



**Complaint made by: Cassidy Law Solicitors on behalf of Mr. Seán Gallagher Ref. No. 217/11**

<b><u>Station:</u></b>	<b><u>Programme:</u></b>	<b><u>Date:</u></b>
RTÉ One Television	The Frontline – Presidential Debate	24 <sup>th</sup> October 2011
RTÉ Radio One	Today with Pat Kenny	25 <sup>th</sup> October 2011

**Decision of the Compliance Committee:**

The complaint relates to The Frontline Presidential Debate broadcast on RTÉ One television on 24<sup>th</sup> October 2011 and the Today with Pat Kenny programme broadcast on 25<sup>th</sup> October on RTÉ Radio One. The Complainant argues that the broadcast, during the Frontline Presidential Programme, of a tweet from a Twitter account erroneously described by the programme presenter as that of the official Martin McGuinness for President Campaign was unfair to the Complainant and was indicative of a lack of objectivity and of partiality towards the candidate on the part of the presenter of the programme. The Complainant argues that this programme coupled with subsequent interview with Mr. Seán Gallagher during the Today with Pat Kenny programme on RTÉ Radio One were accordingly in breach of Section 39(1)(b) of the Broadcasting Act 2009 (Fairness, Objectivity and Impartiality).

The Committee considered the broadcast, the submissions from the Complainant and the submissions from the Broadcaster. Following a discussion, it was decided that the complaint would be upheld. In reaching this decision the Committee took into account the following:-

- The programme was a debate involving candidates for the office of President of Ireland. The focus of the debate was therefore on the character and policies of the candidates and this focus was considered by the Committee to be appropriate considering the office to which each candidate was vying to be elected;
- Accordingly, an examination of the Complainant's relationship and prior involvement with the Fianna Fáil political party was considered by the Committee to be a legitimate focus of The Frontline Presidential debate. The Committee noted that the nature and extent of the Complainant's involvement with this party had also been the subject of press and public interest during the campaign and questions on this topic were considered by the Committee to be legitimate and in the public interest;



- The programme was a special edition of The Frontline presented by Mr. Pat Kenny. This programme is characterised by a robust, challenging and probing style of questioning with a central involvement by the audience in the programme from week-to-week. Candidates would be expected to have been prepared accordingly for the style of questioning associated with the programme;
- Upon a review of the programme, it was the Committee's view that the broadcast of a tweet incorrectly attributed to the official Martin McGuinness for President Twitter account was unfair to the Complainant in the context of the requirements of the Broadcasting Act 2009. In reaching this decision, the Committee had regard to the following:
  - Verification of information is an important role for broadcasters. It is particularly important in the context of news and current affairs and coverage of national ballots. Particular care is required closer to the polling date;
  - The Broadcaster states that the inclusion of the tweet during the programme was legitimate for a number of reasons. These reasons include the contention that the content of the tweet, if not the source, subsequently proved to be accurate. The Broadcaster also states that the debate provided the opportunity for the Complainant and Mr. Martin McGuinness to verify or otherwise the content of the tweet. In this regard, the Broadcaster states that the Complainant was afforded the opportunity to respond to the content of the tweet and matters relating to his relationship with the Fianna Fáil political party during the debate and in the subsequent interview on the Today with Pat Kenny radio programme broadcast the following morning. The Broadcaster also notes that the original tweet was re-tweeted many times before and after it was highlighted in the programme.
  - The Committee was of the view that these points did not validate the inclusion in a programme of this nature of what amounted to unverified information at the time of broadcast, from a source that was wrongly accredited by the programme presenter. In this regard, the attribution of the tweet to the official campaign of Mr. Martin McGuinness was incorrect. In addition, there were no apparent efforts made by the Broadcaster to verify the source and accuracy of the content of the tweet at the centre of the complaint. Furthermore, the programme presenter did not take the opportunity to verify the content or provenance of the tweet with Mr. Martin McGuinness, the Sinn Féin candidate participating in the live debate. The Committee also noted that information was available during the course of the programme that clarified that the tweet account at the centre of the complaint was not from an official Sinn Féin Twitter account.



