



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

**Broadcasting Authority of Ireland  
Broadcasting Complaint Decisions**

**March 2019**



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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. Further information on the complaints process or codes may be found on the BAI's website: [www.bai.ie](http://www.bai.ie). Alternatively, you can request further information by email: [info@bai.ie](mailto:info@bai.ie) or by phone: 016441200.

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.

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, four complaints were considered and rejected by the Compliance Committee of the BAI. In addition, twelve complaints were considered and rejected by the Executive Complaints Forum. The decisions of the Compliance Committee were reached at its meetings held on 3<sup>rd</sup> October 2018, while the decisions of the Executive Complaints Forum were reached at meetings held on 3<sup>rd</sup> and 24<sup>th</sup> September, 17<sup>th</sup> October, 5<sup>th</sup> and 19<sup>th</sup> November 2018.



## Rejected by Compliance Committee

**Complaint made by: Mr. John T. O'Sullivan on behalf of Bio Atlantis**

**Ref. No. 43/18**

**Station:**

RTÉ One

**Programme:**

A Wild Irish Year

**Date:**

13<sup>th</sup> May 2018

### 1. Programme

The complaint refers to A Wild Irish Year, which is a 4-part documentary series tracking Ireland's wildlife through the seasons.

### 2. Complaint Category

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 - Rules 4.1, 4.2 and 4.17.

### 3. Complaint Summary

The complainant questions the claims by the broadcast that mechanical harvesting of seaweed causes land to become "devoid of life" and maintains this is a false and unsubstantiated claim. The complainant also cites other claims made on the programme which he believes to be incorrect.

These include:

- That mechanically harvesting seaweeds such as kelp causes the land to become devoid of life.
- That there are species of Giant Kelp in Ireland.
- That mechanically harvesting seaweeds such as kelp makes the land barren.
- That mechanically harvesting seaweeds such as kelp is like clear felling a forest.
- That kelp prevents big waves from battering our coasts and forms a barrier.

The complainant maintains that the inaccuracies led to the production of a programme that was one sided and lacked fairness, objectivity and impartiality.

### 4. Broadcaster Response

The broadcaster states that this is a nature programme, the editorial brief of which could be described as bringing nature into the living room. This is a four-part series which follows the annual cycle of the natural world. The broadcaster states that this is not a current affairs or news programme and, as such, the broadcaster submits that the audience expectation of this programme must be seen and evaluated within its editorial context.

The programme touched on conservation issues, however, these were a minimal part of the programme as they were outside the scope of the series and the segment which is the subject of the complaint makes up less than three minutes of the 51-minute programme. The broadcaster states that the aim of the particular sequence was to highlight the beauty of Irish seaweeds and coastlines and the presenter briefly mentioned several aspects relating to seaweeds. The broadcaster further states that the presenter stressed the importance of harvesting seaweed sustainably but did not suggest that it should



not be harvested at all. The presenter's observations were in line with concerns which are well documented in academic journals.

In relation to reference by the presenter to mechanical seaweed harvesting and comparing it to clear felling of terrestrial forest, the broadcaster maintains that this is a simile and one which the audience would have understood. This was not an examination of the pros and cons of seaweed harvesting but a descriptive comparison to aid the viewer. In addition, 'kelp forest' is a term commonly used in the scientific world. The broadcaster states that it is widely accepted that mechanical harvesting of living kelp forests does have adverse impacts on the kelp and other ecosystems.

The broadcaster notes that the complainant took issue with the reference to "giant kelp forests". The broadcaster accepts that the presenter used this adjective 'giant' as a descriptor. However, this was not used as an element of the proper noun and name for the specific species of seaweed called "Giant Kelp". The differentiation is clearly audible in the pause between 'giant' and 'kelp' in the presenter's enunciation.

With reference to the role of kelp forests, the broadcaster states that it is clear that the primary point being made is that kelp forests have 'a role' to play in preventing storms from battering our coastline. However, it does not say that they prevent them battering the coast but that they play a role.

Overall, the presenter's comments were focused on spring tides, the value and beauty of our seaweeds and on the theme of sustainability and do not preclude the possibility of sustainable harvesting. The broadcaster is of the view that the audience would have seen the programme in this context and maintains that there are no grounds to uphold this complaint.

## **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 relevant legislation and Code, the Committee decided to reject the complaint. The Committee's findings and reasons for the decision are set out below.

The Committee noted the complaint was submitted under the Code of Fairness, Objectivity and Impartiality in News and Current Affairs. The Code requires that content is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster's own views. The requirement also includes that a current affairs item is presented with due accuracy and that views and facts should not be misrepresented or presented in such a way as to render them misleading.

