



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

Broadcasting Authority of Ireland

Broadcasting Complaint Decisions

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BAI Complaints Handling Process

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

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

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

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

In total, seven complaints have been considered and rejected by the Compliance Committee of the BAI. The decisions of the Compliance Committee were reached at meetings held in May and November 2015.

Broadcasting Complaint Decisions

Rejected by the BAI Compliance Committee

Complaint made by: Mr. Mark Vincent Healy

Ref. Nos. 113 and 114/14

Station:

RTÉ One TV

Programme:

One and Nine News

Date:

15th August 2014

1. The Programme

The complaints concern two broadcasts of new bulletins on RTÉ 1 television at 1pm and 9pm. In particular, the complaints deal with an item during each bulletin setting out the findings of research produced by the Economic and Social Research Institute (ESRI) and *Trinity College Dublin* (TCD). The research focused on the impact of child sexual abuse on older members of the male population and the impact on them from an economic and social perspective.

2. Complaint Category

The complaint is submitted under: the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in news and current affairs), 48(1)(b) (offence and harm), and 48(1)(c)(Privacy); the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.3, 4.4 and 4.9, 4.28 and 4.29); the *Code of Programme Standards* (Rule 3.5 – Persons and groups in society).

3. Complaint Summary:

The complainant was a participant in the reports aired during both news bulletins. The complaint addresses two issues.

Firstly, the complainant objects to the use, during the 9pm bulletin, of a photograph of a meeting that he had with Pope Francis. The complainant states that he owns the copyright for this photo and did not give the broadcaster permission to broadcast this photograph. He says that his rights in this regard were infringed.

Secondly, the complainant objects to what he says was the presentation of him in the reports as a lonely single aging man in his private life, a presentation which he states he never consented to by way of any interview. The complainant states that he engaged with RTÉ to talk about what he had presented to Pope Francis in terms of the findings of the economic impact on the lives of survivors, namely, household income and labour force attachment.

He states that he participated in the interview, not to speak about his personal life or circumstances, but as a campaigner seeking services which he states are badly needed for survivors of clerical child sexual abuse.

The complainant states that what was portrayed was the social impact issue of living alone, which was not the basis for his consent to participate in the interview.

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4. Broadcaster's Response

4.1 Initial response to complainant

The complainant initially raised his concerns with the producer of the reports in question, RTE's Religious and Social Affairs Correspondent. He then made a formal complaint to the broadcaster.

In its response, the broadcaster stated that it was sorry that the complainant felt let down by the broadcast and by the use of the photograph in the 9pm news bulletin. The broadcaster states that the photo was used in good faith and on the assumption that it had been provided to the broadcaster as part of the communication between the complainant and RTE's Religious and Social Affairs Correspondent on the issues raised in the report. In this context, the broadcaster states that it did not believe that it required additional permission for the use of the photograph.

Concerning the interview with the complainant, the broadcaster states that they believe the complainant, in his interview, gave powerful testimony which went to the core of the findings of the *ESRI* report. The broadcaster states that this is why the clip was selected for broadcast. The broadcaster reiterates that they sincerely regret that the complainant feels otherwise.

In the course of correspondence with the complainant, the broadcaster responded to a number of queries concerning RTE's complaints handling processes.

4.2 Response to BAI

In terms of the issue relating to the use of a photograph, the broadcaster has provided correspondence between the complainant and RTE's Religious & Social Affairs Correspondent that covers the period between 15th March 2013 and 12th September 2014.

The broadcaster states that it establishes that the relationship between the complainant and RTE's Religious & Social Affairs Correspondent was clearly one between a campaigning abuse survivor and an RTE journalist with a particular responsibility for coverage of the subject of the complainant's campaign. It is in that context that the photograph of the complainant's meeting with Pope Francis was received, with no indication of any restriction on its use, and accompanied by a text message which appeared to be a suggested caption to the photograph, reinforcing the impression that it was being offered for publication.

The broadcaster also states that the correspondence included a link to an opinion piece written by the complainant in *thejournal.ie* (provided to the BAI) which included the statement:

"Prior to going to the Vatican I was asked if I had any problem with having my photograph taken with Pope Francis or in having it published. I didn't and hoped it would be published."

