



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

**A Guide for Listeners & Viewers to the Complaints Process  
& the Broadcasting Authority of Ireland  
2020**

## **Introduction**

Any viewer or listener who is not satisfied with broadcasting content on an Irish licensed broadcasting service, whether a programme or an advertisement/commercial communication, has a right to complain about it and have their complaint handled by the broadcaster in the first instance.

This document explains how the complaints procedure works, the role of the broadcasters and the Broadcasting Authority of Ireland (BAI) in adjudicating complaints.

The document is a summary of the complaints process, including the powers and jurisdiction of the Broadcasting Authority of Ireland. It does not purport to be exhaustive and complainants are advised to study carefully the statutory provisions.

Your right to complain is protected by the Broadcasting Act 2009. This Act is available here <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/html>

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## 1. Radio & Television Complaint Procedures

### 1.1 Who Can Make a Complaint?

Any viewer or listener can make a complaint. In most instances, your complaint should firstly be submitted to the relevant broadcaster about the programme or advertisement/commercial communication that has been broadcast and that you believe may have infringed the BAI's broadcasting codes.

Please note that the BAI may only accept complaints about content that has already been broadcast. The BAI cannot consider complaints about content carried via on-demand services such as the RTÉ Player, TG4 Player and 3 Player or other content on the Web such as YouTube. The BAI cannot consider complaints about content on the websites of a broadcaster or contracts for the provision of services, for example, those provided via cable, satellite or pay per view. If you have a complaint about a programme broadcast by a British broadcaster, you can contact Ofcom - <https://www.ofcom.org.uk/>.

### 1.2 Which broadcasters are within the scope of the complaints process?

All commercial, community and public radio and television broadcasters, be they on a local, temporary, institutional, regional or national basis, are covered by the complaints handling process detailed in this document.

For the avoidance of doubt, a 'broadcaster' refers to the organisation operating the broadcasting service. It does not refer to individual programme presenters, producers etc., employed or contracted by the broadcaster.

### 1.3 What can I complain about?

If you see or hear any broadcast which you believe has infringed any of the following requirements you may make a formal complaint:-

i. **Fairness, objectivity & impartiality in news and current affairs**

Section 48(1)(a) of the Broadcasting Act: [BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs](#)

All broadcast news must be presented and reported in an objective and impartial manner and without expression of the broadcasters' own views.

Current affairs broadcasts, including matters of public controversy or debate, must be treated in a manner which is fair to all interests concerned and the broadcast must be presented in an objective and impartial manner, without any expression of the broadcasters' own views.

You are invited to review the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* when making a complaint under this heading. If the broadcast is not

a news and current affairs programme, it is not obliged to comply with this code. Instead, the *BAI Code of Programme Standards* may apply (see below). Complainants should also note that the BAI cannot consider complaints about party political broadcasts or about programmes or commercial messages that have yet to be broadcast.

**ii. Harm & undue offence, including law and order**

Section 48(1)(b) of the Broadcasting Act: [BAI Code of Programme Standards](#)

Every broadcaster must ensure that it does not broadcast anything which may reasonably be regarded as likely to cause harm or **undue** offence or unreasonably encroach on the privacy of an individual or raise issues of a law and order nature. You are invited to review the *BAI Code of Programme Standards* when making a complaint about harm and undue offence, including law and order and privacy.

**iii. Privacy**

Section 48(1)(c) of the Broadcasting Act: [BAI Code of Programme Standards](#)

Every broadcaster must ensure that it does not broadcast anything which may unreasonably encroach on the privacy of an individual. The Act does not give an absolute right to privacy and there may be certain circumstances, such as the public interest, where the encroachment on the privacy of an individual may be reasonable.

If you are considering making a complaint about privacy, you should be aware that only individuals who believe that their privacy has been unreasonably encroached upon may make a complaint. A complaint may not be made on behalf of another individual unless that individual has authorised this complaint or where you are, for example, the parent or guardian of that person.

**iv. Commercial communications**

Section 48(1)(d) of the Broadcasting Act: [BAI General and Children's Commercial Communications Codes](#)

Commercial communications include, advertisements, sponsorship announcements, competitions, teleshopping and product placement.

If you wish to make a complaint about commercial content, you are invited to review either the *BAI General Commercial Communications Code* and/or the *BAI Children's Commercial Communications Code* when making a complaint under this heading.

The Children's Code applies to commercial communications broadcast during children's programmes or where the commercial message is directed at children. All other commercial messages fall under the General Code.

Copies of the BAI's codes are available on our website - <http://www.bai.ie/en/codes-standards/>.

