



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

Broadcasting Authority of Ireland

Broadcasting Complaint Decisions

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BAI Complaints Handling Process

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

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

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

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

In total, 6 complaints were considered by the Compliance Committee of the BAI. Of these, 1 has been upheld and 5 rejected. The Executive Complaints Forum considered and rejected 5 complaints. The decisions of the Compliance Committee were reached at meetings held in July and September 2016. The decisions of the Executive Complaints Forum were reached at meetings held in August 2016.

Upheld by the BAI Compliance Committee

Complaint made by: Mr. Noel G. Walsh

Ref. No. 51/16

Station:

KCLR

Programme:

KCLR Live

Date:

23rd February 2016

1. Programme

The complaint concerns *KCLR Live*, which is a weekday magazine programme, broadcast from 10am to 12 noon. The complaint concerns comments made by the presenter of this programme about the complainant, a candidate in the 2016 *General Election*.

2. Complaint Category

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

3. Complaint Summary

The complainant states the following:

- That he, as an independent candidate in the *General Election*, was invited take part on *KCLR Live* and agreed a date of Wednesday 17th February 2016. He states that when he arrived at what he believed was the agreed time, he was informed by KCLR that the slot assigned to him had been double-booked and that KCLR had re-booked him for Thursday 18th February 2016. The complainant states that he was never booked in for the 18th February. The complainant states that KCLR then asked him for a date during the following week that would suit him to appear on-air. The complainant states that he suggested 22nd February. However, the complainant states that KCLR did not confirm that date with him. The complainant states that neither he nor his election agent were informed of the new date.
- The complainant states that while canvassing in south Kilkenny on 23rd February, he was informed by a member of the public that he was being '*slated*' on *KCLR Live* for not turning up for an interview on the programme that day.
- The complainant states that he made contact with KCLR and requested that the remarks made about him on the programme of the 23rd February be withdrawn. He further states that the relevant production staff in KCLR hung up on him when he made contact by phone after the broadcast in question.

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4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

KCLR respond as follows:

- Having examined the issues raised by the complainant, spoken to the staff involved, reviewed the correspondence with the complainant and his election agent, as well as notes of conversations that took place, together with a review of records of appearance made by the complainant on KCLR, the broadcaster is satisfied that the complainant was treated fairly, appropriately communicated with and received appropriate coverage on the station.
- KCLR states that it considers the decision by its staff to terminate a phone call with the complainant was entirely appropriate on that occasion as the KCLR production staff member was uncomfortable with the tone and content of the call made by the complainant.

4.2 Broadcaster's Response to BAI

The broadcaster replies as follows:-

- Referring to the claim by the complainant that an interview was agreed for 17th February, the broadcaster states that this was not the understanding of KCLR. The broadcaster states that the presence of the complainant at the station on the morning of 17th February was therefore unexpected. The broadcaster states that, however, it gave the complainant the benefit of the doubt and accepted that it was possible that there had been a misunderstanding. The broadcaster states that, at that stage, the complainant left the premises abruptly without concluding the conversation in a manner which would be usual in normal interaction.
- The broadcaster maintains that it subsequently wrote a letter to the complainant offering to organise a one-on-one interview with him. In subsequent emails and a phone call with the complainant's election agent, an interview for Tuesday 23rd February was arranged. The broadcaster is adamant that this arrangement was made with the election agent for the complainant.
- The broadcaster asserts that the complainant did not appear on the morning of 23rd February for the interview and attempts by KCLR to contact him failed. Contact was made with his election agent at approximately 10.10am to ascertain if the complainant was running late. In the course of the call, the election agent informed KCLR that the complainant had decided the previous evening not to participate that morning. KCLR states that no notice of this cancellation was received. This information was then relayed to the presenter in the on-air studio.

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- The broadcaster claims that the non-appearance for a pre-arranged interview followed a pattern of difficult communication with the complainant. This was the context of the subsequent remarks by the presenter, Mr. Masterson, on-air.
- The broadcaster claims that in the course of his remarks, the presenter referred to the fact that the complainant's agent had informed the station that the complainant had decided the previous night, that he was not taking part in the pre-arranged interview. The broadcaster further claims that it is established custom that election agents are mandated to make statements on behalf of their candidates.
- The broadcaster states that the presenter, referring to the complainant, said on air "*he neglected to tell us that he couldn't be bothered turning up to KCLR*". The broadcaster claims that this is a statement of fact based on the information conveyed earlier by the complainant's election agent. The presenter further stated on-air "*I think there is a little lack of normal civility and manners with that particular candidate*". The broadcaster believes that this is a legitimately held view which is relevant in the context of a person seeking responsible public office.
- The broadcaster further states that the presenter also stated on-air that "*it is always nice to let people know if you are not going to turn up, when they have prepared specifically for your arrival and to talk to you*". The broadcaster believes this is fair comment in the context of the behaviour exhibited by the complainant in his interactions with KCLR.
- The broadcaster maintains that in the context of the above circumstances, the comments made by the presenter were fair and reasonable and addressed an issue of relevance in the context of someone seeking public office.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.2 and 4.3), the Committee has decided to uphold the complaint.

In this regard:-

- On the issue of the manner of the arrangements of the interview highlighted by the complainant and addressed by the broadcaster, the Committee was of the view that there was a fundamental conflict of fact which could not be resolved on the basis of the complaint submissions. In these circumstances, the Committee could not reach a view as to the fairness or otherwise of the manner in which the broadcaster engaged with the complainant.

Broadcasting Complaint Decisions

- On the issue of the remarks made on-air; the Committee noted that the presenter stated the following in respect of the complainant: -

“...well, actually, we don’t have four candidates today because one of them is sadly lacking in manners. That would be Noel G. Walsh who was due here at 4 minutes past 10, to go on-air at 4 minutes past 10 to do his one-plus-one interview but he neglected to tell us that he couldn’t be bothered turning up to KCLR. He got 243 votes last time, so maybe he’ll get more this time.

Apparently, his election agent, when Emer finally tracked him down...said, ‘ah no he decided that he wouldn’t do that last night.’ He neglected to tell us. So, I think there’s some little lack in normal civility and manner with that particular candidate...have I ever stood anyone up? Emer, have you ever been stood up? ...I doubt it, I doubt it. No, it’s always nice to let people know if you’re not going to turn up when they have prepared, specifically, for your arrival and to talk to you. Now, that’s my rant over.”

- The Committee was of the view that while there was nothing problematic in noting that the candidate had not turned up as expected by the programme makers, it considered that the remarks were personal and pointed and addressed aspects of the character of the candidate, including his civility and manners. The presenter’s remarks also included a reference to the number of votes that the complainant had attained during the last election and queried whether he would get more; comments which the Committee considered to amount to a suggestion about his electability. The Committee noted that these remarks were made about a candidate in the middle of an election campaign and without Mr. Walsh being afforded the opportunity to respond beforehand or afterwards.
- Programme makers are obliged in normal circumstances to ensure fairness, objectivity and impartiality in the treatment of news and current affairs. Additional requirements are placed on them in the context of election coverage, in recognition of the importance of broadcast coverage as a means of informing audiences about candidates and about the issues of a given election. In view of this, the Committee concluded that the nature, tone and content of the remarks of the presenter did not meet the requirements of the Broadcasting Act 2009 or the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs. Accordingly the complaint has been upheld.

Rejected by the BAI Compliance Committee

Complaint made by: Mr. Maghnus Monaghan

Ref. Nos. 11/16 & 12/16

Station:

RTÉ Radio 1

Programme:

The Ray D'Arcy Show

Date:

2nd and 3rd Nov 2015

1. Programme

The complaints concern *The Ray D'Arcy Show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3pm to 4.30pm. The discussion on both days focused on the debate over denominational educational (including schools admissions policy) and featured an interview with the then *Minister for Education and Skills*, Ms. Jan O'Sullivan T.D. (2nd November) and a response from a listener to the interview, which was discussed on the following day's programme (3rd November).

