards and 3 Protection from Harm), the Committee has decided to uphold the complaint in part.

In this regard:-

- Having considered the broadcast, it was the view of the Committee that the manner in which this topic was handled by the presenter infringed Principle 1 of the BAI Code of Programme Standards. This section of the Code does not prohibit the use of coarse and offensive language which may be in certain circumstances be appropriate and justified. However, in the case of this programme, the Committee considered the tone and vitriol of the presenter's comments and the fact that they were largely directed at one individual (Mr. Paul Murphy T.D) and his supporters were not appropriate or justified on the basis of creative or editorial reasons or for other reasons. Moreover, given that the comments were made as part of the regular introduction to the programme and were made by one of the two main presenters, the Committee was of the view that the presenter took no steps to guard against the use of coarse and offensive language. So while the presenter provided an apology for his language, the Committee did not consider this sufficient to address the issues arising given the extent and nature of his comments and given that he has a key editorial responsibility in the making of the programme and ensuring compliance with regulations. For these reasons, the Committee has decided to uphold the complaint in part.
- In terms of Principle 3, the Committee was of the view that the channel and the programme is targeted at an adult audience and did not raise issues in respect of harm. For this reason, the Committee did not agree that the programme would infringe Principle 3 of the BAI Code of Programme Standards.



**Complaint made by: Mr. Eddie O'Sullivan**

**Ref. No. 77/17**

**Station:**

Newstalk 106-108FM

**Programme:**

Newstalk Breakfast

**Date:**

27<sup>th</sup> July 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 language used by one of the presenters, Mr. Paul Williams, regarding a protest in Jobstown, Dublin, against the appearance of then Tánaiste, Ms. Joan Burton at a graduation ceremony. The protest led to a subsequent court case.

**2. Complaint Category**

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

**3. Complaint Summary**

The complainant objects to the language used by the presenter, Mr. Paul Williams, on the Newstalk Breakfast Show. The complainant states that the co-presenter, Mr. Kieran Cuddihy, read from an article in the Daily Mail newspaper regarding an incident referring to the then Tánaiste, Ms. Joan Burton, being trapped in her car during a protest in Jobstown. The article indicated that Ms. Burton was attending a graduation ceremony in the area at the time.

The complainant states that Mr. Williams went on to make claims post-court Judgement that were proven to be false in court. The complainant states that Mr. Paul Murphy T.D. and six other defendants were found not guilty by a jury of their peers. He states that not only were they unanimously found not guilty, but in court it was found that none of the defendants participated in any kind of abuse either physically or verbal towards any person.

The complainant states that Mr. Williams was allowed on-air to attack these people with vicious offensive language. There was no objective or impartial view put forward, instead it was just an abusive rant. The complainant states that at no time did the co-presenter try to bring balance to what was being said.



#### **4. Broadcaster's Response**

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

The broadcaster states in relation to the language used by Mr. Williams that it was inappropriate and Newstalk apologised if it caused offence. The broadcaster states that an apology was read out on-air at approximately 7.20am by Mr. Paul Williams. The broadcaster states that it was clearly stated during the programme that a trial was recently held in relation to 7 men and they were found innocent of the charges put to them. The broadcaster states that while inappropriate language was used and the tone was quite animated, the purpose of the piece was to highlight the impact the protests had on someone who left school at 12 but went on to receive a BA; it was stated that this person was a 'working-class hero'. Newstalk accepts the point could have been made more clearly and without inappropriate language.

##### **4.2 Broadcaster's Response to BAI**

The broadcaster states that the complaint refers to the opening comments made on the programme at approximately 7.10am. The broadcaster states that regular listeners to the programme will be aware that a topic of the day is discussed and the views of listeners are invited. The purpose of this portion of the show is to give an authored view, as permitted under the Code, engage the listener and so provoke discussion and debate that will run throughout the programme.

The broadcaster states that, in this case, the matter of discussion was a letter written by a person who graduated from An Cosán on November 12<sup>th</sup> 2014. The letter was carried in one of the daily papers and was the first time it was put in the public domain. The broadcaster states that the co-host, Mr. Kieran Cuddihy, began by outlining certain passages from the piece. This provided context and the framework for comments that followed.

The broadcaster states that the point put forward was that this graduate, who complained of having their day ruined by the protesters on the day, was an example of a 'working class hero'. The protest on the day was carried out by groups and people opposing water charges and said it was representing the working classes yet this 'working class hero' had their day ruined.



The broadcaster maintains that comments made by Mr. Williams after having quotes read out on air, echoed those of the letter writer i.e. that those who protested should question their actions as they negatively impacted on the graduates that day, people who come from the area and worked hard to improve their opportunities which is something a number of elected representatives present that day, claim to do for their constituents. It was claimed that it was ironic that these graduates were called 'traitors' (as the letter writer highlighted and as is evidenced from video footage from that day) and this was a point put forward by the presenter.

The broadcaster states that it is common place for a point to be put forward for discussion at the beginning of the programme. Kieran Cuddihy asked listeners to text in their views and a number of them, both those in agreement and those who disagreed, were read throughout the morning thus giving balance and fairness to the piece. The broadcaster states that the Code makes it clear with regard to achieving objectivity and impartiality that the rules in the Code should not be taken to imply that a presenter cannot convey critical views or pursue vigorous lines of questioning. It is clearly stated that what is necessary to achieve fairness, objectivity and impartiality is credible, trustworthy and editorially independent production and reporting. The broadcaster states that this piece included a fair and equitable balance of both sides of the issue, mainly by the inclusion of the various text messages that were read out and, therefore, was fair to all sides concerned.

The broadcaster accepts that the language used by Mr. Williams in offering these comments was inappropriate and caused offence to some. This point was made and an apology was read at the first available opportunity which was approximately 7.20am. An apology was also given to the complainant, promptly upon receipt of his email.

Newstalk states that the broadcast was at 7am and during school holidays. Only 2.28% of Newstalk's total audience is under 18 years of age and of the entire audience of the breakfast show less than 1% are under 18 years of age.

The broadcaster accepts that the language used may have been unacceptable to some listeners and for that Newstalk took immediate steps to apologise to listeners. However, the complaint response is in respect of whether or not the piece was fair, objective and impartial and whether it caused harm to listeners.



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

Having considered the broadcast and the submissions from the complainant and the broadcaster 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 and Impartiality in News and Current Affairs (Section 4: Rules 4.1 and 4.2), the Members have decided to uphold the complaint.

In this regard:-

- The Committee noted the format of the programme, which commences with an overview of the programme content to come and an overview of the main news stories of the day. In addition, the format includes the two presenters taking alternative views on news items with a view to teasing out different perspectives and with a view to engaging listeners, including via texts, tweets and emails. The Committee further noted that the news item that is the focus of the complaint was topical and was an editorially appropriate topic for this news and current affairs programme.
- Notwithstanding this, the Committee, having reviewed the content, has determined that the programme did not comply with the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs.
- In this respect, the Committee noted the comments by the presenter, which included the following:-

“...And Paul Murphy and the rest of the rabble, you should be ashamed and, you know what, they're not. These narcissistic egotists are only concerned with their own political aggrandisement, which is to become modern day social heroes, making martyrs and victims of themselves. What a con, what a disgrace and what a bloody insult to the decent hard-working people who are trying to pull themselves...out of the socio-economic rut that they were born into.



"These people, this lady who wrote this letter...they're the people who are trying their best to make their society better than what Murphy wants to do, Murphy and his bully boys and girls have no concerns...they don't give a shit about anyone. They prefer to shout down, bully, terrify those amongst the social cohort that they claim to represent...I'd love to see some of those little bastards come to my door and do that.

And this underlines why every society that is structured along the same socialist ideologies and economic policies espoused by Murphy and his rabble are grim, grey and backward places where their people are downcast and downtrodden...and those kids, those people who went back to college...who were told they were traitors...that is an example of how populist socialism, Trotskyism, operates...we as a nation should be bloody aware, wary of populism left-wing politics, such as the People Before Profit, Solidarity, and even perhaps Sinn Féin, but I think Sinn Féin have an awful lot more street cred than those thugs and assholes and Paul Murphy and the whole of you should be ashamed, be very ashamed..."

The Committee was of the view that these comments and the manner in which they were handled by the programme makers failed to meet the requirement included in the BAI's news and current affairs code that broadcasters ensure that individuals and organisations that are the subject of news and current affairs content are treated fairly and honestly. In addition, the Committee considered that the content also failed to meet the obligation of broadcasters to demonstrate an even-handed approach to how news and current affairs content is presented.

The Committee noted that this segment was not in line with the usual programme format in that there was no other perspective given by the co-presenter and, in that context, the comments amounted to what was essentially a partisan diatribe by one presenter against an individual elected representative, his party and parties who hold what is described as left-wing political positions and which the presenter clearly objects to on a personal level. Moreover, the comment was not in line with the obligations of the Code in a context where there are self-evidently other perspectives on the presenter's view given that the target of his comments are individuals and political parties who have been elected to the Dáil by their constituents.





- In view of the above, the Committee has decided that the programme segment did not comply with the Broadcasting Act 2009 and Sections 4.1 and 4.2 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs. Accordingly, the complaint has been upheld.



**Complaint made by: Mr. Karl Martin**

**Ref. No. 83/17**

**Station:**

RTÉ Radio 1

**Programme:**

Morning Ireland

**Date:**

31 July 2017

**1. Programme**

The complaint concerns 'Morning Ireland', which is a news and current affairs programme broadcast each weekday morning from 7am to 9am. The complaint refers remarks by the presenter in relation to journalist, Mr. Kevin Myers.

**2. Complaint Category**

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

**3. Complaint Summary**

The complainant states that one of the presenters on this programme described Mr. Kevin Myers as a 'Holocaust denier'. The complainant states that this was an absurd claim based on a newspaper article written by Mr. Myers over eight years ago under a misleading headline that he didn't write. The complainant states that Mr. Myers took issue with the word 'Holocaust' on account of its Greek origin, meaning 'destroy by fire'. He stated that there was no single Holocaust because it took many forms; Jews were shot in pits, beaten to death, frozen and starved to death, burnt alive in their homes and synagogues and gassed. The complainant maintains that it is quite clear from the newspaper article that Mr. Myers believes that there was a Nazi genocide of the Jews – he typically and pedantically takes issue with the word.

The complainant adds that Mr. Myers has written many times about the Holocaust and the suffering of the Jews and that it is ridiculous and offensive to label him as 'Holocaust denier'. The complainant states that no senior member of the Irish Jewish community has called him 'a denier'.



In support of his complaint, the complainant submits the following:-

- a) A copy of a statement issued by the Jewish Representative Council defending Mr. Myers from, inter alia, the claim that he had denied the Holocaust in an article eight years ago.
- b) A copy of the Guardian newspaper's correction to its earlier description of Mr. Myers as a Holocaust denier.
- c) A copy of The Times of Israel published defence of Mr. Myers by the Jewish blogger, Mr. Jonathan Hoffman.

The complainant states that despite all of the above, the broadcaster still claims that it was correct to refer to Mr. Myers as having previously written a column in which he "denied the Holocaust". The complainant states that this is, to quote the Jewish Representative Council, "an absolute distortion of the facts" and is based on the selective use of certain phrases taken out of context.

#### **4. Broadcaster's Responses, to Complainant and the BAI**

The broadcaster states that the references to Mr. Myers in this context relate to articles written by Mr. Myers for the Irish Independent and Belfast Telegraph newspapers in 2009. In reaction to commentary on the articles following Mr. Myers' final Sunday Times newspaper column, the Irish Independent immediately removed the article in question from its website. The Belfast Telegraph had not, at the time of replying to the complainant, removed its version of the article.

These are quotes taken directly from the article:-

"There was no holocaust (or Holocaust, as my computer software insists) and six million Jews were not murdered by the Third Reich. These two statements of mine are irrefutable truths."

"It is an offence in Germany to say that six million Jews did not die in the holocaust. Very well then, I am a criminal in Germany."

"I'm a Holocaust denier."



The broadcaster states that these are Mr. Myers' own words. He may have then qualified his headline statements by then writing that there certainly was genocide waged against the Jews by the Nazis, in what he describes as "one of the most satanic operations in world history." The broadcaster maintains that if he is being referred to around the world as a Holocaust denier, it is because he described himself as such.

The broadcaster refers to the contents of this article as unarguable evidence that the statement by the presenter that Mr. Myers had "previously written a column in which he denied the Holocaust" was accurate and fair, did not misrepresent Mr. Myers and was not in any way misleading to listeners. The broadcaster maintains that it was also an editorially appropriate reference in the context of the column by Mr. Myers under discussion having been accused of antisemitism, as can be heard in the interview with Mr. Gideon Falter, Chairman of Campaign against Anti-Semitism in the UK.

The broadcaster refers to the submission by the complainant of copies of a statement from the Jewish Representative Council and a newspaper article in support of Mr. Myers. The broadcaster maintains that these points of view, not shared by all commentators on the matter, do not in any way contradict the accuracy of the Morning Ireland presenter's reference to Mr. Myers' Belfast Telegraph column. The broadcaster also states that the Guardian clarification referred to by the complainant as a correction, does not state that Mr. Myers is not a Holocaust denier but says that he contest that description and "is not a Holocaust denier in the usual sense of that term."

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

Having considered the broadcast and the submissions from the complainant and having had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs – Section 4: Rules 4.3, 4.19, the Committee has decided to uphold the complaint.

In this regard:-

- The Committee had regard to the obligations set out in the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs which require broadcasters to deal fairly with persons referred to in news and current affairs content and to present views and facts in a way which does not misrepresent those views of facts or render them misleading.



- Having reviewed the broadcast, it was the opinion of the Committee that these obligations had not been met in the broadcast. While noting that Mr. Myers had described himself as a 'Holocaust denier' in a typically provocative newspaper article that he had written, it was evident from the article as a whole that his description did not in fact amount to a statement denying the genocide of the Jewish people at the hands of the Nazi regime. Rather, the article was a comment on how language is used and the criminalisation of individuals or groups who engage in Holocaust denial. In this context, the comments by the presenter were considered to lack fairness to Mr. Myers and both misrepresented his views in a manner which would likely mislead audiences as to his views. Accordingly, the complaint has been upheld.



**Complaint made by: Ms. Fiona O'Toole**

**Ref. No. 93/17**

**Station:**

Newstalk 106-108FM

**Programme:**

High Noon

**Date:**

8<sup>th</sup> September 2017

**1. Programme**

The complaint concerns 'High Noon', which is a news and current affairs programme broadcast daily from 12 noon to 2pm. The complaint refers comments made by the programme presenter about the sexual assault of a women in the UK and issues of responsibility.

**2. Complaint Category**

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(harm and offense); the BAI Code of Programme Standards, (Principle 2 - Importance of Context).

**3. Summary of the Initial Complaint to the Broadcaster**

The complainant refers to the presenter's comments after he read out the details of a court case dealing with a sexual assault. The circumstances of the assault was that court proceedings stated that the woman had willingly gone to a hotel room with a man that she had met and she was assaulted by a different man who was also in the same room. The presenter went on to describe the rape as awful and then stated:-

"But when you look deeper into the story you have to ask certain questions. Why does a girl who just meets a fella in a bar go back to a hotel room? She's only just barely met him....then is surprised when somebody else comes into the room and rapes her."

He later posed the question:

"Is there no blame now to the person who puts themselves in danger? There is personal responsibility. You then of course read that she passed out in the toilet and when she woke up the guy was trying to rape her. There is a personal point of responsibility, because it's your daughter and it's my daughter."



And what determines the daughter who goes out, gets drunk, passes out and is with strangers in a room and the daughter that goes out, stays half way sober and comes home. I don't know...but there is a point of responsibility. The real issues nowadays and increasingly, is the question of the personal responsibility that young girls are taking for their own safety."

The complainant states that it was not appropriate for the presenter to blame an alleged victim of sexual assault for the fact that she was raped. The complainant states that it is irrelevant that she chose to go back to a hotel room with one man; she should not be raped by a second. The complainant expressing the opinion that the presenter believes that the victim is responsible for this assault is offensive and harmful. The complainant states that nobody would suggest that men who are mugged walking down Grafton Street in Dublin are responsible for being mugged and it is not appropriate for the presenter to blame women (and their parents) for rape rather than the rapist and their parents for how they raised them.

The complainant states that she is personally disappointed and disgusted by the presenter's comments and the lack of response from Newstalk. The complainant states that it took until Saturday lunchtime before Newstalk issued an apology, but only after 24 hours of uproar.

#### **4. Broadcaster's Response**

##### **4.1 Summary of Broadcaster's Initial Response to the Complainant**

The broadcaster states that the day following the initial broadcast, Saturday 9<sup>th</sup> September, the programme presenter and Newstalk issued an apology for the on-air remarks. On Monday 11<sup>th</sup> September, the presenter, while on-air, issued a further, more detailed, apology. The broadcaster states that an internal process within the station in relation to the comments was undertaken and, on Friday 15<sup>th</sup> September, it was confirmed that the presenter had been suspended from his duties at the station while the process was ongoing. The broadcaster states that on the 22<sup>nd</sup> September it was confirmed that the process which reviewed the circumstance that led to the presenter's comments had concluded and Newstalk confirmed that the presenter would be stepping down from his lunchtime slot and would return in December when he will take on a new weekend show.



#### **4.2 Broadcaster's Response to BAI**

The broadcaster states that Newstalk did take strong remedial action following the comments that were broadcast on the day in question. They state that the day following the initial broadcast both Newstalk and the presenter issued an apology for the on-air remarks. The broadcaster states that on Monday 11<sup>th</sup> September, the presenter issued a further and more detailed apology on-air. The broadcaster states that the presenter specifically apologised for the hurt and offence caused by the statement that attributed blame to victims of rape and acknowledged that he understood how it could impact on victims of sexual violence.

The broadcaster states that an internal process was then commenced within Newstalk and on Friday 15<sup>th</sup> September it was confirmed that the presenter had been suspended from his duties while this process was ongoing. On Friday 22<sup>nd</sup> September it was confirmed that the process had concluded and that the presenter would no longer be a presenter of High Noon and would return in December to present a weekend programme.

The broadcaster states that on week of Monday 2<sup>nd</sup> October Newstalk held a series of training sessions with presenters and production teams on BAI obligations, specifically on the BAI Code of Programme Standards and the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs.

The broadcaster maintains that all it can do is apologise again for again for the comments that were made, outline the steps taken to address them and note that it publicly apologised for the comments and accepted that they were totally wrong and inappropriate and should never have been made.

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

Having considered the broadcast and the submissions from the complainant and having had regard to the Broadcasting Act 2009, Section 48(b)(offence and harm) and the BAI Code of Programme Standards (Principle 2 – Importance of Context), the Members decided to uphold the complaint.





In this regard:-

- The Committee had regard to the fact the BAI Code of Programme Standards requires broadcasters to take into account general community standards when making programmes. The Code acknowledges that harm or offence may be caused by the programme or by the context in which the programme is heard because the material is not in line with audience expectations. Broadcasters are as a result obliged to have due regard for audience expectations and, in live programming, take timely corrective action where unplanned content is likely to have caused offence.
- Broadcasters are also required to take due care when broadcasting content with which audiences may identify and which can cause distress, particularly in relation to content such as sexual violence, among other types of content.
- In the case of the programme that is the subject of the complaint, the Committee noted that it is aimed at an adult audience and the programme and presenter's sometimes provocative style are well established and understood by the audience. The Committee also recognises that it is permissible in broadcasting to deal with the question of personal responsibility in covering issues of crime and criminal behaviour. However, this topic was raised in the programme in the context of a then ongoing UK court case about rape and the issue of personal responsibility was described by the presenter as "the real issue" in this matter. As such, the Committee considered that the manner and context of raising the issue of personal responsibility in the context of a specific case of alleged rape caused undue offence and there was a strong possibility of causing distress to audience members who might personally identify with this issue.
- In considering this complaint, the Committee acknowledged that the broadcaster subsequently undertook remedial action and has accepted the substance and validity of the complaint. It also noted that the presenter explicitly stated that he does not condone rape. However, the broadcaster had a responsibility to take greater care to prevent the possibility of undue offence and harm, including taking timely corrective action where content is likely to have caused offence.



The Committee was of the view that the broadcaster had failed to take corrective action in a timely fashion, action which may have ameliorated the undue offence caused. Given this and given the content of the programme, the Committee has decided to uphold the complaint.

**Rejected by the BAI Compliance Committee**



**Complaint made by: Mr. Patrick O'Connor.**

**Ref. No. 25/17**

**Station:**

RTÉ One

**Programme:**

The Late Late Show

**Date:**

6<sup>th</sup> January 2017

**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 comments by panellists referring to the Eucharist as 'haunted bread'.

**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 2 – Importance of Context and Principle 5 – Respect for Persons and Groups in Society).

**3. Summary of Initial Complaint to the Broadcaster**

The complainant states that he was greatly offended by the content of the panel discussion between Mr. David Chambers, Ms. Stephanie Preissner and Mr. Michael Harding. The complainant believes that the presenter, Mr. Ryan Tubridy, failed in his duty to maintain balance to the discussion and uphold the requirements of the BAI.

The complainant states that the use of the term 'haunted bread' in the programme was particularly offensive. He states that, rather than pointing out that many people would not appreciate the Eucharist being referred to in such a manner, the presenter added to the offence by saying it was "a great expression". The complainant states that he acknowledges people's right to free expression. However, as a practising Catholic, he expects something as sacred as the 'Body of Christ' to receive respect in any discussion rather than it to be mocked as it was on this programme.