The Compliance Committee had regard to the programme type and noted that this is a nature programme which looks at various aspects of Ireland's natural world during four seasons. The Committee noted that the complainant believes that the series constitutes news and current affairs, specifically due to the reference to mechanical seaweed harvesting. However, the tone and focus of the programme was that of a nature documentary and the Committee did not find that the programme constituted current affairs. As the programme was determined to not be news and current affairs, the requirements under the Code do not apply. On this basis the complaint was rejected.



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

**Ref. No. 46/18**

**Station:**

TV3

**Programme:**

The Pat Kenny Show  
Referendum Special

**Date:**

23<sup>rd</sup> May 2018

**1. Programme**

The complaint concerns The Pat Kenny Show – Referendum Special, a current affairs programme, the focus of which was the referendum regarding the 8<sup>th</sup> Amendment.

**2. Complaint Category**

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 - Rules 4.1 and 4.2.

**3. Complaint Summary**

The complaint concerns a panel debate on the 8<sup>th</sup> Amendment which featured four guests, two on the 'Yes' side of the debate and two on the 'No' side.

The complainant is of the view that the programme lacked fairness, objectivity and impartiality. The complainant believes that this was due to the presenter's treatment of the panellists who represented the 'No' vote. The complainant believes that the presenter was rude to the panellists who favoured a 'No' vote and that he challenged them in a more robust manner. The complainant believes that this was most evident in the presenter's treatment of Maria Steen, a panellist against repealing the 8<sup>th</sup> Amendment. The complainant acknowledges that the presenter challenged the panellists from the 'Yes' campaign but believes that he took an uneven and unfair approach which resulted in the programme failing to be fair, objective and impartial.

**4. Broadcaster Response**

The broadcaster states that the discussion, which featured two contributors from both the 'Yes' and 'No' side of the referendum debate, as well as contributions from the audience, was fair to all sides and gave ample time to both contributors on each side to make their case. Ms. Steen was challenged by the presenter as were the other contributors.

The broadcaster maintains that the coverage of the 8<sup>th</sup> Amendment referendum was carefully moderated to ensure such an important and emotive issue was debated fully and properly. The broadcaster acknowledges that the presenter did interrupt the panellists and at times had to cut them short but did so in his role as moderator. The broadcaster acknowledges that the presenter was direct and strict with panellists and contributors but maintains that this was necessary given the nature of the debate.

The role of the broadcaster is to ensure that the audience has access to accurate and trustworthy coverage, and it was in this context that the presenter clarified or corrected statements. The broadcaster states that the presenter treated panellists from both sides of the debate equally and that the programme was fair to all sides



## **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 relevant legislation and Code, the Committee decided to reject the complaint. The Committee's findings and reasons for the decision are set out below.

The Compliance Committee noted that the complaint was made under Sections 4.1 and 4.2 of the Code of Fairness, Objectivity and Impartiality in News and Current Affairs. The Code requires that content is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster's own views.

The Committee noted that the complainant believes that the presenter displayed bias through his treatment of the panellists who advocated against repealing the 8<sup>th</sup> Amendment and that his treatment rendered the programme unfair and partial. The Committee found that the presenter moderated the debate fairly and did not believe that his treatment of any particular contributor indicated bias, nor did the Committee find the presenter's treatment of any contributor to have infringed the requirement for a programme to be fair, impartial and objective.

The Committee did not find evidence to support the complainant's view and as such, the complaint was rejected.



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

**Ref. No. 47/18 & 48/18**

**Station:**  
TV3

**Programme:**  
The Tonight Show

**Date:**  
17<sup>th</sup> & 21<sup>st</sup> May 2018

## **1. Programme**

The complaints concern The Tonight Show, which is a current affairs programme broadcast at 11pm Monday to Thursday. These broadcasts referred to the referendum regarding the 8<sup>th</sup> Amendment.

## **2. Complaint Category**

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 - Rules 4.1 and 4.2.

## **3. Complaint Summary**

The complaints concern two episodes of The Tonight Show, both of which involved a panel discussion on the referendum regarding the 8<sup>th</sup> Amendment. The panels included representatives from each side of the debate with all panellist setting out their positions on the referendum at the beginning of both programmes. This was followed by an open discussion on the referendum. Each programme included fact-checking, which was undertaken by a journalist from Journal.ie.