2. Complaint Category

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

3. Complaint Summary

2nd November 2015:

The complainant states that, on numerous occasions throughout the interview, the presenter acted as an advocate for a secularist approach to the debate over denominational education, and gave his own very forceful views on the matter. In the view of the complainant, the presenter frequently argued for a number of positions in respect of the denominational education system in a way that, the complainant says, clearly indicated the presenter's own support for these positions. The complainant also states, that in his opinion, the presenter also impugned the integrity of the members of the *Catholic Church* at one point during the interview.

3rd November 2015:

The complainant states that, in the second programme, this topic was dealt with again at the beginning of the broadcast. The complainant states that the relevant segment likewise failed the tests of objectivity and impartiality, for the same reasons as the previous day's programme.

The complainant states that, for instance, the presenter clearly expressed disagreement with a text with a 'pro-denominational' education viewpoint, and also clearly expressed disagreement and even anger towards Mr. David Quinn, who the complainant describes as a prominent public defender of a 'pro-denominational' viewpoint.

Broadcasting Complaint Decisions

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

The complainant received an acknowledgement of his complaint only.

4.2 Broadcaster's Response to BAI

RTÉ states that they wish to apologise to both the complainant and to the Compliance Committee for the absence of a response to the initial complaints. They states that this is entirely the responsibility of RTÉ Complaints and none of the programme team or editorial executives. The delay in responding to the BAI complaint referrals is currently being investigated with the assistance of RTÉ Technology.

The broadcaster states that the interview with Minister O'Sullivan on 2nd November covered a wide range of subjects including third-level fees, Irish language, the future shape of education/schools and the "*lack of uniformity*" across the education system, as well as that of school admissions policy, which is the topic of complaint.

The broadcaster states that there was no unfairness to any party in the handling of the discussion on schools admissions policy. The broadcaster states that the tone of *The Ray D'Arcy Show* is conversational and exploratory, and within that context, the presenter put to the Minister views not unlike those expressed by Archbishop Michael Neary of Tuam a few days after the programme ("*For those who do not want faith education for their children, it is appropriate that non-faith schools be provided.*" - *The Irish Times*, 11th November 2015).

The broadcaster states that in the context of such publicly expressed support by *Roman Catholic Church* leaders for educational choice, the complaint neither demonstrates any unfairness within the broadcast nor any way in which the presenter expressed views such that a partisan position was advocated.

The broadcaster states that neither is it possible to understand the allegation that the presenter "*impugned the integrity of the (members of the) 'Catholic Church'*", and therefore it is not possible to respond.

The broadcaster states that the interview with the Minister was the subject of a substantial email from a listener which was read on the following day's programme (3rd November). This emailer expressed the view that the issue was fundamentally one of school funding rather than admissions policy. The presenter did disagree to a degree with this view and referred to its expression by another party on a television programme the previous evening. Such an open expression of views is an aspect of the ongoing conversation with the presenter's audience, which is a core element of the programme's editorial format.

The broadcaster states that no anger whatsoever was expressed towards any person, as alleged in the complaint. The presenter did say in relation to certain views expressed on the previous night's television programme that "*My blood was boiling.*"

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The broadcaster states that the presenter then went on to explain: “*I would like to think that my children are brought up in a caring, all-inclusive society where children are not segregated or discriminated against because of their religious beliefs.*” In other words, he made it clear that his strong feelings were positively on behalf of his children and their generation, not antagonism towards any individual.

5. Decision of the Compliance Committee:

11/16 (2nd November 2015): Reject (Unanimous)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the *Broadcasting Act 2009*, Section 48(1)(a)(fairness, objectivity & impartiality in current affairs) and the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* (Section 4: Rules 4.3 and 4.22), the Committee has decided to reject the complaint.

In this regard:-

- The Committee noted that the interview was part of a series of interviews examining access to primary schools in Ireland in the context of the *Equal Status Act*, patronage of schools by the *Roman Catholic Church* and the policy of divesting of schools by the *Roman Catholic Church*. This topic had been examined by the programme on a number of occasions via interviews with parents who had difficulties accessing schools for their children and via interviews with decision-makers in this area.

This included interviews with the former advisor to Mr. Ruairí Quinn when Mr. Quinn was the *Minister for Education* as well as Mr. Quinn himself, following his retirement as Minister. In this context, the topic is one that would have been familiar to audiences for this programme and the interview with Minister O’Sullivan was a further part of the examination of this topic by the programme makers.

- In considering the complaint, the Committee took into account the fact that broadcasters are editorially independent and are free to choose the topics included in their programmes. They are also entitled to examine a topic on a consistent basis and to do so from a critical perspective once fairness, objectivity and impartiality are maintained.

In the case of this interview, the Committee found that it was an exploration of education and religion, in terms of patronage and also the role of religion on the curriculum. The presenter sought the views of the Minister on the pace at which the divestment of schools by the *Roman Catholic Church* was progressing in a context where divestment was a policy of government. It was clear the Minister was aware that this was a topic to be included as part of her interview.

The impact on access to primary schools of the *Equal Status Act* and the number of school places available was examined by the presenter with his guest as was the question of whether parents are having their children baptised simply to gain access to school.

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The interview also touched on broader issues in the area of education and also on the interviewee's personal experiences and also the electoral prospects of *The Labour Party*.

- Having reviewed the broadcast, the Committee found it to be a standard interview with the presenter acting in the role of "*Devil's Advocate*" and one where his guest was provided with ample opportunity to respond to the points raised. The Committee found that the interview focused on education policy and the role of the Government and the *Roman Catholic Church* in implementing and influencing this policy.

The Committee did not agree with the contention of the complainant that the presenter was either acting as "*an advocate for a secularist approach*" or that he "*impugned the integrity of the members of the Catholic Church.*" Neither the Broadcasting Act nor the BAI's news and current affairs codes prohibits a programme presenter from expressing views. Rather, they prohibit a lack of fairness, objectivity and impartiality and prohibit the advocating of a partisan position by a presenter. In this respect, the Committee noted that the presenter expressed views but did not believe that they were of a nature that would infringe the obligations placed on the presenter or the broadcaster.

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

12/16 (3rd November 2015): Reject (Majority)

Having considered the broadcast and the submissions from the complaint parties and having had regard to the *Broadcasting Act 2009*, Section 48(1)(a)(fairness, objectivity & impartiality in current affairs) and the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* (Section 4: Rules 4.3 and 4.22), the Committee has decided to reject the complaint.

In this regard:

- The Committee noted that the second complaint was linked to the broadcast on the preceding day and for this reason, the Committee had regard to both programmes when considering this complaint.

In terms of the content, the Committee found that the presenter read out a text from 'Mary'. This contributor set out her view that the issue of access to primary schools was about the shortage of school spaces that arose from bad planning and that, where space remains limited, some criteria must be set to allocate limited places.

This contributor stated that any criteria, whether it is religious or not, will be considered discrimination where spaces are limited. She also noted that the school population is currently diverse.

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- The Committee found that the presenter stated that the contributor's views are also shared by others, such as the journalist, Mr. David Quinn and the presenter set out an alternative perspective. While the Committee found that the presenter stated his own views, it was of the opinion that, on balance, and having had regard to the fact that the text and the interview with Minister O'Sullivan ensured a wide variety of views were presented on the topic, that the presenter's remarks did not infringe the *Broadcasting Act 2009* or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

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Complaint made by: Mr. Éamonn Geoghegan

Ref. No. 43/16

Station:

RTÉ 2

Programme:

RTÉ 2 *Facebook* Election Special

Date:

21st February 2016

1. Programme

The complaint concerns the *RTÉ 2 Facebook Election Special*, which was broadcast from *Facebook* head office in Dublin. The programme dealt with issues involved in the *General Election*.

