



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

**Broadcasting Authority of Ireland**

**Broadcasting Complaint Decisions**

**October 2013**

### Broadcasting Complaint Decisions

Under the Broadcasting Act 2009, viewers and listeners can complain about broadcasting content which they believe is not in keeping with the broadcasting codes and rules. In line with the complaint process, the viewer or listener should direct their complaint to the broadcaster in the first instance with regard to the broadcaster's *Code of Practice for Handling Complaints*, a policy 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 in their Code of Practice (usually 21 days), then the viewer or listener can refer the complaint to the BAI for consideration.

In assessing complaints, and having regard to the codes and rules, the BAI considers all written material submitted by the relevant parties together with the broadcast material. Complaints are assessed at Executive level and/or by the Compliance Committee of the Authority. The details of the broadcasting complaint decisions reached by the BAI are detailed in this document.

At its meeting held in September 2013, the Compliance Committee upheld one complaint and rejected 12 complaints.

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# Upheld by BAI Compliance Committee

**Complaint made by: Ms. Sharon Murphy on behalf of Galway One World Centre - Ref. No. 26/13**

**Station:**

Classic Hits 4FM

**Programme:**

The David Harvey Show

**Date:**

16 January 2013

**Complaint Summary:**

Ms. Murphy's complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(harm & offence: *Code of Programme Standards* – Sections 2.1 general community standards, 2.2 due care, 3.4.1 / 3.4.2 persons & groups in society).

Ms. Murphy's complaint, made on behalf of Galway One World Centre (GOWC), refers to what she claims were racist comments on Classic Hits 4FM. She states she has listened to many offensive comments.

The complainant claims that it is the view of many people that Classic Hits 4FM is becoming a platform for people to articulate their racist views towards African People and members of the Traveller Community under the pretence of refugee/asylum, welfare and unemployment issues. This is clear, in the complainant's opinion, given the many times racism has featured on various shows and because much of what is discussed does not deal with the facts but concentrates on African and Traveller behaviour. The complainant states that the comments expressed were clearly offensive and cruel and had a negative impact i.e. leading to vulnerable to physical and/or verbal abuse on the streets, accessing employment, welfare and housing. The complainant made reference to a number of programmes. However, all but one of these programmes was broadcast in the 30 days prior to the complaint being made to the broadcaster and for this reason, only one broadcast has been considered by the Committee.

The complainant believes Classic Hits 4FM is responsible for not only facilitating people's hate comments but also encourages them. The complainant states that they should be held accountable for the way they mistreat people who do not have social power to undo the wrong they do.

The complainant states that she sent a letter of complaint by post to the station and filled in a form on the station's website, but she did not receive a response.

**Broadcaster's Response:**

**Initial response to complainant:**

Classic Hits 4FM state they never received Ms. Murphy's letter of complaint dated 8<sup>th</sup> February and so a resolution was not possible before the complaint was sent to the BAI.

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### Response to BAI:

Classic Hits 4FM states Ms. Murphy was given time to air her views and the right to reply live on the David Harvey Show on February 20<sup>th</sup>. A courtesy call was made to Ms. Murphy on 13<sup>th</sup> March to explain why the station had not responded to her original complaint. The broadcaster also claims that if their programme content was not fair, balanced and equitable they would be inundated with complaints, which is not the case. Classic Hits 4FM further state:-

- The David Harvey Show is an open forum discussion platform for listeners to air their opinions on every day issues that affect the average person.
- Topics about racism, the Traveller community, asylum seekers, unemployment, welfare and Irish aid are discussed quite regularly due to the frequency of change within these national issues.
- Ms. Murphy claims that the station discusses these topics so that people can “articulate their racist views”. Classic Hits 4FM completely refutes these claims on the basis that the David Harvey production team work diligently to ensure the programmes remain balanced at all times. To aid this process, the programme operates a 10 second delay procedure should any of the participants/callers breach broadcast policy. They also feel that Ms. Murphy has taken remarks made on the programmes out of context. The presenter ensures that no comment deemed to be racist or discriminatory will go unchallenged.
- Classic Hits 4FM unequivocally disagrees with Ms. Murphy’s statement that “*Classic Hits 4FM is responsible for not only facilitation people’s hate comments but also encourages them*”. The station prides itself on maintaining a balance, ensuring every controversial comment is challenged and never shying away from topics its audience deems to matter.

### Submission by Mr. David Harvey:

Mr. Harvey states, as the presenter of the programme, he had not been afforded the opportunity by 4FM to participate in the formulation of any response in relation to this complaint and he requested an opportunity to participate in the process under section 48(5) of the Broadcasting Act 2009. As a radio and television presenter for over thirty years with an unblemished compliance record, Mr. Harvey states that he is concerned that any negative finding will impact on his professional reputation and integrity as a broadcaster.

Mr. Harvey further states it is important to put the programme into some context. He states that the programme is specifically targeted at RTÉ’s *Liveline* audience and is generally based on the issues of the day. Hence, the sort of topics discussed include politics, social welfare, suicide, government waste, education as well as the topics to which the complainant specifically refers, namely attitudes to “Africans” and Travellers. These topics receive an amount of time proportionate in their output to other subjects covered.

The programme revolves around the opinions of listeners – sometimes strong, sometimes measured and occasionally unreasonable. Their policy is to stimulate debate, elicit opinion and offer a platform. This is done in a balanced manner and, where appropriate, a right of reply is offered and is evidenced by Ms. Murphy’s contribution to the programme on 20<sup>th</sup> February.

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Mr. Harvey dismisses the suggestion as absurd that Classic Hits 4FM is driven by some sort of organised racism where there is a disproportionate amount of time given to people with strong anti-Traveller or anti-African views.

Mr. Harvey strongly rejects the allegations made by the complainant in respect of negative disinformation about Africans and Traveller behaviour. The programme recognises the sensitivities surrounding any discussion of this nature and has facilitated discussions on many occasions. The programme has, where possible, attempted to elicit all facts. For example:

- In the case of Asylum seekers, he states that they have on many occasions asked African callers about their method of entry into Ireland. This is a fair question, given that there are no direct travel links between Ireland and Africa. They have rarely received a satisfactory response.
- Callers have raised the subject of sources of income in Traveller communities occasionally and moderated debates have ensued between Travellers and non-Travellers on the subject. In all cases, Mr. Harvey felt both sides were given adequate opportunities to express their views and, as presenter, he did not express a *pro or con* view.

The complainant made reference to one specific occasion where she believes the programme presenter contributed to the *'facilitation of hate comments'*. On that occasion the presenter stated *"Look at the amount of Aid going to Africa to feed the black babies, blah blah..."* The discussion related to wasted spending in the Irish economy and Mr. Harvey states that he reflected the views of some of the callers that Overseas Aid is excessive, given the current financial difficulties in the economy. Mr Harvey states that this is a matter of genuine concern to some listeners and has been discussed many times on the programme. He states that in this instance he used a colloquialism, which was a part of the language used in Irish schools and general conversation throughout the country during the 1960's – 1980's. Clergy, teachers, parents and pupils to collectively describe the work of Irish missionaries, usually in Africa, used the phrase "Black Babies". While the phrase could be construed as potentially offensive by some, Mr. Harvey states that it was not in any way used by him in the context of attempting to incite racial prejudice and to suggest that this is so is extremely unfair.

Mr. Harvey further states that prior to making the complaint, Ms. Murphy herself was on the programme on 20<sup>th</sup> February. 4FM made as much time as was required for her to make her points, which were, for the large part, contained in a poem. Ms. Murphy read her poem and as far as the programme was concerned, they fulfilled their obligation to fully air both sides of the argument.

The David Harvey Show and Mr. Harvey believe 4FM in general fully recognises its obligations as a broadcaster, particularly towards minorities. Understanding the power of a medium such as radio must be central to the formulation of any programming policy. To suggest that the speech-led programming at the station is, in some way, engaged in a conspiracy to promote racism, is somewhat far-fetched. Mr. Harvey feels it is also legitimate to say that allowing interests groups such as the complainant to effectively censure organisations and censor programmes because of what they consider offensive is contrary to the promotion of free speech in the national media.