The complainant is of the view that the panellists for the 'No' side of the debate were treated differently to the panellists on the 'Yes' side of the debate. The complainant states that this was apparent in the number of challenging questions put to the 'No' side by the presenters.

The complainant believes that a lack of fairness was also evident in the number of challenges to the facts that has been presented by the panellists in favour of the 'No' vote. The complainant believes that the fact checkers did not remain impartial and, on occasion, provided their own viewpoints under the guise of providing fact. The complainant believes the panellists should have been given the opportunity to challenge the journalists who checked the facts.

Overall, the complainant maintains that the programmes were not fair, objective or impartial and displayed bias in favour of the 'Yes' vote.

## **4. Broadcaster Response**

The broadcaster is of the view that the programmes complied with the requirement to be fair, objective and impartial. The broadcaster states that this was achieved through the following: an equal number of panellists for and against repealing the 8<sup>th</sup> Amendment and an equal amount of time for each side, an equal number of vox-pops included which represented both sides of the debate. The broadcaster also states that the presenters challenged each side fairly and did not express their own opinion. The presenters engaged the fact-checkers with a view to ensuring that the audience was provided with information which was trustworthy, honest and credible. The broadcaster maintains that both fact checkers provided accurate information and answered questions without an expression of their own views.





The broadcaster maintains that the coverage of the 8<sup>th</sup> amendment was carefully moderated to ensure such an important and emotive issue was debated fully and properly. The broadcaster believes that fairness was achieved in both programmes.

## **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 relevant legislation and Code, the Committee decided to reject the complaint. The Committee's findings and reasons for the decision are set out below.

The Compliance Committee noted that the complaint was made under Sections 4.1 and 4.2 of the Code of Fairness, Objectivity and Impartiality in News and Current Affairs. The Code requires that content is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster's own views.

The Committee noted that the complainant believes that programmes failed to be fair, impartial and objective and that this was evidence in the treatment of the panellists representing the 'No' side and in the behaviour of the fact-checkers. The Committee did not find any evidence in the broadcasts to support the complainant's assertion that panellists representing the 'No' were treated unfairly, nor did the Committee find that the fact-checking element of the programme led to any infringement of the Code. As such, the complaints were rejected.



## Rejected by Executive Complaints Forum

**Gearán ó:** Julian de Spáinn

**Tagairt Uimh.** 45/18

**Stáisiún:**

TV3

**Clár:**

The Tonight Show

**Dáta:**

19 Bealtaine 2018

### 1. Clár

Baineann an gearán le héagóir ar chainteoirí Gaeilge ar eagrán den chlár The Tonight Show.

### 2. Catagóir Gearáin

An tAcht Craolacháin 2009 - Alt 48(1)(a) (cothroime, oibiachtúlacht agus neamhchlaontacht); Cód Údarás Craolacháin na hÉireann maidir le Cothroime, Oibiachtúlacht i gCláir Nuachta agus Cúrsaí Reatha - Rialacha 4.1 agus 4.2.

### 3. Achoimre ar an nGearán

Measann an gearánaí go bhfuil éagóir ar chainteoirí Gaeilge agus Bláthnaid Ní Chofaigh, aoi ar an gclár agus cainteoir Gaeilge, i gceist le ráiteas a rinne an láithreoir Ivan Yates, a dúirt go raibh daoine a bhfuil suim acu sa Ghaeilge ina "cultural terrorists". Measann an gearánaí go raibh easpa neamhchlaontachta agus oibiachtúlachta sna tuairimí a chuir an láithreoir in iúl le linn an chláir.

### 4. Freagra ón gCraoltóir

Dúirt an craoltóir go mbaineann sé le leagan amach an chláir go gcuireann na láithreoirí tuairimí contrártha in iúl go minic chun argóintí a mhiondealú. Measann an craoltóir go raibh an láithreoir, Ivan Yates, ag feidhmiú mar abhcóide an diabhair ar mhaithe le díospóireacht a spreagadh ar an gceist ach go raibh sé ag caint ar dhaoine a bhfuil tuairimí dochta acu, seachas an Ghaeilge agus cainteoirí Gaeilge go sonrach. Deir an craoltóir freisin go raibh triúr ar an bpainéal a bhí ar son an Ghaeilge a choinneáil mar ábhar éigeantach agus nach raibh ach duine amháin ar an bpainéal a labhair ina aghaidh.

### 5. Cinneadh ón bhFóram Feidhmiúcháin Gearán

Tar éis machnamh a dhéanamh ar an gcraolachán agus na haighneachtaí ón ngearánaí agus ón gcraoltóir, agus ag féachaint freisin don reachtaíocht ábhartha agus don Chód, chinn an Fóram diúltú don ghearán. Leagtar amach tuairimí an Fhórait agus na fáthanna ar ghlac sé an cinneadh sin thíos.