2. Complaint Category

The complaint is submitted under Section 48(1)(d) (the *BAI General Commercial Communication Code* - Sections 6.1, 6.2, 6.3, 6.7, 7.1, 7.4(a) and 7.4(d)).

3. Complaint Summary

The complainant claims that:

- Contrary to the requirements of the *BAI General Commercial Communications Code*, this current affairs programme was sponsored and also contained product placement.
- The complainant maintains that the programme was sponsored by *Facebook*. He states that, in opening the programme, the presenter welcomed the audience to the *RTÉ2 Facebook Election Debate 2015*, live from *Facebook* headquarters in Dublin.
- The complainant states that the presenter mentioned social media but no other social networking sites during the programme. The complainant claims that this was scripted and clearly shows a lack of editorial control from RTÉ due to the nature of the sponsorship from *Facebook*.
- The complainant believes that such sponsorship could have caused the presenter to sidestep the issue of Corporate Tax rates and he states that, to a great extent, the topics did avoid this issue except during the debate on Education when Mr. Eamon Ryan of the *Green Party* started the conversation about Corporate Tax.
- The complainant states that the *Facebook* logo was promoted throughout the programme, not only on the back walls of the set but also during two segments totalling nearly 20 minutes. He states that a representative of *Facebook* was interviewed about the programme taking place in their headquarters and made sure to mention *Facebook* in an effort to promote the company.
- The complainant states that all graphics were presented with the *Facebook* logo and were very different to normal graphics used by RTÉ News and Current Affairs. The complainant states that this infringes the code under Product Placement.

Broadcasting Complaint Decisions

- The complainant states that the end credits of the programme only featured RTÉ, which shows that it was not considered a co-production with *Facebook*.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states the following:

- This was a joint production between RTÉ and *Facebook* whereby *Facebook* provided the premises and information on election-related interactions on their platform, as well as a vehicle for sourcing audience members and questions through RTÉ2's *Facebook* page.
- The broadcaster states that from time to time, RTÉ will partner with other organisations in order to expand their reach and vary their coverage on issues of public importance. They states that, in this instance, the partnership with *Facebook* was used to further engage the younger demographic for whom *Facebook* constitutes a significant part of how they get information.
- The broadcaster states that the editorial control of the broadcast rested with RTÉ which may have been evident by a six minute discussion of the multinational corporate tax rate. The discussion itself was produced by an RTÉ news and current affairs executive producer and presenter and ultimately, the programme was under the guidance of the *Managing Editor* of RTÉ Current Affairs.
- The broadcaster states that no end credits were rolled as the programme ran significantly over time.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the *Executive Producer, RTÉ2 Facebook Election Special* to the initial complaint above. RTÉ further state the following:

- *RTÉ2 Facebook Election Special* employed a new format to engage the younger audience, providing a two-way conversation about election issues and maintaining RTÉ's editorial values.
- The broadcaster states that media companies such as *Facebook*, Twitter and Snapchat act both as sources of news content and forums for discussion. They are also a source of first-person information about the concerns of a demographic shared by RTÉ2 and *Facebook*, who follow trending discussions on *Facebook* and search to see what others are saying on a topic. This demographic is accustomed to a participatory relationship with news and current affairs subjects.
- The broadcaster states that, in pursuit of its goal of covering the *General Election* for the RTÉ2 audience, RTÉ held discussions with *Facebook* about a joint project and, after consideration, decided to engage with the social media company.

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RTÉ took the view that this new approach would generate increased interest in the *General Election* and provide understanding of where party candidates stood on issues that were raised via social media (*Facebook* and *Twitter*). The broadcaster states that the collaboration offered the public service broadcaster the opportunity to connect with an audience often characterised as having little interest in current affairs, belied by their engagement on a media platform such as *Facebook*.

- The broadcaster states that the decision to work with *Facebook* was taken after consultation with RTÉ legal and compliance advisors and was brought to the *RTÉ Election Steering Group* chaired by the *Director-General* which examines all election-related programming across broadcast and digital platforms.
- The broadcaster refers to the *BAI General Commercial Communications Code* which defines sponsorship as:

Any contribution made by a public or private undertaking or natural person not engaged in providing radio or television services or in the production of sound broadcasting or audio-visual works, to the financing of television and/or radio programmes with a view to promoting its name, its trade mark, its image, its activities, its products or its services.

- The broadcaster states that *Facebook* is clearly an undertaking which is in the business of the production/dissemination of audio-visual works and therefore falls outside the above definition.
- The broadcaster states that editorial independence requires that a broadcaster has the freedom to enter into collaborations with other media companies, whether print, digital or on any platform.
- The broadcaster asserts that there was no sponsorship agreement between *Facebook* and RTÉ and therefore no requirement to inform viewers of a non-existent arrangement. None of the elements of a sponsored TV programme were present – for example, there were no sponsorship stings, no product give-aways or contests or major branding.
- The broadcaster maintains that there was no product placement in the programme. *Facebook* products (such as pens, notebooks, coffee mugs etc.) were specifically not permitted on the studio floor. The branding of the programme was that of the two collaborating media companies '*RTÉ2 Facebook*'. In all cases, except during the presentation of *Facebook's* own data, visual references to *Facebook* were preceded by a graphic image of RTÉ2. In addition the RTÉ2 logo remained on screen throughout the programme, reflecting the broadcaster's editorial control of the programme.

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- The broadcaster references the complainant's claim that no other social media/networking site was included during the production. The broadcaster claims that both *Twitter* and *Facebook* were used to source potential audience members and questions for the programme.
- The broadcaster states that the invitations to participate were put on *Twitter*. This happened simultaneously with the call for audience on *Facebook*. Audience members were also attracted via sites such as *Reddit* and *LinkedIn*. Live social media interactions were not included in the broadcast in order to control the fairness and impartiality of the programme.
- The broadcaster states that notwithstanding the fact that *RTÉ2 Facebook Election Special* was a collaboration between two media companies, editorial control of every aspect of the programme was held by RTÉ. The programme was reviewed through the production process to ensure editorial integrity. This is stated by RTÉ as a matter of fact and the complainant has failed to offer any evidence to the contrary.
- The broadcaster states that an example of the independent editorial control by the broadcaster includes the discussion of Corporate Tax was on a topic in which *Facebook* would have a business interest. The plan to raise the topic of corporation tax was agreed in advance by the editorial team and the *Managing Editor TV Current Affairs*. The Leader of *The Green Party*, Mr. Eamon Ryan, raised it before the presenter reached it and the presenter encouraged discussion, reiterating the point by noting Ireland's low corporation tax and that in some cases "*they're not even paying that.*" She then facilitated comment from several other candidates, re-directing the conversation to make corporation tax a significant part of the programme, in keeping with the pre-production editorial brief.
- The broadcaster states that the complainant claims that the *Facebook* representative "*gave a hard sell of Facebook for over 20 minutes*" when in fact she was interviewed for a total of just over five minutes (in two spots of over 2'30+ minutes each). The conversation focussed on data on the election-related conversations happening on *Facebook*.
- The broadcaster states that the complainant appears to see significance in the fact that the programme ended with the RTÉ copyright logo. When programmes run over time, as happened on this occasion, the credit roll of production and editorial staff is not used, and simply the most important element, underlining RTÉ editorial responsibility and copyright ownership, takes its place.
- The broadcaster maintains that programme was a new approach to political coverage and was designed to reach a younger audience who are actively using social media to learn and exchange on issues of importance to their lives. Its success is indicated by RTÉ's audience research finding that there was a 38% increase on 2015 RTÉ2 slot average.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to the *Broadcasting Act 2009*, Section 48(1)(d) *General Commercial Communication Code*, sections 6.1, 6.2, 6.3, 6.7, 7.1, 7.4(a) and 7.4(d), the Committee has decided to reject the complaint.