### Decision of the Compliance Committee

The Committee considered the broadcast and the submissions from the broadcaster, from Mr. David Harvey and from the complainant. Following consideration of this material the Committee decided to uphold the complaint. In reaching this decision, the Committee took into account the following:

- The Committee noted that the context for the programme was a report from the ESRI regarding the issue of whether Africans living in Ireland are subject to discrimination when seeking employment in Ireland. In this regard, the programme presenter made a number of remarks about the content of the ESRI report. While the programme began on this topic, the Committee noted that the programme discussion broadened to include contributions from callers on the issue of immigrants and their right to seek employment in Ireland.

This included the airing of the views of callers to the programme that immigrants from outside the EU in general, and members of visible minorities in particular, were being allowed to work in Ireland although it is not their first point of entry into the European Union. The programme also contained a range of comments from callers claiming that such individuals come to Ireland only to avail of welfare benefits.

- It was the Committee's view that as the programme developed, statements that it considered racist and prejudicial were permitted to be aired by callers to the programme. These included the following statements made during the programme:
  - 'Blacks' are "very lazy."
  - 'Black Africans' always "get up on their high horse" if challenged.
  - 'Blacks' have a certain DNA related to their work ethic and practices.
  - 'Blacks' "twist everything around to suit themselves."
  - Filipinos in Ireland are "scammers."
  - You will be "locked up straightaway" and "not get away with it" if you make racist comments in Ireland.
  - "The majority of ye" ['blacks' in particular and immigrants more generally] are evasive.
- The Committee noted that it is the role of the broadcaster, in this case 4FM, to ensure that programmes are moderated in line with the statutory obligations incumbent upon the broadcaster. In this context, the Committee noted that these remarks and others like them went largely unchallenged by the presenter and that the programme facilitated the airing of such remarks.

While noting that comments from callers that were critical of the contributions from other callers and the presenter were evident during the programme, they were not considered sufficient in number to counter-balance the comments considered by the Committee to be both racist and prejudicial, particularly in circumstances where problematic remarks went largely unchallenged.

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- The Committee also noted that callers to the programme of African ethnicity were treated differently to other callers. While these callers went on air to discuss discrimination in the workplace, each of them was questioned by the presenter or a caller about his or her legal status as a resident in Ireland. Other callers were not challenged in a like manner, thus creating an imbalance in the way in which callers of differing ethnic backgrounds were treated. While the Committee considered that such questioning may have been appropriate in a context where the programme was concerned with asylum seekers and their manner of entry into the State, the treatment of these callers was considered inappropriate in a context where they had called to discuss a different topic, namely, discrimination in the workplace against immigrants from Africa and elsewhere.

For example, a named immigrant from Nigeria, who was said to work at a national retailer and who phoned in to discuss the topic of workplace discrimination against immigrants, was repeatedly asked by the presenter to reveal details concerning her entry into Ireland. This included questions about information provided by her to immigration officials. The presenter also asked this caller if she was an asylum seeker. The caller objected to this line of questioning on the grounds that it was not relevant to the topic of workplace discrimination and on the basis that the questions were of a personal nature. When she had gone off-air, the presenter made a number of statements about her contribution that the Committee believes would leave listeners with the impression that the caller's bona fides was questionable. They were as follows:

- Firstly, he said, *"I have to say I started off by having a huge element of sympathy...I have to say now that [that interview] did not do much for my confidence in terms of the robustness of the argument - if I cannot get a straight answer out of somebody who comes on the programme, —but then there you go."*
- Secondly, in response to another caller who had criticised the presenter's earlier interview with the immigrant woman, the presenter defended his interview and said, - *"We seem to have a situation where no one cares; there is a blind eye to all this sort of stuff."*

Both remarks were considered by the Committee not only to dismiss the caller's legitimate objections to being asked questions not germane to the topic under discussion, but also, in its opinion, would reasonably have given some listeners the view that the answers provided by her to the presenter during the interview were questionable.

- The Committee also noted that the presenter referred to comments at one point during the programme as being "one side of the argument", suggesting that the fact of discrimination, or racism, were simply matters of opinion. However, it was the opinion of the Committee that racist and prejudicial views cannot be considered equivalent with comments that are neither racist nor prejudicial and there was an onus upon the programme makers under the Broadcasting Act 2009 and the Code of Programme Standards to avoid the airing of comments that are harmful or unduly offensive. In this regard, it was the view of the Committee that the presenter should have, but failed to, question, and in some instances, strongly challenge, these remarks.



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- Regarding the issue of whether the complainant, Ms. Sharon Murphy, was afforded a right of reply during the broadcast of the 20<sup>th</sup> of February, it was the Committee's view that her contribution could not be considered as a right of reply. This view was taken on the basis that the broadcaster states that it had, at that time, received no complaint from Ms. Murphy and, as such, her contribution could not be considered a right of reply in the context of her complaint. Furthermore, it would not have been apparent to listeners that a right of reply was being afforded as no reference was made to her complaint or to an earlier broadcast.
- In considering contextual factors, the Committee noted that the programme is both live and audience driven. It also agreed with the broadcaster and Mr. Harvey that the principle of freedom of speech may be invoked to permit robust discussion of controversial topics. This right to free speech must be exercised responsibly and in this regard, the Broadcasting Act 2009 and the Code of Programme Standards sets out a range of requirements regarding responsible broadcasting. These include the obligation to avoid undue offence and to avoid harm, to show due care, to represent persons and groups in society in a manner that is appropriate and justifiable and to avoid the broadcast of content that supports or condones discrimination towards groups and persons in society.
- The Committee did not agree with the complainant that the programme in question was evidence of a systematic failure on the part of 4FM to meet its requirements under the Broadcasting Act or that 4FM is responsible on an ongoing basis for facilitating and encouraging discrimination or hatred towards minority groups. The Committee did not conclude that the moderation of the programme and the contribution by the presenter constituted racism.

However, it was the view of the Committee that the failure to challenge what the Committee considered racist and prejudicial remarks, the treatment of certain callers by the presenter as well as the handling of the discussion by the programme makers across the duration of the programme was such that 4FM failed to meet the aforementioned statutory requirements and that listeners would have reasonably assumed that racist and prejudicial remarks of some callers to the programme were reasonable and acceptable positions to hold in contemporary Irish society.

### Rejected by BAI Compliance Committee

**Complaint made by:** Mr. Eamonn Corbett

**Ref. No.** 41/13

**Station:**  
RTÉ One

**Programme:**  
Eco Eye

**Date:**  
26 February 2013

#### **Complaint Summary:**

Mr. Corbett's complaint is submitted under the Broadcasting Act 2009, section 48(1)(d)(General Commercial Communications Code: section 6 (2 & 3 - rules pertaining to sponsorship). The complainant states that it is his opinion that the interview with the Chief Executive of Irish Water was not an appropriate contribution to the programme given that one of the programme sponsors, Bord Gáis, will operate Irish Water. In this regard, he cites the reference by the Chief Executive to the advantages of a single water authority and its ability to provide "World Class" water services. The complainant states that such comments have no place in factual programming and the complainant questions the compliance of the content with respect to existing codes of practice in relation to sponsorship.

#### **Broadcaster's Response:**

The broadcaster failed to respond to the complainant within the timeframe specified in its Code of Practice for Complaints Handling. The complaint was submitted on 5<sup>th</sup> March and an acknowledgment was sent on 15<sup>th</sup> March. Following a query from the complainant, a further email was sent from the broadcaster on 25<sup>th</sup> March stating that they were awaiting updates from the producer and that the Commissioner Editor of Eco Eye was 'currently out of the office' and would respond upon his return. A reply from Commissioning Editor sent to the complainant on 25<sup>th</sup> April 2013.

#### **Initial response to complainant:**

RTÉ states that Duncan Stuart and Eco Eye have been arguing the case for a sustainable environmental policy by government throughout the existence of the series, in various programmes the water policy of both government and local authorities has been highlighted and matters of public concern have been raised.