Thug an Fóram faoi deara go n-éilítear ar chraoltóirí cothrom na Féinne a thabhairt do rannpháirtithe, réimse tuairimí a éascú agus a chinntiú nach gcuireann láithreoirí a dtuairimí féin in iúl agus nach ndéantar seasamh claonpháirteach a chur chun cinn. Chuir an Fóram i gcuntas an cineál clár agus comhthéacs an agallaimh. Is clár é ina mbíonn meascán d'anailís ar nuacht, cúrsaí reatha agus polaitíocht na hÉireann. Sa chuid seo den chlár atá faoi chaibidil, rinneadh plé ar cé acu ar cheart go mbeadh an Ghaeilge ina hábhar éigeantach i scoileanna agus ar an bpainéal bhí an láithreoir teilifíse, Bláthnaid Ní Chofaigh, an láithreoir raidió, Niall Boylan, an staraí Diarmaid Ferriter agus Pearse Doherty TD.



Thug an Fóram faoi deara gurb é úsáid an téarma “cultural terrorists” le duine de na láithreoirí, Ivan Yates, an chúis is mó leis an ngearán. Tá an Fóram den tuairim gur úsáid an láithreoir an téarma “cultural terrorists” chun díospóireacht a spreagadh. Cé gur thug an Fóram faoi deara gur féidir gur chuir sé sin isteach ar roinnt daoine sa lucht féachana, ach luann sé go mbaineann sé sin le gnáth-nósanna an láithreora agus go mbíonn an lucht féachana rialta ag súil le tuairimí conspóideacha a chloisteáil uaidh. Thug an Fóram faoi deara gur tugadh neart deiseanna do na daoine faoi agallamh a dtuairimí a chur in iúl agus gur úsáideadh cur chuige cothrom, oibiachtúil agus neamhchlaonta ar an iomlán i leith an ábhair. Thairis sin, thug an Fóram faoi deara nach gá go bhfuil éagóir i gceist i gcásanna ina gcuirtear tús leis an díospóireacht trí ‘fheidhmiú mar abhcóide an diabhair’ agus, ag féachaint ar an gcraolachán ina iomláine, nach raibh an sé éagothrom i ngeall ar úsáid an téarma sin.

Ar na cúiseanna sin, níor ghlac an Fóram leis gur sháraigh an clár na riachtanais atá leagtha síos sa reachtaíocht agus sa Chód mar a mhaígh an gearánaí. Dá réir sin, chinn an Fóram diúltú don ghearán.



**Complaint made by: Mr. Julian de Spáinn**

**Ref. No. 45/18**

**Station:**

TV3

**Programme:**

Tonight Show

**Date:**

19<sup>th</sup> May 2018

**1. Programme**

The complaint concerns an edition of the Tonight Show and the unfair treatment of Irish language speakers.

**2. Complaint Category**

Broadcasting Act 2009 - Section 48(1)(a)(fairness, objectivity and impartiality); the BAI Code of Fairness, Objectivity in News and Current Affairs - Rules 4.1 and 4.2.

**3. Complaint Summary**

The complainant is of the view that a comment made by the presenter, Ivan Yates, in which he described people who are interested in the Irish language as “cultural terrorists”, was unfair to Irish language-speakers and to the guest, Bláithnaid Ní Chofaigh, who is an Irish language speaker. The complainant believes that the presenter displayed a lack of impartiality and objectivity in the views he expressed during the programme.

**4. Broadcaster Response**

The broadcaster states that the format of the programme is that the presenters often adopt opposite tacks in deconstructing arguments. It is the view of the broadcaster that the presenter, Ivan Yates, played devil’s advocate in order to provoke debate on the topic but states that the comment was about anyone with absolute views, as opposed to being aimed at the Irish language or Irish language speakers. The broadcaster further states that there were three members on the panel in favour of Irish remaining compulsory and only one panellist against.

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

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 Forum decided to reject the complaint. The Forum's views and reasons for the decision are set out below.

The Forum noted that broadcasters are required to deal fairly with contributors, to facilitate a range of views and to ensure presenters do not express their own views such that a partisan position is advocated. The Forum had regard to the type of programme and the context of the interview. The programme is a mix of Irish news analysis, current affairs and politics. The segment in question discussed whether the Irish language should be a compulsory subject in schools and the panel consisted of TV personality, Bláithnaid Ní Chofaigh, radio presenter, Niall Boylan, historian Diarmaid Ferriter and TD Pearse Doherty.

