



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

**Broadcasting Authority of Ireland  
Broadcasting Complaints Decisions**

**September 2020**



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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, five complaints were considered and rejected by the Compliance Committee<sup>1</sup> of the BAI at meetings held on 20<sup>th</sup> May and 1<sup>st</sup> July 2020. In addition, two complaints were considered and rejected by the Executive Complaints Forum at its meetings held on 28<sup>th</sup> July 2020.

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<sup>1</sup> As per section 48(10) of the Broadcasting Act 2009, all complaint decisions are published unless the Committee considers it inappropriate to do so. Three complaints considered by the Committee, one at its May meeting and two at its July meeting, were of a very sensitive nature and directly impacted the complainants, as such, the Committee considered it inappropriate to publish these complaints.



## Rejected by Compliance Committee

|                                   |   |
|-----------------------------------|---|
| <b>Complaint Reference Number</b> | C5280   |
| <b>Complainant</b>                | Mr. Michael Tomney  |
| <b>Station</b>                    | RTÉ 2   |
| <b>Programme Name</b>             | FAI Cup Finals  |
| <b>Broadcast Date</b>             | 3 <sup>rd</sup> November 2019   |
| <b>Broadcast Time</b>             | 11:45 – 18:30   |
| <b>Segment Broadcast Time</b>     | 15:30 – 15:40   |
| <b>Programme Description</b>      | Pre-match commentary of the FAI Cup Final   |
| <b>Complaint Category</b>         | 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. Section 48(1)(b)(harm and offence); the BAI Code of Programme Standards – Principle 3. |

### Complaint Summary

The complaint relates to the commentary at the beginning of the FAI Cup Final between Shamrock Rovers and Dundalk. The complainant takes issue with a comment made by the sports commentator, George Hamilton, which was incorrect.

The complainant states that he was a football referee and that he refereed the 1995 FAI Cup Final between Derry City and Shelbourne. During the pre-match commentary, the commentator referenced the fact that the complainant had been a referee but stated that he had never refereed a FAI Cup Final. The complainant states that this is incorrect and believes it is unacceptable, particularly as the commentator who made the statement had covered the 1995 FAI Cup Final. The complainant is of the view that this was unfair to him and was made worse by the co-commentator agreeing with the inaccurate statement.

The complainant states that this inaccurate comment caused him personal harm and discomfort. The complainant states that refereeing a FAI Cup Final is a great honour and achievement, he believes that broadcasting a statement on live television to the contrary caused a lot of upset. Further, the complainant states that this negatively impacted his reputation, as he received calls from colleagues querying if he had refereed a FAI Cup Final and he also states that he came under scrutiny from some members of the public.

### Broadcaster Response Summary

The broadcaster states that the comment made about the complainant not refereeing a FAI Cup Final was caused by human error and no disrespect or harm was intended. The broadcaster states that the pre-match discussion in which he was mentioned acknowledged that the complainant was a distinguished League of Ireland referee. However, the commentators were not having an in-depth



discussion of the complainant's services to football. Further, the broadcaster refutes the complainant's belief that the co-commentator concurred with the inaccurate comment.

The broadcaster acknowledges that the comment was inaccurate but considers that the reference to the complainant was a positive acknowledgement of his services to football and, in this context, did not consider that this would have caused the complainant harm.

The broadcaster is of the view that the content which is the subject of the complaint does not constitute news or current affairs and, as such, the Code of Fairness, Objectivity and Impartiality in News and Current Affairs does not apply. The broadcaster does not consider that there is a basis to uphold this complaint.

#### **Decision of Compliance Committee**

Having considered the broadcast and the submissions from the complainant and the broadcaster and having had regard to the relevant legislation and Code, the Committee decided to reject the complaint. The Committee's findings are set out below.

The 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 relevant 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 complaint is also made under Principle 3 of the Code of Programme Standards, which requires broadcasters to take due care to ensure that audiences are not exposed to harmful content.

The Committee noted that the complaint relates to a comment made during the FAI Cup Final pre-match discussion, in which a presenter mistakenly stated that the complainant had never refereed the FAI Cup Final. The Committee noted that the Code of Fairness, Objectivity and Impartiality in News and Current Affairs requires broadcasters to comply with the principle of fairness, accuracy and responsiveness. However, while the Committee considers it unfortunate that this error occurred, it noted that the FAI Cup Final does not constitute news or current affairs as defined by the Code. As such, the requirements of this Code do not apply to this broadcast and, accordingly, this element of the complaint was rejected.

The Committee noted that the complainant believes that the mistake caused him personal harm. In considering this element of the complaint, the Committee had regard to the meaning of harm as defined in the Code of Programme Standards. According to the Code, harmful material is considered as having an effect on an individual such that it causes mental, psychological or physical harm. The Committee acknowledged that the airing of this error was upsetting to the complainant, however, the Committee did not consider the content to be harmful in the context of the Code. As such, this element of the complaint was rejected.