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As I subsequently wrote to Fr. Robert Oliver, the Vatican promoter of Justice for the Congregation for the Doctrine of the Faith (CDF) who replaced Msgr. Charles Scicluna in January 2013 as 'Chief Prosecutor', asking him to let Fr Federico Lombardi, the director of the Holy See Press Office know:

"I think it is important to be seen with His Holiness and not anonymously spoken of as nameless and faceless. It is part of justice to be seen. It is part of healing to be seen. It is part of witness to be seen. Let not the darkness which was in the sin (crime) be the place resigned for survivors. It is important to be in the light in order to instill hope."

The broadcaster states that the article in thejournal.ie goes on to make clear the complainant's unhappiness with the subsequent decision by the Vatican not to publish a photograph of his meeting with Pope Francis, referring to it as being 'bagged' and 'gagged'. The broadcaster states that the article in thejournal.ie also included the photograph of Pope Francis, Cardinal Seán O'Malley and the complainant, with the complainant credited as the source of the photograph.

The broadcaster states that both the text message to which the photograph was attached and the link to the article by the complainant in thejournal.ie indicated to the RTÉ Correspondent that not only was the photograph offered for publication but that the complainant was actively in favour of its publication.

RTÉ therefore asserts that in the use of the photograph there was no breach of legislation or broadcast codes. Notwithstanding this, RTÉ wishes to note that on receipt of the complainant's objection to use of the photograph a commitment was given that there would be no further use of it, if that was his wish, and this will continue to be respected.

Concerning the second aspect of the complaint, relating to Rule 3.5 of the *Code of Programme Standards*, RTÉ believes that it could not be reasonably expected that the dignity of the complainant could be prejudiced by the inclusion in the broadcast of his response to a question on abuse survivors living alone. His reference to his personal experience was freely given and with no subsequent reservations about its use being expressed by him before broadcast.

The broadcaster states that, when agreeing to be interviewed, the complainant was fully informed as to the topic of the news report (and there was no change before broadcast in that respect). The pre-interview discussion between the complainant and the RTÉ Correspondent included reference to the complainant's having heard the correspondent's radio reports on the topic earlier that day; the approach to the topic in those radio reports was similar to that of the television reports to which the complainant contributed, in their emphasis on the social aspect of the *ESRI/TCD Research Bulletin*.

The broadcaster states that the complainant requested not to be questioned on a particular aspect of the research bulletin, which was respected. He freely answered all questions put to him and before broadcast expressed no reservations or made any conditions in relation to use of the interview.

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The broadcaster states that, in this context, it is noted that in addition to speaking immediately after the filming of the interview, the journalist and the complainant lunched together later that day, following their contribution to *News at One* on RTÉ Radio 1 on the topic of the pending resignation of Cardinal Seán Brady. While a text which the complainant had sent to the journalist after the interview and before meeting the journalist in RTÉ Radio, in which he said “*I wish I did you better by way of an interview*”, was discussed over lunch, he expressed no reservations at that time about any particular aspect of the interview, nor sought any restrictions on its use.

The broadcaster states that both in conversation directly after the filming of the interview and later over lunch, the complainant had the opportunity to withdraw or qualify his informed consent to the use of the interview or any parts thereof by RTÉ; the journalist was given no indication of any objections by the complainant regarding the use of the entirety of the footage.

RTÉ believes that the complainant’s composed and frank response in the broadcast would have underlined for the viewer the consequences in terms of lived experience of the matters dealt with in the *ESRI/TCD* report. While asserting that there has been no infringement of Rule 3.5 of the *Code of Programme Standards* or of Rules, 3, 4 or 9 of the *Code of Fairness, Objectivity & Impartiality in News & Current Affairs*, in any respect, RTÉ wishes to reiterate the regret already expressed by the Religious and Social Affairs Correspondent and the Managing Editor TV News for any distress caused to the complainant by the inclusion of his contribution in the report.

The broadcaster states that, as is generally the case in news reporting, the edited report used an excerpt from the interview with the complainant. The broadcaster states that the excerpt was selected because it brought a unique perspective to the issue being covered. Exercising appropriate editorial independence, both in the editing of interviews and the editorial emphasis of the report, the broadcaster selected an excerpt from the complainant’s interview which was entirely relevant and apt to the subject of the report, the *ESRI/TCD Research Bulletin*. The broadcaster states that in the editing, there was no distortion of the context or meaning of the original interview; nor, although on viewing the report the complainant regretted his contribution, does he indicate any way in which that contribution was distorted.