The Forum noted that central to the complaint is the use of the term “cultural terrorists” by one of the presenters, Ivan Yates. The Forum was of the view that the presenter used the term “cultural terrorists” to kick start the debate. While the Forum noted that this may have offended some viewers, it noted that this style is usual for the presenter and regular viewers would have expected the presenter to make controversial comments. The Forum noted that the interviewees were given ample opportunity to



convey their views and that, overall, the topic was dealt with in a manner which was fair, objective and impartial. The Forum further noted that playing 'devil's advocate' to launch a debate did not necessarily constitute unfairness and that use of the term in question did not make the entire broadcast unfair or unbalanced

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, the Forum decided to reject the complaint.



**Complaint made by: Ms. Anne McGrath**

**Ref. No. 49/18**

**Station:**

RTÉ Radio 1

**Programme:**

Liveline

**Date:**

26<sup>th</sup> June 2018

**1. Programme**

Liveline is a current affairs chat show which is broadcast each weekday from 1.45 – 3pm.

**2. Complaint Category**

Broadcasting Act 2009 - Section 48(1)(b)(harm & offence); the BAI Code of Programme Standards – Principle 3.

**3. Complaint Summary**

The complaint concerns a topic under discussion regarding the visit of Pope Francis to Ireland. During the programme, a caller stated that he had procured 690 tickets intended for attendance at the Papal Mass and that, as a form of protest, he intended to burn them. The next caller stated that he could help procure more tickets and was willing to help with this same campaign.

The complainant is of the view that this amounted to incitement to hatred and that the presenter encouraged a campaign of hate against Pope Francis.

**4. Broadcaster Response**

The broadcaster categorically rejects any claim that the programme incited hatred or infringed Principle 3 of the Code and does not believe that the complainant provided any evidence to support her assertion that the broadcast could have caused harm. The broadcaster acknowledges that the presenter interviewed callers who were intent on destroying tickets to the Papal Mass in protest of the Pope's visit, but states that this could not be deemed as incitement to hatred. Further, the programme included contributions from callers who were in support of the mass and disagreed with destroying tickets. The broadcaster is of the view that the programme contained a range of views. The broadcaster states that it is the role of the presenter to ask questions and draw out the views of callers and, in the view of the broadcaster, the presenter acted appropriately at all times.

**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 Forum decided to reject the complaint. The Forum's views and reasons for the decision are set out below.

The Forum noted the complaint was submitted under the Principle 3 of the Code of Programme Standards: Principle 3 - Protection from Harm. The Forum also noted that broadcasters are required to take due care to ensure that audiences are not exposed to harmful content and must provide adequate information to audiences to allow them to make informed choices about what they listen to and watch.

The Forum noted that the complaint referred to a discussion both in favour of, and against, the visit of Pope Francis to Ireland. The complaint focused particularly on the contribution of a listener who stated



he had procured several hundred tickets to attend the Mass in the Phoenix Park and intended burning them in protest at the visit.

The Forum noted that the programme included contributions from a number of contributors whose opinions varied and was of the view that this was a robust, yet fair discussion. People representing both sides were provided with ample time to put forward their views. The Forum was of the view that the presenter played role of moderator by posing questions and facilitating the debate. The Forum found that there was no evidence to support the complainant's view that the programme incited hatred.

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 Forum decided to reject the complaint.



**Complaint made by: Mr. Joe McCormack**

**Ref. Nos. 50/18 and 51/18**

**Station:**

RTÉ Radio 1  
RTÉ One

**Programme:**

Ray D'Arcy Show  
What Are You Eating?

8<sup>th</sup> March 2018  
9<sup>th</sup> March 2018

**1. Programme**

The complaints concern two programmes in which vegan diets were discussed. The Ray D'Arcy Show was broadcast at 3.30pm and What Are You Eating was broadcast at 8.30pm.

**2. Complaint Category**

Broadcasting Act 2009 - Section 48(1)(b)(harm and offence); the BAI Code of Programme Standards - Principles 1, 2, 3, 5 & 6.