If you have any queries about the BAI Codes or the complaints process, you can call the BAI on 01 6441200 or email [complaints@bai.ie](mailto:complaints@bai.ie)

#### 1.4 Where do I direct my complaint?

##### **The Broadcaster**

The BAI has discretion, under the Broadcasting Act, to refer a complaint in the first instance to the broadcaster for consideration. Therefore, in most cases, the BAI expects that the broadcaster is the first stop for your complaint.

The advantages of a broadcaster addressing your complaint in the first place are: -

- Some complaints may not be based on the Broadcasting Act, cannot be dealt with by the BAI and are best resolved by the broadcaster;
- The broadcaster has institutional knowledge which can allow for a speedy resolution of your complaint;
- Under section 47 of the Broadcasting Act the broadcaster has a legal obligation to give due and adequate consideration to a complaint on grounds specified in section 48(1) of the Broadcasting Act.

Broadcasters are required to develop and implement a *Code of Practice for Complaints Handling*. You should make your complaint in the manner outlined in the broadcaster's Code of Practice for Complaints Handling, which can usually be found in the 'contact us' or 'complaints section' of a broadcaster's website. When making a complaint, you should be sure to address your complaint to the complaints section of the broadcaster and not to individual presenters/producers.

If you have any difficulty accessing the *Code of Practice for Complaints Handling*, you should contact the broadcasters directly. Contact details for broadcasters can be found on the BAI website: <https://www.bai.ie/en/broadcasters/>. In the event that you continue to have trouble in accessing the broadcaster's complaints procedures, you may contact the BAI.

##### **The BAI**

In certain circumstances, you may request to make a complaint **directly** to the BAI ahead of the broadcaster. Generally, this will be granted where:-

- The complaint deals with your privacy or the privacy of a person for whom you have responsibility (such as a child);
- Where a request for anonymity is granted by the BAI;
- Where you or an organisation that you represent has been mentioned in the programme or commercial communication that you wish to complain about;

- We will also consider your complaint directly where you provide an acceptable reason or reasons why the complaint should not be referred to the relevant broadcaster in the first place.

#### **How quickly should the complaint be made to a broadcaster/the BAI?**

There is a time limit: -

- (i) If the complaint relates to one broadcast, you must send it to the broadcaster no later than thirty days after the date of the broadcast;
- (ii) If it relates to two or more unrelated broadcasts, you must send it no later than thirty days after the date of the earlier or earliest broadcast;
- (iii) If it relates to two or more related broadcasts, of which at least two are made on different dates, you must send it no later than thirty days after the later or latest of these broadcasts.

**If you make the complaint to the broadcaster outside of these timeframes, they are not obliged to consider your complaint. If you make a complaint directly to the BAI outside of these timeframes, we cannot consider it.**

#### **1.5 Complaint Referrals to the BAI**

The BAI also deals with complaint *referrals* i.e. where a broadcaster has already issued a response to a complaint or where a broadcaster has not issued a response within 20 working days of the date the complaint was received by them.

If you wish to refer a complaint to the BAI, you should do so promptly. The BAI considers 14 days to be a sufficient period within which to submit a complaint referral i.e. 14 days after you have received a response from the broadcaster or after the date by which a response was due. If your referral occurs later than 14 days after a broadcaster's decision or lapse of a broadcaster's timeframe, we ask that you provide a reasonable explanation for this delay.

We retain discretion to accept referred complaints received later than 14 days after the broadcaster's decision or their failure to respond. If we reasonably believe there has been an undue delay in the submission of a referral complaint, we may reject the complaint. Each complaint will be considered on a case-by-case basis.

Further information on the decision-making process of the BAI is set out in Appendix One.

When directing complaints to the BAI, you should submit it through the online complaints portal: <https://bai.service-now.com/complaints>. Please be advised that the portal is not currently mobile-friendly.

If you are unable to submit an electronic copy of your complaint, please submit your complaint<sup>1</sup> in writing to:

Complaints Officer  
Broadcasting Authority of Ireland  
2 – 5 Warrington Place, Dublin 2  
D02 XP29

All queries should be directed to [complaints@bai.ie](mailto:complaints@bai.ie).

#### **1.6 What will happen to your complaint to the broadcaster?**

Once your complaint has been submitted to the broadcaster, the broadcaster should acknowledge receipt of your complaint.

The broadcaster should respond to your complaint within 20 days of receipt. The broadcaster may reject, uphold or seek to resolve your complaint. Each complaint will be decided by broadcasters on a case-by-case basis. This may entail an apology, correction, clarification and/or the offer of a rebuttal.