The broadcaster states that the contribution of the complainant was fairly and respectfully portrayed in the context of a short news report on the publication: *The News at One* report was of 1’52” duration (2’09” including helpline information) and *The Nine O’Clock News* was of 2’02” duration. In the longer *Nine O’Clock News* report, the photograph of the complainant meeting Pope Francis was used when referring to him having presented the research to the Pope, underlining the authority of his testimony.

The broadcaster states that the three interviewees – Mr. Alan Barrett of the *ESRI*, co-author of the *ESRI/TCD Research Bulletin*; Ms. Angela McCarthy of the *Dublin Rape Crisis Centre*; and the complainant – were afforded fair and equitable time (15”, 16” and 17” respectively, in both reports) to offer three different perspectives on the *ESRI/TCD Research Bulletin*.

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The broadcaster states that the complainant's valuable contribution, which led the interview excerpts in both reports, brought his own experience to bear, complementing and grounding the contributions of Professor Barrett and Ms. McCarthy. RTÉ genuinely regrets the complainant's subsequent unhappiness with his contribution but believes strongly that viewers would have appreciated and respected his dignified testimony to the continuing personal consequences of childhood sexual abuse.

RTÉ believes there are no grounds to uphold this complaint and that the complainant was fairly and respectfully portrayed in an accurate, objective and impartial report on the publication of the *ESRI/TCD Research Bulletin* and that there was no breach of Rules 4.1, 4.2, 4.3, 4.4., 4.9, 4.28 and 4.29 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, of Rule 3.5 of the *BAI Code of Programme Standards*, or of section 48(1)(c) of the Broadcasting Act 2009.

Nevertheless, RTÉ wishes to reiterate its genuine regret for distress caused to the complainant by his participation. It is very much hoped that he may appreciate that all concerned within RTÉ have acted in good faith and in support of bringing to public attention an important piece of research on the impact of childhood sexual abuse.

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

The Committee considered the broadcast and the submissions from the complainant and the broadcaster. Following a review of the material, the Committee has decided to reject the complaints. In reaching this view, the Committee had regard to the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in news and current affairs), 48(1)(b) (Offence and Harm) and 48(1)(c) (Privacy); the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.3, 4.4 and 4.9, 4.28 and 4.29); the *Code of Programme Standards* (Rule 3.5 – Persons and groups in society).

In this regard:

- The Committee noted that the focus of the news items in question was new research that focused in particular on older males who had been the victims of child sexual abuse and how this experience impacted them later in life in terms of their economic and life situations. It was in this context that the complainant had agreed to be interviewed in the segment.
- In this regard, the Committee noted that in the broadcasts the complainant stated that he could identify, in some respects, with the experience of those men who were the focus of the research covered in the news reports. In particular, he talked about his own experience and stated – “*I myself live alone, so does that mean it's more difficult to get by and make do, yes it does...*” He also spoke more generally when he said, in respect of people who have had similar experiences, “*...I think it is more difficult in life.*” It was evident from his contribution and from the complaint documentation that the interviewee was fully aware of the context for the interview and that he had consented to participate.