**3. Complaint Summary**

The complaints concern two programmes in which vegan diets are discussed. The Ray D'Arcy Show included an interview with Philip Boucher Hayes. During the interview Mr. Boucher Hayes discussed his experience undertaking a vegan diet for the programme What are you Eating, which was aired on RTÉ One later that day. It is the view of the complainant that both programmes gave out misinformation about the vegan diet in respect of the percentage of bone density Mr. Boucher Hayes lost while on a vegan diet; the complainant states that the percentage of bone density lost was given as 3% on the Ray D'Arcy Show and 2% in What Are You Eating? The complainant further states that the failure to mention the benefits of weight loss or reduced BMI resulted in both programmes providing a negative representation of the vegan diet. The complainant is of the view that this is harmful as it did not inform the audience of the benefits of a plant-based diet, nor did it discuss the health concerns related to eating meat. The complainant also states that vegans are a minority group and is of the view that there was no consideration given to this group in making these programmes.

**4. Broadcaster Response**

The broadcaster is of the view that the complainant has not made the case for how these programmes breached the Code of Programme Standards. Ray D'Arcy interviewed Philip Boucher Hayes and asked appropriate and probing questions and highlighted that Mr. Hayes had not followed medical advice, while on the 28-day vegan diet, by not taking health supplements to complement his vegan diet and not eating sufficient calories. The programme focused on the experience of Mr. Boucher Hayes as he undertook this diet regime and during the broadcast interviewed both vegans and non-vegans for their opinions.

The broadcaster is of the view that these programmes did not infringe the requirements of the Code of Programme Standards and states that the complainant did not demonstrate how the content infringed the Code.

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





The Forum noted that these complaints relate to the same topic broadcast on the same day and that both the complainant and broadcaster have addressed these as related complaints. The Forum, while considering each broadcast on its individual merits, determined these to be related broadcasts. In making this determination, the Forum had regard for the date of broadcast and the subject matter being discussed.

The Forum noted that the complaint was submitted under the Code of Fairness, Objectivity and Impartiality in News and Current Affairs. However, in this instance, the Executive determined that these specific broadcasts do not constitute news and current affairs and, as such, the Code of Fairness, Objectivity & Impartiality in News and Current Affairs does not apply. The complaints were also submitted under the Code of Programme Standards, therefore, the Forum only had regard to the elements of the complaint which related to the relevant Principles of the latter Code.

The Forum considered the complaints under Principles 1 (Respect for Community Standards), 2 (Importance of Context), 3 (Protection from Harm), 5 (Respect for persons and Groups in Society) and 6 (Protection of the Public Interest).

The Forum noted that complaint centres on what the complainant believes was misinformation provided regarding a vegan diet. During the programmes, figures were provided in relation to the percentage of bone density and muscle mass that the interviewee/presenter, claimed to have lost while on this diet for 28 days. On the Ray D'Arcy programme the loss was stated as 3% of bone density while on the programme What Are You Eating, it was stated at 2%. The complainant maintains that these percentages were based on mistakes made in the interpretation and use of data from an analyser featured on the programme and are neither credible nor trustworthy.

The Forum noted that both programmes had regard to the personal experience of the presenter as he undertook a vegan diet for a defined period of time. The subject matter was discussed and explored from a personal viewpoint and was not presented in a manner which could reasonable be considered as a scientific experiment on a vegan diet. For example, it was made clear in both programmes that the presenter had not following expert advice in relation to diet and supplements during the period he was following the diet. The Forum acknowledged that while there were some inaccuracies in relation to the percentages of bone density and body mass lost during the reference period by the presenter, the Forum concluded that, these were not sufficient to render either broadcast as having infringed the requirements outlined in the relevant principles in the Code of Programme Standards. Further, the Forum noted that the programme had a range of contributors about the benefits of veganism. Finally, it was noted that vegans are not a protected group in society and, as such, Principle 5 does not apply.

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



**Complaint made by: Mr. Con O'Leary**

**Ref. No. 53/18**

**Station:**

RTÉ Radio 1

**Programme:**

Sure 'Twas Banned

**Date:**

16<sup>th</sup> June 2018

**1. Programme**

The complaint concerns a comedy panel show which features clips from the RTÉ radio sound archive.

**2. Complaint Category**

Broadcasting Act 2009 - Section 48(1)(b)(harm & offence); the BAI Code of Programme Standards – Principle 5.

**3. Complaint Summary**

The complaint concerns comments made during a panel discussion about a book called The Tailor and Ansty. The programme included a clip of an interview with a man about The Tailor and Ansty. One of the panellists responded to clip by asking if the man featured in it was speaking English as she could not understand him. The complainant maintains that this type of narrow view by panellists should not be permitted and is insulting to persons with different accents.