In the context of his complaint, the complainant states that he did not receive a response from the broadcaster. He notes that the broadcaster has responded to other complainants about this programme and states that he rejects being discriminated against on any grounds, for any particular reasons and under any circumstances. He states that his experience in respect of this complaint is in line with what he considers to



be the appalling history of how the broadcaster has mis-managed previous complaints made by him to the broadcaster.

#### **4. Broadcaster's Response**

##### **4.1 Summary of Broadcaster's Response to the Initial Complaint**

No response was received by the complainant to this complaint.

The broadcaster regrets that the complainant did not receive a reply to his initial complaint, one of a high number of identical copies of a complaint received variously by 'The Late Late Show', RTÉ Complaints and the Director-General's Office. The broadcaster states that as the complainant is aware, replies have been made and there is no question whatsoever of discrimination against the complainant.

##### **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 maintains that the item in question was a conversation looking back on 2016 and looking ahead to 2017, as has taken place many times on The Late Late Show over the years. The broadcaster states that on this occasion the programme decided to bring together three guests who have made interesting contributions to the show over the previous year, to get their combined views on a number of items.

The broadcaster states that as part of the conversation the presenter brought up a theory advanced on his radio show earlier that week that some people in their thirties are returning to the Catholic Church after a period of difficulty and scandal for the Church and asked the panel for their views.

The broadcaster states that as someone from that age group, Blindboy Boatclub was first to reply, and he did so in the language of his generation and his satirical character. The broadcaster states that the point he was making, to put the language to one side for a moment, was that in his view, people of his generation are not returning to the Church and that attendance at Christmas Eve Midnight Mass is not an accurate barometer of religious conviction, as there are many other reasons to attend that particular ceremony. Reasons such as family pressure, tradition and community as well as Catholicism. The broadcaster states that this seems a reasonable and fair assessment of his views.



The broadcaster agrees that the phrase 'haunted bread' in relation to the doctrine of Transubstantiation was certainly provocative. However, it was designed, as the comedy of the Rubber Bandits generally is, to provoke thought and not to be pointlessly offensive. (This was underlined by Blindboy Boatclub's apology to Mr. Michael Harding for any offence – "*Sorry about the haunted bread stuff*" – on discovering that Mr. Harding is a former priest.)

The broadcaster states that the phrase was a linguistic encapsulation of The Holy Ghost and Holy Communion to illustrate the speaker's, and many of his generation's, difficulty with the belief in Transubstantiation. In fact the phrase was described by panelist Mr. Harding as "the language of a poet" and he went on to say: "The beauty of religion is the language of poetry."

The broadcaster states that Blindboy Boatclub's assertion of his difficulty in coming to grips with what are to him personally the contradictions within some Christian beliefs gave rise to a substantial and thoughtful discussion of truth and belief in contemporary society, in Ireland and internationally.

The broadcaster states that the discussion included Michael Harding's saying:

"If it keeps me from depression, if it allows me to be a loving person, that's a good truth. [Blindboy Boatclub nods] And in the same way if Jesus or the "haunted bread" helps you to be more compassionate and caring to the people around you, then I'm all for the "haunted bread."

Blindboy Boatclub responded:

"It's true like [referring to Harding's argument]. People think I have a problem with religion. I only have a problem with religion if it's in the school system or whatever but people are entitled to believe what – it's secularism, you know."

The broadcaster states that Mr. Harding also spoke of a world of conflicting truths being "a frightening but exciting place to be" and Ms. Preissner and Blindboy Boatclub talked of challenges to their own beliefs, in the case of Ms. Preissner on her post-election visit to the USA and in that of Blindboy Boatclub his embrace of opposing points of view on social media.



In respect of Principle 5, the broadcaster states that the discussion was notable for its absence of derision of the views of others, or their faith, and – while two speakers expressed their personal difficulty with a certain tenet of Catholicism and some other Christian churches – was striking in its consensus that some form of spiritual or other transcendence of the everyday is necessary for humanity, in the words of the presenter: “You create somewhere for your brain, your soul, to be fulfilled.”

The broadcaster does not believe that this broadcast was in breach of Principles 2 and 5 of the BAI Code of Programme Standards or of any other section of that or any other code.

The broadcaster states that Principle 5 states clearly that:

“...it is not intended to prevent the critical scrutiny of religion by means of information, drama or other programming”.

This is further supported in Principle 1 of the Code where it states in relation to community standards:

“This principle recognises that such standards are ever evolving and broadcasting must be facilitated in representing the rich diversity, plurality and realities of contemporary Irish society. This may sometimes involve making programmes that may cause offence to viewers and listeners but are justified for creative, editorial or other reasons”.

And the preamble to the Code states:

“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”.

The broadcaster refers to a recent decision by the BAI to reject a complaint against a programme titled Tommy Tiernan – Crooked Man (TV3) as relevant, particularly where it states:



“In terms of the specific remarks, the Forum found that while the comedian made reference to the Eucharist, the focus of the remarks was not on this religious practice but rather on the comedian’s personal reflections on his own upbringing in a Catholic country, his own experience as an altar boy and the manner in which Irish society and its social and religious beliefs have changed”.

The broadcaster states that, also relevant is the BAI decision to reject a complaint against *The Ray D’Arcy Show* (RTÉ Radio 1) where it stated:

. . . “the Code recognises that content can be aired which may cause offence but which is justified for creative, editorial or other reasons. In the case of the current complaint, the Forum considered the words to have a context and their use was not gratuitous.”

The broadcaster states that, in addition, the BAI has on many occasions supported both broadcasters’ editorial independence to choose topics for coverage and the perspective on those subjects and the entitlement of programme contributors to freedom of expression, for example in another decision to reject a complaint against *The Ray D’Arcy Show* (RTÉ Radio 1) where it stated:

“While not every listener will enjoy or agree with the contributions of an interviewee, they have a legitimate right to free expression”

In respect of Principle 2, the broadcaster states that the broadcast began at 11.20pm, significantly after the watershed which marks the transition to purely adult viewing and would have met the expectations of *The Late Late Show* audience over more than fifty years that the programme will present voices and perspectives, at times challenging to some, which will stimulate thought and discussion amongst viewers.

#### **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 2 – Importance of Context and Principle 5 – Respect for Persons and Groups in Society), the Members decided to reject the complaint.





In this regard:-

- The Committee considered the provisions of the BAI Code of Programme Standards in the context of the content as broadcast. It noted the distinction between offence and harm set out in the Code, specifically, the recognition that matters which cause offence can, and frequently do, differ from person to person and are largely subjective in nature. It also noted that the Code states 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.

Recognising this and recognising also the legitimate interests of audiences, the Code requires broadcasters to provide audiences with information so as to minimise the potential for offence and to schedule appropriately. The Code also places limits intended to guard against undue offence, which is where programme content, even where editorially justified and in the public interest, could still be regarded to have crossed a line that has resulted in audiences being unduly offended. Moreover, the Code requires broadcasters to represent persons and groups in society in an appropriate and justifiable manner and without prejudicing human dignity. Broadcasters must also not air material that will stigmatise, support or condone discrimination, including on the grounds of religion. Furthermore, while critical scrutiny of religion may be appropriate, broadcasters must show due respect for religious views, images, practices and beliefs.

- In the context of these provisions, the Committee had regard to the discussion as a whole, the editorial justification for the comments that were considered offensive by the complainant, the different elements of that discussion and other relevant contextual factors, including the likely expectations of the audience and the time of broadcast.
- In this respect, the Committee noted that the comments that were deemed by the complainant to be offensive and which also gave rise to the responses by the presenter that the complainant has also identified as offensive, were articulated as part of a broad conversation on faith, which arose from the presenter asking the panellists about the manner in which they spent the Christmas period. The first contributor, Mr. Michael Harding, outlined how he shied away from the traditional Christmas dinner and instead ate Indian food. The conversation turned to Mr. David Chambers of The Rubberbandits who detailed his Christmas celebrations in a surrealist manner that is the hallmark of the artistic/comedy act of which he is one



member. Finally, Ms. Stefanie Preissner spoke about her disillusionment with the commercial nature of Christmas festivities. The conversation then progressed to a discussion about Catholic belief and practice and it was at this point in the programme that Mr. Chambers made reference to The Eucharist as 'haunted bread'. Following this, the other contributors reflected on this topic. Learning that Mr. Harding was a former priest, Mr. Chambers apologised for any offence that his description of The Eucharist may have caused him.

- Having reviewed the discussion, it was the opinion of the Committee that the comments that caused the complainant offence were editorially justified in the context of the discussion, which was about religious belief and practice. The Committee also noted that contributors have a right to free expression and, in this instance, Mr. Chambers dealt with a religious tenet which rests on a belief in the real presence of Jesus Christ in The Eucharist, a belief which may be difficult to reconcile for those who hold other religious beliefs or no religious belief and one which the panellist in question did not appear to hold. While the Committee was of the view that his comments were provocative and likely to offend, the Committee did not consider them to entail mockery of Christian's belief in the Eucharist. The Committee considered them to be the articulation of the contributor's own views expressed in the character of Blindboy Boatclub.
- In terms of the contributions by the presenter, it was the Committee's view that the presenter misjudged the offence likely to have been caused by the use of the term 'haunted bread'. While the Committee did not believe that the comments or the presenter's contributions crossed a line such that undue offence was caused to the audience as a whole, the Committee considered his remarks regrettable and agreed that the degree of offence may have been minimised if the presenter had demonstrated greater sensitivity to the potential for offence and RTÉ is advised to have regard to the Committee's view in this respect.
- The Committee also considered the timing of the discussion, which was after 11pm, a time at which content with a higher likelihood to offend may be broadcast. It also considered the fact that audiences would have been familiar with the comedic/artistic style of The Rubberbandits and it found the comments made were aligned with their comedic/artistic style.
- Given the content, the editorial justification for the comments that are the subject of the complaint, the time of broadcast and audience expectations, the Committee was of the view that the content, while evidently causing offence to some audience



members, was editorially justified and did not infringe the provisions of the BAI Code of Programme Standards in respect of the Principle 2 (Importance of Context) and Principle 5 (Respect for Persons and Groups in Society). Accordingly, the Committee had decided to reject the complaint.



**Complaint made by: Mr. David Owens**

**Ref. No. 34/17**

**Station:**

2FM

**Programme:**

Game On

**Date:**

3rd February 2017

**1. Programme**

The complaint concerns 'Game On' which is a sports magazine show featuring daily sports news, analysis, interviews and features. It is broadcast nightly from 7 – 8pm.

**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 what he considers to be derogatory comments made by one of the panellists on this programme who referred to a group of players as "a bunch of fairies". The complainant states that the presenter then reiterated this by introducing another guest with the term "speaking of fairies." The complainant finds this unacceptable language. The complainant believes this is not only homophobic, but also queries the messages it conveys to any gay person involved in sport as a player or supporter. The complainant requests the broadcaster to issue an on-air apology.

**4. Broadcaster's Response**

**4.1 Summary of Broadcaster's Response to the Initial Complaint**

In his response, the Producer of this programme expressed his disappointment at the use of this remark and communicated his dissatisfaction to those involved. Further, the Producer, on behalf of the Game On team, offered an apology to the complainant for the comment made.



The broadcaster states that having spoken to the two people involved, both stated that the remark was not intended to be offensive. However, they understand how easily it could be taken as such and apologise.

The broadcaster states that Game On has been very supportive of initiatives regarding LGBT issues including the Rainbow Laces campaign supported by Premier League clubs recently. In fact, by coincidence, in the days immediately after the incident which caused the complainant offence, the show aired an interview with a gay footballer. He highlighted the issues and emotions involved in coming out as gay in the football world.

The broadcaster maintains that an on-air apology requested by the complainant, would only serve to draw more attention to the use of the term and this is something the broadcaster would not wish to do.

#### **4.2 Broadcaster's Response to BAI**

RTÉ refers to the response by the Producer of Game On to the initial complaint.

In addition, the broadcaster wishes to sincerely support and repeat the apology of the Producer to the complainant. The use of the term not only gave offence but, albeit unintentionally, ignorantly and ridiculously implied that homosexuality could affect sporting performance. The broadcaster also supports the Producer's belief that to have broadcast an apology would have drawn unconstructive attention to this exceptional occurrence.

The broadcaster states that while the term was not intended to offend and was not used in a threatening, abusive or insulting context, there are no grounds on which its use can be justified, editorially or otherwise.

The broadcaster notes the action of the Producer in both apologising and taking steps to ensure that the offence would not be repeated. The broadcaster also suggests that there was no intent or likelihood of stirring up hatred, stigmatising, supporting or condoning discrimination against any person or group. Taking those factors into account and that, to judge by the one instance of complaint, widespread offence does not appear to have been caused.

Finally, and not least in the context of the publication of BAI complaint referral decisions, the broadcaster again wishes, on the record, to support and repeat most sincerely the apology of the Producer to the complainant.



## **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 5 – Respect for Persons and Groups in Society), the members have decided to reject the complaint.

In this regard:-

- Principle 5 sets out an obligation on broadcasters to represent persons and groups in society in an appropriate and justifiable manner. Programming must also not stigmatise, support or condone discrimination, including on the basis of sexual orientation. More generally, the Code also recognises that younger audiences require additional protection. In this context, the Committee had regard to the younger audience profile for 2FM, the comments themselves and the manner in which the broadcaster dealt with the initial complaint (by offering an apology which was repeated in the response to the BAI and by raising the matter with the programme presenters).
- It is the view of the Committee that the comments, while regrettable, were not gratuitous or clearly intended to offend or discriminate. The Committee also noted that the broadcaster took steps to deal with the complaint in a meaningful manner. The Committee further noted that the terms used were anachronistic and were unlikely to cause undue offence to typical members of the listening audience or support, condone or encourage discrimination on the basis of sexual orientation. The Committee also agreed with the broadcaster that to air an apology would have drawn further attention to the remarks and may have resulted in additional offence. For this reason, the Committee has decided that, on balance, the programme did not infringe Principle 5 of the BAI Code of Programme Standards.
- In view of the above, the Committee has decided to reject the complaint. Notwithstanding this, the Committee strongly advises the broadcaster to take steps to ensure that comments of this nature are not repeated during this programme, particularly given the target audience for the channel and also having regard to the importance of avoiding language that unduly offends or discriminates.



**Complaint made by: Mr. Brendan Burgess**

**Ref. No. 61/17**

**Station:**

RTÉ One

**Programme:**

Ireland's Property Crisis

**Date:**

3<sup>rd</sup> and 10<sup>th</sup> April 2017

**1. Programme**

The complaint concerns a documentary named 'Ireland's Property Crisis' which was a two-part series produced for RTÉ. The item complained of refers to data and case studies relating to arrears and repossessions in the housing market.

**2. Complaint Category**

The complaint is submitted under the Broadcasting Act, 2009 Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the BAI Code of Fairness Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2 and 4.19).

**3. Complaint Summary**

The complainant states that key points were misleading and infringed the BAI Codes above. The following is a summary of the points made by the complainant:

- a) The complainant states that between 2009 and March 2017, a total of 2,476 family homes have been repossessed by lenders on foot of a court order. The complainant states that many of these homes had been abandoned. As there are 600,000 mortgages, that is approximately 1 repossession for every 250 mortgages. The complainant states that, despite one of the worse economic crises to hit the country, despite high levels of unemployment, despite a 50% fall in house prices, over a period of 8 years, just 1 borrower in 250 lost their home on foot of a court order.
- b) The complainant states that despite this tiny number of repossessions and despite the huge progress made on the general arrears issue, the programme gave the impression that there were wholesale repossessions of family homes in Ireland. The complainant states that this is just not true.



The complainant maintains that the programme gave this impression through the following:

- It provided figures which sound large but gave absolutely no context.
  - It gave figures without explaining what they meant.
  - It did not broadcast any numbers which showed the tiny number of actual repossessions and the huge reductions in arrears in court cases.
  - It used case studies to portray people as the victims of callous lenders when it appears that none of these borrowers were actually paying anything at all towards their mortgages.
  - It reported a day in Trim Court when 8 orders were granted. Despite being told by MABS (Money Advice Budgeting Service) that this was a record, it did not broadcast his fact.
  - It reported on a day in Dublin Court when 6 orders were granted. This too was a record number and completely untypical, but the broadcaster did not say that.
  - RTÉ had 8 crews around the country and may have covered other courts that week where there were no orders granted.
- c) The complainant states that RTÉ dismissed the complainant's complaint saying that his analysis was a 'value judgement' on his part which they state is not supported by the content. The complainant quotes the following excerpts from the programme and states that anyone hearing these would form the value judgement that he did about the programme:

"Ireland is facing one of the worst housing crises since the foundation of the state... mortgage arrears... repossessions."

"This week some 500 repossession cases are being heard in Irish courts."

"I estimate that there are 500 cases [being heard by the courts this week] and the vast majority are the family home."

"We had 75 mortgage cases in Trim today and 8 possession orders being granted."





"One of the reasons we are experiencing the high level of cases [in courts for possession]."

"30,000 households are in danger of losing their home at the moment."

"Court Service figures show that 3,665 Circuit Court cases were taken in 2016 to repossess lands or properties."

"David Hall deals with clients who are in arrears, most of whom face repossession."

"The Circuit Court [in Trim] holds repossession hearings up to 3 times a month."

"In today's 8 cases, in at least 6 of them, quite substantial payments are being made."

"For people who are facing homelessness through repossession, isn't this (Abhaile) not too little too late."

"The people in the bank – all they want is their quid, quid, cash."

"39 repossession cases listed today, unfortunately not a lot of people actually show up."

"Within 5 minutes of their barrister standing up, your home is gone. That's how fast it is in there."

"According to the Central Bank 455 properties were taken into possession by lenders in the last Quarter of 2016. 343 of these were voluntarily surrendered or abandoned."



"In October 2012, the bank wrote to you saying: You must vacate the property – notice calling in mortgage. Those are very hard words to stomach. "

"The blunt response in a court of law will be "So what if you are sick? The contract doesn't say you don't have to pay if you are sick". "

d) The complainant states RTÉ should have pointed out the progress made in this area, i.e.:

- Households in negative equity have fallen from over 300,000 to under 100,000.
- The level of mortgage arrears has halved since the peak.
- Lenders have rescheduled 120,000 mortgages.
- The number of court proceedings started by the lenders to repossess houses has fallen by 50% since the peak.
- In the last 8 years, a total of 2,476 family homes have been repossessed on foot of a court order.
- It is virtually impossible for a lender to get an order for possession against a borrower who is paying something and who shows up in court.

#### **4. Broadcaster's Response**

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

RTÉ are confident that the facts as presented in the programme were not misleading. In their view, it is a value judgement on the complainant's part to suggest that an audience would think that Irish courts were granting lenders repossession orders on a wholesale basis – and they don't share that value judgement. It is RTÉ's view that they showed very clearly that if you engage with your lender and attend court, you are significantly less likely to be the subject of a possession order.



On the charge of selectively choosing data, court hearings and case studies to support a false picture of families losing their homes – the broadcaster states that this is not the case. The broadcaster states that A Week In Ireland's Property Crisis sought to offer a snapshot in time of the housing crisis – "for one week in 2017 cameras across Ireland offer a snapshot in time of the people who live the housing crisis every day".

The broadcaster states that this meant they followed whatever was happening in their chosen week – Monday 27<sup>th</sup> February to Sunday 5<sup>th</sup> March. The series is observational in style and seeks to tell a very wide range of stories, many not connected to court proceedings or banks. Even though the series is not what might be termed classic current affairs - its more observational documentary - RTÉ are very conscious of their need to be fair, accurate, objective and impartial given they are dealing with a subject of major public importance. RTÉ state that they take their duty and obligations in this regard very seriously.

The broadcaster states that the scenes relating to court cases only serve to agree with the complainant's view that not turning up in court and not engaging with the process will more likely result in a repossession order whereas engaging with the process will deliver a different result.

#### **4.2 Broadcaster's Response to BAI**

RTÉ refers to the initial response by the Genre Head of TV Factual. RTÉ states Ireland's Property Crisis was a two-part series, the editorial perspective of the series was to offer a snapshot in time of the housing crisis that Ireland faces. As clearly stated to viewers:

"For one week in 2017 cameras across Ireland offer a snapshot in time of people who live the crisis every day."

RTÉ states that the country faces a housing crisis is beyond dispute. The word 'crisis' has been used on many occasions by both the incumbent Minister Murphy and his predecessor Minister Coveney. The crisis is multi-faceted and interlinked, encompassing, among other things: a housing supply shortage; spiralling costs in private rental accommodation; an unprecedented number of people presenting as homeless; and poor standard private rental accommodation. Mortgage arrears and repossessions are also a part of this.

The broadcaster states that the producers only filmed at three court houses where repossession cases were being heard - Dublin, Trim and Cork. These courts were chosen, with no prior knowledge of the cases to be heard, because they offered a geographic and demographic spread. The court that granted the greatest number of repossessions of the three, Cork, with 10



repossession orders, did not feature in the series, an indication that the producers did not seek to sensationalise or exaggerate the scale of the problem.

The broadcaster states that as a snapshot in time, the story of one week in Ireland's housing crisis, the statistics used in the programme either related directly to that week, or, where these were unavailable, the most up to date official statistics were used.

RTÉ states the complainant objects that the programme did not conform to his analysis of the facts. The facts are that 77,493 mortgages are in arrears, 33,447 for more than 2 years; that 500 repossession cases were heard in the week of production; that some 11,000 repossession cases are outstanding. It is the complainant's view that this does not constitute a crisis; that a downward trend in the number of mortgages in arrears will continue; that most of the 11,000 cases 'will be struck out'. This is opinion, analysis and conjecture on the part of the complainant, something that the programme did not engage in and something that other experts in the area would disagree with.