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| <b>Complaint Reference Number</b> | <b>C5303</b>   |
| <b>Complainant</b>                | Mr. Roman Zdanov   |
| <b>Station</b>                    | RTÉ One  |
| <b>Programme Name</b>             | Operation Transformation   |
| <b>Broadcast Date</b>             | 26 <sup>th</sup> February 2020   |
| <b>Broadcast Time</b>             | 21:35  |
| <b>Programme Description</b>      | Health and fitness reality programme   |
| <b>Complaint Category</b>         | Broadcasting Act 2009 - Section 48(1)(b)(harm and offence); the BAI Code of Programme Standards – Principle 6. |

#### **Complaint Summary**

The complaint refers to the use of the imperial system when announcing the weight of the contestants in the programme. The complainant believes that the metric system should be used as the primary system of measurement on the programme.

The complainant states that the metric system was introduced into Ireland in 2005 and is of the view that under Statutory Instrument 225/1992 - European Communities (Units of Measurements) Regulation, 1992, the metric system should be used. The complainant states that according to Section 7(b) of SI 255/1995, the imperial system may be used as a supplementary indication for the convenience of its viewers but is of the view that this can only be used in addition to the metric system.

The complainant is of the view that RTÉ is breaching legislation and considers that, in doing so, it is undermining the authority of the state.

#### **Broadcaster Response Summary**

The broadcaster acknowledges the legislation regarding the metric system introduced in 2005, but also takes account of the derogations that were granted by the EU in respect of cultural traditions across EU countries. The broadcaster states that there is an everyday use of pounds and ounces by Irish people across society i.e. a new baby's weight, ordering a pint of milk or a pound of meat etc.

The broadcaster contends that Operation Transformation is a mainstream family programme which reflects the lives of the contestants and, for many, they relate to weight measurements in imperial terms.

The broadcaster does not consider that the use of imperial measurements infringes the Code. Further, the broadcaster denies that use of the imperial system can be considered incitement to crime or as undermining the authority of the State. The broadcaster does not believe that there is a basis for the complaint under the Act and/or the Codes.



#### **Decision of Compliance Committee**

Having considered the broadcast and the submissions from the complainant and the broadcaster and having had regard to the relevant legislation and Code, the Committee decided to reject the complaint. The Committee's findings are set out below.

The Committee noted that the complaint was made under Principle 6 of the Code of Programme Standards. The Code requires that broadcasters shall not broadcast anything likely to promote, or incite to, crime or as tending to undermine the authority of the State.

The Committee noted the views of the complainant that the use of the imperial system in the programme infringes legislation and undermines the authority of the State. The Committee noted that the programme is a reality television programme in which contestants aim to lose weight and get fit over the course of the programme series. The Committee had regard to the fact that many people in Ireland still refer to stones and ounces and, in this regard, the reference to the imperial system is merely a reflection of colloquialisms that would be common and familiar to many of the programme participants and audience members.

The Committee did not consider that there was evidence in the programme to support the view that the content of the broadcast undermined the authority of the State or infringed the requirements of the Code. As such, the Committee rejected the complaint.



## Rejected by Executive Complaints Forum

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| <b>Complaint Reference Number</b> | C5318   |
| <b>Complainant</b>                | James Bilson  |
| <b>Station</b>                    | RTÉ Radio 1   |
| <b>Programme Name</b>             | Arena   |
| <b>Broadcast Date</b>             | 16 <sup>th</sup> April 2020   |
| <b>Broadcast Time</b>             | 19:15   |
| <b>Programme Description</b>      | Daily arts and culture programme  |
| <b>Complaint Category</b>         | Broadcasting Act 2009 - Section 48(1)(b)(harm and offence); the BAI Code of Programme Standards – Principle 1, 2 and 4. |

### Complaint Summary

The complaint refers to a discussion about two movies, 'Outbreak' and 'Contagion', both of which featured the spread of a virus. The segment included a clip from 'Outbreak', which included a character from using the term 'fucking shit'.

The complainant objects to the strong language used at 19:15. It was broadcast without any prior warning and the complainant considers that this was inappropriate. The complainant states that he personally is not offended by such language but states that his three young children were listening to the programme.

### Broadcaster Response Summary

The broadcaster states that Arena is a dedicated arts programme that reports on, debates and explores all aspects of the arts including literature, theatre, film and music. The broadcaster further states that this is not a children's programme and that it is self-evidently a programme for an adult audience. The broadcaster is of the view that, by definition, the arts often involve challenging material and themes, including content that some might consider offensive. There is a well-established audience expectation that the programme will feature material of this kind.