**4. Broadcaster Response**

The broadcaster states that this is a comedy panel show which uses the resources of the RTÉ sound archive relating to episodes of censorship and banning from the past. A clip about The Tailor and Ansty, from an RTÉ documentary, was discussed by the panellists and one panellist commented on the interviewee's accent.

The broadcaster states that it is widely understood that accents vary greatly in Ireland and is of the view that the remark was a genuine reaction to the clip and the comment was off the cuff. The broadcast does not believe that the comment caused offence to persons or groups in society.

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

The Forum noted the complaint was submitted under the Code of Programme Standards: Principle 5 - Persons and Groups in Society.

The Forum noted that broadcasters must ensure that the manner in which persons and groups in society are represented is appropriate and justifiable and shall not prejudice respect for human dignity.

The complaint referred to a comment made by one of the panellists on the programme in relation to the accent of the interviewee featured in the clip played. While the Forum acknowledged that the complainant was offended by the comment, it was of the view that the comment made could not be considered as causing undue offence. As the Code guards against undue offence only, the Forum did not consider that an infringement occurred in this instance.



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, the Forum decided to reject the complaint.



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

**Ref. Nos. 54/18, 55/18, 56/18, 57/18 & 58/18**

**Station:**

RTÉ Radio 1

**Programme:**

Radio News Bulletins

**Date:**

21<sup>st</sup> July 2018

**1. Programme:**

The complaints concern five radio news bulletins, broadcast on RTÉ Radio 1 at 8am, 9am, 11am, 12 noon and 1pm on 21<sup>st</sup> July.

**2. Complaint Category**

Broadcasting Act 2009 - Section 48(1)(a) (fairness, objectivity and impartiality); the BAI Code of Fairness, Objectivity in News and Current Affairs - Rules 4.17 and 4.19.

**3. Complaint Summary**

The complaints concern five news bulletins on the conflict in Gaza. The complainant is of the view that the news bulletins failed to be accurate and also misrepresented the facts. The complainant takes issue with the newsreader repeatedly referring to "...an Israeli soldier and four Palestinians..." being killed in the fighting. The complainant believes that the newsreader neglected to state that three of the four Palestinians killed were Hamas Islamist radicals. The complainant is of the view that the bulletins were inaccurate and misleading as they would lead an ordinary listener to assume that, in contrast to the Israeli victim, the Palestinian casualties were all ordinary civilians. The complainant is of the view that the broadcaster failed to explore the available information and found that the exclusion of this relevant fact resulted in reports which failed to be objective or impartial.

**4. Broadcaster Response**

The broadcaster is of the view that all five broadcasts were accurate and gave a true account of the information available to them. The news bulletins reported on an agreed ceasefire between the Palestinian group Hamas and Israel following an upsurge of violence in Gaza. The broadcaster maintains that in the 8am, 9am and 11am news bulletins it was reported that four Palestinians had been killed and in the 12 noon and 1pm bulletins it was stated that four Palestinians were killed, and the broadcaster maintains that this information was factually correct.

The broadcaster is of the view that the information given, in context of a report on the fighting in Gaza, was presented with due accuracy and was not misleading.

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

The Forum noted that these complaints relate to five news bulletins broadcast on the same day and that both the complainant and broadcaster have addressed these as related complaints. The Forum, while considering each broadcast on its individual merits, determined these as related broadcasts. In making this determination, the Forum had regard for the date of broadcast and the subject matter being reported.



The Forum noted that the complaints were submitted under the Code Fairness, Objectivity and Impartiality in News and Current Affairs – Rules 4.17 and 4.19. The Code requires that the content is presented with due accuracy having regard to the circumstances and the facts known at the time of preparing and broadcasting the content. The Code also requires that views and facts are not misrepresented or presented in such a way as to render them misleading.

The Forum noted that each report began with a reference to the violence in Gaza and the Forum were satisfied that this provided the listener with sufficient context for each report. However, the Forum noted that the focus of the reports was the ceasefire and not the preceding violence. In considering these complaints, the Forum was mindful that the reports have to be taken in whole and in context and, on balance, found that the reports did not infringe the Code. The Forum acknowledged that the reports excluded reference to Hamas members being among the Palestinians that were killed, however, the Forum was of the view that the omission of this information did not lead to the subject matter being reported in a manner that could be considered as misleading or presented without due accuracy.

In view of the above, the Forum did not agree that the broadcasts infringed the requirements of the legislation and Code in manner specified by the complainant. Accordingly, the Forum decided to reject the complaints.