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- On the issue of privacy, as the complainant had chosen to participate in the interview voluntarily, the Committee could find no basis on which to uphold that part of his complaint. While noting that the news bulletin included an additional element in respect of the presentation by him to Pope Francis of the research that was the focus of the news reports, again this was information that he had provided to the programme makers.
- On the issue of the complainant's portrayal in the news reports; the Committee noted that interviews will be edited and this is an editorial decision for broadcasters. While the interview segments chose to predominantly emphasise the complainant's personal experience, the Committee was of the view that the item did not portray him in a negative fashion. In particular, the Committee noted that in the second bulletin, he was clearly shown as an individual advocating the rights of people who had been victims of child abuse and that this was done by the inclusion in the news report of his meeting with Pope Francis.
- On the issue of the use in the second bulletin of a photograph of the complainant meeting Pope Francis, the Committee did not consider matters pertaining to copyright as this is outside the scope of the Section 48 complaints process. Instead, the Committee considered whether the use of the photograph was fair to the complainant. From its review of the complaint submissions, it was the Committee's view that there was a degree of ambiguity in respect of the photograph. While the complainant raised issues subsequent to the news items being broadcast, the Committee was of the view that, on balance, it was reasonable for the broadcaster to take the view that it could use the photograph in question. Having said this, the broadcaster may wish to review its editorial processes so as to put in place stronger measures in terms of the use of photographs and avoid a repeat of the issues that arose in the case of the current complaint and which caused evident distress to the complainant.
- Having considered the complaints, it was the opinion of the Committee that the programmes did not infringe the requirements of the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in news and current affairs), 48(1)(b) (Offence and Harm), and 48(1)(c) (Privacy), the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.2, 4.3, 4.4 and 4.9, 4.28 and 4.29) or the *Code of Programme Standards* (Rule 3.5 – Persons and groups in society), in the manner specified by the complainant. Accordingly, the complaints have been rejected.

Further Determination

In assessing the complaints, the Committee was cognisant of the sensitive nature of the subject matter to the complainant. In this context, the Committee was of the view that the complaint decision should not be published, except at the request of the complainant. The complainant has informed the BAI of his wish that the complaint decisions be published and, accordingly, it is included in this publication.

Broadcasting Complaint Decisions

Complaints made by: Mr. Brendan O' Regan

Ref. Nos. 120/15 and 121/15

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ Radio 1	The Ray D'Arcy Show	7 th May 2015
		25 th May 2015

1. Programme

The complaints concern *The Ray D'Arcy Show*, which is broadcast each weekday afternoons on RTÉ Radio 1 from 3.00pm to 4.30pm. This is a lifestyle/entertainment programme. The topic discussed on both programmes was the *Marriage Referendum*.

2. Complaint Category

The complaints are submitted under the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.3, 4.22).

3. Complaint Summary

7th May – The complaint relates to an item on the *Marriage Referendum* on this programme. The item concerned a photo of a family which had been used on a poster of an organisation which advocated a 'No' vote in the *Referendum*. The family featured in the photo objected to the use the photo as they were personally in favour of a 'Yes' vote in the *Referendum*. The complainant claims that there was a lopsided, unbalanced and partial discussion about this poster which focused mainly on the views of those in favour of a 'Yes' vote.

25th May – The complainant believes that the presenter's introduction to this programme regarding the results of the *Marriage Referendum* was a gross contravention of the Codes. The complainant states that in his introduction, the presenter referred to the result as truly historic and as being one of the most important in the history of the state. The complaint states that the presenter also commented that [the presenter] had cried tears of pride, that he was proud to be Irish because of this and that it was a great thing because it sent out a message that the Irish are tolerant and inclusive. The complainant states that the presenter also described the idea of children bringing this news to school as being healthy, powerful, and brilliant. The complainant states that the presenter then concluded by stating that the show was going to celebrate the passing of the *Marriage Referendum*.

The complainant claims that, ironically, by celebrating inclusion the presenter was excluding approximately 40% of the electorate.

Broadcasting Complaint Decisions

Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ acknowledged the complaints but no follow-up occurred.

4.2 Broadcaster's Response to BAI

In respect of both complaints, RTÉ states:-

Ref: 120/15

The broadcaster states that the editorial format of *The Ray D'Arcy Show* includes topics of the day. In that editorial context, an item on the programme 7th May 2015 reported on the background to the revelation that a couple whose photograph had been used in a poster for an organisation campaigning for a 'No' vote in the *Marriage Referendum*, had not known of its use in that context. The story had been reported widely in media on that day.

The broadcaster states that the presenter and programme researcher took listeners through the story in a fair, objective and impartial manner, following the sequence of events, statements and reactions from the various parties involved. As can be heard, these quotations read by the presenter, in a purely informational manner, included: -

Adam Hills, the Australian comedian who had commented on Facebook that his wife knows the couple who were featured on the poster:

"So, there is a Marriage Equality vote in Ireland at the moment, and it has all got pretty heated. Posters like these have been circulated.