RTÉ states that it is a matter of fact that the government has now appointed Irish Water as the entity through which the national water strategy will be implemented. It is a matter of public policy by the current government that water charges will be imposed at some point, the revenues from which will be used for the improvement of the water system. Mr. Fogarty's statement regarding his ambition to create a world class water system was left within the programme as the producers felt that it was important to have such a statement on the public record. Irish Water has not as yet taken over the functions of controlling the government's water policy and supply. Should Irish Water fail in this stated ambition then Eco Eye, should it still be on-air, will address this as it has criticised environmental policy and practice in the past. Eco Eye is a multiple funded series and RTÉ retains full editorial control over the contents.

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### **Response to BAI:**

RTÉ states that Eco Eye is an advertiser-assisted programme supported by them, with multiple sponsors including: the Environmental Protection Agency; The Department of Environment, Heritage and Local Government; Department of Agriculture; Teagasc; Bord Bia; Coillte; and Bord Gáis. All of these sponsors are government agencies and responsible for the implementation of government policy in their respective areas and are clearly identified as sponsors in the closing credits of the programme, observing Section 6.3 of the BAI General Commercial Communications Code. Nor is there any other contravention of the section in this or any other edition of Eco Eye.

RTÉ retains full editorial control in respect of Eco Eye by means of the supervising involvement of the Deputy Director of Acquisitions as Executive Producer. No representative of any of the sponsors ever has any editorial input to or control over a completed programme. RTÉ can specifically confirm that this was the case in respect of this programme and the inclusion of Irish Water/Bord Gáis.

Irish Water has been set up by statute in accordance with government policy following European directives and is charged with pursuing objectives in relation to water pollution, water conservation and the delivery of safe water to households and businesses in Ireland. It would be impossible to make a programme about Irish water without the inclusion of Irish Water.

Furthermore, RTÉ emphatically denies that undue prominence was given to the spokesperson for Irish Water, who appeared in two short interview clips. In the first, lasting a few seconds over a minute including the presenter's question, on the rationalising of water supply management, the spokesperson stated what Irish Water wishes to achieve, a mission statement to which the organisation can subsequently be held to account. In the second, on the topic of water charges, slightly under half a minute, he asserted Irish Water's intention that all money raised on water charges would be put back into services, again a useful statement on the public record by the new body. No undue prominence was given to the necessary involvement of the Irish Water/Bord Gáis spokesperson.

### **Decision of the Compliance Committee:**

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following consideration of the material the Committee has decided to reject the complaint.

In reaching this decision, the Committee took into account the following:

- Section 6.2 of the BAI General Commercial Communications Code deals with the requirement that sponsorship announcements do not constitute advertising. A sponsorship announcement is an acknowledgement on-screen or on-air of a financial arrangement between the broadcaster or production company and a third party. Sponsorship can be provided via financial provision to assist the production of a programme or via the supply of goods and services, for example, via the provision of a prize. The acknowledgements cannot encourage purchase of the products or services of the sponsor.

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While noting that Bord Gáis are one of the programme sponsors and also noting that Bord Gáis will be responsible for operating Irish Water, the Committee found that the reference to Irish Water in the programme was in the context of an interview with the Chief Executive of Irish Water. As such, the reference was not a sponsorship reference or acknowledgement and section 6.2 was not relevant to the content as aired.

- Section 6.3 of the BAI General Commercial Communications Code states that viewers and listeners shall be clearly informed of the existence of a sponsorship agreement. In this respect, the Committee noted that the role of Bord Gáis as one of the programme sponsors was indicated at the end of the programme and this in line with the requirement of the Code. Accordingly, the programme was compliant with the requirements of 6.3.
- For these reasons, the Committee decided that the complaint would not be upheld.

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**Complaint made by: Mr. Alan Curran**

**Ref. Nos. 45/13 – 48/13**

**Station:**

RTÉ Radio 1  
RTÉ One

**Programme:**

Morning Ireland  
One O'Clock News  
Nine O'Clock News  
RTÉ News Now

**Date:**

3 May 2013

**Complaint Summary:**

Mr. Curran's complaints are submitted under the Broadcasting Act 2009, section 48(1)(a)(*objectivity, and impartiality in news*) and (*fairness, objectivity & impartiality in current affairs*). The complaints concern the requirement at the time of the broadcasts to file returns in respect of the Local Property Tax by set deadlines. The following summarises the views of the complainant in respect of the relevant programmes. RTÉ News Now is a repeat of the One and Nine O'Clock News programmes.

**Morning Ireland:**

The complainant submits an item was broadcast on 'Morning Ireland' containing an interview with Revenue's Property Tax Manager, who promoted the payment of the Local Property Tax before the upcoming deadline. He states no opposing views or comments was aired by RTÉ. The complainant states that the interview was preceded with emphatic statements by the presenters such as "These are dates you need to remember: the 28th May this year is the last date for filing your Local Property Tax online; the 7th May, Tuesday, is the last date for filing it on paper - that means today is your last chance to post if you're doing your property tax the old fashioned way with pen and paper". The complainant states that the Revenue's Property Tax Manager was then given totally uncontested and virtually uninterrupted airtime to promote the payment of the controversial tax. The complainant states that the only query the presenter raised was the public's confusion over the valuation of their property for the tax. The complainant states that the presenter ended the interview thanking the Revenue's Property Tax Manager and stated "So don't forget Tuesday, if you want to do it by paper you must get your Property Tax Returns in the post today".

The complainant states that this interview showed the programme makers of this programme as acting as facilitators and conduits for State propaganda and thus it amounted in his opinion to a textbook example of how RTÉ does not comply with its statutory broadcasting regulations.

**One O'Clock News/Nine O'Clock News/RTÉ News Now:**

The complainant states that RTÉ News bulletins continued to repeat the Revenue's 'advice', which the complainant characterises as a 'demand'. He states that no opposing view was heard in opposition to the views of the Revenue's Property Tax Manager, who he states was repeatedly quoted and clips of the Manager's comments were shown throughout the rest of the day's bulletins. The complainant states that this culminated in the main Nine O'Clock News with what the complainant describes as a glossy, extensive 'package' of expensively-produced, animated graphics, remote, inside and outside broadcasts from the Revenue Offices at Dublin Castle, vox-pops from inside the GPO in O'Connell Street etc - All of which, the complainant states, promoted the same Revenue line.

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The complainant states that the news anchor introduced a packaged report on the tax by repeating the Revenue's 'advice' for 'home owners' to send in their forms by next Tuesday and that Revenue "will accept letters posted on Tuesday" and that "their helpline is being extended this evening and will be operational tomorrow". Again, the complainant states that there was no mention of any alternative to this nor any indication made by the news anchor that a dissident view would be heard. The complainant states that the packaged report was a slick and professional piece of PR that was pro-Revenue. He states that the Revenue's Property Tax Manager again was allowed free uninterrupted airtime to repeat her 'advice'.

The complainant states that this report was totally one-sided, without any hint of the deep, countrywide controversy surrounding the subject. It was paid for by Irish taxpayers (through the Licence Fee) a great number of who the complainant states were and are let down by what he describes as blatantly partial coverage.

### **Broadcaster's response:**

#### **Initial response to complainant:**

No response from broadcaster. RTÉ have explained that Mr. Curran's complaint was blocked by their spam filter.

#### **Response to BAI:**

RTÉ states their public service remit to inform, educate and entertain includes on occasion the broadcast of straightforward information to support citizens in matters such as the mechanics of voting in an election or referendum or, in this case, paying taxes. The broadcasts complained of were an impartial account of the procedure for paying the Local Property Tax. There was no advocacy of the tax in principled terms by either RTÉ editorial staff or interviewees, and therefore no such views to be balanced. Reporters, newsreaders and interviewees simply described and clarified the procedure and the deadlines involved.