The broadcaster states that the complainant quotes from the programme in support of his view that the facts were presented in a misleading way. However, he quotes only the part that supports his contention and none of the context. This parsing by the complainant either changes the meaning or makes the quotes seem more sensationalist.

The broadcaster states that it is the complainant's view that the programme should have pointed out that the situation has improved in some regards. If this were a current affairs series wholly about mortgage arrears, repossession orders and court proceedings – and not the "snapshot in time of people who live the [housing] crisis every day" clearly signalled to viewers – then a more exhaustive examination of the trends in mortgage arrears and court cases might apply.

The broadcaster states that the complainant points to a drop in the overall numbers of people in mortgage arrears, which he says indicates an amelioration of the situation. The numbers in long-term mortgage arrears – two years or more - have not fallen very significantly in the last three years. In Q1 2014 the figure was 35,314 and in Q1 2017 the figure was 32,953. In 2016, 1072 repossession orders were granted, while financial institutions initiated 3,665.

The broadcaster states that as part of its News and Current Affairs output, RTÉ regularly reports on the broader statistical trends with regard to mortgage arrears. The type of analysis of the broader arrears situation and discussion of whether it has improved or not, might be appropriate in a current affairs report dedicated entirely to the issue. However, this was an observational documentary series, which offered only a snapshot of one week in a much broader property crisis



and we assert strongly that in that editorial context the matter was presented in an appropriate manner.

RTÉ state that they are satisfied that the series gave a true and accurate reflection of the housing crisis in the chosen week. This includes how mortgage arrears and repossession cases were featured in the series.

#### **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) and the BAI Code of Fairness Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1 and 4.2 and 4.19), the Committee has decided to reject the complaint.

In this regard:-

- The Committee noted that broadcasters have the right to choose the editorial focus of a programme and that a particular subject may be tackled from a wide range of perspectives. In this context, the role of the Committee when considering a complaint is not to consider the decision of the broadcaster regarding the editorial focus but rather whether the programme, as made and broadcast, has been fair, objective and impartial.
- In the case of the programmes that are the subject of the complaint, the Committee noted that the editorial focus was stated at the outset of the programmes. This focus was on the impact on citizens and residents of the current state of the Irish property market. The programmes examined this issue by looking at pressures arising from a lack of sufficient housing stock, challenges faced by those with mortgage arrears and facing possible repossession, the impact of long waiting lists for social housing and the issue of homelessness. They also examined how this situation had emerged and the political and policy responses of government to the situation. This editorial focus was examined via the prism of the personal experiences of a number of individuals and families based around the country across one week. The Committee was satisfied that audiences would have been clear that this was an observational documentary dealing with a range of different aspects about the property problem in Ireland and clear about the approach of the programmes and the editorial focus to be taken. The Committee therefore considered whether the programmes were compliant on the basis of their content and editorial focus.



- The Committee noted that the complainant set out what he considered to be flaws and omissions in the programme content which he contends resulted in the programmes lacking in fairness, objectivity and impartiality. He stated that these flaws and omissions resulted in an overstatement of certain aspects of the problems in the housing market and was misleading as a result. It was the view of the Committee that, given the range of issues to be examined in the programmes and the focus predominantly on the human impact of the different challenges in the property market, the extent to which each aspect of the property market could be examined would be necessarily limited. It would therefore be legitimate that the broadcaster would make editorial choices which will involve omitting information and/or simplifying some of the complexities involved. In addition, the content created was in many respects determined by the focus on a particular period of time and the Committee found nothing to indicate that the material as broadcast inaccurately represented events that unfolded across those seven days. Moreover, the focus on the impact on citizens and residents meant that the programme tone would be informed by the experiences of the individuals and families with the result that the focus of the programme would be naturally critical of the weaknesses in the property market. The Committee did not agree that this approach was misleading. Rather, the Committee was of the view that the approach ensured that the programme focus, as set out at the beginning, remained clear and was maintained.
- Having reviewed the programmes, it was the Committee's view that they included a range of facts, some of which were contestable and some which were not. The Committee was of the view that the interpretation and analysis provided during the programmes was reasonable and while a different analysis might have been undertaken, the absence of this different approach was a matter of editorial focus rather than evidence of a lack of fairness, objectivity and impartiality.
- In view of the above, the Committee did not agree that the programmes lacked fairness, objectivity and impartiality in the manner specified by the complainant. Accordingly, the complaint has been rejected.



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

**Ref. No. 85/17**

**Station:**

Newstalk 106-108fm

**Advertisement:**

Advert- MSL Motor Group

**Date:**

August 2017

**1. Programme**

The complaint concerns an advertisement for MSL Motor Group broadcast in August on Newstalk.

**2. Complaint Category**

The complaint is submitted under Section 48(1)(d)(the General Commercial Communication Code), Principle 1 - Legal, Honest, Decent and Truthful.

**3. Summary of Initial Complaint to the Broadcaster**

The complaint refers to the part of this advert which mentions "Buy Irish". The complainant states that the advert describes the difficulty experienced importing a car from the United Kingdom. The complainant states that the advert encourages the listener to "Buy Irish", however, he states, MSL does not sell anything Irish. For this reason, he contends that the advert is contrary to the BAI's General Commercial Communications Code.

**4. Broadcaster's Response**

**4.1 Summary of Broadcaster's Response to the Initial Complaint**

The broadcaster states that the advertisement is for MSL Motor Services and is targeted at people purchasing cars in the United Kingdom. It is widely known and accepted that there are no car brands built or created in Ireland, therefore, the broadcaster claims it is clear that the use of 'Buy Irish' refers to the company MSL rather than the individual car brands that MSL stock and sell.



#### **4.2 Advertiser's Response**

The advertiser, MSL Motor Group, state that it is an Irish owned, family run motor business in operation in Ireland since 1959. The intention of the advert is to encourage consumers to purchase vehicles from Irish motor dealership such as MSL, instead of purchasing from abroad. MSL state in the advert that they are 'an Irish owned family business' and then state at the end 'Buy Irish, buy peace of mind, buy MSL'. At no point is it stated or insinuated that the brands MSL sells are manufactured in Ireland, rather the emphasis is that MSL Motor Group is an Irish owned company.

#### **4.3 Broadcaster's Response to BAI**

The broadcaster states that it is widely accepted that there are no car brands built or created in Ireland and the MSL advertisement is specifically targeted at people purchasing cars in the United Kingdom. The broadcaster states that MSL, according to its corporate history, is an Irish owned family business in operation since 1959 with offices and premises in Dublin and Cork. With both these factors considered, the broadcaster believes it is clear that the use of 'Buy Irish' in the advertisement refers to the company MSL rather than the individual car brands that MSL stock and sell.

#### **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 Section 48(1)(d) (the BAI General Commercial Communication Code), Principle 1, Legal, Honest, decent and Truthful, the Committee has decided to reject the complaint.

In this regard:-

- The Committee noted that the focus of the advert was on the purchase, rather than the manufacturing of cars. The advert encouraged audiences to purchase their cars in Ireland rather than abroad. Given this, the Committee was satisfied that the use of the term 'Buy-Irish' did not infringe the BAI's General Commercial Communications Code in a context where MSL Motors are an Irish company that sells cars.





- In view of the above, the Committee did not agree that the advert infringed the Broadcasting Act 2009 or the BAI General Commercial Communications Code in the manner specified by the complainant. Accordingly, the complaint has been rejected.

**Rejected by the Executive Complaints Forum**



**Complaint made by: Mr. William Henry**

**Ref. No. 46/17**

**Station:**  
98FM

**Programme:**  
Dublin Talks

**Date:**  
10<sup>th</sup> April 2017

**1. Programme**

The complaint concerns 'Dublin Talks', which is a talk and phone-in show derived mainly from topical issues and broadcast each weekday morning from 10am to 12pm. The complaint refers to comments made by one of the presenters when discussing the lifting of the ban on pubs opening on Good Friday.

**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, as a practising Catholic, he was highly offended by comments made by one of the presenters on this programme. In particular, reference was made to the fact that Jesus must have been an alcoholic because he changed water into wine, and that people with faith are 'Holy Joes.' The complainant believes that this was not a discussion but someone with a belief/non-belief making fun out of anyone that did not have the same views as him.

The complainant maintains that all believers and non-believers in God, deserve to be treated with respect. The complainant states that he texted the programme at the time and part of his text was read out. In that text he requested that the presenter be more respectful of some listeners who hold religious values. However, the presenters, while now aware they were causing offence, continued offending by then saying, in essence, that Jesus must have been fond of a jar because he had changed water into wine.



#### **4. Broadcaster's Response**

##### **4.1 Summary of Broadcaster's Response to the Initial Complaint**

The broadcaster states that sometimes the content of this programme may offend some listeners, however, callers have the right to express themselves as openly as possible. This is the nature of live talk shows which contain debates on a wide variety of topics.

The broadcaster states that the topic of discussion on this programme was around the reported lifting of the ban, from next year, on pubs opening on Good Friday. The broadcaster states that callers were invited to participate with some arguing for its retention while others believed it has no place in "secular Ireland." With reference to the use of 'Holy Joes', the broadcaster states that this is very much part of Dublin vernacular and is something likely to be heard on the streets.

The broadcaster maintains that the piece in question ran for 20 minutes and was well balanced between the presenters, callers and listeners who texted into the show. The broadcaster states that the format of Dublin Talks is very much 'tongue-in-cheek' and whilst the topics can often be edgy, there is no intention to offend listeners based on their religious beliefs.

##### **4.2 Broadcaster's Response to BAI**

The broadcaster wishes to highlight that Mr. Henry's complaint is the only one received by 98FM on foot of this broadcast. The broadcaster states that this is particularly relevant having regard to the general community standards by which the question of offence and disrespect must be assessed.

The broadcaster states that the clear focus of the item was to debate the question of whether or not the proposed repeal of the Good Friday alcohol ban was a good thing or a bad thing. The main argument put forward for debate by the presenter, Mr. Jeremy Dixon, was that the ban was a bygone relic of a time when legislation was influenced by the views of the Catholic Church. He articulated that firstly, Ireland is a secular republic and therefore a particular religion should not influence laws that effect everybody and secondly, that there is no prohibition on alcohol in the Bible itself.



The broadcaster states that to reinforce the latter point, the presenter made a number of references to how often alcohol features as part of everyday life in the Bible. He also made a tongue-in-cheek reference to the wedding at Cana that was clearly not intended to cause deliberate offence, as suggested by the complainant, but rather to emphasise that the alcohol ban is a construct of the Church, rather than the Bible.

The broadcaster states that of the five callers who gave their views, three were in favour of retaining the ban (for various reasons, and not just on religious grounds) and two were opposed. Of the two texts read out, including most of the complainant's text, both favoured retaining the ban. The broadcaster states that the show phoned the complainant twice to ask if he would like to go on-air to articulate his own views but unfortunately he declined.

The broadcaster maintains that Dublin Talks is a live talk show and can often be edgy. However, the broadcaster states that it does not gratuitously offend people nor does it believe it did so in this instance. Taking into account that the show does deal with issues that can be controversial and provocative, a warning is issued at the start of every show: "The following show is controversial and contains content you may find offensive. Listener discretion is advised."

The broadcaster states that while it appreciates that the complainant has taken exception to the item, it is simply not possible to debate social issues or current affairs matters in a manner that everybody will find to be entirely to their taste.

#### **5. Decision of the Executive Complaints Forum: 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 & offence) and the BAI Code of Programme Standards – Principle 5 (Respect for Persons and Groups in Society), the Forum has decided to reject the complaint.

In this regard:-

- The Forum noted that the discussion related to the future opening of public houses on Good Friday in 2018 and that from 1927 to 2017 people could not obtain a drink in a pub on Good Friday. The presenters discussed the closure of pubs on Good Friday and threw this topic out to the public for debate.



- The Forum noted that the format of the programme is caller driven with topics chosen by the programme producers and caller interaction driven by the presenters. In line with this type of programming, a key role of the presenters is to provoke engagement. In this instance, the presenters took opposing views on the topic of the alcohol ban. Coupled with this, views from the audience were provided. The Forum found that the majority of contributions to the programme from callers were in favour of public houses staying closed. Callers defended the fact that it is only two days per year when public houses do not serve alcohol and said that this should continue. The Forum also noted that parts of a text from the complainant was broadcast and that he was offered the opportunity to participate in the programme. While the complainant was wholly entitled to turn down this invitation, the Forum found that this invitation indicated the openness of the programme producers to airing a range of views.
- In considering the complaint, the Forum took account of the obligation on broadcasters to show due respect for religious views and beliefs while also having the freedom to engage in robust debate and critique the impact of religion, once it does not stigmatise, support or condone discrimination on the base of religion. While the complainant was clearly offended by the content of the programme, the Forum was satisfied that the content could not be considered to have supported or condoned discrimination on the basis of religion. The Forum was also of the view that it could not be considered to have failed to show due respect for religion based on the context for the discussion, which was the intersection between religious belief and secular practices, in this case, the closing of public houses on Good Friday.
- The Forum noted that the broadcaster provided information to the audience via a warning that was aired before the start of the programme. The Forum also took into account the audience expectations of this programme, the time of broadcast and channel type.
- Notwithstanding the above, it is desirable that programme makers take all appropriate steps to minimise offence to audience members and, in this regard, the Forum was of the view that a more sensitive approach to references to religion and the Bible may have been warranted in this instance.
- In view of the above and especially audience expectation, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act, 2009 or the BAI Code of Programme Standards – Principle 5 in the manner specified by the complainant.



**Complaint made by: Ms. Maureen Sheehan**

**Ref. No. 54/17**

**Station:**  
RTÉ Radio 1

**Programme:**  
Ray D'Arcy Show

**Date:**  
13<sup>th</sup> 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 13<sup>th</sup> 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.



**Complaint made by: Mr. Jarlath Flynn**

**Ref. No. 63/17**

**Station:**

TV3

**Programme:**

Tonight with Vincent Browne

**Date:**

24<sup>th</sup> May 2017

**1. Programme**

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

**2. Complaint Category**

The complaint is submitted under the Broadcasting Act 2009 Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.19 and 4.22).

**3. Complaint Summary**

The complainant states that the programme was in breach of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, in the failure of the presenter to ensure an 'independent, unbiased and without prejudgement' approach to the section of the interview with Minister Simon Coveney T.D., dealing with the 8<sup>th</sup> Amendment to the Irish Constitution and with abortion. The complainant states that had the presenter acted with due even-handedness, he should have been expected to:-

- 1) Challenge Minister Coveney's assertion that we "...have to change the Constitution..."
- 2) Explored the future extensions of what the complainant states is Minister Coveney's radical proposal to establish a new Irish legal principle that capital punishment is a just outcome for the son or daughter of an alleged rapist;
- 3) Explore the future extension of the medical principle of killing a patient with a prognosis of less than nine months or so i.e. a child with a life limiting condition;
- 4) Query the idea of permitting capital punishment for rape, when the E.U. does not permit capital punishment;



- 5) Challenge Minister Coveney's use of what the complainant considers to be the propagandist language of women being "...forced to [carry a pregnancy]", when the X-case some twenty-five years ago established that women are free to travel to jurisdictions where abortion is legal.

The complainant states that during the interview, it was apparent that the presenter felt that legalisation of abortion was long-overdue in this country, and it seems that his own view on the matter prevented his maintaining a robust challenge as he should.

#### **4. Broadcaster's Response**

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

The broadcaster states that the Citizens Assembly voted in April of this year that the 8th Amendment to the Constitution be replaced. The broadcaster states that it is reasonable in this context for TV3's presenter to ask if Minister Coveney, as a member of Government, is in favour of amending the Constitution about this issue and, if so, in what way. The broadcaster states that during the interview, the Minister said he believes the Constitution and the law in this area needs to be changed, and so their presenter naturally followed up by asking him what form he thought that change should take.

The broadcaster states that the presenter never expressed his own views on the issue nor advocated a certain position. He simply made the point that as the debate on abortion has been carrying on in public discourse for decades, Minister Coveney has presumably formed views on the issue. They state that their presenter's line of questioning was designed to find out what those views were, for the benefit of informing the wider public.

The broadcaster states that TV3 has covered the ongoing public debate about the 8th Amendment over several different programmes this year and it is an issue that will be visited again as the debate continues. TV3 believes that the interview and coverage of the ongoing 8th Amendment debate fully complies with all BAI Codes in relation to fairness, objectivity and impartiality.

##### **4.2 Broadcaster's Response to BAI**

The broadcaster refers to the response of the Producer of Tonight with Vincent Browne above to the initial complaint and adds:-

- 1) TV3 has been dealing with the issues surrounding the 8<sup>th</sup> Amendment over the course of a number of programmes.



It should be noted that the Pat Kenny Tonight Show of 1<sup>st</sup> March debated the 8<sup>th</sup> Amendment with a panel comprised of Ms. Clare Daly TD, Ms. Maria Steen, Dr. Peter Boylan and Dr. John Monaghan. There was also audience contribution from 'pro-life' and 'pro-choice' advocates.

- 2) Following the programme of 24<sup>th</sup> May, there was a further Tonight with Vincent Browne programme dedicated to the 8<sup>th</sup> Amendment. This was broadcast on 6<sup>th</sup> July 2017 and on this occasion, the panel was comprised of Ms. Caroline Simons, Ms. Bríd Smith T.D., Ms. Maria Steen and Ms. Kate O'Connell T.D., an equal balance of 'pro-life' and 'pro-choice' advocates.
- 3) TV3 does not accept that any facts were misrepresented in a misleading way in this broadcast. While the complainant takes issue with some of the views expressed by Minister Coveney, he does not identify any facts that have been misrepresented.
- 4) The complainant set out a number of issues which he believes the presenter should have been expected to raise. TV3 does not accept that its obligations to be fair, objective and impartial required the presenter to raise all or any of these issues with Mr. Coveney in the interview in question.

#### **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 and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.19 and 4.22), the Members are asked to adjudicate on the complaint.

In this regard: -

- The Forum noted that the discussion relating to the 8<sup>th</sup> Amendment to the Irish Constitution formed part of a wide ranging interview with Mr. Simon Coveney T.D., ahead of the election for leadership of the Fine Gael party and where the new leader would likely become An Taoiseach. Mr. Coveney was one of two candidates standing for election to the position and it was evident from the content that the interview was being conducted to establish Mr. Coveney's outlook on various aspects of Fine Gael policy.





The focus of the interview was not, therefore, on the specific ways in which Ireland's abortion laws might be changed but rather on establishing Mr. Coveney's position on this topic in a context where he may become leader of Fine Gael and An Taoiseach.

- The Forum had regard to this editorial context when assessing the complaint. In line with the focus of the interview, the presenter questioned Mr. Coveney on a number of occasions with a view to establishing the conditions under which he would consider abortion to be acceptable. In this regard, the presenter asked his guest - "are you in favour of changing or appealing the 8<sup>th</sup> Amendment and if changing, in what way". Mr. Coveney stated his view that there was a need to change the Constitution and the law in this area and he stated that he also recognised there are women in very difficult situations that need more assistance from the State and more clarity in law. He cited a pregnancy following a rape as one circumstance where he considered abortion might be appropriate. The Forum noted that Mr. Coveney, however, refused to be drawn on the medical aspects of the controversy as he did not feel qualified to do so or drawn on other circumstances in which he believed abortion might be an appropriate course of action. This was despite being pressed to do so by the presenter.
- The Forum noted that the complainant outlined what he would have wished the presenter to ask in respect of matters pertaining to Ireland's abortion laws and believed that by not asking these question, the broadcast breached the Broadcasting Act and the BAI's news and current affairs code. However, any interview is bounded by time and by the context of the interview. The Forum was of the view that as the focus of the interview was an exploration of Mr. Conveney's political values and views, the questions asked of him on the topic of abortion were focused on teasing out his views on abortion rather than discussing the merits or otherwise of changes that he would favour. For this reason, the Forum did not agree that by failing to pose the questions as set out by the complainant, the broadcast infringed the sections of the Codes as claimed.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.19 and 4.22), in the manner specified by the complainant.



**Complaint made by: Mr. Brendan O'Regan**

**Ref. Nos. 64, 65, 66, 67/17**

**Station:**

Newstalk 106-108FM

**Programme:**

Newstalk Breakfast Show  
The Pat Kenny Show - News bulletins  
Newstalk Drive

**Date:**

12<sup>th</sup> & 13<sup>th</sup> June 2017

**1. Programme**

The complaints concern 'Newstalk Breakfast' (including news bulletins), 10am, 11am and 12 noon news bulletins' and 'Newstalk Drive', which are news and current affairs and Lifestyle/Entertainment programmes broadcast each day on Newstalk. The context for the programme content was the publication by the Childcare Law Reporting Project which detailed 22 Case histories with regard to child care proceedings in the court.

**2. Complaint Category**

The complaints are submitted under the Broadcasting Act 2009 Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.3 and 4.22).

**3. Complaint Summary**

**Complaint No. 64/17 – Newstalk Breakfast 12/06/17**

The complainant states there was a contribution from Ms. Linda Kavanagh of the Abortion Rights Campaign arguing against abortion restrictions. He states that, later in this programme, Irish Times journalist Ms. Kitty Holland was interviewed about the facts of the case – one of which involved a suicidal girl who had asked for an abortion but was sectioned in a psychiatric unit the previous year. The complainant felt that for this journalist to choose this case above others in the report in question (The Childcare Law Reporting Project) was to provide grist to the mill for the 'pro-choice' side of the argument, creating an emotional thrust against Ireland's restrictive abortion law. He states that Newstalk colluded in this by giving it prominence and that the interview was soft and unchallenging.