In this regard:

- The Committee noted that the programme was broadcast from the headquarters of *Facebook* and the programme included a debate with contributions and questions from the audience and discussion of these contributions and questions with the political representatives in attendance. The programme also included segments consisting of short interviews with a *Facebook* representative dealing with election related trends on their social media platform and trends in respect of the programme itself. In that context, the Committee had regard to whether the references constituted a commercial reference, in particular one that could be characterised as sponsorship or product placement. The Committee also had regard to whether the references to *Facebook* in the programme could be considered to be surreptitious advertising where advertising may take place even in the absence of a payment or similar consideration.
- The Committee found no evidence of a commercial sponsorship relationship between the broadcaster and *Facebook*, either via a direct financial contribution or via contributions which would have offset the production costs of the programme. The Committee also noted that the programme was not branded as sponsorship i.e. there were no on-air references to the programme being formally sponsored by *Facebook*. The Committee further noted that while the programme did include references to *Facebook*, these did not have the nature or character of a commercial reference. In view of this, the Committee concluded that the programme was not one sponsored by *Facebook*.
- The Committee also reviewed the programme in the context of the BAI rules on product placement. In this respect, the Committee found no evidence of a commercial arrangement in place that would constitute an infringement of the rule prohibiting paid product placement appearing in news and current affairs programming. There was also no evidence of undue prominence being afforded to *Facebook* or of the editorial content having been influenced by any product placement arrangement. The Committee found that the *Facebook* logo was minimally visible and no promotional material was visible during the programme nor did any of the camera shots provide any undue prominence to *Facebook*.
- In view of the above, the Committee was satisfied that the references to *Facebook* in the programme were editorial and not commercial. Programming, including news and current affairs programming will, from time to time, be broadcast from a location outside of the main studio of a radio or television service. The venue may be chosen because of its geographic location or because it has a relevance to the topic being discussed.

Broadcasting Complaint Decisions

In this respect, the Committee considered the venue editorially legitimate given the increasing role of social media in political discourse and also having had regard to the fact that social media, including *Facebook*, is an ever increasing source of news for young people and as a means of engaging in discussion on politics and social matters. The Committee further noted that the programme was broadcast on RTÉ 2, a channel that traditionally targets a younger audience than RTÉ 1, and the content, venue and use of *Facebook* information were considered editorially appropriate means for engaging an audience on a television service which generally has a younger demographic.

- In view of the above, the Committee did not agree that the programme infringed the *Broadcasting Act* or the *BAI General Commercial Communications Code* in the manner specified by the complainant. Accordingly, the complaint has been rejected.
- In considering this complaint, the Committee noted that the inclusion of *Facebook* in the title of the programme could have potentially misled audiences as to the nature of the arrangement between RTÉ and *Facebook*. Therefore, the Committee would advise that the broadcaster have regard to this view in the production of future programmes of this nature.

Broadcasting Complaint Decisions

Complaint made by: Friends of the Irish Environment

Ref. No. 65/16

Station:
RTÉ One

Programme:
Prime Time

Date:
31st March 2016

1. Programme

The complaint concerns *Prime Time*, which is a current affairs programme broadcast at 9.30pm. The complaint refers to a report on the debate surrounding planning proposals for *Trump International Golf Links and Hotel*, at Doonbeg, Co. Clare.

2. Complaint Category

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

3. Complaint Summary

- The complainant states that in the *Prime Time* report, the arrival of Mr. Donald Trump to Ireland was shown, including a red carpet, harpist and singer; a traditional Irish musical welcome. However, the presence of the *Minister for Finance*, Mr. Michael Noonan T.D. greeting Mr. Trump was not shown, although the Minister's presence was given prominence on RTÉ News and in the print media at the time of Mr. Trump's visit.
- The complainant believes that by excising the *Minister* from the greeting, *Prime Time* undermined the *BAI Code of Programme Standards* and failed to abide with the requirement to ensure current affairs is fair, objective and impartial.
- The complainant states that the aforementioned visit by Mr. Trump continues to provoke media comment and he notes a report in the *Irish Times* newspaper, and comments made by *An Taoiseach*, Mr. Enda Kenny T. D. in *Dáil Éireann*, that were critical of Mr. Trump.
- The complainant believes that concealing from the *Prime Time* audience the presence of the *Minster for Finance* at the airport to greet Mr. Trump was invidious censorship and undermined the public interest which he states is concerned with '*the public's ability to fully understand the way in which public life is being conducted in Ireland*' [Foreword to the *BAI Code of Programme Standards*].

Broadcasting Complaint Decisions

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

- RTÉ in their response state that the piece in question was an examination of the relative merits and demerits of the construction of a sea wall on the beach adjacent to the Doonbeg golf course. It also includes claims by the hotel and golf course owners and local residents that it was a vital piece of protective infrastructure, versus the claims of environmentalists and others that it would cause irreparable damage to the character of the beach and coastline.
- RTÉ state that it was a very interesting, but not critical part of the story, that the golf course and hotel were owned by such a globally-recognisable figure as Mr. Donald Trump. For this reason, the character of the welcome accorded to Mr. Trump when he arrived on his visit to Ireland, warranted only a few second within the filmed report. *Prime Time* then used the best piece of footage available to perform that function. Nothing was concealed from the audience.

4.2 Broadcaster's Response to BAI

- RTÉ refers to the response by the *Editor of Prime Time* to the initial complaint.
- RTÉ states that the report in question was entirely focused on the debate between environmentalists (including the complainant), surfers and members of the public on a proposal to build a wall to protect a golf links and hotel from the sea. The broadcaster states that the *Minister for Finance* has no role whatsoever in this debate and the complaint does not offer any evidence whatsoever to support the allegation that the *Minister* greeting the hotelier on a visit to Ireland was of the slightest relevance to the environmental debate which was the subject of the broadcast.
- RTÉ maintain that the complaint, in its references to matters completely unrelated to the editorial topic – reports in other media on the resort owner and *Dáil* remarks about his statements as a US presidential candidate, perhaps indicates that the complainant would have wished the item to have been on a larger but very different topic.
- RTÉ state that broadcasters have the editorial freedom to choose editorial subjects and the perspective on those subjects. In the context of such choices made on this occasion, nothing was omitted from the report which had a bearing on the debate on the planning proposals for the links and hotel and the complaint fails to show any such omission or any way in which viewers would have been misled in their understanding of that debate.
- RTÉ also wishes to note that while the greeting of Mr. Trump by *Minister Noonan* at the former's visit to Ireland in May 2014 was reported extensively by RTÉ News at the time, its relationship to the story covered in the programme of 31st March 2016 is entirely the speculation of the complainant and completely unsubstantiated by any evidence whatsoever.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having had regard to the *Broadcasting Act 2009*, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48 (1)(b)(offence and harm); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rule 4.2) and the *BAI Code of Programme Standards* (Principle 6 - Protection of Public Interest), the Committee has decided to reject the complaint.

In this regard:

- The Committee considered the report in its entirety. It found that the focus of the report was a proposal to erect a sea wall along the shore behind which the *Trump International Golf Links and Hotel* is situated. The report focused on the views of those who favoured the wall and those who opposed the wall. Issues relating to the potential impact of the wall on the sand dunes in Doonbeg, the viability of the resort (with or without the wall) and the broader economic impact of the wall on the Doonbeg environment and economy were examined.
- The Committee noted that the programme included file footage of the visit of Mr. Trump, the owner of the business that runs the golf course and which is proposing to fund and build the sea wall. This included shots of his plane landing, musical performances on a red carpet at the airport and a comment from him about the resort. The Committee found these to be editorially legitimate. While noting that the footage did not include any images depicting the greeting of Mr. Trump by the *Minister for Finance*, Mr. Michael Noonan, T.D., it was the Committee's view that the exclusion did not raise issues pertaining to fairness, objectivity or impartiality in news and current affairs or the public interest.
- Broadcasters, as independent media organisations, have appropriate freedom to decide the editorial approach to be taken to a subject matter. While noting that the greeting of Mr. Trump by the *Minister of Finance* in 2014 was a matter of controversy, the focus of the programme broadcast in 2016 was the potential impact of the proposed sea wall and not the relationship between Irish businesses, the Irish State and foreign investment. In that context, the Committee's view is that the exclusion of footage of *Minister Noonan* meeting Mr Trump did not give rise to any issues provided for in the BAI's codes or the Broadcasting Act.
- In view of the above, the Committee did not agree that the programme infringed the *Broadcasting Act*, the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* or the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Anthony Sheridan

Ref. No. 70/16

Station:

Newstalk 106-108FM

Programme:

The Right Hook

Date:

11th May 2016

1. Programme

The complaint concerns *The Right Hook* which is an entertainment/current affairs programme which at the time was broadcast each weekday afternoon from 4.30pm to 7.00pm. The topic under discussion was the non-payment of water charges by certain politicians.