RTÉ further states:

- These were objective reports, aimed at providing a public service to the national audience about what they needed to do to comply with a statutory deadline set by Government, on the reasonable assumption that viewers and listeners would welcome and even expect information about the deadline on programmes such as *Morning Ireland* and News broadcasts.
- For example, it is well known that a major source of anxiety among older citizens is that, because they are not necessarily fluent in online technology, they may be missing vital information and will be at a disadvantage, or worse, found to be inadvertently non-compliant after the stated deadline.
- The interview with the Revenue's Property Tax Manager on *Morning Ireland* was not about the policy behind the Revenue deadline, which was set by government and not by the Revenue Commissioners. RTÉ states that the Manager gave information about the deadline and methods of payment, in line with the goal of supplying public information. It was not an interview in which it would have been appropriate or required to challenge the interviewee, apart from being asked to clear up confusion about operational details, which was done.

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- The reports on the *One O’Clock News*, *Nine O’Clock News* and *News Now* were similarly informative; the decision to run these reports was taken in the context of the approaching postal deadline and associated confusion about the deadline for those who registered by post. The reports covered registration for the tax and the mechanics of payment; they did not address the debate over whether or not there should be a property tax, a debate which received extensive and balanced coverage elsewhere on RTÉ news and current affairs programmes.

RTÉ would like also to clarify the failure to respond to Mr. Curran’s original complaints, e-mailed to [complaints@rte.ie](mailto:complaints@rte.ie), [morningireland@rte.ie](mailto:morningireland@rte.ie) and [newsdesk@rte.ie](mailto:newsdesk@rte.ie). His mails were never received at these or any other RTÉ addresses due to their being intercepted by RTÉ spam filters. RTÉ uses industry standard spam filters and deals with thousands of spam emails every week, but receives very few complaints regarding legitimate mails being blocked. There is always a risk of false positives but thus far it is a very infrequent occurrence. RTÉ very much regrets not having had the opportunity to respond to Mr. Curran’s initial complaints and also the frustration from his point of view. RTÉ believes the broadcasts were an appropriate implementation of its public service remit.

### **Decision of the Compliance Committee:**

The Committee considered the broadcast and the submissions from RTÉ and the complainant. Following consideration of the material, the Committee has decided to reject the complaint. In reaching this decision, the Committee took into account the following:

- Each of the programmes that were the subject of the complaints concerned the then forthcoming deadline for filing the return in respect of the Local Property Tax. As such, the content was not concerned with the merits or otherwise of the introduction of a property tax per se but rather with the requirement for citizens to pay this tax and the processes and procedures linked to filing a return. The compliance of this content with the statutory requirement for fairness, objectivity and impartiality in news and current affairs was considered by the Committee on this basis.
- Upon its review of the programmes, the Committee noted that, in the case of Morning Ireland and the RTÉ TV news broadcasts, they included information on the requirement to file the Local Property Tax return by a set deadline depending on whether payment was being made by post or online. Representatives from the Revenue Commissioners were interviewed about the process by which a return can be made and addressed a number of questions about this process. The Committee found that the content was factual, pertained to the payment of a tax whose deadline was forthcoming and that the provision of factual information to the public on this legal requirement did not require an opposing view.
- Further, a decision regarding what elements of a news story are to be covered by a broadcaster is an editorial matter that rightly rests with the broadcaster. In assessing complaints made under section 48 of the Broadcasting Act 2009, the Committee considers what was broadcast and considers whether it complied with the statutory requirements incumbent upon broadcasters, including the requirement for fairness, objectivity and impartiality.

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Attainment of these standards does not require a broadcaster to examine every aspect of a particular news or current affairs item. In this regard, the Committee noted that the focus of these programmes was on the payment of the tax and not on the issue of whether the introduction of the tax was fair, desirable or suitable. As such, the absence of such an examination and the absence of voices critical of the introduction of the tax were not considered by the Committee to constitute a failure to be fair, objective and impartial in the manner specified by the complainant in the context of the broadcasts and their content.



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**Complaint made by: Mr. Alan Curran**

**Ref. No. 50/13**

**Station:**  
RTÉ Radio 1

**Programme:**  
Morning Ireland

**Date:**  
10 May 2013

### **Complaint Summary:**

Mr. Curran's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a)(*objectivity & impartiality in news*) and (*fairness, objectivity & impartiality in current affairs*). The complaint concerned the Local Property Tax. The complainant references three elements of this programme in his complaint. Namely, the introduction, an interview with an NUI geography professor and an interview with two county councillors.

The complainant submits the programme began with what he characterises as a biased and slanted introduction to the item ...*"local authorities and the Property Tax – how much more could you owe?"* The first interview on the subject was with an NUI Maynooth geography professor who discussed the sharing out of Property Tax revenues to fund local councils around the country. The complainant claims that the presenter's contribution revealed that he, like his guest, agreed with the imposition of the Tax, merely questioning the disparity in local council funding from it. The complainant claims there was no opposing view, although the Professor did express his opinion that the tax was flawed as *"it doesn't reflect the ability to pay"*. The complainant further claims that the presenter again displayed his, and by proxy, RTÉ's 'group think' acceptance of the principle that Revenue/government/council "have the power" to impose and raise at will, the rate of such a tax. The complainant states that Mary Fitzpatrick, a Fianna Fáil Councillor, was the only guest to voice an opposing view, which, the complainant states was abruptly countered by a dismissive comment by the presenter. He further claims that her contribution was restricted by the airtime given to Colm Brophy, a Fine Gael Councillor, and was curtailed by the presenter, ostensibly due to time constraints.

### **Broadcaster's Response:**

#### **Initial response to complainant:**

No reply was received by the complainant. RTÉ submits that some of the complaints from this complainant were blocked by RTÉ's spam filter.

#### **Response to BAI:**

RTÉ states that at the top of the programme, the presenter stated: *"Local authorities and the property tax – how much more could you owe?"* This was in the context of the power of local authorities to increase property taxes in two years' time. It was an impartial statement of fact.

Later in the programme, in an item arising from the confirmation by Revenue the previous day that in two years time local authorities will have the power to raise the property tax, Proinnsias Breathnach, NUI Maynooth, was interviewed as a professional expert in local administration. Nowhere in the interview about the distribution of property tax revenue among councils across the country did the presenter express any view of the tax other than the factual reality of its existence. Mr. Curran alleges that the presenter "agreed with the imposition of the tax." RTÉ states that the presenter did not agree or disagree with the tax but dealt with a public policy issue as he found it.

## Broadcasting Complaint Decisions

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In fact, this expert was revealed as believing that the operation of the tax could lead to inequity in rates from one county to another and that the model found in other European countries, of local income rather than property tax, took more account of ability to pay.

A second item also dealt with the power of local authorities to raise property tax and the equity of the tax across the country. Dublin City Council Fianna Fáil Group Leader Mary Fitzpatrick and South Dublin Council Fine Gael Group Leader Colm Brophy debated the equity of the tax – with Councillor Fitzpatrick criticising it as “*a Fine Gael tax . . . which ignores people’s ability to pay*” and Councillor Brophy characterising the tax as an aspect of local government reform. RTÉ claims that the politicised debate was chaired fairly and impartially by the presenter who displayed no bias in his acceptance of the reality of the tax.

In the context of overall balance on the debate surrounding the Local Property Tax and this and other complaints by Mr. Curran about the coverage, it may be noted that *Morning Ireland* has regularly featured interviews with contributors challenging the fairness of the tax, as well as its proponents. Contributors critical of the tax have included Vincent P. Martin of New Beginnings, Kieran Brennan, CEO of the League of Credit Unions, Aoife Walsh of 'Respond' Housing Association and Fianna Fáil Senator Darragh O'Brien.

In this edition of *Morning Ireland*, RTÉ asserts that an impartial enquiry of an expert perspective was followed by a balanced discussion of the potential for tax increase and the equity of the tax.

### **Decision of the Compliance Committee:**

The Committee considered the broadcast and the submissions from RTÉ and the complainant. Following consideration of the material, the Committee has decided to reject the complaint.