**Complaint No. 65/17 – The Pat Kenny Show – News Bulletins & Interview 12/06/17**

The complainant states there was another contribution from Ms. Linda Kavanagh of the Abortion Rights Campaign in news bulletins and this time she specifically called for a Referendum and Repeal of the 8<sup>th</sup> Amendment to the Irish Constitution. The complainant states that there was no balancing 'pro-life' contribution. He states that Ms. Kavanagh's contribution was repeated again on the 11 o'clock headlines, when the story was given top billing.

The complainant states that on the same show, there was an interview with Ms. Carol Coulter, author of the Childcare Law Reporting Project. The complainant states that another distressing case from the report was mentioned in this interview, but without the same prominence as the abortion case. On the midday news headlines, the viewpoints of the abortion rights campaigners were given prominence.

**Complaint No. 66/17 – Newstalk Drive 12/06/17**

The complainant states that on this programme there was an interview with Professor Veronica O'Keane of Trinity College who the complainant states was explicitly 'pro-choice', and unfairly characterised the 'pro-life' side as 'anti-choice' and wasn't challenged on this. The complainant states that this guest criticised the current abortion law (not from a 'pro-life' perspective) and instead of challenging her, the presenter put words in her mouth – 'so it's not working then'. The complainant states that there was an interview with journalist, Ms. Kitty Holland, who promoted the story. The complainant states that this was a soft interview and still no 'pro-life' reaction given any space. The complainant states that the presenter spoke of the girl being 'forced' to continue with the pregnancy. The complainant states that another way of looking at this would be to say that she would be 'assisted' to continue her pregnancy. The complainant states that at every turn the language of the 'pro-choice' perspective was used.

The complainant states that there was no acknowledgement during the discussion at any stage of the unborn baby as a baby, as a human, despite its constitutional position. He states that all concerns expressed were for the pregnant girl exclusively, which is effectively playing to the 'pro-abortion' or 'pro-choice' perspective. The complainant states that the presenter spoke of 'huge questions' for the legal and political system, but why did she not raise the huge question of the welfare of the unborn baby, whose very life was under direct threat?



#### **Complaint No. 67/17 – Newstalk Drive 13/06/17**

The complainant states the abortion issue was followed up again. Newstalk played what he describes as Ms. Ruth Coppinger T.D.'s gross characterisation of what happened to the young girl from the Childcare Law Reporting Project as 'incarceration, internment and imprisonment'. The complainant states that there was no challenging of this point. He states that Newstalk reported uncritically on the latest UN Human Rights Committee criticism of our abortion regime and gave an unchallenging interview to Mr. Niall Behan of the Irish Family Planning Association, which the complainant describes as 'pro-choice'. The complainant states that there was, again, no contribution from a 'pro-life' spokesperson, no contribution from the 'pro-life' perspective and no challenging of the interviewee from that perspective. The complainant states that in the news headlines, Newstalk included a contribution from Mr. Colm O'Gorman of Amnesty against our restrictive abortion laws. He called them 'cruel laws' and this could have been challenged later in the show, but wasn't.

The complainant states that, to sum up, in relation to these abortion related stories the coverage varied from subtle 'pro-choice' to obvious 'pro-choice'. He states that there was no contribution/interview with a 'pro-life' spokesperson, though their response to developments would have as much relevance as a 'pro-choice' response. In the interviews with 'pro-choice' people, their perspectives were accepted or encouraged but not challenged. The Newstalk Drive show is a particular offender in not showing balance, impartiality, neutrality, objectivity or fairness.

#### **4. Broadcaster's Response**

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

The broadcaster states the coverage was of the publication by the Childcare Law Reporting Project of 22 Case Histories with regard to child care proceedings in the court.

The broadcaster states that these case histories covered a wide variety of cases covering issues such as sexual abuse, children in psychiatric care and unaccompanied minors. Only one of the cases dealt with the issue of abortion. Newstalk states that it stands over their coverage of the publication of these case histories as fair and balanced and reject that it represented any breach of the Code with regard to Objectivity & Impartiality in News or Fairness, Objectivity & Impartiality in Current Affairs.



Newstalk states they take their commitment to the Code very seriously particularly regarding abortion and will continue to do so in their coverage of this issue.

#### **4.2 Broadcaster's Response to BAI**

The broadcaster states the following:

##### **Complaint 64/17 – 12/06/17**

The broadcaster states that, by way of background, the common thread throughout the first three complaints made by the complainant should be put in context. On the 11<sup>th</sup> June, the Childcare Law Reporting Project issued a report on childcare proceedings in the courts. The report comprised of 22 cases which were published and featured incidences in relation to children and their experiences before the courts and the various cases that they were involved in. The first three complaints relate to coverage of this issue. The complainant's characterisation of this coverage as 'coverage of the abortion issue' is incorrect. It is clear that this coverage, which is mainly news bulletins, is coverage of the Childcare Law Report.

The broadcaster states that the Childcare Law Report featured in the main newspapers that day, including on the front page of the Irish Times newspaper, and therefore it also featured on Newstalk's 8 o'clock bulletin. The 8 o'clock bulletin ran a story about one of the case studies that came out of the report which involved a suicidal girl who had asked for an abortion but was sectioned in a psychiatric unit last year.

The broadcaster states that the contribution from Ms. Kavanagh featured on the news bulletin and the short interview with Ms. Holland was part of the newspaper review. They were both in response to the main story of that day and were purely factual and transparent accounts of the report that was issued.

The broadcaster states that this was a news report of a topical story and was not a debate or discussion on abortion. The report was about children and their experiences in court – it was not about abortion. There was no expression of the presenter's own view on any of the issues discussed much less about abortion.

##### **Complaint No. 65/17 – 12/06/17**

The broadcaster states that this complaint refers to three news bulletins at 10 o'clock, 11 o'clock and 12 o'clock. Again, Newstalk submits that the bulletins did not present or express any views of the broadcaster and were very standard news bulletins dealing with the story that was the top news story of the day.



The broadcaster states that like the first complaint, this was simply reporting on the news. The complainant takes issue with the interview with Ms. Carol Coulter, who is the Director of the Childcare Law Reporting Project with Mr. Jonathan Healy on the Pat Kenny Show. It should be noted that the presenter began the interview by saying the following: "Let's talk about the top news story about cases in our courts concerning children". He then went on to say how this news report deals with "how the legal system treats the most vulnerable in our society". This interview ran for 14 minutes. During that 14 minutes, Ms. Coulter talked about how the law has changed from five years ago to now, allowing for the reporting of these cases on an anonymised basis as there was an inherent public interest in the case being reported. She then talked about two particular cases out of the twenty-two cases. The first of those was in relation to the child who wished to have an abortion and was sectioned. This is what the complainant complains about.

The broadcaster states that the second case she talked about was the case of five children who suffered neglect and sexual abuse. What is of most note here is that out of the 14 minutes of the interview 2½ minutes were spent talking about the case to which the complainant refers and complains about this coverage as giving abortion rights campaigners prominence. Newstalk is satisfied that it was about the actual facts of the case. It was about how our court process worked in this girl's favour in terms of going before the courts and dealing with situations like this. It particularly notes that we don't know what happened afterwards and therefore, we don't know if this girl had an abortion or not.

The broadcaster states that it is just not correct to state that this was a broadcast which showcased the viewpoints of abortion rights campaigners.

The broadcaster states that it was a clearly signalled interview with the Director of the Childcare Law Reporting Project about the 22 cases that formed part of the report dealing with how children are dealt with in our court system. To characterise it as an imbalanced and unfair broadcast advocating abortion is ill-conceived and incorrect.

There was also no expression of the presenter's opinion.

**Complaint ref 66/17 – 12/06/17**

The broadcaster states that this complaint relates to the same issue as the two complaints above. It relates to an interview arising out of one of the main news stories of the day, being the Childcare Law Reporting Project report on childcare proceedings in the courts and one of the 22 cases, the pregnant child who was sectioned in a psychiatric unit.



Professor Veronica O' Keane was interviewed in her capacity as a Senior Lecturer in the Department of Psychiatry and a leading perinatal psychiatrist.

The broadcaster states that she spoke about the legalities of when a woman presents with suicide ideation or intentions and how the role of a psychiatrist is unclear in her experience. The interview focussed on the current existing legislation and how it is working in practice from the perspective of a psychiatrist and how psychiatrists are dealing with it.

The broadcaster states that this was not a critique of the Protection of Life during Pregnancy Act or of the rights or wrongs of abortion. It was an account of the experience of a psychiatrist arising out of one of the cases reported in the Childcare Law Reporting Project report. Again, in circumstances where we don't even know if the girl in question had an abortion or not, the issue of abortion clearly was not the topic being focussed on.

The broadcaster states that, again, to categorise this discussion as giving prominence to the 'pro-choice' perspective is wrong. The issue of abortion will involve topics that are related to abortion but that do not necessarily involve a debate on the rights and wrongs of abortion. Such as the Protection of Life during Pregnancy legislation and how medical practitioners view this legislation in practice. This was not an interview that advocated a 'pro-choice' viewpoint. It was a transparent and credible interview with a clearly introduced medic devoid of any discussion on 'pro-life' or 'pro-choice'.

**Complaint Ref 67/17 – Newstalk Drive – 13/06/17**

The broadcaster states that this is a complaint based on the following day's coverage of another news story which, while touches on the abortion issue, is not about abortion per se, certainly not in the way the complainant characterises it.

The broadcaster states that, that day the United Nations Human Rights Committee ruled that Ireland's abortion laws were inhumane. This was a factual report of a news story. This wasn't something to be challenged. It was a news report. There were several contributions from appropriate people relevant to the subject.

Newstalk does not feel that such a news report required a contribution from a 'pro-life' spokesperson. The complainant is conveniently conflating two issues. There is obviously overlap between the ruling made by the UN Human Rights Committee and the 'pro-choice' view but this does not mean that any questions asked or reportage by Newstalk presenters that discussed this ruling can be said to be pushing a 'pro-choice' view. It was fair and impartial coverage of the UN Human Rights Committee's ruling.



The broadcaster states that the clip with Ms. Ruth Coppinger T.D. referred to by the complainant was made in an entirely different context as she chose to include her comments in her speech as former Taoiseach Enda Kenny resigned from the Dáil. The broadcaster states that the clip was played in the context of reportage of this event and was not the subject of any comment on the programme. Newstalk does not feel that inclusion of such a clip required a contribution from a 'pro-life' spokesperson.

### **Conclusion**

Newstalk believes that all the broadcasts complained of were fair, impartial and objective. They do not accept that they failed in their duty to be impartial. The pieces were mainly news reports or based on news stories and were introduced without any ambiguity or confusion and the interviews were conducted in a wholly transparent manner.

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

Having considered the broadcasts 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); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.3 and 4.22) the members have decided to reject the complaints.

The Forum noted that these complaints all refer to discussions and or news reports on cases included in the Childcare Law Reporting Project issue.

In this regard: -

### **64/17 - Newstalk Breakfast – News bulletin and Review of Newspapers**

- The Forum noted that the complaint refers to a news bulletin and a short news interview focused on the findings of the Childcare Law Reporting Project, in particular a case involving a child and her family who sought to terminate a pregnancy under the provisions of the Protection of Life in Pregnancy Act, 2013. The news bulletins included a clip from an interview with Ms. Linda Kavanagh, Abortion Rights Campaign, who commented critically on the court case. Later, the programme included an interview with Irish Times Journalist, Ms. Kitty Holland on this story.





- The Forum found that the coverage of the story was not focused on the issue of abortion but rather on the application of law to cases involving children, one (amongst 22) which related to the application of the Protection of Life in Pregnancy Act, 2013.

In the case of the news bulletins, these provided a brief outline of the case involving the child and her family and included a comment. As there is no requirement for fairness in news, the Forum was of the view that no issue arose with this news bulletins or other bulletins broadcast during the day. In respect of the interview with Ms. Kitty Holland, this interview simply summarised the facts of the case and there was no evidence from the complainant to suggest that there was anything inaccurate in this summary. While the complainant questioned the decision of the journalist to focus on this story, this was not a relevant consideration for the Forum as it did not pertain to editorial decisions of Newstalk. In terms of Newstalk, their decision to focus on this particular case is an editorial matter for the broadcaster. The Forum was of the view that there was no requirement for another voice with opposing views to be included in either items. The Forum also found no evidence of any 'collusion' on the part of the broadcaster in respect of its handling of this story.

More generally, as the news story related to the impact of Irish law on children and not on the issue of abortion, the inclusion or otherwise of a 'pro-life' perspective or discussion of the rights of the unborn were not relevant to a determination on the complaint.

- 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. Accordingly, the complaint has been rejected.

#### **65/17 – The Pat Kenny Show – News Bulletins and interview with Ms. Carol Coulter**

- The Forum noted that this programme included a number of additional bulletins covering this news story including a further contribution from Ms. Linda Kavanagh on the same subject as above. For the reasons set out in complaint reference 64/17, the Forum found no issue with the inclusion of the interview with Ms. Kavanagh and there was no requirement therefore for opposing views to be included in these news bulletins.



- The second interview complained of was with Ms. Carol Coulter, author of the Childcare Law Reporting Project. The Forum found that this was a 13-minute interview which provided context for the report and examined a number of the 22 cases included in the report, including the case involving the child and her family who both sought to end her pregnancy. The Forum found that the main focus of the interview was on the report in general and what needs to be done to ensure legal cases involving children are handled with due care and attention. The Forum was of the view that this interview was conducted in a fair and impartial manner by the interviewer without any infringement of the Code and found no evidence from the broadcast that the story of the child and her family seeking to terminate the child's pregnancy was given any undue prominence.
- 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. Accordingly, the complaint has been rejected.

#### **66/17 – Newstalk Drive – 12/06/17**

- The Forum noted that this complaint referred to an interview with Professor Veronica O'Keane, Senior Lecturer and Perinatal Psychiatrist, Trinity College, Dublin. The Forum found that this contributor discussed the situation in general of pregnant women who present with suicidal ideation and how psychiatrists such as herself are expected to deal with these women under the Protection of Life during Pregnancy Act. The Professor outlined how women in these situations are assessed under the Protection of Life during Pregnancy Act and the difficulties faced by psychiatrists attempting to engage with the Act. The Forum found that her views were then paraphrased, rather than supported, by the presenter when she stated – 'It's not working then?'
- The Forum found that the main focus of this interview was on the difficulties experienced by the medical profession and psychiatrists in particular, in carrying out their duties under the Protection of Life during Pregnancy Act. The Forum found that the focus was on the application of the Act and in that context, the inclusion or absence of references to the rights of the unborn were not considered relevant to a determination as to whether the item met the requirements of the Act or the BAI's news and current affairs code.



- Regarding the interview with Ms. Kitty Holland, the Forum found that Ms. Holland outlined the decision by the judge in the case of the pregnant suicidal girl, to appoint a Guardian ad Litem and how this assisted the girl in this case. She also spoke about the other details of the case. The Forum found that this was an examination of the details of the case and again the inclusion or absence of references to the rights of the unborn were not considered relevant to a determination as to whether the item met the requirements of the Act or the BAI's news and current affairs code.
- 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. Accordingly, the complaint has been rejected.

#### **67/17 – Newstalk Drive – 13/06/17**

- The Forum found that this programme item centered on the United Nations (UN) Human Rights Committee ruling that Ireland's abortion laws were inhumane. One of the items complained of, related to a contribution by Ms. Ruth Coppinger, T.D. when she spoke in the Dáil on the resignation of the then outgoing Taoiseach, Mr. Enda Kenny T.D. Ms. Coppinger used her time to make reference to several items, including the report of the Childcare Law Reporting Project, issued in June 2017. One of the cases included in the report referred to the childcare proceedings in the courts and treatment of the young pregnant girl who, when she sought an abortion, was sectioned in a psychiatric unit. Ms. Coppinger highlighted this case in her speech.
- The Forum found that this was not a discussion on abortion but part of a wider ranging speech by Ms. Coppinger on the occasion of the resignation of An Taoiseach. Her comments were observations on the performance of An Taoiseach only. As a result, the Forum was of the view that there was no requirement for another voice with opposing views to be included in this item.
- The Forum also considered the contribution by the presenter, Mr. Chris Donoghue and those of Mr. Niall Behan of the Irish Family Planning Association as raised by the complainant. The Forum found that the main focus was a discussion on the outcome of the ruling on the UN Human Rights Committee that was critical of Ireland's abortion laws. Overall, the Forum found that this was a factual report and not a wider discussion on abortion. There was no requirement, therefore, for an



opposing view on abortion to be included. It was fair and impartial coverage of the UN Human Right's Committee's ruling.

- The Forum found that the comments made by Mr. Colm O'Gorman, Amnesty International, were included in a factual news report. As there is no requirement for fairness in news, the Forum was of the view that no issue arose with this news bulletin.
- In view of the above and especially audience expectation, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act or the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs in the manner specified by the complainant. Accordingly, the members decided to reject the complaint.



**Complaint made by: Family Media Association**

**Ref. No. 69/17**

**Station:**

RTÉ Radio 1

**Programme:**

Morning Ireland

**Date:**

1<sup>st</sup> May 2017

**1. Programme**

The complaint concerns the Morning Ireland, which is a news and current affairs programme broadcast each weekday morning. The complaint refers to an interview with Simon Harris T.D., Minister for Health and a question put by the presenter.

**2. Complaint Category**

The complaint is submitted under 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, 4.3, 4.4, 4.17, 4.19, 4.20, 4.21, 4.22, 4.25, 4.26 & 4.28 and under the Code of Programme Standards (Harm & Offence) Principles 3 (Protection from Harm), 5 (Respect for Persons and Groups in Society) and 6 (Protection of the Public Interest).

**3. Complaint Summary**

The complainant states that during the interview on the ownership of the proposed new National Maternity Hospital, the Morning Ireland reporter asked the Minister "so you accept that the public are on the right side of this argument?" The complainant states that the basis of one of the assumptions behind this question appears to be an online petition containing 100,000 names. The complainant states that even if accurate, the figure of 100,000 does not represent the public in general. The complainant states that given the strength of feeling about religion it would be surprising if large numbers of people were not willing to put their names to a petition on either side of the argument.

The complainant maintains that to suggest contrary to the opinions of Dr. Rhona Mahony and others of diverse backgrounds, that this was the "right side" of the argument, on this matter of 'public controversy' and particularly at that time 'subject of current debate' was clearly in contravention of the BAI's Code of Fairness, Objectivity and Impartiality in News and Current Affairs.



The complainant also believes other rules listed above were infringed by, what he claims were the presentation of false and otherwise misleading assumptions that the anti-religious involvement position was the definitive position of the public and that this position was the "right side".

#### **4. Broadcaster's Response**

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

The broadcaster states that the question raised referred to the strong public opposition to the plan to transfer ownership of the National Maternity Hospital to the Sister of Charity expressed over several days by women's groups, political groups on radio programmes and widely across social media. In his answer the Minister acknowledged this disquiet by saying "I accept the public have very genuine concerns that they have expressed."

The broadcaster states that a minute later in the interview the presenter put it to the Minister that "There are other voices out there that think that this is just a lot of scare mongering ... some of those involved in the negotiations are perfectly happy at the level of clinical independence." This gave the Minister a chance to state that some people - including those most closely involved in the negotiations - had no problem with the plan.

Having reviewed the matter, the broadcaster agrees that it is true that the phrasing of the question could have been better, along the lines of "Do you accept that the public concerns have to be dealt with?" However, there was no intention to give a false impression of the public reaction. The intention was to allow the Minister address the high level of public disquiet which he recognised existed over this issue.

##### **4.2 Broadcaster's Response to BAI**

The broadcaster states that the complainant objects to a particular question put by the reporter to the Minister: "So, you accept that the public are on the right side of the argument?" In doing so, he bases the complaint on his presumption that "the basis of one of the assumptions behind this question appears to be an online petition containing 100,000 names."



The broadcaster agrees that the unusually large online petition is referred to in the presenter's introduction to the pre-recorded interview. However, as listening to the interview recorded the previous evening will confirm, the reporter's question arises from the unprompted statement by the Minister for Health at the beginning of the exchange that:

"I've heard the public concerns in recent weeks, I really have, and I know they're genuine and people feel very strongly on this matter."

Throughout the interview, the Minister continued to detail his understanding of the nature, integrity and level of public concern on the issue.

"I absolutely accept, absolutely accept the public's view that we need to make sure in doing so and in seeing the priority that is a new maternity hospital that we absolutely get this right. And what I want to say to people this evening, very very clearly, I have heard their concerns, please provide me with the time to further engage with both hospitals. I will then report back to Cabinet and to the Oireachtas and to the public at the end of May and let's see where we are then."

The phrasing of the reporter's question "So you accept the public are on the right side of this argument?" has been addressed by the Series Editor Morning Ireland. In reply, the Minister says:

"I accept that the public have very genuine concerns that they have expressed. I also accept that the agreement endeavours to put a range of safeguards in place but I do think it's important that we can provide further clarity in relation to the issue of ownership, that the issue of ownership can be examined and that we can try and come up with a mechanism, with a solution that addresses the public concern in relation to ownership."

Again towards the close of the interview the Minister returns, again unprompted, to the subject of public concern:

"We will get this right, we will build this hospital, but we will do so in a manner that addresses the public's concerns. . . . We can try and deliver a state-of-the-art national maternity hospital and secondly one that absolutely addresses public concerns."



The broadcaster maintains that as can be seen above and heard in the interview, the objective fact of public concern about the ownership of the maternity hospital is first raised by the interviewee, setting the context for the reporter's question.