2. Complaint Category

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

3. Complaint Summary

The complainant states that the presenter was stating his own views and opinions while making comments on the issue of the non-payment of water charges by certain politicians. The complainant cites the following from the programme:

“We seem to be perfectly happy that a Cabinet minister can sit there and not pay his taxes. He is a tax evader; he is evading lawful taxation in the shape of the water charges.

Meantime, across the aisle in the Opposition benches you have the leader of the Social Democrats, also says I haven't paid any water charges...It is rumoured that John Halligan will become a Junior Minister... And one can only presume...that Paul Murphy hasn't paid his water charges either.

I think it is an absolute outrage to the ordinary people of Ireland, more than half of whom have actually paid their water charges, that people who think they can be Cabinet ministers, junior ministers, leaders of political parties, leaders of campaigns for the underprivileged can actually turn around and say; I'm not going to pay lawfully taxes that have been levied by the Government. It is an absolute outrage....”

The complainant further states that the presenter is expressing opinions on a matter that is publicly controversial and of current public debate and is, therefore, in breach of the Code.

Broadcasting Complaint Decisions

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Newstalk 106-108 states that Mr. George Hook did not express his opinion such that a partisan position was being advocated. The broadcaster states that he expressed a perspective on the subject in question, a perspective that may not otherwise have been heard. Therefore, no breach of Section 22 occurred.

The broadcaster states that, furthermore, his expression of this perspective was in the context of a regular editorial delivered by him every evening. As section 23 of the Code specifies, such 'personal view' or 'authored' current affairs segments '*can be appropriate, subject to normal editorial controls [especially] if part of a series of related segments/programmes which, taken together, will discharge the statutory obligations*'. Listeners to this programme would have been very aware of this context and the content Newstalk believes did discharge the statutory obligations.

4.2 Broadcaster's Response to BAI

Newstalk 106-108FM states that the presenter did articulate his own perspective but these views are counterpointed by other elements of the programme: interviews, clips, texts and emails. The presenter's views can be robust and controversial but they are never such that a partisan position is being advocated and the airing of other views to those of the presenter, including those directly critical of him, ensures this.

The presenter discussed the admission by recently appointed *Minister of State*, Mr. Finian McGrath, T.D. and members of the *Independent Alliance* that they have not paid their water charges. His contribution was robust but did not articulate a partisan position. The broadcaster states that the presenter clearly aired the views of the Minister in question via a statement received by the programme. The Minister refused an invitation to come on the programme as did other incumbents including, Mr. John Halligan, T.D. and Mr. Stephen Donnelly, T.D. The broadcaster states that the presenter also aired at length the views of his listeners, many of whom were in complete disagreement with his perspective and directly critical of him.

The broadcaster states that the programme shows no record of a partisan position on this subject and has, on an ongoing basis, welcomed contributions from both T.D.s and campaigners who oppose water charges and would have done so on the day in question, had that option been available to it.

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

Having considered the broadcast and the submissions from the complainant and the broadcaster and having had regard to the *Broadcasting Act 2009*, Section 48(1)(a)(fairness, objectivity and impartiality in news and current affairs); *the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* - (Section 4 - Rule 22), the Committee has decided to reject the complaint.

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In this regard:

- The Committee had regard to the programme format, presenter style and related audience expectations. In this respect, the presenter will regularly comment on the news stories of the day, with a focus on one particular news story. On this occasion, the story concerned non-payment of water charges by elected representatives and the presenter engaged with this news story in a robust, forthright and intentionally exaggerated manner that is familiar to audiences, is part of the programme format and approach and is intended deliberately to engage audiences and generate a response to the programme and the programme topics.
- In considering the complaint, the Committee also had regard to the item as a whole. This included the facts of the story, namely, that elected representatives were not obeying the rule of law in circumstances where a legal charge had been introduced by an elected government and where criticism of non-payment was therefore a reasonable perspective that audiences to the programme might hold. The Committee also found that a range of views was presented to listeners on this news story. These views were provided by the presenter, but also by contributions received by text. The presenter set out his view that non-payment by elected representatives, and potential ministers in the Government that was soon to be formed, raised significant questions for the integrity of the democratic process. The Committee considered the presenter's view on the topic to represent a perspective that some listeners would likely hold on this issue.
- Separate to this, the presenter read out a series of text messages from listeners which were uniform in being highly critical of his perspective and robust in the manner in which the criticisms were phrased. These included comments describing the presenter as a 'clown', a 'fool', a 'dipstick' and an 'obnoxious geriatric'. His views were also described as 'nonsense', as 'ill-informed ranting', as those that characterise the 'filthy rich', and as those that could only be attributed to one who had suffered concussion from playing rugby.
- Programme presenters have a position of power in any on-air discussion. For this reason, Rule 4.22 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* prohibits the articulation of a partisan position by a presenter and notes the important role that a current affairs presenter has in ensuring that audiences have access to a wide variety of views.

While acknowledging that the presenter in this instance was very strong in his views, and in his comments on those who disagreed with him, the Committee concluded that, on balance, the programme did not infringe the requirements of Rule 4.22. This view was reached having had regard to the programme format, the presenter style, audience expectations and in particular to the fact that the presenter was articulating a reasonable perspective on the news topic and where the programme and the presenter provided airtime to significant and robust criticism of his views on the topic

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of the payment of water charges by elected representatives. The Committee was of the view that compliance issues may have arisen had the programme not included texts which strongly disagreed with the views of the presenter.

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

Rejected by the Executive Complaints Forum

Complaint made by: Mr. Liam O'Mahony

Ref. No. 48/16

Station:

RTÉ Radio 1

Programme:

Callan's Kicks

Date:

6th February 2016

1. Programme

The complaint concerns *Callan's Kicks*, a comedy programme, broadcast on RTÉ Radio 1. The item complained of refers to comments made by the comedian, Mr. Oliver Callan about Mr. Thomas Clarke, one of the leaders of the *1916 Rising*.

2. Complaint Category

The complaint is submitted under the *Broadcasting Act 2009*, Section 48(1)(b)(harm & offence); the *BAI Code of Programme Standards* (Principle 1 - Respect for Community Standards, Principle 2 - Importance of Context).

3. Complaint Summary

The complainant states that during the programme in question, references were made which the complainant states were extremely crude and juvenile and which entailed comments on the genitals of Mr. Thomas Clarke, one of the *1916 Leaders*. The complainant states that Mr. Clarke gave his life for Ireland and should not have been the subject of such disparaging remarks.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ state the following:

- This is a humorous programme which is charged with satirising and poking fun at public figures. The broadcaster states that the line "*was Thomas Clarke's langer not that big in real life?*" was said in response to a suggestion by one of the programme characters that the programme, *Rebellion*, was full of inaccuracies.
- The broadcaster states that the joke was not about Mr. Clarke as such. Rather, it was satirising the public figures and politicians of today. The humour in the piece is in the characterisation of the *Fianna Fáil* party.