In reaching this decision, the Committee took into account the following:-

- The Committee noted that the programme considered the confirmation by the Revenue Commissioners that after two years in operation, county councils would have the power to vary the Local Property Tax. This issue was examined from two perspectives. Firstly, the amount of revenue available to councils arising from the introduction of the property tax was considered as well as the shortfall or surplus funding to be made available to councils depending on their population size. Secondly, the views of two county councillors on the role of councils to vary the tax were examined.
- Following its review of the programme, the Committee did not agree that the introduction to the programme lacked fairness, objectivity and impartiality in the manner specified by the complainant since the increases in the Local Property Tax are possible by virtue of the legislation that puts the tax in place. As such, the issue of how much listeners to the programme ‘might owe’ was legitimate in circumstances where the change could be varied by county councils.
- While parts of the debate focused on the rationale and equitability of the tax, the focus of the discussion was not predominantly on the merits or otherwise of the introduction of a property tax per se but rather on the role of county councils to vary the tax and the suitability of this power given to county councils by virtue of the legislation that introduces the tax.

## Broadcasting Complaint Decisions

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The compliance of this content with the statutory requirement for fairness, objectivity and impartiality in news and current affairs was considered by the Committee on this basis.

- The Committee noted that the discussion was undertaken in a context where the Government had legislated for a property tax and had appointed the Revenue Commissioners to collect this tax. The legislative and administrative arrangements are matters of uncontested fact and it was the Committee's view that undertaking an interview on the basis of these established facts could not be considered as evidence of bias on the part of the programme presenter.
- Furthermore, a decision regarding what element of a news story is to be covered by a broadcaster is an editorial matter that rightly rests with the broadcaster. In assessing complaints made under section 48 of the Broadcasting Act 2009, the Committee considers what was broadcast and considers whether it complied with the statutory requirements incumbent upon broadcasters, including the requirement for fairness, objectivity and impartiality. Attainment of these standards does not require a broadcaster to examine every aspect of a particular news or current affairs item.
- In this regard, the Committee noted that the focus of the programme was on the revenue to be provided to councils on foot of the tax as well as the power of councils to vary the tax locally and not on the issue of whether the introduction of the tax was fair, desirable or suitable. As such, the absence of such an examination and the absence of voices critical of the introduction of such a tax were not considered by the Committee to constitute a failure to be fair, objective and impartial in the manner specified by the complainant in the context of the broadcasts and their content.
- Regarding the presentation of the programme, the Committee noted that the presenter interjected contributions by two guests elected as county councillors during an interview. It was evident from a review of the programme that this was done with a view to ensuring the discussion focused on the role of councils vis-a-vis the tax rather than on the broader election and party political issues that the interviewees raised at different points of the discussion. The Committee did not consider the moderation of the debate by the presenter as indicative of a lack of fairness, objectivity and impartiality in the context of the discussion and its focus on county councils.

## Broadcasting Complaint Decisions

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**Complaint made by: Mr. Bernard Egan**

**Ref. Nos. 52/13 & 59/13**

**Station:**

RTÉ Radio 1

**Programme:**

The Late Debate

**Date:**

23 & 30 April 2013

**Complaint Summary:**

Mr. Egan's complaints are submitted under the Broadcasting Act 2009, section 48(1)(a)(*fairness, objectivity & impartiality in current affairs*). The complaints concerned a debate on abortion and in particular suicidal ideation and the link between such ideation and the health of women.

The complainant submits the programme on 23<sup>rd</sup> April was tilted and this short changed the whole subject matter. He also believes that one of the panellists asserted leading questions and was permitted by the presenter to be forceful in her treatment of an opposing interviewee. The complainant claims that any attempt to widen the matter was stymied because the presenter was, according to the complainant unduly swayed by a panellist.

The complainant states that the core matter of abortion is the fact that two people are directly involved. He states that the programme was debated around one of the principals i.e. the mother, and no reference was made to the foetus. The complainant claims that suicidal ideation, for whatever reason, does not excuse the homicide of another. He further states that the thing, or person, considered to be the cause of suicidal pattern of thought – if mute – must have someone else to plead their case be that a separate and personal doctor or legal representative. The complainant claims that the coverage of this matter on this programme was completely one-sided. The complainant states that the position regarding the mother was well represented but the foetus was mainly ignored. He states that no one on the programme referred to the second person being directly connected to the matter.

The complainant also refers to the same programme broadcast on 30<sup>rd</sup> April 2013 and believes this too lacked balance. He claims that one panellist, Professor Bacik, dominated the discussion and the presenter allowed this dominance to continue. He states that a forceful manner should not be allowed to create bias.

**Broadcaster's Response:**

**Initial response to complainant:**

RTÉ states that its coverage of the debate included contributors who hold strong views as was the case in the edition of the programme on 23 April, in which clearly opposing views were expressed in a notably courteous as well as forceful manner. Many of these contributors spoke from standpoints informed by professional, legal or medical experience. RTÉ claims that it is not accurate to say that the life of the unborn is not referenced in their reporting, analysis and discussion on the subject. This programme opened with a quotation from the Taoiseach saying that *"there are two lives involved here; the life of the mother and the life of the unborn"*.

Referring to the programme broadcast on 30 April, RTÉ states that the exchanges between two very experienced debaters on this topic, Professor Bacik and Professor Binchy, was facilitated in a fair and balanced way by the presenter.

## Broadcasting Complaint Decisions

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### Response to BAI:

#### **Late Debate broadcast on 23 April 2013**

RTÉ states that the panel for this programme was a fair and balanced reflection of the key opposing views on the issue of legislation on abortion. The panel consisted of:

- Dr. Seán O'Domhnaill, consultant psychiatrist, spokesperson for The Life Institute – opposed to legislation on abortion arising from the Supreme Court decision in the X case.
- Professor Veronica O'Keane, Professor of Psychiatry at Trinity College Dublin and a consultant psychiatrist at Tallaght Hospital – in favour of legislation on abortion arising from the Supreme Court decision in the X-case.
- Solicitor Cora Sherlock, Deputy Chairperson of the Pro-Life Campaign – opposed to legislation on abortion arising from the Supreme Court decision in the X case.
- Dr Liam Twomey, Fine Gael TD – in favour of legislation on abortion arising from the Supreme Court decision in the X case.

RTÉ claims that the discussion which explored the topic in detail and in depth, with a focus on abortion in the context of mental health, was chaired fairly and impartially by the presenter. Interruptions were minimised and each of the four panellists was given ample time to express their point of view. The complaint cites no example of impartiality or lack of objectivity on the presenter's part but simply expresses an impressionistic judgement or opinion. RTÉ asserts that this programme was fair, objective and impartial and believes there are no grounds to uphold this complaint.

#### **Late Debate broadcast on 30 April 2013:**

The item began with a phone interview with Seán Connolly, Political Correspondent of *The Irish Examiner*, updating on the position in respect of publication of the legislation agreed earlier in the day by the Cabinet and expected to be published that evening.

This was followed by a studio debate in which two lawyers debated opposing views on the issue of legislation on abortion. The panel consisted of Senator Ivana Bacik, Reid Professor of Criminal Law, Criminology and Penology and barrister William Binchy, former Regius Professor of Laws and currently Fellow Emeritus at Trinity College Dublin, legal adviser to the Pro-Life Campaign – opposed to legislation on abortion arising from the Supreme Court decision in the 'X-case'.

The two panellists held strong and comprehensively opposed points of view on the topic, which they put forcefully but not without the courtesy of practised debaters and barristers. RTÉ claims that the argumentative discussion was chaired fairly and impartially by the presenter whose interventions were for the most part aimed at managing fairness rather than introducing sub-topics.

The complainant's suggestion that "Senator Bacik monopolised the programme," may have been influenced by the assertion at one point by Professor Binchy that Senator Bacik was filibustering and had "gone on for rather a long time" when she had actually spoken for a minute, no longer than many previous contributions by both debaters; or by Professor Binchy saying a little later that Senator Bacik had "spoken there for close to five minutes" when she had actually spoken for two, including his earlier intervention. He later re-asserted that the Senator "had five good minutes."