With respect to the 11 rules and three principles alleged to be breached:

- Rules 4.1 & 4.2 - As detailed above and in the reply of the Series Editor, *Morning Ireland*, there was no breach of these rules.
- Rule 4.3 - There was no unfair treatment of the contributor or of any person or organisation referred to (insofar as there was any such reference) and the complainant offers no evidence of such treatment.
- Rule 4.4 - The interviewee's consent to the interview was fully informed.
- Rule 4.17 - The content was accurately presented, the interviewee offering clear support

## **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), Section 48(1)(b) (offence and harm), the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.3, 4.4, 4.17, 4.19, 4.20, 4.21, 4.22, 4.25, 4.26 and 4.28) and the BAI Code of Programme Standards (Harm & Offence) Principles 3 (Protection from Harm), 5 (Respect for Persons and Groups in Society) and 6 (Protection of the Public Interest), the members have decided to reject the complaint.

In this regard: -

- The Forum noted that this was an interview with the Minister for Health, Mr. Simon Harris T.D. on the controversy surrounding the site of the new maternity hospital on the campus of St. Vincent's Hospital on the ownership and control issue.
- The complaint relates to a question posed by the presenter to Deputy Harris - "So, you accept that the public are on the right side of this argument?" The context for this question relates to an online petition containing 100,000 names of various groups who





objected to the plan to transfer ownership of the National Maternity Hospital to the Sisters of Charity. The main argument of the complainant is that the complainant feels 100,000 names does not represent the public, in general, and given the strength of feeling about religion it would perhaps be surprising if large numbers of people were not willing to put their names to a petition on either side of this argument.

- Having reviewed the broadcast, the Forum found that the programme content did not raise any issues that were relevant to the BAI Code of Programme Standards or a number of sections cited by the complainant in respect of fairness, objectivity and impartiality in news and current affairs (4.21, 4.25, 4.26 and 4.28). On the issue of the comment by the presenter and the discussion as a whole, the Forum agreed that the phrasing of the presenter's question which could have been better. However, given the high number of signatures to the petition and given the level of public comment that was critical of the proposed arrangement, it was reasonable for the presenter to highlight this aspect of public opinion. The Forum did not consider this to demonstrate a lack of fairness, objectivity and impartiality. In addition, it was the view of the Forum that there was no evident intention to give a false impression of public reaction. Rather, this question was considered by the Forum to be a typical question for a discussion such as this which was posed to interpret what the Minister had to say, to cover all aspects of the debate and to inform listeners of the current position of the Minister.
- In view of the above, the Forum did not agree that the programme infringed the Broadcasting Act or the requirements of 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 members decided to reject the complaint.



**Complaint made by: Mr. Patrick Scully**

**Ref. No. 70/17**

**Station:**

RTÉ One

**Programme:**

Six One News

**Date:**

17<sup>th</sup> May 2017

**1. Programme**

The complaint concerns the Six One News, broadcast each weekday evening from 6.01 to 7pm. The complaint refers to an interview with a representative from Women's Aid on the release of their 2016 report.

**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 and 4.2) and the BAI Code of Programme Standards, Principle 3 (Protection from Harm).

**3. Complaint Summary**

The complainant states that, in his opinion, the interview with the Director of Women's Aid provided her with free rein to make negative and unfair comments about men in respect of domestic abuse. The complainant states that this guest was allowed to do this without the slightest amount of cross-examination from the interviewer. The complainant states that the Women's Aid by-line 'making (all) women and (all) children safe' implies that (all) men are dangerous when it comes to the safety of women and children. The complainant states that men make up half the population and deserve equal treatment in the media instead of being told how awful they are by the people in Women's Aid.

**4. Broadcaster's Response**

**4.1 Broadcaster's Response to Complainant:**

The broadcaster states that it reported on the annual statistics from the Women's Aid group in relation to domestic abuse, which was a news story on that day. The organisation has a valid role in society and for the first time its figures related to operating a 24 hour helpline.



The broadcaster reported on their statistics which showed a 70% increase in calls amounting to 44 contacts a day.

The broadcaster states it did not fail to mention the male victims. The lead-in referred to the report's finding that 4% of calls were from men. The substantive news report featured a young woman who uses social media to highlight the effects of domestic abuse on the children in a relationship. The Director of Women's Aid also featured and referred to the hidden problem and the stigma attached, particularly for women and children. The Minister for Children also contributed and referred to the impact on children.

On other occasions, the broadcaster states, it will report in more detail on the male victims of domestic abuse but as is evident from the earlier reference, it is a much smaller cohort and much harder to get people to talk openly about the subject. That given, the broadcaster has noted the complainant's concerns and will continue to try and cover all aspects of domestic abuse as it affects female and male victims as well as children.

#### **4.2 Broadcaster's Response to BAI**

The broadcaster refers to the response (above) of the Editor to the initial complaint.

The broadcaster notes the editorial freedom of broadcasters to choose the stories which it wishes to cover and the perspective on those topics, supported for example in the BAI decision on earlier complaint referrals Ref 95/16, 96/16 and 97/16:

"The Forum noted that broadcasters have the editorial freedom to approach a topic from a particular angle and such decisions do not automatically demonstrate evidence of a failure to be fair, objective and impartial."

The topic in this case was the release that day of the annual statistics from the Women's Aid group in relation to domestic abuse, not domestic abuse generally or any other aspect of the topic.

The broadcaster states that Women's Aid exists as an organisation specifically to support women and children experiencing domestic violence; while it is unable to support male victims of domestic violence, on its website and otherwise it refers male victims to support agencies such as Cosc; hence the reference in the newsreader's introduction to 4% of calls to the organisation having been from men.



RTÉ notes also the statement by the BAI Executive Complaints Forum when rejecting the complaint referrals Ref 132/15, 133/15, 134/15 and 135/15 that:

“ . . . the Forum were of the view that it is widely understood that a higher percentage of women than men suffer from domestic abuse in Ireland . . . . ”

The broadcaster states that there was absolutely no statement whatsoever in the broadcast which could be reasonably interpreted as implying that “*(all) men are dangerous when it comes to the safety of all women and children*”, as alleged by the complainant.

The broadcaster claims there was no breach of Rules 4.1 and 4.2 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, insofar as those rules could be said to apply to a report on a topic which is not a matter of public controversy: there is no alternative view – for example, that domestic abuse is to be supported or encouraged - to that of the organisation whose findings were being reported.

The broadcaster also claims that there was no breach of Principle 3 of the BAI Code of Programme Standards; the broadcast was focused on an organisation which supports victims of violence and contained no material which could reasonably be seen as harmful to any audience.

## **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 and 4.2) 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 this interview was based on the release of the annual statistics from the organisation, Women's Aid, relating to domestic abuse and arising from their interaction with those using their service. The complaint referred to an interview with the Director of Women's Aid, whom the complainant claims was “given free rein to make negative and unfair comments about men” in relation to domestic abuse.



- The Forum found that this was a report on the impact of a relatively new 24-hour helpline set up by Women's Aid to assist victims of domestic abuse. The Forum noted that the piece in question was a 20-second interview with the Director of Women's Aid who explained that domestic abuse was still a "hidden problem in Ireland" and that there was still a "massive stigma about speaking out about it as well as a fear for an awful lot of women". She further stated that "there are a lot of women and children that live with a high level of fear" while being threatened by their partner.
- On the issue of the experience of men as sufferers of domestic violence, the Forum found that in the introduction to the report, the presenter stated that 4% of the callers to the helpline were men. More generally, there is no obligation on a broadcaster to ensure that every angle of a story or topic is covered, broadcasters may select a particular aspect of a story and focus on that and a decision not to cover other aspects of a story is only problematic when not to do so will lead to unfairness. This was evident from the broadcast which focused on the findings of Women's Aid. Given this focus, the item naturally emphasised the experience of this organisation, who deal predominantly with women and where the instigator of abuse will be predominantly men. The Forum was of the view that this focus was factual in nature, was not derogatory towards men as a whole and there was no evidence of any denial of domestic abuse against men.
- In view of the above and especially audience expectation, the Forum did not agree that the programme infringed the Broadcasting Act or the requirements of 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 members decided to reject the complaint.



**Complaint made by: Mr. Aaron McAllorum**

**Ref. No. 73/17**

**Station:**  
RTÉ One

**Programme:**  
Six One News

**Date:**  
29<sup>th</sup> June 2017

**1. Programme**

The complaint concerns the Six One News, broadcast each weekday evening from 6.01 to 7pm. The complaint refers to the tone used by the presenter during an interview with Mr. Paul Murphy T.D.

**2. Complaint Category**

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

**3. Complaint Summary**

The complainant states his complaint relates to the tone of an interview with Mr. Paul Murphy T.D. The complainant is of the view that the interviewer continually made attempts to discredit and undermine a person acquitted of certain charges in an Irish court. The complainant states that the interviewer made several attempts to draw a direct line to persons she claimed were violent and abusive at a protest and were under the control of Mr. Paul Murphy, T.D.

**4. Broadcaster's Response**

**4.1 Broadcaster's Response to Complainant:**

The broadcaster states that they covered the verdict with two packaged reports which featured comments from those who had walked free from the courts and were welcomed by their supporters as well as live analysis with their correspondent.



The broadcaster states that Deputy Murphy was invited to be interviewed in studio. They state that it was a five and a half minute interview which began with the interviewer asking how he felt and whether he expected the verdict. Deputy Murphy spoke of his relief after a draining and lengthy process. The presenter pursued a line of questioning about whether Deputy Murphy had any regrets about the disturbances at the protest. Deputy Murphy used the opportunity to outline that he has no regrets about peaceful protest but in follow-up questions went on to say he didn't agree with some of the incidents that happened that day.

The interview then moved on and allowed Deputy Murphy address the issues surrounding his claims that the political establishment were trying to subdue the water protests movement. He addressed the issue in detail. Overall, the interview hit on a number of issues surrounding the courts verdict and there was no attempt to discredit or undermine Deputy Murphy.

#### **4.2 Broadcaster's Response to BAI**

The broadcaster refers to the response of the Editor to the initial complaint above.

As provided for in section 39(1)(b) of the Broadcasting Act 2009 and Rule 4.18 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, RTÉ submits that the interview and the accompanying report on the same topic be considered as a whole.

RTÉ also asserts that the interviewing of Deputy Murphy was entirely in keeping with the requirement of Rule 4.22 of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs to ensure that:

“ . . . the audience has access to a wide variety of views on the subject of the programme or item; to facilitate the expression of contributors' opinions – sometimes by forceful questioning; and to reflect the views of those who cannot, or choose not to, participate in content.”

The questions asked and issues raised by the interviewer were in the public interest, as was the opportunity given to the interviewee to respond.



## **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 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 the complaint referred to the tone used during an interview with Mr. Paul Murphy T.D. which was seen by the complainant as one of undermining and discrediting Mr. Murphy.
- The Forum noted that the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs acknowledges that it is the role of a programme presenter to robustly challenge (where appropriate) interviewees. However, the Code requires the presenter to take care that their approach to an interview, including their tone, does not result in unfairness.
- Having reviewed the interview, the Forum was of the view that the tone and approach, while robust, did not prevent Mr. Murphy from setting out his reasons as to why he supported the citizen's right to peaceful protest while also distancing himself from some of the incidents that happened on the day of the protest in question. The Forum was of the view that viewers to the programme would have been clear about his position on the protest and that the fact that Mr. Murphy would have no difficulty in putting across his views, as a seasoned participant over many interviews on radio and television. The Forum considered the approach to be typical of a news interview, dealing with a matter of controversy and where it involved a public representative.
- In view of the above and the fact that this was a standard news interview, the Forum did not agree that the programme infringed the Broadcasting Act or the requirements of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs in the manner specified by the complainant. Accordingly, the Members decided to reject the complaint.





**Complaint made by: Mr. Declan McKenna**

**Ref. No. 76/17**

**Station:**

RTÉ Radio 1

**Programme:**

Today with Seán O'Rourke

**Date:**

8<sup>th</sup> June 2017

**1. Programme**

The complaint concerns 'Today with Seán O'Rourke', which is a mid-morning current affairs magazine with the stories of the day, analysis, sports coverage, in-depth features and consumer interest. The programme is broadcast each weekday morning from 10am to 12 noon. The complaint concerns the use of the term "Russian interference" in the US election.

**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 during the interview with the former director of the CIA, Mr. John Brennan, the presenter posed the question "When did you first become aware of Russian interference in the election last year?" The complainant states that he is not aware of RTÉ broadcasting proof of any Russian interference nor had the CIA or any other US agency. Therefore, in the absence of proof, the complainant believes that the only reasonable position that RTÉ could adopt, was to ask about allegations of interference. The presenter, having accepted the proposition that the claim of Russian interference was a fact, then conducted the rest of the interview as if it was a proven case and failed to ask Mr. Brennan for any substantiation of the claims he was making.

The complainant states that because of the claims made by the presenter and by Mr. Brennan against the government of Russia and with no representative of the Russian government to respond, then RTÉ should have filled that roll. This was not done.



The complainant refers to Mr. Brennan denouncing any attempts by anyone anywhere to interfere in electoral processes and specifically stated that the American electorate was entitled to protection from any interference. The complainant states that it would have been appropriate for the presenter to ask about allegations of interference in the electoral processes in any number of countries by US government controlled agencies. The complainant states that other items discussed during the interview, including the killing of Osama Bin Laden, the Sandy Hook Elementary School shooting and whether Ireland is "immune from terrorist attack", were not conducted by the presenter in a challenging manner.

#### **4. Broadcaster's Response**

##### **4.1 Summary of Broadcaster's Response to the Initial Complaint**

The broadcaster states that the interview with Mr. John Brennan was a wide ranging profile interview covering news stories of that day/Brennan's background/Irish ancestry/key moments from his career under US Democratic and Republican presidents. The broadcaster states that it was not an item specifically addressing Russian interference in the US elections, it was a profile interview covering his career.

With respect to the claims of Russia's interference in the US presidential election last year, the United States Intelligence Community concluded with high confidence that the Russian government had interfered in the 2016 U.S. presidential election. [A joint statement was issued from the Department of Homeland Security and Office of the Director of National Intelligence on Election Security in October 2016]. The NSA, the CIA and the FBI have all stated, in sworn testimony, that there was Russian interference in the US election. On December 29th the US expelled 35 Russian diplomats, 6 individuals were expelled due to cyber hacking. In January 2017, then President Elect, Trump, issued a statement in which he said:

"I had a constructive meeting and conversation with the leaders of the Intelligence Community this afternoon. I have tremendous respect for the work and service done by the men and women of this community to our great nation. While Russia, China, other countries, outside groups and people are consistently trying to break through the cyber infrastructure of our governmental institutions, businesses and organizations including the Democrat National Committee, there was absolutely no effect on the outcome of the election including the fact that there was no tampering whatsoever with voting machines."



The broadcaster states that during the interview with Seán O'Rourke, Mr. John Brennan said he met with Mr. Alexander Bortnikov [Director of the FSB – Russian security service] on August 4th, he spoke to him about press reports of release of emails and apparent Russia involvement in this. Mr. Brennan said Bortnikov denied any responsibility for it. Mr. Brennan told him that the relationship between Russia and US needs to improve and this wouldn't help. Mr. Brennan later said the Russia policy is to 'deny, deny, deny' but that it was a clear consensus of the intelligence community that they were responsible for doing this.

On previous items that specifically covered Russia/US relations, the broadcaster states that it has stated that Russia denies any of these cyber hacking allegations as have other News programmes. Regarding the killing of Osama Bin Laden, the broadcaster maintains that this part of the interview was based on John Brennan's first-hand experience of being present when the military decision was taken to raid Bin Laden's compound. The questions focused on Mr. Brennan's personal experience of that day. It is well established that the US has a strong security partnership with Pakistan and has close ties with the country in terms of providing counter terrorism support.

With respect to the shooting at Sandy Hook Elementary School, the broadcaster states that this was raised with Mr. Brennan because as security advisor to the then President Obama it was he who had to brief him on the tragedy.

The broadcaster states that the interview with Mr. Brennan was not meant to be a comprehensive review of the role of the US intelligence services or their undoubted involvement in several theatres worldwide – subjects that have been covered many times in many programmes across the RTÉ schedule, and no doubt will be again. That said, Sean O'Rourke asked John Brennan if he had an issue with waterboarding. Mr. Brennan said he was a critic of it though maybe not as vocal as he could have been. He said if he was Director of the CIA at that time [under Bush], he would not have implemented it as an enhanced interrogation technique. Mr. Brennan also said he objected to it from a pragmatic and principled perspective.

#### **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:-



The right of broadcasters to select subjects for coverage and the perspective on those subjects has been supported on numerous occasions by the BAI, for example in the BAI decision on complaint referrals Ref 95/16, 96/16 and 97/16:

"The Forum noted that broadcasters have the editorial freedom to approach a topic from a particular angle and such decisions do not automatically demonstrate evidence of a failure to be fair, objective and impartial."

The broadcaster states that the interview provided an opportunity for listeners to hear the perspective of a very experienced and senior former member of the US intelligence community on current news topics, including Russian interference in the US election. The opening of the interview set it in the context of the upcoming appearance that day at the US Senate Intelligence Committee of former FBI Director, Mr. James Comey, at which the topic of election interference was expected to be raised.

The interview went on to draw out Mr. Brennan's experience in relation to a number of events during his service as Director of the CIA, notably the killing of Osama Bin Laden, the Sandy Hook Elementary School shootings, and contemporary terrorism.

The broadcaster states that the interviewer referred to texts critical of the CIA and in that context inquired of Mr. Brennan why he had joined the CIA rather than the priesthood and followed up Mr. Brennan's acknowledgement of CIA mistakes to ask for examples, specifically raising eavesdropping on foreign leaders such as Chancellor Merkel.

It is noted that the complainant does not assert that the interviewer should have challenged Mr. Brennan's criticism of 'enhanced interrogation techniques' but is selective in listing the historical events which he would have wished to have heard raised, perhaps indicating a particular political perspective which he believes should have been put to Mr. Brennan in a debate format which was clearly not that of the interview.

The broadcaster states that the possibility that the complainant would have wished to hear put to the interviewee, a particular political perspective critical of US foreign policy and the related actions of its agencies, was not to allege or imply anything "sinister" about such a perspective, only to suggest that the content of the broadcast may have been other than that he would have wished to hear, rather than failing to meet editorial standards.



The complainant quotes from “Assessing Russian Activities and Intentions in Recent US Elections” of 6<sup>th</sup> January 2017, drafted and coordinated by The Central Intelligence Agency (CIA), The Federal Bureau of Investigation (FBI), and The National Security Agency (NSA).

The broadcaster state that it should be noted that in fact key findings of the document support the fair and impartial use by a journalist of the phrase “Russian interference in the US election” when discussing the topic, in a context where all listeners will be completely aware of ongoing investigation. They include (page 1):

“We assess with high confidence that Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election, the consistent goals of which were to undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency. We further assess Putin and the Russian Government developed a clear preference for President-elect Trump. When it appeared to Moscow that Secretary Clinton was likely to win the election, the Russian influence campaign then focused on undermining her expected presidency.

We also assess Putin and the Russian Government aspired to help President-elect Trump’s election chances when possible by discrediting Secretary Clinton and publicly contrasting her unfavorably to him. All three agencies agree with this judgment. CIA and FBI have high confidence in this judgment; NSA has moderate confidence.

In trying to influence the US election, we assess the Kremlin sought to advance its longstanding desire to undermine the US-led liberal democratic order, the promotion of which Putin and other senior Russian leaders view as a threat to Russia and Putin’s regime. “



## **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); 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 the complaint referred to an interview with the former director of the CIA, Mr. John Brennan. During the interview, the presenter posed the question "When did you first become aware of Russian interference in the election last year?" The complainant is not aware of RTÉ broadcasting proof of any Russian interference nor had the CIA or any other US agency. The Forum found this a legitimate question to ask, considering Mr. Brennan's testimony to the House Intelligence Committee. The question was also valid in view of the suspicions of Russian involvement as far back as the Spring of 2016, according to Mr. Brennan.
- The Forum was also of the view that considering John Brennan's status as former director of the CIA and the fact that he had spoken of Russian involvement, the presenter was entitled to ask the question. The Forum also noted that this interview was not about American Foreign Policy and to pose basic questions to elicit information, was legitimate.
- In view of the above and RTÉ's clear initial response to the complainant, the Forum did not agree that the programme infringed the Broadcasting Act or the requirements of the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs in the manner specified by the complainant. Accordingly, the members decided to reject the complaint.



**Complaint made by: Ms. Claire Stack**

**Ref. No. 78/17**

**Station:**

Newstalk 106-108fm

**Programme:**

Newstalk Drive

**Date:**

12<sup>th</sup> June 2017

**1. Programme**

The complaint concerns 'Newstalk Drive', which is a current affairs programme broadcast each afternoon from 16:00 -19:00. The complaint refers to an interview with Dr. Veronica O'Keane and journalist Ms. Kitty Holland regarding the release of the Childcare Law Report. The focus of the discussion was on one of the cases in the Report, about a pregnant girl who had requested an abortion on the basis that she was suicidal and was then sectioned under the Mental Health Act.

**2. Complaint Category**

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

**3. Summary of Initial Complaint to the Broadcaster**

The complainant states that the choice of guests on the programme failed to ensure that the audience received the benefit of a "wide variety of view" as required under rule 4.22 of the Code. The complainant states that, in his view, both Dr. O'Keane and Ms. Holland are in favour of repealing the Eighth Amendment to the Irish Constitution and in that context, it would have been incumbent on the broadcaster to interview someone who holds an opposing view and in particular someone who does not agree that it is in any way that abortion is a treatment for suicide ideation. The complainant states that by failing to interview a psychiatrist or other guest who could offer an alternative view, the complainant believes that the programme breached the Code.