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

**Ref. No. 59/18**

**Station:**

Newstalk 106-108FM

**Programme:**

Off the Ball

**Date:**

10<sup>th</sup> August 2018

**1. Programme**

The complaint concerns the intro to Off the Ball, which is broadcast each weekday evening Monday – Thursday from 7-10pm, on Friday from 7-9pm and on Saturday and Sunday from 1-6pm.

**2. Complaint Category**

Broadcasting Act 2009 - Section 48(1)(b)(harm & offence); the BAI Code of Programme Standards – Principles 1, 3 and 6.

**3. Complaint Summary**

The complaint relates to a short clip of voices which is played in the introduction to Off the Ball. The complainant takes issue with the inclusion of a clip in which the speaker states “I knew I was going to strike Ollie Baker and I knew where I was going to hit him, and I did, and I opened him”. The complainant is of the view that this piece is offensive, ill-judged, inappropriate and is an incitement to crime.

**4. Broadcaster Response**

The broadcaster categorically rejects any claim that the programme infringed the Code of Programme Standards and states that Off the Ball is Newstalk’s nightly sports show which is aimed at an adult audience and presented in an irreverent style. The broadcaster states that the language which is the subject of the complaint is not used in a gratuitous way. In the view of the broadcaster, the quote is used in the opening segment to provide context and to set the tone and style of the programme to follow.

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

The Forum noted that the complaint was submitted under three sections of the Code of Programme Standards: Principle 1 – Respect for Community Standards, Principle 3 – Protection from Harm and Principle 6 – Protection of the Public Interest.

The Forum noted that the Code protects against undue offence, however, the Code acknowledges that there is no right not to be offended and that, in order for broadcasters to provide a diverse range of programmes that caters for a diverse audience, programming may cause offence to some members of the audience.

The Forum noted that the segment in question is part of the preamble to a programme which is aimed at an adult audience and is well-known for its somewhat irreverent presentation style. In this context, the Forum found that the piece was used to attract the listeners’ attention at the introduction to the programme. The Forum acknowledged that the complainant found the reference to the use of violence



towards another person offensive, however, having considered the segment in the context of the tone, style and audience expectation, the Forum found that it was unlikely to cause widespread offence nor incite to crime. Further, the Forum did not find any evidence that the segment in question could have caused harm to any listeners.

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 Forum decided to reject the complaint.



**Complaint made by: Mr. Dermot Donnelly**

**Ref. No. 62/18**

**Station:**

Newstalk 106-108FM

**Programme:**

Lunchtime Live

**Date:**

26<sup>th</sup> September 2018

**1. Programme**

The complaint concerns 'Lunchtime Live', which is a lifestyle programme broadcast each weekday from 12 noon to 2pm.

**2. Complaint Category**

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 - Rules 4.1 and 4.2.

**3. Complaint Summary**

The complaint concerns an interview with a financial advisor at AskPaul.ie, discussing the issue of income tax and taxation, in the context of a report from the Irish Tax Institute and in advance of the upcoming budget. The complainant claims that the interviewee failed to differentiate between tax and income tax and listeners were given a one-sided perspective on taxation.

**4. Broadcaster Response**

The broadcaster maintains that this segment was a review of a report by the Irish Tax Institute and outlined the rate of personal tax paid by workers and the topic of personal tax was clearly outlined by the presenter at the outset of the interview. The guest was interviewed in his capacity as financial advisor and he presented the facts of the ITI report in a fair and balanced way. The broadcaster rejects the claim that the programme infringed the Code of Fairness, Objectivity and Impartiality in News and Current Affairs.

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

The Forum noted the complaint was submitted under the Code of Fairness, Objectivity and Impartiality in News and Current Affairs - Rules 4.1 and 4.2. The Code requires that the content is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster's own views.

The Forum found that the presenter introduced the item by referring to a pre-budget report by the Irish Taxation Institute which established that "workers across all and every income level were paying more personal tax, which is income tax, the universal social charge and the PRSI combination, despite a reduction over the past 7 years". It was clear from this introduction that the topic under discussion related to income tax and the differences paid by those on higher or lower wages as well as middle-income earners.





The Forum noted that the interviewee stated that “there’s an awful lot of people not paying any tax – I’m not suggesting that everybody needs to get hammered by income tax but there is (*sic*) some that should be paying tax, in my opinion”. However, this was the clearly personal view of the interviewee and did not, in the Forum’s view, render the programme misleading. The Forum did not find evidence to support the complainant’s view that the interview was an attack on low paid workers.

In view of the above, the Forum was of the view that the programme in its entirety was fair, impartial and objective. Accordingly, the Forum decided to reject the complaint.