## Broadcasting Complaint Decisions

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This could have created an inaccurate impression of imbalance and unfairness in the minds of some listeners. However, RTÉ asserts that this programme was fair, objective and impartial.

### **Decision of the Compliance Committee:**

The Committee considered the broadcasts and the submissions from the complainant and the broadcaster. Following consideration of the material, the Committee has decided to reject the complaints. In reaching this decision, the Committee took into account the following:

#### Late Debate broadcast on 23 April 2013

- The Committee noted that the programme format is a debate format. Accordingly, listeners familiar with the programme would expect a sometimes robust discussion characteristic of a debate programme. Notwithstanding this, the Committee did not agree with the complainant that the discussion or any members of the panel restricted or were permitted by the presenter to restrict any participant from airing their views on the matter under discussion.
- The Committee also noted that the panel in the studio was evenly split between those favouring legislating for the X case and in particular providing an abortion on the grounds of suicidal ideation, and those who opposed introducing this measure into legislation. The Committee was of the view that this permitted a range of opposing views to be aired throughout the duration of the programme.
- The Committee also noted that, contrary to the view of the complainant, the impact on the fetus of permitting abortion on the grounds of suicidal ideation was clearly articulated during the programme. For example, one guest, Cora Sherlock specifically clearly articulated this view.
- Overall, the Committee found no grounds to support the view of the complainant that the programme lacked fairness, objectivity or impartiality.

#### Late Debate broadcast on 30 April 2013

- The Committee noted that the programme format is a debate format. Accordingly, listeners familiar with the programme would expect a sometimes robust discussion characteristic of a debate programme. Notwithstanding this, the Committee did not agree with the complainant that the discussion or any members of the panel restricted or were permitted by the presenter to restrict any participant from airing their views on the matter under discussion. Moreover, the Committee agreed that the participants in this programme were seasoned and very able debaters equipped to engage in what was a robust and challenging discussion on abortion, a matter of public controversy.
- Overall, the Committee was of the view that the two contributors to the debate on abortion during this edition of The Late Debate were afforded adequate and equitable opportunities to air their views and that the debate was fairly moderated.

## Broadcasting Complaint Decisions

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**Complaint made by: Mr. Alan Curran**

**Ref. No. 56/13**

**Station:**

RTÉ One

**Programme:**

The Week in Politics

**Date:**

12 May 2013

**Complaint Summary:**

Mr. Curran's complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(objectivity & impartiality in news) and (fairness, objectivity and impartiality in current affairs).

The complainant states that the programme, as demonstrated by programme reporter and programme presenter, showed bias that he claims illustrated their predominantly pro-establishment mindset. He further states:

- The introductory clips featured Revenue Chairperson Josephine Feehily, Seán Fleming and Ray Butler all supporting the imposition of the Property Tax. He states that no opposing voice was presented. A clip was shown of Clare Daly in the Dáil making a general plea to Eamonn Gilmore to be kinder to working people.
- In the pre-recorded report, Fine Gael's Ray Butler was featured expounding on the value to the country of mandatory legislation in health insurance and elsewhere. The complainant states that, again, no opposing view was presented. The complainant states that later in the programme, the reporter delivered this categorical statement in voice-over: *"...what is certain is that the self-employed and all other workers who are homeowners will have to pay the Local Property Tax"*. The complainant states that the reporter then went on to introduce the clip of Josephine Feehily who stated that *"local authorities were entitled to vary the rate by 15% in the legislation"*. Seán Fleming also accepted the imposition of this Tax, merely questioning the operation of it.
- The complainant states that the presenter, said to Joan Burton T. D. *"...people on low incomes, they're having to pay the Property Tax..."* another confirmation of that 'group think' mentality of unquestioning conformity with the status quo as prescribed by the Government.

The complainant states that not once was there any attempt by any participant in the programme to have a balanced debate by giving some voice to a representative of the widespread angry opposition to this Tax and similar mandated legislation.

**Broadcaster's Response:**

**Initial response to complainant:**

No initial response from RTÉ received by the complainant. RTÉ states the complaint was blocked by their spam filter.



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### Response to BAI:

RTÉ states this edition of *The Week in Politics* took place in the context of the legislation for the Local Property Tax having been passed into law by the Oireachtas. They further state:

- With respect to the introductory clips at the beginning of the programme, neither Revenue Commission Chairperson, Josephine Feehily, nor Deputy Seán Fleming expressed a view on the merits or otherwise of the Local Property Tax (LPT); the excerpts came from their exchange at the Public Accounts Committee hearings on Thursday 9<sup>th</sup> May in relation to the power of local authorities to raise and lower the LPT rate. Mr. Curran is incorrect that the excerpt from Deputy Butler's interview referred to the LPT; he was speaking about a possible increase in PRSI rates for the self-employed.
- The video report of which Mr. Curran complains sets out to capture a variety of political and economic developments of that week in relation to workers' pay and conditions. This included the revelation of a leaked advisory document to the Department of Social Protection indicating the introduction of a mandatory increase in PRSI for the self-employed. This was the principal reason for interviewing FG Deputy Ray Butler. Deputy Butler did not mention or refer to property tax (or health insurance) in his comments.
- The complainant goes on to refer to a particular line of voiceover in the video report. Again, the report had nothing to do with the merits or otherwise of the property tax (at this stage passed into law) but related to the rising cost to the taxpayer of extra taxes and cuts. In this context it was stated by the reporter as a fact, rather than a point of view, that *"What is certain is that the self-employed and all other workers who are homeowners will have to pay the Local Property Tax and there was confirmation this week that that charge could be increased as soon as 2015"*.
- The complainant states that, also in the video report, Deputy Sean Fleming *"accepted the imposition of this Tax, merely questioning the operation of it"*. That is the complainant's subjective view of the Deputy's exchange with the Revenue Commission Chairperson on an aspect of the tax, the power to alter the rate.

(In fact, Deputy Fleming's response to the Commission Chairperson's clarification was: *"This is the three-card trick now, not by you, but it's a three-card trick,"* which was hardly uncritical of this provision in the legislation).

- The complainant objects that in the studio discussion, the presenter when putting a question to the Minister for Social Protection Joan Burton said *"People on low incomes . . . they're having to pay the property tax . . ."* It is correct that he made this reference to the tax alongside changes in allowances and possibly in child benefit as realities for workers in the public and private sectors. RTÉ claim that no partiality or lack of objectivity was shown by referring to this fact.

### Decision of Compliance Committee

The Committee considered the broadcast and the submissions from the broadcaster and the complainant. Following consideration of the material the Committee has decided to reject the complaint.



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In reaching this view, the Committee took into account the following:

- The programme, *The Week in Politics*, is a programme that reviews political developments in Ireland in the preceding week. In this context, the programme about which the complaint has been made examined a number of new and potential charges that would likely impact on the income of citizens of the State. These included a proposed increase in PRSI paid by the self-employed, the Croke Park II negotiations and their impact on pay and conditions, recent legal decisions regarding sectoral labour agreements, as well as the property tax. These issues along with the dispute then ongoing at *Bus Éireann*, the issue of universal health cover and the inquiry into the banking industry were discussed by a panel.
- Following a review of the programme, it was the Committee's view that these issues were examined from a range of perspectives, including the expression of views that were both supportive and critical of Government policy, including the requirement to pay a local property tax.
- The Committee noted that the discussion was undertaken on the basis that the Government had legislated for a property tax and had appointed the Revenue Commissioners to collect this tax. The legislative and administrative arrangements are matters of uncontested fact and it was the Committee's view that the debate undertaken by the participants was done on the assumption of these facts and could not be considered as evidence of bias on the part of the programme makers.
- In addition, the Committee noted that the extracts from Dáil hearings in respect of the property tax and the power of councils to vary the tax were presentations of factual events that did not require an alternative perspective.
- More generally, the Committee noted that the Local Property Tax was not the focus of the discussion and references to it were minimal. Rather, the focus of the discussion was predominantly on matters such as the Croke Park II agreement, universal health cover and an inquiry into banking. Taking this into account and having regard to the programme as a whole, the Committee did not agree with the complainant that the programme lacked fairness, objectivity and impartiality.