The complainant states that both interviewees were allowed to expound on their opinions of the case of a pregnant girl who was suffering from suicidal ideation, without receiving any kind of forceful questioning from the presenter. The complainant states that the presenter allowed Dr. O'Keane to provide lengthy monologues where she could expand on her views without interruption or challenge.



The complainant submits examples of Dr. O'Keane's contribution as examples of long monologues. These can be found in the complaint submission.

The complainant also states that Ms. Holland was allowed to speak at length without being subjected to any kind of "forceful questioning" which would have challenged her views on this issue. The complainant states that Ms. Holland was allowed to speculate on the facts of this case without the presenter noting that the facts were not fully known and highlighting that it was not appropriate to speculate at such an early stage. The complainant states that towards the end of the interview, the presenter asked Ms. Holland for her view on why the 2013 Protection of Life during Pregnancy Act had not been invoked in this case. The complainant believes this was a leading question as the facts were not known at this stage, yet Ms. Holland was encouraged to answer.

The complainant maintains that it was entirely unhelpful for the listeners' understanding of this highly complex and sensitive case for the presenter to encourage the guests to engage in speculation of any kind. The complainant states that the presenter brought the interview to an end without any further comment and without stating firmly that all the facts were not known and that the comments made by the guests were pure conjecture at this stage.

The complainant submits examples of what she believes were leading questions posed by the presenter and refers to several past decisions taken by the BAI in relation to complaints.

#### **4. Broadcaster's Response**

##### **4.1 Summary of Broadcaster's Response to the Initial Complaint**

The broadcaster states that Professor Veronica O'Keane was interviewed in her capacity as a Senior Lecturer in the Department of Psychiatry and a leading perinatal psychiatrist. The broadcaster states that she spoke about the legalities of when a woman presents with suicide ideation or intentions and how the role of a psychiatrist is unclear, in her experience. The broadcaster states that the interview focused on the current existing legislation and how it is working in practice from the perspective of a psychiatrist and how psychiatrists are dealing with it.





The broadcaster states that this was not a critique of the Protection of Life During Pregnancy Act or of the rights or wrongs of abortion. They states that it was an account of the experience of a psychiatrist arising out of one of the cases reported in the Childcare Law Reporting Project report. In circumstances where it is not known if the girl in question had an abortion or not, the issue of abortion clearly was not the topic of focus. The broadcaster states that to categorise this discussion as giving prominence to the 'pro-choice' perspective is wrong. They state that the issue of abortion will involve topics that are related to abortion but that do not necessarily involved a debate on the rights and wrongs of abortion. The broadcaster maintains that that this was a transparent and credible interview with a clearly introduced medic devoid of any discussion on 'pro-life' or 'pro-choice'.

The broadcaster states that the second interview, with Ms. Holland, was included to report the facts of the story being discussed as opposed to in any pro-choice capacity. The broadcaster states that the questions asked of her brought forward the facts of the case without pushing any agenda for either the 'pro-life' or 'pro-choice' side of the debate.

#### **4.1 Broadcaster's Response to BAI**

The broadcaster states that by way of background and context to this complaint, on the 11<sup>th</sup> of June the Childcare Law Reporting Project issued a report on childcare proceedings in the courts. The report comprised of 22 cases which were published and featured incidences in relation to children and their experiences before the courts and the various cases that they were involved in.

The broadcaster states that the complainant's description of this interview as one on the issue of abortion in Ireland and that therefore required an interview with someone who does not agree with the provision of abortion in Ireland, is incorrect and a mischaracterisation of the topic. The broadcaster states that it is clear that this interview was in relation to the main story of the day being the release of the Childcare Law Report. This was outlined in the introduction to her interview. The broadcaster states that the presenter introduced the interview as being about one of the cases in the Report about a case of a pregnant girl who had requested an abortion on the basis that she was suicidal and was then sectioned under the Mental Health Act.

The broadcaster states that, as further background, it should be noted that the Childcare Law Report featured in the main newspapers that day including on the front page of the Irish Times and it also featured on Newstalk's 8 am news bulletin.



They state that the 8 o'clock news bulletin ran this story about one of the case studies that came out of the report which involved a suicidal girl who had asked for an abortion but was sectioned in a psychiatric unit last year.

The broadcaster states that Professor Veronica O'Keane was interviewed in her capacity as a Senior Lecturer in the Department of Psychiatry and a leading perinatal psychiatrist. The broadcaster does not accept that the questions asked were leading. The presenter asked the interviewee four questions and they were all about her experience as a psychiatrist in the context of the legislation that governs a situation where a woman or girls presents herself for an abortion with suicidal ideation. The questions were about other psychiatrists level of engagement within that legislation and whether or not the legislation is, in her view, working or not.

The broadcaster states that Dr. O'Keane spoke about the legalities of when a woman presents with suicide ideation or intentions and how the role of a psychiatrist is unclear in her experience. The broadcaster states that the interview focused on the current existing legislation and how it is working in practice from the perspective of a psychiatrist and how psychiatrists are dealing with it. The broadcaster maintains that the interviewee gave an honest account of her professional experience as an expert in her field on the legislation surrounding this area in the context of that case. The broadcaster states that she was critical of the Protection of Life During Pregnancy Act and she outlined the reasons why. They state that at the beginning of the interview she did note that her own view was that women should have the choice but she went on to give her reasons why the legislation is not working in her field of expertise without advocating any position on abortion and outlining all of those reasons in a very transparent and credible manner.

The broadcaster states that this was not a critique on of the rights or wrongs of abortion. Rather, it was an account of the experience of a psychiatrist arising out of one of the cases reported in the Childcare Law Reporting Project report. Again, in circumstances where we don't know if the girl in question had an abortion or not, the issue of abortion clearly was not the topic if focus. The broadcaster states that to categorise this discussion as giving prominence to the 'pro-choice' perspective is wrong, in our respectful submission. The issue of abortion will involve topics that are related to abortion but that do not necessarily involve a debate on abortion. Such as the Protection of Life during Pregnancy legislation and how medical practitioners view this legislation in practice.



The broadcaster states that the complainant believes that Newstalk should have had someone on who does not agree with the provision of abortion in Ireland and in particular from someone who does not agree that it is in any way a treatment for suicide ideation. The broadcaster does not accept that this is a valid argument. They state that the legislation is there and this was not a debate about whether it should exist or not. This was an interview with a professional working within the confines of the legislation and to see in her experience does it work and in the context of the publication of the Childcare Law Report.

The broadcaster states that Ms. Holland was interviewed as the journalist that broke the story and she spoke about the legal issues that arose and in particular the guardian ad litem. The broadcaster states that she did not advocate or promote any view on pro-life or pro-choice or even pro the legislation she simply spoke about the facts of the case and when asked why the 2013 act had not been invoked in this case she gave a very neutral response.

The broadcaster refers to the complainant stating that it failed to “ensure that the audience has access to a wide variety of views” and did not engage in “forceful questioning” and therefore was in breach of section 4.22. The broadcaster maintains that if this had been what the complainant described it as being, i.e. an interview on the issue of abortion in Ireland and featured an interviewee advocating a particular view in that debate, then those parts of 4.22 would absolutely be relevant and should be complied with. However, this interview was clearly not that. The listener was fully informed as to what it was and the context of the interview and the interviewee as an expert health care professional.

The broadcaster claims that the presenter did not express any view at any point such that a partisan position was advocated.

#### **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 and Impartiality in News and Current Affairs (Section 4: Rule 4.22), the members have decided to reject the complaint.



In this regard:

- The Forum noted that this complaint referred to interviews with Professor Veronica O'Keane, Senior Lecturer and Perinatal Psychiatrist, Trinity College, Dublin and with Ms. Kitty Holland, Journalist, following the release of the report of the Childcare Law Reporting Project. The focus of the discussion was on one of the 22 cases in the report, regarding a pregnant girl who had requested an abortion on the basis that she was suicidal and was subsequently sectioned under the Mental Health Act.
- The complainant believes that as both contributors are in favour of the repeal of the Eighth Amendment to the Irish Constitution, it was therefore, incumbent on the broadcaster to ensure someone with opposing views was also included in the programme.
- The Forum found that Dr. O'Keane discussed the situation of pregnant women who presented with suicidal ideation and how psychiatrists such as herself are expected to deal with these women under the Protection of Life during Pregnancy Act. The Professor outlined how women in these situations are assessed under the Act and the difficulties faced by psychiatrists attempting to engage with that Act.
- The Forum noted that the main focus of this interview was on the difficulties experienced by the medical profession and psychiatrists in particular, in carrying out their duties under the Protection of Life during Pregnancy Act. The Forum found that the focus was on the application of the Act and in that context, the inclusion or absence of references to the rights of the unborn were not considered relevant to a determination as to whether the item met the requirements of the Broadcasting Act or the BAI's codes.
- Regarding the interview with Ms. Kitty Holland, the Forum found that Ms. Holland outlined the decision by the judge in the case of the pregnant suicidal girl, to appoint a Guardian ad Litem and how this assisted the girl in this case. She also spoke about the other details of the case. The Forum was of the view that the presenter's posing of the question on why the 2013 Protection of Life during Pregnancy Act had not been involved in this case was in line with earlier discussion with Dr. O'Keane. Ms. Holland responded with an either/or reply i.e. "either it was not considered at all for whatever reason or it was considered and not entertained". The Forum found this to be an unbiased response from Ms. Holland. The Forum was of the view that this was an examination of the details of the case in question and that points raised by the presenter were appropriate and posed 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 or the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs in the manner specified by the complainant. Accordingly, the members decided to reject the complaint.



**Complaint made by: Ms. June Twomey**

**Ref. No. 79/17**

**Station:**

Newstalk 106-108fm

**Programme:**

The Sean Moncrieff Show

**Date:**

10<sup>th</sup> July 2017

**1. Programme**

The complaint concerns 'The Sean Moncrieff Show', which is a Lifestyle and Entertainment programme broadcast each afternoon from 14:00 to 16:00. The complaint refers to an interview with Ms. Ann Furedi, British Pregnancy Advisory Service (BPAS).

**2. Complaint Category**

The complaint is submitted under Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2 and 4.22).

**3. Summary of Initial Complaint to the Broadcaster**

The complainant states that the interview conducted with Ms. Furedi, (BPAS) represented what she considered to be a blatant pursuing of an agenda, by the choice of guest and lengthy airtime provided. As a result, the audience did not, in the complainant's view, receive a fair airing of the issue.

The complainant states that BPAS is a commercial agency, providing a service for a fee and has a potential commercial interest in introducing abortion into Ireland. The complainant believes that BPAS attempted in this interview to promote abortion by marketing it as a part of family planning options. The complainant states that the interviewee was given free rein to provide personal views of abortion. The complainant states that this interview was not balanced.

The complainant states that, overall, this interview presented as soft and unchallenging and did not force the interviewee to provide any real explanation or justification for what the complainant states is the 'pro-abortion' stance of her organisation. The complainant states that the presenter did not challenge his guest with scientific facts or probe about the reality of abortion such as the actual procedures on the impact of term limits on ending of the life of a child.



The complainant states that there was no alternative view or rigorous line of questioning by the host. The complainant believes that by his silence and lack of relevant questioning, the presenter was complicit with the interviewee, enabling her argument.

The complainant maintains that the general message in this interview was that Ireland needs abortion as a form of family planning and it should be down to the individual to choose whenever in the pregnancy she feels like ending the life of the baby. The complainant states that the presenter made no attempt to provide fairness by giving the positive side of not having abortion in Ireland.

The complainant states that she was deeply concerned at this platform being given to an interviewee who was allowed to talk at length about how she feels abortion is a form of family planning and that it is some kind of solution to a crisis pregnancy. The complainant states that this was facilitated by the presenter. The interviewee, the complainant believes, blatantly suggests that the wellbeing of a woman can be enhanced by availing of an abortion which, in her opinion should be legal and locally accessible

#### **4. Broadcaster's Response**

##### **4.1 Summary of Broadcaster's Response to the Initial Complaint**

The broadcaster apologised for the failure to respond to the complaint in the proscribed time and explains that this was down to human error and the matter being mistakenly overlooked.

##### **4.1 Broadcaster's Response to BAI**

The broadcaster states that the presenter introduce the item as follows:

"Now on to something a bit more serious. On the pro-choice side of the argument I think it is fair to say that there is a range of views in terms of when and in what circumstance abortion should be provided. But at the weekend the chief Executive of the British Pregnancy Advisory Service said to the BBC that abortion should be regarded as a form of birth control. As you might imagine it's prompted a wee bit of controversy."

The broadcaster states that this piece therefore was introduced very clearly and was flagged as an interview about a view that was 'pro-choice'.



The broadcaster states that there was no question of it being a commercially driven piece with Ms. Furedi seeking to influence and promote her service. They state that it was clearly a discussion on her view on abortion. The presenter went on to question the interviewee about comments and in what context she meant them.

The broadcaster states that the presenter asked several challenging questions such as asking her what she would say to the following:

"Many see it as a form of murder, killing and ending a human right"... She agreed that it is ending a human life.

He also asked:-

"Is her (the woman's) right absolute over the life of another individual, does she have the right to end another life of another individual?"

"Should there be a limit weeks to abortion?" The presenter mentions 24 weeks and 2 days is the limit in the UK. He posed to her that there is a lot of discomfort with this limit as this is passed the point of viability. At 24 week, that's a baby.

The broadcaster states that the structure of the programme, by including texts messages for a large portion of the segment, provided balance. The broadcaster states that the presenter also read out text messages represented the 'pro-life' debate including, among others:

"A life is taken where abortion is concerned. It is not contraception. It's someone existence and it's not up to someone to lay God with that."

Also "6 months is too late...it's disgusting", and

"What kind of society do we live in where it's ok to end a human life?"

The presenter continued the conversation with the 'pro-life' side in text message reaction.

The broadcaster states that this presenter's style is well-known to be laid back, non-antagonistic and non-aggressive or confrontational. The broadcaster states that it is satisfied that the presently sufficiently challenged the interviewee and facilitated the views of the other side to an appropriate degree.





The broadcaster maintains that it covers both sides of the debate in a balanced manner and one example of this is a broadcast on 2<sup>nd</sup> August where Ms. Dawn McEvoy, a founder of the Northern Irish group "Both Lives Matter" was interviewed. Ms. McEvoy is a vehement pro-life advocate.

#### **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 and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2 and 4.22), the members have decided to reject the complaint. The Forum's views and basis for the decision are set out below.

- The programme segment comprised an interview with the Chief Executive of the British Pregnancy Advisory Service (BPAS) to explore her views on abortion, in the context of her previously expressing a view that abortion ought to be considered a form of birth control. The editorial approach was to have the presenter question the interviewee on this view and related matters. It is clear from the broadcast content that the interview was not intended as a comprehensive discussion on the topic of abortion.
- The BAI's Code of Fairness, Objectivity and Impartiality in News and Current Affairs does not require broadcasters to cover all aspects of a topic in one programme nor does it require the inclusion of representatives of all perspectives on an issue in one programme. A range of views on a topic can be provided to the audience through the presenter questioning and challenging the views of the programme contributors/interviewees. In this case, the Forum found the presenter's comments and questions were sufficient to meet the requirements of the Code for fairness, objectivity and impartiality, for example, "pro-life people would ask does a woman have the right to end the life of another individual", "in your view should there be a limit on how many weeks past which an abortion should not be allowed?" and "I think the discomfort a lot of people will have with 24 weeks and 2 days is that's past the point of viability so it's not something that's the size of a walnut; that's a baby". On this basis, the Forum was satisfied to reject the complaint.



**Complaint made by: Ms. Geri Slevin**

**Ref. No. 80/17**

**Station:**

Newstalk 106-108fm

**Programme:**

High Noon

**Date:**

24 August 2017

**1. Programme**

The complaint concerns comments made by the presenter on the programme, 'High Noon', which features a mix of lifestyle, entertainment, current affairs, news and interviews, broadcast each weekday from 12pm – 2pm. The complaint refers to an interview with an animal rights action network representative.

**2. Complaint Category**

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

**3. Summary of Initial Complaint to the Broadcaster**

The complainant states that she is disgusted and shocked at an example that the presenter, Mr. Hook, used during an interview with an animal rights action network representative. The complainant claims that Mr. Hook used a name when referring to a hypothetical dog. The complainant further states that 90% of people in Ireland, regardless of the Party they support, would identify a reference to the name of an Irish politician. According to the complainant, had the presenter used the name 'Michael D', listeners would have associated with the current president of Áras an Uachtaráin.

**4. Broadcaster's Response**

**4.1 Summary of Broadcaster's Response to the Initial Complaint**

The broadcaster states that when the presenter used the name in relation to a hypothetical dog he was referring to a well-known song. The broadcaster states that the presenter regularly uses songs and movies from the past as reference points in the course of his radio show.



#### **4.1 Broadcaster's Response to BAI**

The broadcaster states George Hook used the name 'Fido' when referring to the hypothetical dog and used the name that the complainant objects to as a hypothetical name for the daughter of a family.

The broadcaster maintains that regular listeners to the programme would be familiar with the style of the presenter's broadcasting and his knowledge and passion for cultural references from days past. When he uses a name like the one that the complainant objects to in a hypothetical incident like this, it is with that context in mind - he regularly uses references from old movies and songs of the 50s and 60s when making a point. On this occasion, his use of a name from an old popular song.

The broadcaster states that the politician was copied on the original mail of complaint sent to Newstalk by the complainant and did not react which would lead Newstalk to assume this is not an issue for them.

#### **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 5 - Persons and Groups in Society), the members have decided to reject the complaint.

In this regard: -

- The Forum noted that the complainant claimed that the broadcaster made reference to the name of an Irish female politician and, during a discussion on animal rights, linked that name to a hypothetical dog.
- Upon listening to the broadcast, the Forum found that the broadcaster did not use the name of the politician in the context as suggested by the complainant. The name used in relation to the dog was "Fido" and the daughter of the hypothetical family was given the name of the politician.
- The complainant was found to have erred in her submission, therefore the complaint was rejected on that basis.



- In view of the above, the Forum did not agree that the programme infringed the requirements of the BAI Code of Programme Standards in the manner specified by the complainant. Accordingly, the Members decided to reject the complaint.



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

**Ref. No. 81/17**

**Station:**

Radio Kerry

**Programme:**

Radio Kerry News

**Date:**

20<sup>th</sup> August 2017

**1. Programme**

The complaint concerns the 10am News, which is a news programme, including current affairs, broadcast each weekday morning. The complaint refers to a news item concerning a 'pro-choice' campaigner on abortion.

**2. Complaint Category**

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(Fairness, Objectivity and Impartiality in News Content); the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs – Section 4: Rules 4.1 and 4. 2.

**3. Complaint Summary**

The complainant states that the news included an item by Ms. Ailbhe Smyth of the Coalition to Repeal the Eight regarding An Taoiseach's visit to Canada and referenced 'pro-life' campaigners who called on the Canadian Prime Minister to educate the Taoiseach on women's rights and abortion. The complainant states that An Taoiseach took part in a Pride parade in Canada and Ms. Smith stated that he should understand that it is not enough to come out in favour of one aspect of human rights and completely ignore the other.

The complainant further states that the tone of Ms. Smyth was, in his opinion, insistent and she argued that the justice of her claim was overdue recognition. The complainant states that her tone deflected attention from notions like equality and human rights being treated in any depth. The complainant is of the view that many Kerry listeners will struggle with talk of 'human rights for all' if the pre-born child is removed from inclusion. The complainant states that neither was there any mention of men's rights in the matter, the rights of grandparents or those of the wider community.



#### **4. Broadcaster's Response**

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

The broadcaster states the news story to Repeal the Eight Amendment was broadcast in the context of An Taoiseach's visit to Canada and his announcement that a referendum on the Eight Amendment will be held next year. The broadcaster states that some advocates for abortion believe that legislation here should be modelled on abortion laws in Canada. Furthermore, they believe gay rights and abortion access are intertwined as they both represent secular, humanist values; a viewpoint reflected by Ms. Smyth.

The broadcaster further states that the station does not have a position on abortion. News from one day should not be taken in isolation. The story with Ms. Smyth was broadcast after their weekly religious programme. On July 19<sup>th</sup>, Radio Kerry ran a news story announcing the 'pro-life' Save the Eight roadshows organised by Youth Defence that were taking place in both Tralee and Killarney that day.

The broadcaster states that during the last referendum on the issue, the broadcaster urged listeners to inform themselves and directed them to sources representing both sides of the argument.

##### **4.2 Broadcaster's Response to BAI**

Radio Kerry refers to the initial response to the complainant. In addition, the broadcaster states:-

Since this broadcast, Radio Kerry broadcast a story reporting that the 'pro-life' movement were holding a gathering outside the Dáil to mark the 34<sup>th</sup> anniversary of the passing of the Eighth Amendment to the Constitution, which in the view of the movement, should be 'celebrated for saving lives'. The broadcaster states that on the edition of Kerry Today on that same day, a discussion took place involving both sides of the argument in the abortion debate. The broadcaster states that this shows that news from one day should not be taken in isolation. Radio Kerry states that it cannot censor news but they have measures in place to ensure balance in their overall coverage of the topic.