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- The broadcaster notes that *RTÉ Content Standards Guidelines* states that: “Good comedy is sometimes likely to be close to offensive. The justification for this has to be found within the comedy itself. Is the comic sketch a commentary on life, are its targets suitable for the attention of the scriptwriters? Was the particular humour expected of the programme? What time was the broadcast?”
- RTÉ takes the representation of men and women like Mr. Clarke very seriously and believe that this programme does not denigrate his memory but instead pokes fun at today’s politicians.

4.2 Broadcaster’s Response to BAI

RTÉ refers to the response of 14th April 2016 by the *Executive Producer* of *Callan’s Kicks* to the initial complaint. RTÉ states the following:

- RTÉ notes the statement in Principle 1 of the *BAI Code of Programme Standards* and in that context, asserts that a programme such as *Callan’s Kicks* represents the editorially independent delivery to the audience of satirical political comedy and a contribution to freedom of expression in a democracy. Without diminishing the complainant’s entitlement to hold his own view, RTÉ also suggests that the fact that this is the sole complaint made in respect of this sketch indicates that no community standard was breached. The broadcaster states that, arguably, community standards in relation to satirical comedy actually support, and have done for decades, the broadcast of such comedy as part of a healthy political landscape. In addition, comedy has for millennia been a place where both satire and coarse language (mildly so in this case) can be expected.
- The broadcaster states that, similarly and in respect of Principle 2, the adult listeners to *Callan’s Kicks* will tune in for and expect satirical comedy which will be consistently and impartially disrespectful to contemporary and historical figures alike. The broadcaster states that the reference complained of is in that tradition and editorially justified in that context of robust comic insolence.
- The broadcaster states that the programme in question was in the third series of *Callan’s Kicks* and Mr. Oliver Callan was the main performer/writer/producer for two series of the comedy programme, *Green Tea*, before that. As a result, the programme’s and Mr. Callan’s high profile and reputation for satirical comedy make it extremely unlikely that any listeners could be unaware of the nature of its content or be unintentionally exposed to it.
- The broadcaster states that, as noted by the *Executive Producer*, the target of the sketch complained of was the contemporary *Fianna Fáil* party. The broadcaster states that, while there was a reference to the assumed representation of the penis of one of the leaders of the *1916 Rising* in a television programme, there was actually no disparagement either of him or of his ideals. The broadcaster states that no reference was made to the actual *1916 Rising*; which, for honesty and clarity’s sake, is not to say that, in the context of free expression and editorial independence, that such a reference is inconceivable; simply that it did not occur.

- Similarly and in respect of Principle 2, the adult listeners to *Callan's Kicks* will tune in for and expect satirical comedy which will be consistently and impartially disrespectful to contemporary and historical figures alike. The reference complained of is in that tradition and editorially justified in that context.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to the *Broadcasting Act 2009*, Section 48(1)(b)(harm and offence) and the *BAI Code of Programme Standards - Principle 1 (Respect for Community Standards)* and Principle 2 (Importance of Context), the Forum has decided to reject this complaint.

In this regard:

- The Forum had regard to the programme content in the context of the entire programme and audience expectations. In particular, the Forum noted that the programme was a satirical comedy show and, as such, in attempting to scrutinise or comment on facets of Irish political society, comedy programmes such as this often do so through the format of highlighting, in an exaggerated and farcical manner, such facets.

Audiences are familiar with this genre of programming and would be aware that facets of society are, and can be, subjected to parody. While such humour may not appeal to all tastes, the Forum must respect the right to freedom of expression.

- Having reviewed the programme, it was the opinion of the forum that the focus of the humour was the *Fianna Fáil* political party and not Mr. Thomas Clarke. The context for the sketch was a meeting of the parliamentary party to discuss the *Fianna Fáil* election strategy, which was portrayed as unfocussed and scattershot. Included in this was a comment by one of the programme characters that touched on the criticisms of the RTÉ television programme, *Rebellion* (which dealt with the *1916 Rising*), in particular about the accuracy of the programmes portrayal of this historical event. It was in this context that the remark about Mr. Thomas Clarke was made.
- The Forum was of the view that this particular sketch was based on the comedian's perceptions and it was evident his comments were not meant to be taken seriously or literally. While some audience members may have found the content offensive and puerile, the Forum was of the view that it did not infringe community standards nor was it broadcaster without context.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the *Broadcasting Act 2009* or the *BAI Code of Programme Standards*, under Principles 1 or 2 in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Liam O'Mahony

Ref. No. 49/16

Station:
RTÉ One

Programme:
'Rebellion'

Date:
31st January 2016

1. Programme

The complaint concerns *Rebellion*, which is a fictional drama account of the *1916 Rising*. The segment of the programme complained of refers to the portrayal of Mr. Éamon de Valera following the announcement that his death sentence was to be commuted.

2. Complaint Category

The complaint is submitted under the *Broadcasting Act 2009*, Section 48(1)(b)(harm & offence); the *BAI Code of Programme Standards* (Principle 1 - Respect for Community Standards, Principle 2 - Importance of Context).

3. Complaint Summary

The complainant states that the portrayal of the commuting of Mr. Éamon de Valera's death sentence, in the final episode of *Rebellion*, was a wholly untrue version of events. The complainant states that it is an incontrovertible fact that Mr. de Valera was never in front of a firing squad, as suggested by *Rebellion*. The complainant also states that the portrayal of Mr. de Valera, which showed him vomiting when he heard of the commuting of the death sentence, deliberately denigrated his memory in its representation of his reaction. The complainant also notes that this was the only character who was shown to have responded as such.

The complainant states that it is also a fact that Mr. de Valera was a religious man and had the producers chosen to show his relief at his reprieve by, for example, depicting him dropping to his knees in prayer, this would have been an acceptable portrayal of a man whose life had just been spared. The complainant states that, instead, he was shown in an undignified manner.

4. Broadcaster's Response

4.2 Broadcaster's Response to Complainant

RTÉ state the following:

- In developing the drama, the underlying concept was to tell a story through the experiences of fictional characters who would portray complex and diverse views of the events of *Easter 1916*.
- The broadcaster states that, unlike a documentary, it can only be effective if the drama itself does not betray the benefit of hindsight. In this drama Mr. de Valera is seen from the perspective of a fictional character who has never met him and can't be informed by the actions and standing of the statesman Mr. de Valera was to become.

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- The broadcaster states that the drama sought to tell a story which is based on evidence and multiple testimony of those who fought with Mr. de Valera at Boland's Mills, that he suffered, what would now be considered a nervous breakdown, during *Easter Week*.
- The broadcaster states that, when tried and sentenced, there is epistolary evidence from Mr. de Valera himself and his wife to suggest that he was most distraught at the prospect of his imminent death. His wife did everything in her power to lobby both the *US Consul* and the *Catholic Church*, for his release. This suggests that he did not share the 'blood sacrifice' philosophy held by Mr. Patrick Pearse and many others. The news of the rescinding of his death sentence, therefore, would be both a physical and emotional relief and his reaction a deeply human one.
- The broadcaster states that the point of an authored drama like *Rebellion* is to live up to a responsibility to the audience and pursue a truth in the drama which is what the writer aimed to achieve.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the *Head of Drama* (TV) to the initial complaint. RTÉ states the following:

- There is no indication whatsoever in the complaint of any community standard which was breached by the dramatic representation of the commutation of Mr. Éamon de Valera's death sentence.
- The broadcaster states that the view that the reaction portrayed "*deliberately denigrated*" Mr. de Valera's memory is entirely subjective; in fact, what is portrayed is a powerful, involuntary physical reaction to learning that one is not about to die – the interpretation of the emotion which lies behind that reaction is, as is commonplace in drama, left to the audience.
- The broadcaster states that, in respect of Principle 2, *Rebellion* was clearly presented to viewers as a fictionalised, dramatic account of the *1916 Rising*, in the long tradition of historical drama. It was clearly not presented as a documentary; in fact, even as a drama it did not make structural use of the documentary form, as was done in the RTÉ drama series *Insurrection* in 1966.
- The broadcaster states that the post-watershed adult audience for *Rebellion* would have been in no doubt whatsoever that they were watching a naturalistic narrative drama and that the depictions of historical characters, alongside and presented in the same manner as fictional ones, were dramatic creations in a tradition stretching back two and a half thousand years to the portrayal of King Xerxes by Aeschylus in *The Persians*.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to the *Broadcasting Act 2009*, Section 48(1)(b)(harm and offence) and the *BAI Code of Programme Standards* - Principle 1 (Respect for Community Standards) and Principle 2 (Importance of Context), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that this was a fictional, dramatic account of the *1916 Rising* and included the commuting of Mr. Éamon de Valera's death sentence. As a fictionalised dramatic account of this historic event, audiences for this broadcast would have been aware that this was not a factual documentary and there was some dramatic licence used to tell the story in a particular manner. This approach is common in this genre of programming and audiences would have approached it with this in mind.
- As a piece of dramatic television, the programme makers are entitled to take a creative approach to telling a story with a view to entertaining and engaging audiences. While some audience members may have found the portrayal in this instance offensive and may have objected to the liberties taken in respect of the historical facts, having had regard to the programme genre and the right to free expression, the Forum did not believe that the content would infringe general community standard or raise issues in respect of context.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the *Broadcasting Act 2009* or the *BAI Code of Programme Standards*, under Principles 1 or 2 in the manner specified by the complainant. Accordingly, the complaint was rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Gerald O'Carroll

Ref. No. 53/16

Station:
Today FM

Programme:
The Last Word

Date:
1st April 2016

1. Programme

The complaint concerns *The Last Word*, which is a current affairs programme broadcast daily from 5pm to 7pm. The item complained of refers to a remark from a programme guest about the impact of religion on society.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(*Code of Fairness, Objectivity and Impartiality*) Rule 4.1 and 4.2.

3. Complaint Summary

The complainant states that during this programme, an interviewee, Mr. Ian Power, characterised the Roman Catholic Church as misogynistic and gave an example of the Church's opposition to abortion as an example of this misogyny. The complainant states that the presenter made no attempt to adjust the record or to restrain his guest or to apologise to Catholics or impartial observers for these remarks. The complainant states that the programme permitted the demonization of the Catholic religion as a means to the promotion of abortion.

4. Broadcaster's Response

4.3 Broadcaster's Response to Complainant

No response was received by the complainant. The broadcaster apologised and states that they have been experiencing problems with email direction via aliases to a previous Programme Director. The broadcaster is striving to ensure emails are not missed.

4.2 Broadcaster's Response to BAI

The broadcaster states the following:

- This was a news and current affairs review of the week's news and the discussion began with a general story to do with sexual harassment and the effects/measures to combat same. The conversation then moved to the Muslim faith, branching to the subject of choice women believe they should have within the faith.
- A comment was then made by Ian Power - '*Nobody likes misogyny promoted by any faith. Particularly we are guilty of that ourselves in terms of our abortion legislation here and other things*'. The Roman Catholic Church was not overtly referenced in any way, nor was the faith misrepresented or insulted.

Broadcasting Complaint Decisions

- The presenter performed his duty as per responsible broadcast guidelines, and Ian Power, as mentioned by Mr. O'Carroll did not show bias with an anti-Catholic line.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009 and the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2), the Forum has decided to reject the complaint.

In this regard:

- The Forum noted that one of the items discussed by the programme contributors as part of a review of the newspapers, was comments by a French government minister against the sale of burkinis – full-body, head-covering swimsuits aimed mostly at women of the Muslim faith. The French politician was of the view that it is irresponsible for shops to sell these as they promote the idea that Muslim women need to cover up when at the beach. In that context, Mr. Power stated that *“nobody likes misogyny promoted by any faith, particularly we are guilty of that ourselves in terms of our abortion legislation here and other things”*.

The Forum found that while the comment linked religious faith with abortion legislation, the remark made no direct reference to the Roman Catholic Church *per se* and that it was in the context of the discussion of news stories that were focused more on society's attitude to women. This was also evident from the inclusion in the programme of a discussion on a proposal to provide women-only train carriages.

- The Forum found that the quote from Mr. Power was said in the context of a discussion on misogyny and about people deciding for women what is best for them. This particular discussion focused on women and their right to choose what they do and what they wear and was not in any way an effort to demonise the Roman Catholic Church.
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act 2009 or the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2), in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Ms. Karen Ryan

Ref. No. 57/16

Station:
RTÉ One

Programme:
The Late Late Show

Date:
19th February 2016

1. Programme

The complaint concerns *The Late Late Show* which is a lifestyle/entertainment programme broadcast each Friday evening from 9.35pm. The complaint refers to an interview with journalist Mr. Paul Williams and comments that he made in respect of the *Sinn Féin* political party.

2. Complaint Category

The complaint is submitted under the *Broadcasting Act 2009*, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48 (1)(b) (offence and harm); the *BAI Code of Fairness, Objectivity and Impartiality*, (Section 4: Rule 1 and 2) and the *BAI Code of Programme Standards*, (Principle 5).

3. Complaint Summary

The complainant states the following:

- That during an interview with the *Sunday Independent* journalist, Mr. Paul Williams, he profiled two feuding families in Dublin and provided the history behind the feud.
- The complainant states that towards the end of the interview Mr. Williams turned his attention to the topic of the *Special Criminal Court* stating:-
 - *The only people who will vote for Sinn Féin, in regard to that part of their manifesto, are the drug dealers, the killers and the kidnapers and the terrorists.*
 - *No wonder the guys walking on Francis Street were smirking – because they heard about this legislation. ‘Thank God, Sinn Féin are going to get rid of that – we’re going to vote for them’.*
- The complainant states that RTÉ - according to its own mission statement - must remain impartial at all times, it must represent the views of all people in this country and it must show fairness and equality. The complainant states that the RTÉ did not meet these requirements in the case of this interview. The complainant states that the above comments were not fair, objective or impartial and were unacceptable. The complainant states that the presenter should have deflected or more importantly shut down the interview or failing that, he should have apologised immediately for Mr. Williams’ comments.

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- The complainant also states that in the interest of balance and fairness, a guest from *Amnesty International* or *The Irish Council for Civil Liberties* should have been included on the show to debate the *Special Criminal Court* issue.
- The complainant states that the interview and the manner in which it was conducted effectively means that if a T.D. or a voting member of the public does not belong to one of the "established" mainstream parties, then they will receive unfair media coverage, bias and demonization, as was evident from this interview.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

The *Executive Producer* of *The Late Late Show* responded as follows to the complaint.

- This was a wide ranging and lengthy item that told the story of two criminal families and their vast wealth over a number of years.
- The broadcaster states that towards the end of the item, which, for legal and editorial reasons, had been strictly rehearsed and planned in advance, Mr. Williams unexpectedly started discussing the *Special Criminal Court* and his support for its ongoing existence. Mr. Tubridy attempted to cut him off but Mr. Williams continued and made the accusation that the complainant and several others have found offensive. The interview continued about the feuding families thereafter.
- While it is worth noting that Mr. Williams did not say that anyone who votes for *Sinn Féin* is a drug dealer or killer, he did say that the only people who support that part of their manifesto are. This was unplanned, unscripted and the opinion solely of Mr. Williams.
- Mr. Tubridy did attempt to cut him off and point out that this was only Mr. Williams singular view and not a fact. It was also not relevant to the discussion or issue at hand. From time to time in live television such events occur that, from a production point of view, are not ideal.