#### **1.7 What will happen to your complaint if made directly to the BAI or referred to the BAI?**

If the BAI is satisfied to accept your complaint directly or if you decide to refer your complaint to the BAI after having first contacted the broadcaster, we will assess the complaint as follows:

- We will consider whether your complaint has been made in line with the timeframes set down in the Broadcasting Act 2009 and also whether it has been referred to the BAI in a timely manner.
- We will consider whether your complaint can be considered under the BAI's Broadcasting Codes or the Broadcasting Act 2009. Please note that the BAI can only consider complaints about content that has already been broadcast.
- We will consider if the complaint has been made in good faith or if it is made in a manner which is frivolous or vexatious.
- We will then either register the complaint as valid or we will inform you that we consider the complaint invalid. If we consider the complaint to be invalid, we will set out our reasons for reaching this decision.
- All complaints that are deemed valid will be sent to the broadcaster, and any relevant third party i.e. advertiser. The complainant's name will be included with the complaint material.

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<sup>1</sup> Complaint referral forms available upon request.



- The broadcaster and any third party will be provided with an opportunity to respond. Any response received will be sent to the complainant for information. The complainant may choose to continue with their complaint or may withdraw their complaint at any stage prior to the complaint being considered by the BAI.
- Once the correspondence between the complaint parties has ceased, the complaint material will be circulated to the Executive Complaints Forum or the Compliance Committee for consideration. The decision will be based on the broadcast, the written complaint and the broadcaster's response.
- Once a decision has been reached, it will be circulated to the complaint parties. We will send you and the broadcaster a copy. This will set out whether we believe the broadcast complied or did not comply with broadcasting codes. It will not deal with every issue highlighted in your complaint as the BAI's decision concerns compliance with codes. The BAI may also deem a complaint resolved if it is satisfied that the broadcaster has taken adequate steps to address the complaint.
- The complaint decision will, in most cases, then be published. The publication will detail the decision reached and will identify the name of the broadcaster, the programme/commercial communication that was the subject of the complaint, the date of the broadcast and the name of the complainant.
- The decision of the BAI is final and there is no appeals process.

## **1.8 Section 48(5) Broadcasting Act 2009**

This section of the Act permits an employee of the broadcaster or an independent producer to make a request to the BAI to comment on a complaint. If the BAI considers the interest of the employee might be adversely affected, or the prospects of the independent producer to obtain future programming commissions from the broadcaster concerned may be impeded, as a result of the complaint, then they will be given the opportunity to comment.

It is expected that requests of this nature will be the exception since, in the normal course of events, broadcasters are expected to ensure that an employee or independent producer would be informed of the complaint and be provided with the opportunity to input into the response from the broadcaster to the BAI in respect of the complaint. Nevertheless, broadcasters are expected to apprise relevant parties of the provisions of section 48(5).

## **1.9 Right of Reply Scheme**

In addition to the categories of complaints listed above in Section 1.3, a member of the public may request a Right of Reply from a broadcaster. A Right of Reply, as set out in the Broadcasting Act 2009 provides for the **correction of incorrect facts or information** that have been broadcast about a person, where the assertions of such incorrect facts or information may have

impugned that person's honour or reputation.<sup>2</sup> It **does not** provide for the broadcast of an alternative or contrary opinion. In other words, a person may not be satisfied with the manner in which a broadcaster has relayed information about him/her, but a Right of Reply will not be granted unless the facts or information are factually incorrect such that their honour or reputation have been impugned. If the matter is one where the facts were correct, but not fairly presented, and was contained in a current affairs programme, you may make a complaint under fairness, objectivity and impartiality (See Section 1.3 above for more information).

Further to this Scheme, broadcasters must publish the Right of Reply Scheme on their website and provide up-to-date details in relation to the person who deals with any requests for a Right of Reply.

A request for a Right of Reply may only be made directly to the broadcaster. The BAI cannot consider such requests. However, under the Scheme and only in certain circumstances, a member of the public may request the Compliance Committee of the BAI to review a decision of a broadcaster not to grant a Right of Reply.

The application for a review of the refusal of a request for a Right of Reply must be submitted to the Compliance Committee:

- **not later than 21 days** after receipt from the broadcaster of a decision to refuse the Right of Reply request, or;
- **not later than 31 days** after receipt of your initial request where the broadcaster has not made a decision on the request, or;
- **not later than 21 days** after the failure to agree the form of the Right of Reply statement or the failure and/or refusal to broadcast the Right of Reply statement formerly agreed.

For more information, please refer to the BAI Right of Reply Scheme on the BAI's website <https://www.bai.ie/en/bai-publishes-right-of-reply-scheme/>. Interested parties seeking a review should submit their request through the online complaints portal: <https://bai.service-now.com/complaints>. Please be advised that the portal is not currently mobile-friendly.