The broadcaster states that, focusing on the 10am bulletin, it was reflection of current news and events, not a manifesto for a particular viewpoint or ideology. The bulletin led with the fact that a memorial Mass was taking place in Barcelona for the victims of the recent bombing there, it also featured a story on the search for a missing woman, the Olympic ticketing controversy, the Lotto results and a report from the Rose of Tralee parade.

Radio Kerry continues to strive to be fair and balanced in their coverage, to respect listeners' autonomy and their right to decide positions for themselves. They also keep internal records on stories relating to the debate to ensure fairness.

#### **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 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 the complaint refers to an interview with Ms. Ailbhe Smyth of the Coalition to Repeal the Eight and the tone that the complainant states she adopted.
- The Forum agreed that the report was factual and related to a news story regarding the announcement by An Taoiseach on his visit to Canada that a Referendum on the Eight Amendment would be held next year. In this context, the broadcaster included an extract from an interview to give audiences a particular perspective on the story. The Forum noted that this complaint was submitted for consideration under 'Fairness' but that 'Fairness' is not a requirement in News broadcasts. The absence of another perspective was not therefore considered problematic.
- In view of the above and especially audience expectation, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act or the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs in the manner specified by the complainant. The members decided to reject the complaint.



**Complaint made by: Mr. Emmett De Burca**

**Ref. No. 82/17**

**Station:**

Newstalk 106-108fm

**Programme:**

Newstalk Breakfast

**Date:**

13<sup>th</sup> July 2017

**1. Programme**

The complaint concerns 'Newstalk Breakfast', which is a current affairs/lifestyle and entertainment programme broadcast each morning on Newstalk at 7am – 9am. The complaint refers to an interview with Mr. George Hook concerning the removal of blasphemy as an offence from the Irish Constitution. The context was a bill proposed by the Social Democrat political party which would remove the crime of blasphemy from the Constitution.

**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 under Section 48(1)(b)(harm & offence); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.17, 4.19, 4.20 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 states that during this interview, Mr. George Hook made many incorrect points and misinformed many of the listeners on the topic, as follows: -

- The complainant states that Mr. Hook wrongfully accused comedian, writer and actor Mr. Stephen Fry of being guilty of breaking Irish law, when he clearly didn't. The context for the reference to Mr. Fry was the undertaking of an investigation under Ireland's blasphemy laws that arose from comments he made on an Irish television broadcast. The complainant finds it unfair that what he considers Mr. Hook's own personal biased opinions were given airtime, especially when easily proved to be factually wrong.





- The complainant states that Mr. Hook misrepresented Article 40.6 of the Irish Constitution and the lawful/legal definition of blasphemy, and in doing so, he has wounded and caused upset to adherents of traditional, cultural Christian beliefs. The complainant states that Mr. Hook achieved this by undermining and downgrading the Christian God to same status of all other deities and did not take into account the exclusivity of the Christian faith, which teaches that there is only one God, and only one way to have sins forgiven.
- The complainant states that by postulating what he describes as Mr. Hook's erroneous belief, Mr Hook is essentially stating that it is an offence to blaspheme Satan in Ireland (seeing as Satan is god to some people).
- The complainant states that such an understanding is one of outrage when presented to the believers of the Lord Jesus Christ, nationally and internationally. He states that this careless lack of consideration is offensive and in opposition to a long-held belief system that has been revered in our country for many generations.
- The complainant states that in English law, blasphemy is the offense of speaking matter relating to God, Jesus Christ, the Bible or the Book of Common Prayer, intended to wound the feelings of mankind or to excite contempt and hatred against the Church by law established, or to promote immorality.
- The complainant states that Mr. Fry was not in breach of Article 40.6 as Mr. Fry's comments were directed toward a spurious God, and not the Lord Jesus Christ.
- The complainant states that Ireland's blasphemy law is not there to protect all religions, but Christianity of all denominations exclusively, and only someone of ignorance would argue that Allah or Buddha were at the forefront of our ancestors' minds when writing the law.

#### **4. Broadcaster's Response**

##### **4.1 Summary of Broadcaster's Response to the Initial Complaint**

The broadcaster states the context of discussion related to the blasphemy law as defined by the Defamation Act, 2009. The broadcaster states that a change of law was sought in this area off the back of a complaint of blasphemy made against Mr. Stephen Fry.



The broadcaster states that the matter was investigated by the Gardaí and it was deemed there was not sufficient 'outrage' as mentioned in the law.

The broadcaster states that in this case, a complaint was made and the Gardaí did investigate. While it may be true that blasphemy is regularly committed in the public domain, as outlined by the law, there is not sufficient 'outrage' to prosecute. In most instances, no complaint is made to Gardaí. The law states that 'any religion' is covered.

The broadcaster further states that the purpose of the piece was to discuss the Social Democrat Bill to remove blasphemy from the constitution. The goal was to stimulate discussion and to create discussion on the Bill and challenged it to allow their listeners to make up their own minds. Newstalk felt they achieved this.

#### **4.1 Broadcaster's Response to BAI**

The broadcaster states this complaint refers to an interview concerning a proposed bill from the Social Democrats to hold a referendum which would ask the electorate if they wish to see the removal of blasphemy as an offence from the Constitution, as well as removing it from the Defamation Act, 2009.

The broadcaster states that Mr. Hook argued against the removal of blasphemy from the statute books. The interviewer (Paul Williams) provided a robust challenge to the guest and facilitated a balanced discussion. The point was made that we are a more secular country and so having a blasphemy law is not representative of modern Ireland. The guest disagreed with some of the points made, but this created a balanced and fair discussion.

The broadcaster further states that this was not a discussion on blasphemy but a proposal by the social democrats to remove blasphemy from the Constitution. The facts of the piece i.e. the Social Democrat proposal, the investigation into alleged blasphemy against Stephen Fry and the subsequent dropping of that investigation, were all reported correctly and factually. The article concerning blasphemy (40.6) does not refer to any specific religion, this was one of the points made by George Hook, which again was factually accurate. Paul Williams did not offer his view on the proposals but offered arguments against the case offered by the guest.



The broadcaster also states in relation to the complaints made against the Principles, they feel that the item did not contain sensitive material. It was a discussion on a proposed bill in the national parliament that did not contain harmful material and so cannot be considered to cause harm under Principle 1 or contain material that did not provide protection of the public interest – Principle 6. The broadcaster also believes that respect was shown for all groups of people – Principle 5. Certain religions were mentioned in the context of the discussion, which given the topic, was to be expected. No discrimination, hateful language or ideas were put forward against these religions.

The broadcaster states that the information presented was factually accurate, the discourse impartial, fair and balanced and it was carried out in an appropriate way and was unlikely to cause offence to the majority of their audience.

#### **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), Section 48(1)(b)(harm & offence), the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.17, 4.19, 4.20 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 have decided to reject the complaint.

In this regard: -

- The Forum noted that the complaint referred to a discussion on the Social Democrats draft laws to remove blasphemy from the Irish Constitution. The complainant states that the interviewee, broadcaster, Mr. George Hook, wrongly accused the actor and comedian, Mr. Stephen Fry, of being guilty of breaking Irish law, when he clearly did not. The complainant believes Mr. Hook displayed a personal biased opinion. The complainant also stated that Ireland's blasphemy law is not there to "protect all religions, but Christianity of all denominations exclusively."
- The Forum noted that Mr. Hook was speaking on this subject in his capacity not as a presenter but as a contributor to the programme. In that context, responsibility for ensuring compliance with the BAI's Code fell to the programme makers and the co-presenter and not Mr. Hook.



- The Forum found that the co-presenter of the programme, Mr. Paul Williams, introduced Mr. Hook and asked “What difficulty could you possibly have with this?” Mr. Hook in his response referred initially to the Social Democrats Bill as an “irrelevant bill by an irrelevant party...” and then went on to state that “Stephen Fry was absolutely guilty: Stephen Fry was guilty of a crime against comedy and good taste”. The Forum viewed this as a reference to Mr. Fry’s ability as a comedian and not as a person who was guilty of blasphemy.
- Furthermore, the Forum noted that the Defamation Act 2009 refers to “matters held sacred by any religion [Forum emphasis]” under blasphemy, and therefore did not agree with the complainant that it only applies to “Christianity of all denominations exclusively.”



**Complaint made by: Professor Deasun Toibin**

**Ref. No. 84/17**

**Station:**

RTÉ Radio 1

**Programme:**

The Ryan Tubridy Show

**Date:**

4<sup>th</sup> August 2017

**1. Programme**

The complaint concerns 'The Ryan Tubridy Show', which is a lifestyle/entertainment programme broadcast each weekday morning from 9am to 10am. The complaint concerns a comment by the stand-in presenter when discussing a scientific report on 'gene editing' on live embryos.

**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 the BAI Code of Programme Standards - (Principle 1 – Respect for Community Standards, Principle 5 – Respect for Persons and Groups in Society and Principle 6 – Protection of the Public Interest).

**3. Complaint Summary**

The complainant states that the presenter, Mr. Dave Fanning, when discussing a recent scientific report on so-called 'gene editing' on live human embryos, commented on the news that the Irish Catholic Bishops Consultative Group on Bioethics had voiced opposition to this research. The presenter ended the piece with the gauche comment 'they haven't gone away ...you know'. The complainant states in respect of this remark that:-

- That the use of this expression, first used by Mr. Gerry Adams T.D. of Sinn Féin about the IRA, for such an important issue as bioethics, is highly insensitive and worrying. The complainant believes that the comment by extension implies that those in the general public who hold similar views to those expressed by the Catholic Bishops are an undesirable element that also has not 'gone away'. The complaint believes this is both offensive and worrying.
- That the flippant dismissal of an alternative and considered view on such a significant bioethical issue is deeply worrying.



- That the presenter's comment on the issue was highly selective and therefore risked significant bias. The presenter's failure to inform the audience of the most basic aspects of this issue deprived the audience of significant autonomy with which to contextualise both the Catholic Church's response and the bona fides of the presenter's flippant comment.

The complainant maintains that bioethics is an issue that requires/demands plurality in its consideration, not least by a public service broadcaster. He states that this lapse in minimum standards by a public service broadcaster further risks reducing public confidence in RTE.

The complainant states that he could not find any significant evidence for the presenter's credentials to comment on whether those who raise bioethics concerns should... 'go away'.

#### **4. Broadcaster's Response**

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

The broadcaster states The Ryan Tubridy Show is neither a news nor current affairs programme, rather a lifestyle/magazine programme. Ryan Tubridy's name is in the title, and the audience expect him to have an opinion on the content of show, as they expect any other presenter of the show to have. Mr. Dave Fanning was presenter on this particular day.

The broadcaster maintains that it strives to maintain a balance on the programme and are very aware of any biases or opinions that are held by the presenter and the programme team. This is done, not because of any legislation, but rather that there is no wish to alienate any members of the audience. It was a throwaway remark that the presenter shouldn't have made.

On Friday 4th August 2017, responding to the article on the front of The Irish Times the presenter commented:-

"The future, which is not looked upon too favourably by one organisation here in Ireland coz the front page of the Irish Times says the Catholic Church in Ireland has voiced its total opposition to the use of embryos in research following a breakthrough study by scientists who edited human



genomes, G-nomes, to remove mutations linked to heart failure, basically cystic fibrosis, breast cancer as well and they're looking at this for other conditions. Basically they could do some editing, and do some fixing up but Bishop Kevin Doran, are you ready for this, Chair of the Catholic Bishops consultative group on bioethics ... bioethics I should say and life questions, not up for it at all... They haven't gone away you know...."

The broadcaster states that the presenter's comment 'They haven't gone away you know' reflects his opinion that Catholic Bishops have undue influence on medical issues. This is a matter of opinion, which the broadcaster believes was balanced by the follow-up text.

The broadcaster states that, later in the programme, the presenter read out a text re the same topic.

"Dave, in defence of Bishop Doran, many ethicists have issues with embryonic stem cell research. In fact most of the major health breakthroughs have been achieved by non- embryonic /adult stem cells... Patrick, Co Louth."

The broadcaster states that it should also be noted that the programme directly after the Ryan Tubridy Show had Bishop Kevin Doran, Chair of the Catholic Bishops Consultative Group in studio discussing the new gene editing technology.

#### **4.2 Broadcaster's Response to BAI**

The broadcaster refers to the response by the Producer of Ryan Tubridy Show to the initial complaint.

The broadcaster states that the editorial format of the programme includes in every edition, an opening monologue by the presenter, a short digest of selected topics of the day in which listeners might be interested; it always includes comment by the presenter which frequently, as it did in this case, results in feedback from listeners as part of the conversation between presenter and audience. This is an element of the format to which listeners are accustomed and which meets their expectations of the programme.

The broadcaster maintains that unlike the interview with Bishop Doran in the programme which followed (*Today with Sean O'Rourke*), the item was clearly not a discussion of biotechnology or bioethics and RTÉ questions whether the BAI Code of Fairness,



Objectivity and Impartiality in News and Current Affairs could be reasonably said to apply to the broadcast. In addition, RTÉ does not believe that a passing comment in such a format amounts to the adoption of a partisan position which breaches that code.

The broadcaster states that the presenter's comment was on the stance of the Catholic Church in relation to the matter in question; a reference to the continuing presence of the Church in social and ethical discourse, not an observation on the bioethical issues involved. There was no reference whatsoever to any section of the general public and no connection whatsoever made to Sinn Féin, the IRA or Deputy Gerry Adams.

The broadcaster also states that it may be noted that the presenter did not, as alleged, say that "those who raise bioethics concerns should ' . . . go away'." Rather, he noted that the Church was still the presence referred to above.

It is unclear from the complaint what community standards the complainant believes to have been breached. The broadcaster does not believe that there was any such breach. Nor was there any stigmatisation, support or condoning of discrimination or incitement to hatred against any persons or groups in society. Nor was there any threat to the public interest in this brief remark.

#### **5. Decision of the Executive Complaints Forum: Reject/Uphold (Unanimous/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)(a) (fairness, objectivity and impartiality in news and current affairs); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rule 4.1 and 4.2), and Section 48(1)(b)(harm and offence), the BAI Code of Programme Standards - (Principle 1 – Respect for Community Standards, Principle 5 – Respect for Persons and Groups in Society and Principle 6 – Protection of the Public Interest) the members have decided to reject the complaint. The Forum's views and basis for the decision are set out below.

- The broadcast content was an authored segment by the programme presenter on the news stories of the day. The complaint centered on a comment by the presenter on an item in the news about a scientific report on embryonic research.





The presenter stated:-

"Bishop Kevin Doran... are you ready for this, Chair of the Catholic Bishops consultative group on bioethics.....bioethics I should say, and life questions, not up for it at all...they haven't gone away, you know".

The complainant regards the inclusion of this comment as not treating the subject of embryonic research and its use in science with fairness, objectivity and impartiality because it dismisses a critical view on the subject, did not provide the audience with sufficient information on the issue and links the group who expressed the view to Mr. Gerry Adams T.D. and Sinn Féin by using the phrase "they haven't gone away, you know".

- The Forum also noted that the content was made up of the presenter reading a headline and making a short comment; the content was not intended as a broad discussion or exploration of bioethics and this would be generally understood by the listeners. The Forum found no explicit reference or clear link to Mr. Gerry Adams or Sinn Féin and was of the view that the audience would not generally make this link solely from the above-mentioned phrase. The presenter's remark was clearly in reference to a particular group who had expressed a view on the scientific research and was not a comment on the research itself, the ethical issues in this area of science or critical views of this science. The Forum was of the view that the remark, in this context, did not amount to treating the subject with a lack of fairness, objectivity or impartiality. On this basis, the Forum rejected the complaint under the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs and the relevant sections of the Broadcasting Act 2009.
- The Forum also considered the complaint under the BAI Code of Programme Standards but found insufficient evidence in the complaint as to how the programme contravened the principles and rules of this Code. On this basis, the Forum rejected the complaint under the Code of Programme Standards and the relevant sections of the Broadcasting Act 2009.



**Complaint made by: Mr. Shane Doyle**

**Ref. No. 87/17**

**Station:**

RTÉ Radio 1

**Programme:**

Documentary on One: Love Letter To  
Wezz

**Date:**

12<sup>th</sup> August, 2017

**1. Programme**

The complaint concerns 'Documentary on One', broadcast on Saturday afternoons at 1pm. The complaint refers to a segment of the documentary about teenagers accessing and drinking alcohol before going to a disco in Wesley Rugby club.

**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 2 – Importance of Context, Principle 3 – Protection from Harm and Principle 4 – Protection of Children.

**3. Complaint Summary**

The complainant states that during this documentary, while reminiscing about the Wesley disco, known as The Wezz, tips were provided to 12 to 14 year olds on how to pre-drink, either by topping up parents stock with water or asking an older teen to purchase alcohol in an off-license. The complainant states that the broadcaster included something that is illegal and highlighted ways that young people can act illegally. The complainant further states that 12 year olds are not teenagers and also that this behaviour is not common place among 12 to 14 year old. The complainant states that including this in the programme fuels the "normality" of this age group having to drink alcohol to enjoy themselves.

**4. Broadcaster's Response**

**4.1 Broadcaster's Response to Complainant**

The broadcaster states that thought was given to the broadcast of quotes referring to alcohol from those taking part in the documentary and it was decided to proceed. This was done in order to accurately document teenage behaviour then and now.



The broadcaster states that it does not see them as 'tips' because it does not imagine that teenagers come to a programme like this and pick up 'tips' on how to access alcoholic drink. In much the same way, it does not imagine that parents will listen to the programme for 'tips' on how to prevent their teenagers from drinking alcohol.

#### **4.2 Broadcaster's Response to BAI**

The broadcaster states that the series Documentary on One is broadcast on a channel which is directed towards adults and its choice of editorial topics is in that context and that of there being no watershed in radio broadcasting.

'Documentary on One: Love Letter to Wezz' was aimed at adults and had an overwhelmingly adult audience. In addition, the broadcaster believes that listening will confirm that the programme documented accurately the alcohol drinking of some of those attending the Wesley Disco, in accounts which were unlikely to encourage the practice.

The broadcaster maintains that that the references to acquiring alcohol contained no novel information or information which would not be commonplace in the public domain.

#### **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); the BAI Code of Programme Standards – (Principle 2- Importance of Context, Principle 3 – Protection from Harm and Principle 4 – Protection of Children), the members have decided to reject the complaint. The Forum's views and basis for the decision are set out below.

- The complaint pertained to content on alcohol in a documentary about Wesley disco. The complainant regards the programme as having provided tips to underage listeners on procuring alcohol and normalised illegal alcohol use and, in so doing, broadcast content that is harmful to children.
- The Forum noted the documentary covered a range of aspects of Wesley disco and alcohol use was one of those. The content was comprised, in the main, of contributions from people who attended the disco over the years who recounted their experiences and stories. This included stories from some contributors about how they procured alcohol as underage attendees.



The Forum noted the documentary duration of 40 minutes and that 1 minute and 53 seconds featured the item about alcohol. The Forum was of the view that there was not an undue focus on alcohol and to ignore this aspect of people's experience would have been to leave out an important part of the reality of disco attendance at that time. The Forum did not agree that this content equated to providing "tips" on gaining access to alcohol.

- The Forum also considered the context in which the programme was broadcast. The documentary was broadcast at a time and on a station aimed at an adult audience and is unlikely to have had many 12 to 14 year old listeners.
- In view of the above, the Forum did not agree that the programme infringed the requirements of Broadcasting Act 2009 or the BAI Code of Programme Standards in manner specified by the complainant. Accordingly, the members decided to reject the complaint.



**Complaint made by: Ms. Breda Stacey**

**Ref. No. 89/17**

**Station:**

RTÉ Radio 1

**Advertisement:**

123.ie Home Insurance

14 September 2017

**1. Programme**

The complaint concerns an advertisement for '123.ie' home insurance.

**2. Complaint Category**

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(d)- the BAI General Commercial Communications Code - Principle 2: Human Dignity, Offence and Harm.

**3. Complaint Summary**

The advertisement depicts a scene where a 15-year-old daughter walks in on her naked father as he steps in to the shower. The embarrassment, discomfort and shock of the daughter is conveyed through her screams of disgust and outrage while the father seems relatively unperturbed.

The complainant is of the view that the intended spirit of the advertisement is of nostalgia and warmth for family life and all its ups and downs, however, the complainant expresses concern that there may be a conscious or unconscious attempt at sexual titillation disguised as nostalgia. The complainant queried the dynamic of using a female child to be the subject of the shock at seeing a naked male adult, which may be regarded as male power over a female and adult power over a child. The complainant is concerned that this may in some way provide opportunity for violence in the home.

**4. Broadcaster Responses, to Complainant and the BAI**

The broadcaster states that all commercial communications must first be cleared for broadcast by RTÉ's internal Clearance Committee. The commercial is tongue and cheek and is supposed to be humorous in nature. The scene in the advertisement is intended as a typical household scenario in which a broken door lock means the daughter accidentally walks in on her father stepping into the shower and reacts with the heightened sensibilities of a teenager.



The broadcaster describes the message of the advertisement as "home insurance and unreliable things (a dodgy door lock in this instance) don't mix, so when it comes to your home insurance get something you can count on".

The broadcaster does not regard the content as having depicted a male parent's power over a female and can see no indication in the complaint as to how this power imbalance is represented in the advertisement. The broadcaster believes that there is no basis for upholding this complaint on the grounds cited or under any of the provisions of broadcasting legislation or regulatory codes because the content does not prejudice respect for human dignity, cause harm or encourage harmful behaviour, or contain violence, sexual conduct or coarse and/or offensive language.