4.2 Broadcaster's Response to BAI

RTÉ refers to the response by the *Executive Producer* of *The Late Late Show*. The broadcaster states the following:

- As indicated in the reply from the *Executive Producer*, the discussion was not formatted or presented as one on politics or the *General Election*. The broadcaster states that it was planned as an interview on the topic of organised crime, particularly in Dublin. The interviewee's reference to the views of a political party on the *Special Criminal Court* and to supporters of such views was unplanned and unexpected.

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- The broadcaster states that the presenter promptly responded to the opinions expressed by the interviewee on the topic, reflecting the views of those – the party and its supporters on this particular issue to whom the interviewee had referred – who were not there to participate. RTÉ claim that it is incorrect to say that the presenter “*let [the interviewee’s expression of his views] proceed*”.
- The broadcaster claims that the presenter’s observance of Principles 1 and 2 of the *BAI Code of Programme Standards* may also be noted in the context of the alleged breach of Principle 5. In respect of that allegation RTÉ maintain that it is questionable whether a group of people holding in common a view on a particular political topic is a group envisaged by the Principle, as it is not defined by “*race, religion, sex, ethnicity, sexual orientation or nationality*.” RTÉ believes that it is also questionable whether the expression of opposition to a political viewpoint is intended to or likely to “*stigmatise, support or condone discrimination or incite hatred*.”
- Without prejudice to other points made above in respect of the presenter’s response to the interviewee’s statement, RTÉ claim that it does not seem likely that Principle 5 is in itself intended to restrict the expression of opinion on political topics.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to the *Broadcasting Act 2009*, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs) and Section 48 (1)(b) (offence and harm), the *BAI Code of Fairness, Objectivity and Impartiality*, (Section 4: Rule 1 and 2) and the *BAI Code of Programme Standards*, (Principle 5), the Forum decided to reject the complaint.

In this regard:

- The Forum noted that the comments that were the subject of the complaint were made during a discussion on crime in Dublin. The Forum also noted that the comments therefore had an editorial context, insofar as the *Special Criminal Court* is a mechanism that has been utilised to deal with criminal activities such as those that were the focus of the programme discussion. In addition, Mr. Williams’ comments about the position of *Sinn Féin* in respect of the *Special Criminal Court* and their proposal to abolish it were factually correct.
- From a review of the programme, it was evident that the comments made by the guest concerned the response of some segments of the electorate, in particular those engaging in criminal activities, to this aspect of the election manifesto of *Sinn Féin*. While the comments could be reasonably seen as an implied criticism of that aspect of the *Sinn Féin* manifesto, the Forum did not agree that it amounted to a comment on supporters of this party as a whole.

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- The Forum found that the presenter quickly stated that the *Sinn Féin* proposals in respect of the *Special Criminal Court* were not relevant to the discussion. The Forum was also of the view that had there been a representative of the party in the studio, s/he would have likely disagree with Mr. Williams' analysis. The Forum noted that there is no automatic requirement to balance the view of a contributor with an opposing view. Given Mr. Williams unexpected remarks, that would not have been practical.
- Furthermore, fairness can be achieved by other means, including via the contribution of the presenter. On this occasion, the Forum was satisfied that the presenter achieved the necessary degree of fairness in the circumstances.
- Given the focus of the discussion, the factual nature of some of the comments in respect of the *Special Criminal Court*, the response of the presenter, and having also had regard to the right to free expression, the Forum was of the view that the programme did not infringe the fairness, objectivity or impartiality requirements of the *Broadcasting Act 2009* nor the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner stated by the complainant. Accordingly, the complaint has been rejected.
- In considering the complaint, the Forum found no basis to consider matters pertaining to Principle 5 of the *BAI Code of Programme Standards* as there was no evidence that the content stigmatised or encouraged discrimination against those holding particular political views.

Broadcasting Complaint Decisions

Complaint made by: Mr. Damien McKenna

Ref. No. 60/16

Station:
RTÉ Radio 1

Programme:
The Marian Finucane Show

Date:
27th March 2016

1. Programme

The Marian Finucane Show is a magazine style programme including elements of current affairs, lifestyle and human interest topics. The programme is broadcast every Saturday and Sunday morning from 11am to 1pm. The complaint refers to the coverage of the main *Easter Sunday State Commemoration Ceremony* for the 100th anniversary of the *1916 Rising*.

2. Complaint Category

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

3. Complaint Summary

The complainant states that ahead of the reading of the *1916 Proclamation*, a contributor to the programme, Mr. Manchán Magan, stated:

'that there is one line in the 1916 Proclamation that will have extra repercussions in light of the Jihadist's attack in Brussels - we place the protection of the Irish Republic under the most high God - which is exactly what the Jihadist's are doing and then - whose blessing we evoke upon our arms and we pray that nobody will show cowardice or rapine - these are exactly the words that are coming out of ISIS'.

The complaint states that the presenter replied –

'I was reading that last night and I was thinking the very same thing, to tell you the truth'.

The complainant states that Mr Magan is entitled to say what he likes, but that, in his view, the presenter, as one of RTÉ's most prominent broadcasters, is not. The complainant states that by making this comment, the presenter agreed with her contributor that there was a similarity between the 1916 Proclamation and the ideology of Jihadism.

The complainant states that this comparison is inappropriate given what he describes as the ideals, objectives and sacrifices of the leaders of the *1916 Rising* when put against those of an organisation such as *ISIS*. The complainant states that, following the presenter's logic through, this State is, by implication, a fellow traveller with the ethos of Jihadism.

4. Broadcaster's Response

4.4 Broadcaster's Response to Complainant

RTÉ states when their contributor, Mr. Manchán Magan, made his comments about two lines in the *Proclamation* and then placed those comments in the context of modern day Jihadist's attacks. The broadcaster states that the presenter was not endorsing one way or the other what Manchán – whose great grandfather died during the *Rising* and whose grandmother was a leading member of *Cumann na mBan* – had said. The broadcaster states that when the presenter said she '*was reading (the Proclamation) last night and I was thinking exactly the same thoughts*', what she meant was that she was studying the document in preparation for her show and reflecting on the possible differing interpretations of the content of that document.

RTÉ further states that as well as including several descendants of the men and women of 1916, their discussion also reflected a modern interpretation of a document written 100 years ago and which is open to several differing points of view.

4.2 Broadcaster's Response to BAI

RTÉ asserts very strongly not only the entitlement but the value to public discourse of the free expression of views such as that expressed by the contributor. They state that this is the only complaint to RTÉ in respect of this remark. They state that it may also be noted that the remarks were on one aspect of *The Proclamation of Independence* and not a comment on *1916 Rising* as a whole.

RTÉ also notes that, as pointed out by the *Series Producer*, the presenter's response "*. . . I was reading that last night and I was thinking exactly the same thoughts, to tell you the truth*" — is not an expression of agreement with the panelist but of the fact that the possibility of that perspective had occurred to her.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to the *Broadcasting Act 2009* and the *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs* (Section 4: Rules 4.1 and 4.2), the Forum has decided to reject the complaint.

In this regard:

- In consideration of the complaint, the Forum had regard to the full context for these comments, which took place during a broadcast with live excerpts from the State commemoration to mark the 100th anniversary of the *1916 Rising*. The Forum was of the view that Mr. Magan's comment was a small element in an overall discussion about the *1916 Rising*.

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- While noting the response of the presenter to Mr. Magan's remarks, the Forum was of the view that this response could not be construed as linking the *1916 Rising* leaders to Jihadism but was rather a general observation on the religious language of the *Proclamation* and how groups and organisations use such language and use God to support their military or revolutionary actions. Programme presenters are entitled to free expression and to express their views and in this instance, the Forum noted that the comments were made in an *ad lib* fashion while the presenter and the panellists were awaiting the reading of *The Proclamation of Independence*
- In view of the above, the Forum did not agree that the programme infringed the requirements of the Broadcasting Act 2009 or *BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs*, Rule 4.1 and 4.2, in the manner specified by the complainant. Accordingly, the complaint was rejected.