## Broadcasting Complaint Decisions

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**Complaint made by: Mr. Tony Madden**

**Ref. No. 62/13**

**Station:**

RTÉ One

**Programme:**

Prime Time

**Date:**

27 May 2013

**Complaint Summary:**

Mr. Madden's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a)(fairness, objectivity & impartiality in current affairs).

The complainant submits that the presenter opened a discussion on aborting babies with foetal abnormalities by repeating claims that about 1,500 such cases are diagnosed in Ireland each year and an estimated 80% of those end in abortion in Britain. The complainant states this is a huge and inaccurate manipulation of figures. In his submission, the complainant states that it is his view that Prime Time is not excused by the promise to 'use the correct figures in future' for the following reasons:

- That time may never come;
- The damage is done;
- It is the broadcaster's responsibility to correct such inaccuracies on such a controversial topic rather than repeat the mistakes of the '*Mission to Prey*' episode;
- A five-minute search on Google would have been enough to direct them to the correct figures;
- Not having 'time' does not justify inaccurate figures – they should have omitted them if they were unsure;
- It is his view that the inaccurate figures came from an abortion lobby/advocacy group who would very much desire a change in the laws and public opinion, which totally contradicts any claim to impartiality on the part of the broadcaster;
- Simply stating that 'people campaigning for abortion...' does not exempt the fact the figures were used at the beginning to frame the audiences thinking.

The complainant states that the viewer took from the programme that the figures were correct. Viewers should be able to trust that what they are told is in fact true and this was not the case.

**Broadcaster's Response:**

**Initial response to complainant:**

RTÉ states in the limited time available prior to the programme, they made considerable efforts to ascertain precisely what the figures were for women whose pregnancies tragically involve fatal foetal abnormalities and what proportion end in abortion. However, they were not able to do so. (RTÉ states they were not aware of the British Department of Health figures at the time, and, of course, would have examined them if they had been).

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Given that situation, RTÉ were very careful to make clear that the figures, which were mentioned once in the introduction to the programme, were not RTÉ's figures and were not figures from an independent source. *Prime Time* made it clear that they were the opposite. The Presenter stated "Groups campaigning for termination for medical reasons say..." thereby making quite clear that this was not a claim being made by RTÉ, but by one side in the debate. (It is worth adding that the substance of the debate did not in any way hinge on the numbers of these cases, nor in fact, were the numbers referred to again during the discussion).

RTÉ further states that if they return to this aspect of the abortion debate, they will examine the numbers of such cases in the light of the British Department of Health figures cited.

### **Response to BAI:**

RTÉ states that the item consisted of an introduction by the presenter, a pre-recorded interview with the Minister for Health and a live studio debate between Jennifer Scheppe, School of Law, University of Limerick and Gerry Whyte, Professor of Law, Trinity College Dublin. The Minister stated that in his view, and that of the Attorney General, legislation for termination in cases of fatal foetal abnormality was not compatible with the constitution. In the subsequent debate, Ms. Scheppe disagreed and Mr. Whyte agreed with the Minister's position.

The presenter's introduction included: "The debate about abortion is always underpinned by very strong opinions and emotions on both sides, none more so than when a woman is pregnant and she's told that the child she's carrying has no chance of survival. Groups campaigning for terminations for medical reasons say fifteen hundred such diagnoses are made in Ireland every year and that in about eighty percent of those cases the mother travels abroad for an abortion".

It was not possible for the programme to ascertain in the preparation time available objective figures for the diagnosis in Ireland of fatal foetal abnormalities or of consequent terminations.

RTÉ and *Prime Time* are committed to fair, objective and impartial coverage of this and any debate, as was demonstrated in the ensuing studio discussion, and in this context it would always be an editorial goal to obtain and use the most accurate factual information available. (Had *Prime Time* been aware of the UK Department of Health figures, they would of course have been examined.)

On this occasion, it was not possible to obtain objective statistics and therefore in setting the discussion in context the presenter's script referred to figures claimed by "groups campaigning for termination". It could not have been made more unambiguous that these were not figures claimed by RTÉ or by any independent organisation but by one of the sides in the debate. A reasonable viewer would have heard unmistakably that this was a partisan view.

It can be noted, as the Editor of *Prime Time* did in his response, that these figures were used once, in introducing the topic, and not referred to again in the debate, which was entirely focussed on the legal and constitutional issues and in which numbers played no part.

RTÉ asserts that the figures given were unambiguously framed as a partisan view, that there were no more objective figures available to the programme at that time.

## Broadcasting Complaint Decisions

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### **Decision of the Compliance Committee:**

The Committee considered the broadcast and the submissions made by the complainant and the broadcaster. Following consideration of the material, the Committee had decided to reject the complaint. In reaching this decision, the Committee took into account the following:

- The reference to the number of women travelling abroad to terminate their pregnancies on the basis of fatal foetal abnormalities was not stated as a fact by the programme presenter. Rather, the figure of 1,500 was clearly attributed to “groups campaigning for terminations for medical reasons”. As such, viewers to the programme would have clearly understood the source of the statistic and that the figure quoted was not one provided by an independent body but rather from a group campaigning for a particular outcome.
- In considering complaints under section 48 of the Broadcasting Act 2009, the Committee has regard to a programme in whole and in context. In this regard, the Committee noted that the programme contained a range of views. This included a pre-recorded interview with the Minister for Health and a live studio debate between Jennifer Schweppe, School of Law, University of Limerick and Gerry Whyte, Professor of Law, Trinity College Dublin.
- While the Committee was of the view that it was regrettable that the programme makers did not provide independent information on the number of Irish women seeking abortions on the grounds of fatal foetal abnormality, this was not considered sufficient reason to conclude that the programme as a whole lacked fairness, objectivity and impartiality.

## Broadcasting Complaint Decisions

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**Complaint made by: Ms. Jennifer DeWan on behalf Nasc, the Irish Immigrant Support Centre Ref. No. 63/13**

**Station:**  
Cork 96FM

**Programme:**  
Neil Prendeville Show

**Date:**  
14 May 2013

### **Complaint Summary:**

Ms. DeWan's complaint is submitted on behalf of Nasc (the Irish Immigrant Support Centre) under the Broadcasting Act 2009, section 48(1)(b) (*Code of Programme Standards*: sections 3.4.1 & 3.4.2 (persons and groups in society), sections 3.5.1 & 3.5.2 (factual programming – news, current affairs and documentaries) and 48(1)(b)(law and order). The complainant states that they did not hear the original broadcast but is making the submission on foot of reports received by the organisation via its formal racism reporting mechanism. Emails sent to the complainant by third parties were submitted to the BAI by the complainant. The complainant also notes that they did hear the programme online via a third party application.

The complainant states that the Nasc organisation has in place a mechanism where people can report racism to them. The organisation received a number of complaints referring to what she claims were racist and offensive comments made by the presenter regarding non-Irish people living in this country. The complainant quotes from the programme during which the presenter referred, among other things, to providing *"medical cards to Africans while Irish children go sick".... "we provide social welfare to former Russians and children's allowance to kids living in Eastern Europe...."*

The complainants to Nasc believe the comments were at best discriminatory, irresponsible and prejudicial and at worst, capable of inciting hatred against ethnic minorities living in Ireland and in Cork in particular. Nasc claims that the comments go far beyond just being offensive – they are racist and they state that the broadcast was inciting hatred and promoting intolerance against migrant communities living in Cork city and non-Irish worldwide.

The complainant states that Nasc requested that the broadcaster issue an apology or clarification on the broadcast. The broadcaster stated that the matter had been dealt with internally and would not be revisited. The complainant claims they were not informed as to how the matter had been "dealt with internally" and therefore believe no satisfactory conclusion was reached.