#### **5. Advertiser's Response**

The advertiser states that this advert is one of a series of radio ads developed to convey the message that 123.ie provides reliable insurance. The ads were designed to be distinctive and to depict common household scenarios where some 'reliable' item goes wrong, such as a bathroom lock not working. They intended to use scenarios that would be everyday and people could relate to; to be humorous but not flippant. It was in no way intended to be titillating.

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

Having considered the broadcast and the submissions from the complainant and having had regard to the the relevant legislation and Code, members decided to reject the complaint. The Forum's views and basis for the decision are set out below.

- The complaint pertained to a scene in an advertisement which featured the reaction of a daughter as she witnessed her father stepping naked out of a shower. The complainant believes that there may be a conscious or unconscious attempt at sexual titillation, male power over female and adult power over a child, which in turn could provide the opportunity for violence in the home.
- The Forum noted that this was a radio advertisement aimed at making light of a situation where a broken door lock led to the daughter accidentally entering the bathroom when her father had just stepped out of the shower. The message was to convey how many items that we consider reliable can break and thus the need for insurance. The Forum was of the view that this was intended to create a light-hearted situation with the exaggerated screams of the daughter at the sight of her naked father.



The Forum found that there was no intention at titillation nor was there any intent to link male or adult power over a female or child in this situation.

- In view of the above, the Forum did not agree that the programme infringed the requirements of the legislation or the BAI General Commercial Communications Code in manner specified by the complainant. Accordingly, the members rejected the complaint.



**Complaint made by: Ms. Margaret Greene**

**Ref. No. 90/17**

**Station:**

RTÉ Radio 1

**Programme:**

Today with Seán O'Rourke

**Date:**

14<sup>th</sup> September 2017

**1. Programme**

The complaint concerns 'Today with Seán O'Rourke', which is a mid-morning current affairs magazine with the stories of the day, analysis, sports coverage, in-depth features and consumer interest. The programme is broadcast each weekday morning from 10am to 12 noon.

**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's Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1 and 4.2).

**3. Complaint Summary**

The programme included a discussion on the comments about rape made by the radio presenter, George Hook, on another programme. As an introduction to the debate, the broadcaster played a section of the programme in question, during which the presenter made his controversial remarks. The complaint noted that only part of the relevant section of the programme was played and it omitted the presenter's comments that the perpetrator should be jailed and should serve his sentence for committing the rape. The complainant believes that broadcasting the comments in part, in this way, misrepresented Mr. Hook and coloured the debate.

**4. Broadcaster Responses, to Complainant and the BAI**

The broadcaster noted that the 'Today with Seán O'Rourke' programme played the remarks made by Mr. Hook that were the subject of debate as well as the statement by him apologising for those remarks. These were aired as a precursor to a longer discussion on the issue with invited contributors. The broadcaster believes this discussion was robust and balanced and explored various perspectives, including challenging questions posed by the interviewer. The broadcaster is of the view that there is no basis to uphold this complaint.





## **5. Decision of the Executive Complaints Forum**

### **Reject (Unanimous)**

Having considered the broadcast and the submissions from the complainant and the broadcaster and having also had regard to the relevant legislation and Code, the members decided to reject the complaint. The Forum's views and basis for the decision are set out below.

The segment was introduced by the presenter by playing a recording of George Hook's comments and his subsequent apology for those comments. The Forum noted the presenter's opening remarks for the discussion: "the controversy surrounding George Hook's comment on a rape victim continues to escalate. Yesterday Solidarity TDs said they won't be appearing on any Newstalk programme and will not give interviews to their journalists until George Hook stops broadcasting". This was followed by a discussion involving Ruth Coppinger, Solidarity TD, and journalist, David Quinn, about the controversy and, more particularly, the various responses to it.

The Forum was of the view that the recordings broadcast to introduce the segment were appropriate to set the context for the discussions and to make clear to the audience the remarks Mr. Hook was apologising for. Taking this into consideration, the Forum did not agree that the programme misrepresented Mr. Hook or the comments he had made. The Forum also found that the recordings did not influence the subsequent discussions in a manner contrary to the Code. The Forum noted that it was important to take into consideration the full context of the discussion on this programme which focused mainly on the fallout from the remarks rather than the actual remarks themselves and the audience was provided with a fair, objective and impartial commentary and debate.

In view of the above, the Forum did not agree that the programme infringed the requirements of the legislation and Code in the manner specified by the complainant. Accordingly, members rejected the complaint.



**Complaint made by: Ms. Niamh Turley**

**Ref. No. 91/17**

**Station:**

RTÉ Two

**Programme:**

Bridget and Eamon

**Date:**

19 September 2017

### **1. Programme**

The complaint concerns 'Bridget and Eamon', a comedy programme broadcast on RTÉ Two on Tuesday evenings at 9.30pm.

### **2. Complaint Category**

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

### **3. Complaint Summary**

The complaint concerns a scene in the comedy programme in which the character Eamon suggests going upstairs and the character of Bridget's mother replies "with the lights off so I can't tell that you're ginger".

The complaint states that this remark is racist and demonstrates discrimination and prejudice against people with different hair colour. The complainant believes this type of content promotes the bullying and alienation of people with red hair.

### **4. Broadcaster Responses, to Complainant and the BAI**

The broadcaster argues that most of the narratives and conceits in this comedy programme are based around poking fun at, and subverting, the erroneous or corrupt actions and attitudes of the main characters, for example, the casual misogyny of Eamon and the main couple's tolerance of inappropriate or reprehensible behaviour. In this vein, the remark by Bridget's mother was intended to demonstrate her shallow and unpleasant character, that is, she (and those like her) are the target of the humour and not people with red hair.

The broadcaster regards this content as in keeping with the absurdist comic voice of the programme and it's ironic lampooning of Irish life and culture and believes that audiences would clearly understand the nature of the point being made.



The broadcaster does not believe that people with red hair represent a group such as those protected by Principle 5 of the Code of Programme Standards or that the complaint includes evidence to support the claim that the content prejudiced respect for human dignity or stigmatised, supported or condoned discrimination or incited hatred against persons or groups in society.

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

Having considered the broadcast and the submissions from the complainant and having had regard to the relevant legislation and Code, members decided to reject the complaint. The Forum's views and basis for the decision are set out below.

- The BAI Code of Programme Standards requires the representation of persons and groups in society to be appropriate and justifiable and to not prejudice respect for human dignity. There is a further requirement for programmes not to stigmatise, support or condone discrimination or incite hatred against persons or groups in society.
- The Forum noted that the comment made by the mother character was implicitly derogatory of people with red hair, however, it also noted the broadcaster's view that the character is not intended to be likeable and the programme often highlights the characters' tolerance of poor behaviour for comedic effect. The Forum had regard to fact that this is a comedy programme and that one of the functions of comedy is to push the boundaries of acceptable speech. Comedy content, therefore, may be offensive to some viewers or listeners and this is acknowledged in the Code. The Code is concerned with content that may cause *undue* offence.
- The Forum is of the view that this content clearly offended the complainant but did not unduly offend in a matter that contravened the provisions of Principle 5 of the Code. The Forum noted that people with red hair are not considered a separate 'race' or group in society that would require the protections of this principle in the Code. The Forum did not agree, therefore, with the complainant's contention that the remarks were racist, discriminatory and promote bullying and alienation of people with red hair. The Forum also had regard to audience expectation, channel and time of broadcast, including the fact that the main characters in this series are well-known for their inappropriate comments and behaviour and accept these in the comedic spirit in which the programme is made.



- In view of the above, the Forum did not agree that the programme infringed the requirements of the legislation and Code in manner specified by the complainant. Accordingly, the members rejected the complaint.



**Complaint made by: Mr. Brendan O'Regan**

**Ref. No. 94/17**

**Station:**

Newstalk 106-108FM

**Programme:**

The Pat Kenny Show

**Date:**

13 September 2017

**1. Programme**

The complaint refers to an interview on The Pat Kenny Show, which is a lifestyle/current affairs programme broadcast each weekday morning from 9am – 12pm.

**2. Complaint Category**

The complaint is submitted under the Broadcasting Act 2009 Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.3 and 4.22).

**3. Complaint Summary**

The complaint concerns an interview with Dr. Rhona Mahony, Master of Holles Street National Maternity Hospital. The interview included a discussion on the 8<sup>th</sup> Amendment to the Irish Constitution, which is likely the subject of an upcoming referendum. The complainant is of the view that the presenter did not sufficiently question or challenge the interviewee's objections to the 8<sup>th</sup> Amendment and her arguments for repeal and, instead, helped the interviewee formulate and clarify her opinions. The complainant believes the programme did not include the views of those opposed to repealing the 8<sup>th</sup> Amendment. As a consequence, the complainant found the treatment of the subject did not meet the requirements of fairness, objectivity and impartiality.

**4. Broadcaster Responses, to Complainant and the BAI**

The broadcaster states that the purpose of the interview was to hear Dr. Rhona Mahony's experiences as Master of a maternity hospital and the discussion included, among other things, her views on the working environment of the Health Service Executive (HSE) and the impact of the 8<sup>th</sup> Amendment on her work. The broadcaster is of the view that the interview covered a wide range of issues and did not focus solely or predominantly on the 8<sup>th</sup> Amendment. The broadcaster also states that the nature and range of topics covered in the interview were made clear to audiences from the outset.



In relation to the discussion on the 8<sup>th</sup> Amendment, the broadcaster states that it was an exploration of a medical professional's perspective on the topic and that it is in the public interest to hear this perspective. The broadcaster believes that it would not be proper or necessary to have the presenter challenge the interviewee on her experiences as a medical professional. The broadcaster also contends that the interviewee did not express her personal views on the 8<sup>th</sup> Amendment, as suggested in the complaint, and the presenter did not express his own views or adopt a partisan position.

The broadcaster states that the programme was not intended as a contentious debate involving the promotion or encouragement of abortion nor was it a critique on the rights and wrongs of abortion. The broadcaster asserts that the issue of abortion may involve topics related to abortion but that do not necessarily involve a debate on abortion. The broadcaster contends that it must be allowed autonomy over such editorial decisions subject to overall "balance" in the schedule.

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

Having considered the broadcast and the submissions from the complainant and having had regard to the relevant legislation and Code, members decided to reject the complaint. The Forum's views and basis for the decision are set out below.

- The Forum found that the interview focused mainly on the HSE and the environment in which interviewee, Dr. Rhona Mahony, operates. Part of the interview included a discussion on how the medical profession operates within the legal boundaries set by the 8<sup>th</sup> Amendment to the Constitution. The interviewee outlined her views on this, which included difficulties experienced by medics in interpreting the equal life of the mother and the baby as the law currently requires.
- The Forum was mindful that the BAI's Code of Fairness, Objectivity and Impartiality in News and Current Affairs does not require broadcasters to cover all aspects of a topic in one programme nor does it require the inclusion of representatives of all perspectives on an issue in one programme. In this case, the Forum was of the view that the programme was not a debate on the 8<sup>th</sup> Amendment nor a pro-life versus pro-choice debate, but rather a one to one interview with Dr. Mahony to establish her views from a medical viewpoint. The presenter's questions, therefore, related to the interviewee's personal experience and knowledge of working within Ireland's legal framework on abortion on a day-to-day basis.



The Forum was of the view that this is a legitimate editorial approach for the broadcaster to take and the presenter's questions and manner were appropriate in this context. The Forum did not find evidence of a lack of fairness, objectivity or impartiality in the content.

- In view of the above, the Forum did not agree that the programme infringed the requirements of the legislation and the Code in manner specified by the complainant. Accordingly, members rejected the complaint.



**Complaint made by: Dr. Ruth Foley**

**Ref. No. 95/17**

**Station:**

Newstalk 106-108FM

**Programme:**

Moncrieff

**Date:**

19<sup>th</sup> September 2017

**1. Programme**

The complaint refers to an interview on 'Moncrieff', which is a lifestyle/entertainment programme broadcast each weekday afternoon from 2pm – 4pm.

**2. Complaint Category**

The complaint is submitted under the Broadcasting Act 2009 Section 48(1)(a) (fairness, objectivity and impartiality in news and current affairs); the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs (Section 4: Rules 4.1, 4.2, 4.19 and 4.20) and under Section 48(1)(b) (harm and offence); the BAI Code of Programme Standards (Principle 1 – Respect for Community Standards).

**3. Complaint Summary**

The complaint concerns an interview with Tim Jackson, a pro-life campaigner who was undertaking a hunger strike in protest for the pro-life campaign. During the interview, the presenter asks about babies with Edwards Syndrome and the complainant states that the presenter used the words: "fatal foetal abnormality" and "they'll be in extreme pain, the terrible quality of that short life, isn't that cruel to the child?".

The complainant is of the view that the statement "they'll be in extreme pain, the terrible quality of that short life" is inaccurate and misleading and the complaint includes references to interviews and research in support of the view that babies with Edwards Syndrome do not have a life of suffering and many have happy lives.

The complainant also found the phrase "fatal foetal abnormality" and the question from the presenter highly offensive and distressing by suggesting that parents of children with Edwards Syndrome are being cruel to those children.





#### **4. Broadcaster Response, to Complainant and the BAI**

The broadcaster noted that the interviewee provided emphatic views against abortion and how it was tantamount to rape and child abuse and, in the absence of another guest who could provide a counter balance to this view, it fell to the presenter to challenge the interviewee and facilitate the audience in receiving a wide variety of views. The broadcaster notes that the presenter did not make a statement but put a question to the interviewee. The broadcaster is of the view that, in the context and circumstances, it was a legitimate question to pose.

The broadcaster states that the presenter did not present inaccurate information as fact and did not label parents with children with Edwards Syndrome as cruel. The broadcaster references the Irish Maternal Foetal Foundation in support of the views suggested in the presenter's question that Edwards Syndrome is usually considered lethal and most babies born with it have severe impairments.

The broadcaster noted that the term "fatal foetal abnormalities" is not used by the Health Service Executive (HSE) but quotes from the HSE's *National Standards for Bereavement and Care following Pregnancy Loss and Perinatal Death* which states that "there is no clear or universal term that can be used or is acceptable to the majority of parents". The broadcaster does not accept that the term causes the type of offence suggested in the complaint.

The broadcaster acknowledged the content may have caused offence to some people but references the BAI in asserting that there is no right not to be offended and, in capturing the full richness of life in programmes, there may be times that material will offend some people.

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

Having considered the broadcast and the submissions from the complainant and having had regard to the legislation and Codes, members decided to reject the complaint. The Forum's views and basis for the decision are set out below.

- Principle 1 of the Code of Programme Standards requires broadcasters to be cognisant of general community standards when making programmes, including attitudes to specific language terms. The Forum found that the presenter questioned the interviewee's views while using a respectful tone at all times. During the interview, the presenter posed the question "isn't that cruel to the child, to have them be born and have a life of suffering and then to die. Isn't that cruel?" The Forum did not agree with the complainant's assertion that simply by posing this question the presenter was accusing parents of children with



Edwards Syndrome of being cruel to those children. With regard to the term "fatal foetal abnormality", the Forum acknowledged there are different views on the appropriateness of this term, but also noted that it has been widely used in the public domain and the audience, in general, would have a good understanding of its meaning. The Forum did not find that the content infringed on any community standard in the questions posed by the presenter or the language used.

- The BAI Code of Fairness, Objectivity and Impartiality includes the requirements that views and facts shall not be misrepresented or presented in such a way as to render them misleading and that significant mistakes shall be acknowledged and rectified as speedily as possible. The Forum did not agree with the complainant that the presenter's line of questioning, in particular, asking about babies that are born with conditions that may result in pain and a very short life, was in any way misleading or inaccurate. The Forum was of the view that this is an editorially justifiable and legitimate line of questioning in the context of this interview and found no evidence in the programme of content that infringed on the above Code.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the legislation and Codes in manner specified by the complainant. Accordingly, members rejected the complaint.



**Complaint made by: Ms. Geri Slevin**

**Ref. No. 96/17**

**Station:**

Newstalk 106-108FM

**Programme:**

The Pat Kenny Show

**Date:**

13 September 2017

**1. Programme**

The complaint refers to comments made on The Pat Kenny Show, which is a lifestyle/current affairs programme broadcast each weekday morning from 9am – 12pm.

**2. Complaint Category**

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

**3. Complaint Summary**

The complaint refers to comments made by presenter George Hook who was featured at the end of this programme to signpost the upcoming topics his own show. In a discussion about betting on horses and Revenue, Mr. Hook commented that the Revenue probably have staff at the race courses watching for people putting "a thousand quid on Mary Lou McDonald or one of these horses". The complainant finds the reference to a recognisable female TD in this context misogynistic and offensive.

**4. Broadcaster Responses, to Complainant and the BAI**

The broadcaster draws attention to the context in which the comment was made. This was the 'handover' part of the Pat Kenny Show on which George Hook was featured. It was a casual chat and George Hook was being "playful and spirited" in his comments, which were unplanned and unscripted.

The broadcaster accepts that the reference to a horse being called Mary Lou McDonald is inappropriate and the comment was thoughtless, insensitive and flippant. However, the broadcaster believes there was no malign intent or maliciousness meant by it. The broadcaster further states that it believes the content did not infringe on the standards of Principle 5 of the BAI Code of Programme Standards.



## **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 relevant legislation and Code, the members decided to reject the complaint. The Forum's views and basis for the decision are set out below.

The BAI Code of Programme Standards requires the representation of persons and groups in society to be appropriate and justifiable and not prejudice respect for human dignity.

The Forum noted the comment was made in the context of a light-hearted exchange between presenters during the handover from one programme to another. The Forum was of the view that Mr. Hook made the comment in a flippant manner when asked for his opinions on Revenue personnel being present at racecourses. The Forum found that referring to a horse using the name of a well-known TD was inappropriate. However, the Forum also took into consideration the tone and context within which the remark was made and, although the content clearly offended the complainant, the Forum found it was not unduly offensive and did not contravene the provisions of Principle 5 of the Code. The Forum was further of the view that there was no intention to malign the TD in question.

In view of the above, the Forum did not agree that the programme infringed the requirements of the legislation and Code in the manner specified by the complainant. Accordingly, members rejected the complaint.



**Complaint made by: Mr. Brendan O'Regan**

**Ref. No. 99/17**

**Station:**

Newstalk 106-108FM

**Programme:**

Between the Lines

**Date:**

30 September 2017

**1. Programme**

The complaint refers to an interview on Between the Lines, a lifestyle and current affairs programme broadcast on Saturday mornings from 8am – 9pm.

**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 & Impartiality in News and Current Affairs (sections 4.1, 4.2, 4.3 and 4.22).

**3. Complaint Summary**

The complaint concerns the handling of an interview with Mr. Bernard Durkan TD regarding the Government's decision to hold a referendum on the 8th Amendment to the Constitution. The content is focused on the interviewee's position on the Oireachtas Committee dealing with the 8th Amendment and the Citizens' Assembly recommendation on same.

The complainant believes the programme did not meet the standards of fairness, objectivity and impartiality in the Code because the presenter pursued a line of questioning from a pro-choice perspective and did not ask questions from a pro-life perspective. For example, the presenter challenged the interviewee on how it was unlikely the Government would accept the recommendations of the Citizens' Assembly, which the complainant believes is a pro-choice position, and the presenter did not raise questions about the fairness of the Oireachtas Committee.

The complainant also believes the presenter demonstrated a partisan pro-choice position when she "accepted and promoted uncritically" the Citizens' Assembly and was "taking umbrage" at the Assembly's recommendations potentially being ignored. The complainant was of the view that the language used by the presenter further demonstrated this partisanship, for example, when the presenter said "we've been going around in circles for 30 years" in reference to the time since the 8th Amendment to the Constitution was passed and "this is Government's, the



Oireachtas' and Fine Gael's opportunity to make a stand, to be strong, to take the recommendations from the Citizens' Assembly and put it to the people".

#### **4. Broadcaster Responses, to Complainant and the BAI**

The broadcaster states that the interview with Bernard Durkan TD was aimed at exploring the recommendation and merits of the Citizens' Assembly Report on the 8<sup>th</sup> Amendment and the reasoning behind the Government's decision to hold a referendum on the future of the Amendment.

The broadcaster states that this was not a pro-choice versus pro-life debate and stresses that a broadcaster is not required to cover every angle of the topic and is entitled to make editorial decisions on the aspect of a subject to cover and to choose its line of questioning.

The broadcaster maintains that the presenter engaged with the story in a robust manner with the aim of engaging the audience and stimulating debate on the subject. The broadcaster believes the presenter acted as 'devil's advocate', asked fair and legitimate questions and the interviewee was given ample opportunity to respond to them. While accepting that the presenter expressed views, the broadcaster does not believe that they infringed the obligations placed on her. The broadcaster does not believe that the language used by the presenter demonstrated a lack of fairness, objectivity or impartiality.

#### **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 relevant legislation and Code, the members decided to reject the complaint. The Forum's views and basis for the decision are set out below.

The Forum found that the discussion focused on the political processes entailed in the Citizens' Assembly and the Oireachtas Committee set up to examine the 8<sup>th</sup> Amendment to the Constitution and a potential referendum on its repeal. The interview was with a government representative who was challenged by the presenter on how the political processes were being put into practice; it was not a debate on abortion itself or the 8<sup>th</sup> Amendment or any proposed changes to it. In this context, the Forum was of the view that the presenter's language and the line of questioning were appropriate to the discussion and did not amount to advocacy of a



partisan position. The Forum also found that the presenter dealt fairly with the interviewee, an experienced politician, who was allowed ample time to respond to the questions posed. The Forum did not find evidence in the programme of a failure to meet the obligations of fairness, objectivity and impartiality.

In view of the above, the Forum did not agree that the programme infringed the requirements of the legislation and Code in the manner specified by the complainant. Accordingly, members rejected the complaint.



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