It was the Committee's view that the failure to provide clarification on the provenance of the tweet was unfair to the Complainant, especially given the fact that the initial tweet was the basis upon which the presenter reopened the discussion on the links between the candidate and the Fianna Fáil political party. In addition, while the second tweet did not directly address the content of the first tweet, it did raise questions about its provenance and, by reasonable inference, the accuracy of the initial tweet;

- While the Broadcaster states in its response to the complaint that the content of the tweet turned out to be subsequently correct, the Committee did not believe the subsequent truth or otherwise of the content removed the basic responsibility of the Broadcaster to verify its content and provenance during the programme as it was being broadcast. The Committee noted that in the absence of any meaningful verification, the Broadcaster had no way of knowing that the content of the tweet was correct at the time of broadcast and justification of its inclusion on the basis of subsequent information was not sufficient to warrant its inclusion in the first instance. It was also the Committee's view that the large number of re-tweets was not grounds for any argument regarding the veracity of its provenance or content;
- Regarding the related broadcast – Today with Pat Kenny. It was the Committee's view that those parts of this programme dealing with the Complainant and his campaign exacerbated the unfairness evident in The Frontline Presidential debate insofar as it did not include any clarification by the programme presenter regarding the provenance of the initial tweet (in circumstances where its provenance was already under question) and because the programme included extracts from The Frontline arising from the publication during that programme of an unverified tweet;
- Notwithstanding the above, the Committee is satisfied that there is no evidence, contrary to the views of the Complainant, that the Broadcaster, presenter or production team deliberately concealed information relating to the initial or second tweet or constructed the programme in a manner that lacked objectivity or impartiality. In this regard:
  - It was the Committee's view that there was a context for the inclusion of the tweet insofar as the relationship between the Complainant and the Fianna Fáil party was a legitimate focus of discussion;
  - It is also reasonable and often necessary for maintaining fairness that programme interviewees are not provided with questions prior to an interview;



- It was also reasonable, in principle, for a programme presenter to return to topics throughout a programme should it be considered appropriate once the programme as a whole does not breach the requirements for fair, objective and impartial treatment of the contributors to the programme;
- Finally, it was the Committee's view that there was no evidence that would lead one to question the *bona fides* of the programme presenter or the production team in its approach in the programmes that were the subject of the complaints.
- It is the function of the Committee to consider what was broadcast. Therefore, it cannot have regard to matters that are not directly related to the broadcast or to requests to make findings of fact, except in the case of a request for a Right of Reply. The Committee's primary concern in relation to the complaint was determining whether the programmes that were the focus of the complaint were fair, objective and impartial in the context of the programmes as a whole. In this regard, a range of points raised by the Complainant and the Broadcaster were not considered relevant to the adjudication of the complaint, including the impact of the programmes on the Complainant's campaign or the suitability of internal RTÉ programme-making guidelines;
- As part of its deliberations the Committee considered a number of related issues. In this regard:
  - The Complaint was made in the context of section 48 of the Broadcasting Act, 2009. This provides for redress to complainants via the broadcasting of an announcement on the broadcast service of the Committee's decision where a complaint has been upheld. In this regard, the Broadcaster will be required to carry an announcement detailing the Committee's decision.

Regarding redress, the Complainant also requested an apology from the Broadcaster. However, the BAI cannot compel broadcasters to issue apologies for on-air content. The complainant also requested that an investigation into the matter be undertaken. However, the Committee was of the view that the complaint was not of such a serious nature to warrant an investigation or public hearings as requested by the Complainant;



- The Committee also noted that, during the period running up to the adjudication on the complaint, there were repeated and consistent disclosures of the complaint material by parties unknown. While the motivation for these disclosures can only be speculated upon, they demonstrated a lack of respect for the integrity of the complaints process that does a disservice to the interests of those who make complaints and those who are the subject of complaints, contrary to their right to fair procedures and natural justice.

The Committee agreed that all complainants in respect of this programme would be informed of its view on this matter.

Signed: P.P. Neil O'Brien Date: 07/03/2012  
Chairperson