## 1.10 Confidentiality

The BAI undertakes the complaint referral process and the operation of the Right of Reply Scheme in a confidential manner and asks that all parties to a complaint respect this confidentiality. Parties involved in a complaint are asked not to comment publicly on the complaint until it has been finalised by the BAI.

While your contact details will not be disclosed, the BAI is subject to the requirements of the Freedom of Information Act (2014). If there is any aspect of your complaint which you deem commercially sensitive or which you may wish to make in confidence, please identify any information which you do not wish to be publicly disclosed and specify the reasons for its sensitivity. If the BAI receives a request for information submitted in confidence, you will be consulted before any decision is made.

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<sup>2</sup> The Broadcasting Act provides the BAI with responsibility for the development of the Right of Reply Scheme. This Scheme, developed by the BAI, can be viewed on the BAI's website, [www.bai.ie](http://www.bai.ie).

## Appendix One

### BAI Decision-making Process

#### Complaints/Complaint Referrals

This is an overview of the main steps in the process and does not purport to be an exhaustive description of how the complaint will be processed. The BAI's consideration of complaints submitted will be carried out in private and will be confidential. Upon receipt of your complaint/complaint referral, the BAI will take the following steps:-

- i. The BAI will review your referral/complaint and determine whether it is valid. If the BAI deems your complaint invalid, we will provide reasons for our decision.  
  
If your complaint is deemed valid, the BAI will forward your complaint (including your name) to the broadcaster and to any relevant third party, such as an advertiser, and they will be offered the chance to respond. Any response received will be sent to you and you will be offered the choice to close your complaint or to request for the BAI to consider your complaint.
- ii. An employee of the broadcaster or an independent producer may request to comment on a complaint. If the BAI considers the interests of the employee might be adversely affected, or the prospects of the independent producer to obtain future programming commissions from the broadcaster concerned may be impeded, as a result of the complaint, then they will be given the opportunity to comment. Please note that the onus is on the employee or the producer to make this request to the BAI.
- iii. When the complaint is one in respect of an advertisement under Section 48(1)(d) of the Broadcasting Act, 2009 or where it concerns a public service announcement, the BAI will afford the person responsible for submitting the advertisement/public service announcement an opportunity to make submissions in relation to the broadcast.
- iv. Where a further submission has been made by the broadcaster or third party, a copy will be sent to the complainant. The complainant is not required to provide any extra details or respond to the points raised by the broadcaster. If the complainant decides to respond, a copy of any response provided will then be sent to the broadcaster and correspondence between the complaint parties will continue until either one of the parties has concluded making submissions or the BAI determines that sufficient information has been provided such that a decision can be reached.
- v. In the case of complaints considered by either the Forum or the Committee, the written material regarding the substance of your complaint<sup>3</sup>, together with relevant broadcast material will be reviewed and the issues will be discussed in a collegiate manner at a meeting of the Forum or the Committee.

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<sup>3</sup> Correspondence of an administrative nature is not circulated to the Forum or the Committee.

- vi. Following consideration, the complaint will be upheld, upheld in part, rejected or deemed resolved.

**What happens when the BAI upholds a complaint?**

- A copy of the decision will be sent to the complainant and the broadcaster before its publication. If the commercial communication/public service announcement is produced by a person other than the broadcaster, the BAI will also forward a copy of the decision to the relevant person when necessary.
- Where a programming complaint is upheld, in whole or in part, the broadcaster concerned will broadcast a summary of the BAI's decision, unless the BAI considers it inappropriate to do so. This could include the name of the person who made the complaint. This will be done at a time and manner suitably similar or close to the timing of the original broadcast which prompted the complaint.
- In most instances, a copy of the decision of the BAI will be published and distributed to media. This document will include a summary of the initial complaint, the initial response from the broadcaster and the broadcaster's response to the BAI (where relevant). The programme, broadcast date and the name of the complainant will also be published. The name of the complainant may be withheld if anonymity has been granted or where the BAI deem that it is in the interests of the complainant to maintain their privacy.

Complaint parties should note that the BAI does not have the power to award to any party, costs or expenses.

## **Appendix Two**

### **Members of BAI Compliance Committee and BAI Executive Complaints Forum**

#### **Compliance Committee – Eight members**

Kevin Rafter (Chairperson)  
Nigel Heneghan  
Eileen Maher  
Orlaith Carmody  
Stephanie Comey  
Andrew Robinson

#### **Executive Complaints Forum – Seven members**

Ciarán Kissane (Chairperson)  
Sinéad Owens  
Roger Woods  
Richard Brennan  
Annette Stone  
Deborah Wade  
Barry Casey