The broadcaster maintains that many films contain language that some find offensive. The audience for Arena is accustomed to Thursday night being a movie review night and is also aware it will, at times, contain content that may offend some people. While the show does occasionally provide an advisory, it is entirely within the editorial control of the programme to determine when they deem this appropriate. In this instance, it was not deemed necessary or appropriate, particularly in the context of the two pandemic films being reviewed and the clip cited by the complainant. 'Outbreak' and 'Contagion' were not films aimed at a children's audience as they dealt with themes that could be regarded as frightening for children.

The clip did contain the language mentioned by the complainant, however, this language was used in the context of a dramatic scene which depicted a senior military figure confronted about the dire consequences if action was not taken.



#### **Decision of Executive Complaints Forum**

Having considered the broadcasts and the submissions from the complainant and the broadcaster and having 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 the complaint was submitted under the Code of Programme Standards – Principle 1, 2 and 4. The Code requires that broadcasters show due care for audiences by considering a range of contextual factors which can influence the viewer or listener's perception of programme material. The Code also acknowledges the particular needs of children and seeks to protect children from programme material that is unsuitable for them.

The Forum had regard to the context and format of the programme. Arena is an arts and cultural style programme which is broadcast between 7-8pm on weekdays. The Forum noted that Arena is aimed at an adult audience and considered that listeners would be familiar with the type of content in this programme.

The Forum was mindful that the complainant found the language offensive and unsuitable for the time of broadcast. However, the Code acknowledges the importance of context. The Forum considered that the programme is not a children's programme and the channel does not generally contain content aimed at children. Further, the clip was played in the context of a discussion about the ongoing pandemic which, in itself, is likely to have indicated to audiences that the content is aimed towards adults. The Forum noted that broadcasters share a responsibility with parents and guardians for what children listen to and, having regard to the type of programme, the time of broadcast and the likely audience expectation, the Forum did not find the content to be unduly offensive.

The Forum did not find that the programme infringed the Code of Programme Standards. As such, the complaint was rejected.



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| <b>Complaint Reference Number</b> | <b>C5327</b>  |
| <b>Complainant</b>                | Mr. Frank Cullinane   |
| <b>Station</b>                    | Newstalk 106-108FM  |
| <b>Advertisement</b>              | Advertisement: RSA  |
| <b>Broadcast Date</b>             | 11 <sup>th</sup> June 2020  |
| <b>Broadcast Time</b>             | 20:55   |
| <b>Advertisement Description</b>  | RSA Advert - Walk on Right-Hand Side of Road  |
| <b>Complaint Category</b>         | Broadcasting Act 2009 – Section 48(1)(d)(commercial communications); the BAI General Commercial Communications Code – Principles 1 and 2. |

#### **Complaint Summary**

The complaint refers to an advertisement from the Road Safety Authority (RSA) instructing pedestrians to always walk on the right-hand side of the road, facing oncoming traffic.

The complainant is of the view that this advice is misleading compared to advice given in other countries. When a pedestrian is walking on the right-hand side of the road coming towards a bend, drivers will have insufficient time to see a pedestrian which could cause an accident, especially on country roads. The complainant states that by walking on the left-hand side, pedestrians and drivers can view each other safely.

The complainant is of the view the advert should be removed for safety reasons.

#### **Broadcaster Response Summary**

The broadcaster is of the view that the Road Safety Authority (RSA) is the body charged with raising awareness of road safety in Ireland. The RSA advise on ways to keep pedestrians and motorists safe and broadcasters accept the advice from this statutory body.

The broadcaster believes there are no grounds to remove or question this advice via this advertisement.

#### **Advertiser Response Summary**

The advertiser, BBDO, states that the advice given in the advert on pedestrian safety is based on the legal requirements in Ireland. This is reflected in the official Rules of the Road publication, which is published by the Road Safety Authority.

The advertiser highlights that, according to the Rules of the Road, use of the word 'must' reflects a legal obligation for road users. In both instances referred to by the complainant, and which are referred to in the advert in question, the Rules of the Road state that a road user 'must' walk on a footpath where one is provided. Where no path is provided, the Rules of the Road states that a person 'must' walk on the right-hand side of the road facing oncoming traffic.



The advertiser states that the information included in the radio advertisement is consistent with the RSA's public advice to pedestrians and reflects the Rules of the Road. The advert regarding pedestrian safety is based on the legal requirements in Ireland.

#### **Decision of Executive Complaints Forum**

Having considered the broadcast and the submissions from the complainant and the broadcaster and having 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 the complaint was submitted under the General Commercial Communication Code, Principles 1 and 2. The Code requires that commercial communications shall be legal, honest, decent and truthful and also shall not prejudice respect for human dignity nor cause widespread offence, cause harm or encourage harmful behaviour.

The Forum found that the RSA is the official statutory body charged with providing road safety guidelines for residents in the Republic of Ireland. The Forum noted that the contents of the advertisement reflected advice given by the RSA. There was no evidence in the broadcast to support the complainant's contention that the advertisement infringed the requirements of the General Commercial Communications Code. As such, the complaint was rejected.