### **Broadcaster's Response:**

#### **Initial response to complainant:**

96FM states that they have finalised the matter internally and don't propose to revisit the issue on-air, as suggested. However, the broadcaster states their willingness to meet with Nasc to discuss their concerns.

#### **Response to BAI:**

96FM states that they met with the complainant and one of her colleagues following their initial complaint to the station. They further state they were both alarmed and shocked that neither had actually heard the broadcast that they were complaining about but were acting on what 96FM claims were third-hand transcript which does not contextualise the comments made by Neil Prendeville. On that basis, the broadcaster states that the complainant issued a press release that the broadcaster considered unsuitable.

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96FM does not believe the comments made by Neil Prendeville are racist. They were reflecting / summing up listener contributions to the programme over a period of time. During the remainder of the programme on that day and the one following, texts and callers were aired who both agreed and disagreed with the presenter's comments. Therefore, 96FM claims, the coverage in total was balanced and reflective of the Cork audience served.

96FM claims to have sympathy for the people represented by the complainant. However, they also believe that ill-informed comments on national online forums by people who hadn't heard the broadcast and/or who are not within their franchise area were irresponsible and more likely to cause problems for the people affected. 96FM claims they cannot be held responsible for that.

### **Decision of the Compliance Committee:**

The Committee considered the broadcast and the submissions made by the complainant and the broadcaster. Following consideration of the material presented the Committee has decided to reject the complaint.

In reaching this decision, the Committee took into account the following:-

- The content consisted of a monologue by the presenter outlining his personal views on a wide range of issues, including cronyism on the part of politicians, the public service and its staffing and adequacy, payment of social welfare to recipients that the presenter believed did not deserve payment (including non-Irish members of society), cuts in social welfare, the effectiveness of local Government, the Irish health service (including private and public health), 'junkets' to other countries by public representatives, payment of Irish Government debt and its impact on society, the operation of semi-state companies, the impact of large supermarkets on small retailers and the adequacy of the national media.
- Upon its review of the programme, the Committee did not agree with the complainant that the item was in breach of the Code of Programme Standards. While the presenter's remarks about non-Irish members of society may have offended some listeners, the Committee did not agree that they were of such a nature that they would support or condone discrimination in the manner suggested by the complainant. Furthermore, the Committee did not agree that the comments were of a nature that would incite hatred or criminal actions towards non-Irish members of society. Rather, the comments were made in the context of a polemic made by the presenter whereby he outlined his own personal concerns about Irish society. This polemic dealt with a wide range of issues about which the presenter was dissatisfied and the comments regarding non-Irish members of society were situated in that context and were not considered by the Committee to be a specific attack on particular members of Irish society.
- Regarding the processing of the complaint, the Committee was satisfied that it was appropriate for the complainant to make a complaint to the broadcaster on behalf of those members of societies that it represents. The Committee was also satisfied that the complaint should be considered on those grounds.

## Broadcasting Complaint Decisions

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**Complaint made by: Mr. John O' Donoghue**

**Ref. No. 66/13**

**Station:**

Radio Kerry

**Programme:**

Kerry Today

**Date:**

4 & 5 July 2013

**Complaint Summary:**

Mr. O' Donoghue's complaint is submitted under the Broadcasting Act 2009, section 48(1)(a)(*fairness, objectivity & impartiality in current affairs*). The complaint concerned an interview regarding abortion.

The complainant submits that Ms. Caroline Simons, Legal Adviser of the Pro-Life Campaign was interviewed by the presenter of the programme, Jerry O'Sullivan. The complainant claims that the presenter failed to be objective following his negative interpretation of words used by Ms. Simons when she stated "*regardless of what your own views might be, Jerry in relation to this, it is not a good thing to see T.D.s being bullied in regard to a matter of conscience*". The complainant claims that the presenter took exception to the words "*regardless of what your own views might be*" and believed they cast a negative judgement on him. The complainant states that thereafter the presenter was profoundly unfair to Ms. Simons who attempted to tell him repeatedly that she had not said that which he had chosen to understand from her words. The complainant further states that the presenter, with raised voice, charged her with accusing him of being pro-abortion and of intimating this in a "subtle" and very "snide" way.

The complainant claims that the outburst by the presenter totally derailed the expression of the point of view that Ms. Simons was there to represent on behalf of the Pro Life Campaign at a crucial time before the final week of debate on the Government's abortion legislation. He also succeeded, in the complainant's view, in casting Ms. Simons in a negative light, evidence of which became apparent from the text read out after the interview.

The complainant states that the presenter returned to the issue on Kerry Today on 5<sup>th</sup> July when he repeated his views in respect of the comments made by Ms. Simons saying "*she very clearly implied*" and that she did so "*unprovoked*". He read some further comments from listeners, concluding with one from the complainant. The complainant submits that the behaviour of the presenter towards Ms. Simons was contrary to the requirement to be fair, objective and impartial.

**Initial response to complainant:**

Radio Kerry states that the interview with Ms. Simons was over 13 minutes in duration and she was given ample time to outline her organisation's views. When Ms. Simons referred to "*regardless of what your own views might be Jerry*", the presenter interjected to ask "*Hold on a second Caroline, what have my own views got to do with it?*" Ms. Simons replied "*well I don't know but you certainly are questioning me rather strongly*".

Radio Kerry claims that an objective view of this exchange would draw the conclusion that Ms. Simons was questioning the impartiality of the presenter and that his strong line of questioning was both unfair to her and stemming from personally held beliefs. It also appeared to question the impartiality of the Kerry Today programme.

## Broadcasting Complaint Decisions

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Radio Kerry further claims that the presenter was doing his job by questioning strongly someone with views on one side of the debate thus providing balance so the listeners who can make up their own minds.

With regard to the broadcast on 5<sup>th</sup> July, the complainant's comment was read out. This comment included a challenge to replay part of the interview from the previous day. Kerry Today's producer was of the view that the discussion had been comprehensively dealt with the previous day and that a podcast of the programme was and still is available on the station's website, if anyone wished to listen to it again.

All comments received by the programme, both positive and negative were read out without any censorship.

Radio Kerry draws attention to the fact that although the complainant had been informed that the programme was available on their website, they facilitated him with a transcript and audio of the interview when he requested both.

### **Response to BAI:**

Response above also applies to the BAI.

### **Decision of the Compliance Committee:**

The Committee considered the broadcast and the submissions from the complainant and the broadcaster. Following consideration of this material, the Committee had decided to reject the complaint.

In reaching this decision, the Committee took into account the following:-

- The item about which the complaint was made concerned an interview with Caroline Simons, legal advisor with the Pro-Life Campaign. During this item, the presenter asked his guest to clarify and defend a remark that he believed questioned his impartiality.
- In assessing this complaint, the Committee did not consider whether the presenter's interpretation of comment made by Ms. Caroline Simons was correct and true. Rather, the Committee reviewed the material with a view to assessing whether, in the context of the programme discussion, his response was reasonable and whether his subsequent treatment of his guest was fair, objectivity and impartial.
- In this context, the Committee agreed that the presenter's response in respect of the guest's comment on the presenter's views was reasonable and that it was within the remit of the presenter to challenge the guest on her remarks and to ask that she clarify their intended meaning. In this respect, the guest was provided adequate opportunity to address the concerns of the presenter and to clarify her view that she was not questioning his impartiality and that his assessment of her remarks was incorrect.
- While noting that the tone of the discussion thereafter was impacted by the heated exchange between the presenter and his guest, the Committee did not agree with the complainant that the exchange *"derailed the expression of the point of view that Ms. Simons was there to represent"*.



In this regard, the Committee noted that Ms. Simons was the only guest participating in the interview and was afforded a lengthy opportunity to outline the views of the organisation that she advises. The Committee also noted that the presenter questioned and challenged the guest and that this was appropriate and in line with the role of programme presenters as a 'devil's advocate', particularly in circumstances where only one perspective is being provided by a guest.

- Finally, it was evident from a review of the programme that comments read out by the presenter following the interview and during the programme on the following day reflected an adequate range of views, including those supporting the perspective of the presenter as well as those that disagreed with him.