Unfortunately, the image in the poster is a stock photo - which means anyone can buy it and use it for whatever purpose they so desire. As it turns out, the people in this photo are friends of my wife, and are appalled that their faces are being used, without their permission, to promote something they wholeheartedly disagree with. And yet there is nothing they can do about it.

Regardless of how you feel about the vote – what a weird, horrible, ridiculous world we live in, in which a loving, caring, open-minded family unit can be used to advertise the very opposite of what that particular family unit believes. If any of my Irish friends see these posters, just know this - the beautiful family on that poster is all for Marriage Equality."

The statement in relation to the issue by *Mothers and Fathers Matter*, read:

"Like many campaigns, Mothers and Fathers Matter has used a stock photo to give a human face to our message. In this case, that children deserve a mother and father wherever possible. Our posters all demonstrate the core issue in the Marriage Referendum debate rather than the rather simplistic messaging being used by the various 'yes' posters.

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We don't respond to third parties suggesting that they speak for the family who received payment for this photo but if the couple involved care to contact us directly we will be pleased to demonstrate how use of this photo will help insure that no child will be deliberately denied the love of a mother or father."

The broadcaster states that the subsequent statement by the couple who had posed for the stock shot used in the poster (released through *Amnesty International Ireland's Executive Director*, Mr. Colm O'Gorman) was also read on air.

Then the statement by *Mothers and Fathers Matter* in response to the couple's statement above read:

"We are just worried that next week Colm O'Gorman will be shocked and appalled as he discovers the family in the Coke ads actually likes Pepsi."

The broadcaster states that all statements were reported with complete accuracy and *RTÉ* notes that the complainant does not claim or demonstrate otherwise. The complainant's assertion, that more "*attention*" was paid to one point of view than another is therefore completely unfounded.

RTÉ notes that the presenter's back-reference comments on the item following the commercial break were entirely confined to his wonder at the facility offered by the *Google* search engine to search for images, and not just words.

Ref. 121/15

RTÉ state that the complainant is correct that at the beginning of the programme of 25th May 2015, when introducing the coverage of the *Referendum* result on the programme, the presenter, briefly welcoming that result on a personal basis, in addition described it as a historic occasion and, citing the example of children bringing the story for classroom discussion, one which would change attitudes towards LGBT people in Ireland.

The broadcaster states that the presenter also described newspaper, radio and television coverage of the results which contained an element of personal reaction entirely proper to the programme format - this was also an appropriate introduction to the subsequent coverage of the *Referendum* result. It may also be noted that the presenter expressed the inclusive hope that those who had voted '*No*' in the *Referendum*, would in time, come to see it as positive. In addition, informing the audience that the following hour would contain a "*celebration*" of the result, gave listeners the opportunity to choose whether or not to listen to the occasion being marked in that way.

RTÉ notes that the *Broadcasting Authority of Ireland Guidelines in Respect of Coverage of Referenda (March 2015)* state:

Effective Date

*These Guidelines come into effect from **25th March 2015** until the closing of polling stations on the day of the referenda.*

Broadcasting Complaint Decisions

RTÉ claim that as the polling stations, having closed two days previously, the BAI Guidelines did not apply. *RTÉ* further state that to suggest that the Guidelines would continue to apply through the means of the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* would be to render the Guidelines of little assistance to broadcasters.

RTÉ further state that the *Referendum*, contrary to the claim by the complainant, was no longer a matter of public controversy or debate. The result of the vote had been announced and there was, on that date, no reason whatsoever to suggest that the constitutional amendment would not proceed, as it did. The presenter's comments were confined to the completed vote and result, as was the programme which he was introducing.

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

Having considered the broadcasts and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Sections 48(1)(a)(fairness, objectivity and impartiality in current affairs) and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 4.1, 4.3, 4.22), the Committee has decided to reject the complaints.

In this regard:

Complaint Reference 120/15

- Having reviewed the broadcast, the Committee is of the opinion that the content focused predominantly on the facts of the story as they emerged, including the context for the programme item, the views of the couple included in the *Referendum* campaign poster in question and responses from *Mothers and Fathers Matter* to criticisms of their choice to use the family in their campaign poster. The Committee also noted that the programme included some general comments about the uses to which stock photos can be put and also information on how programme staff researched the story.
- It was evident from the programme that the item was almost exclusively concerned with setting out the facts of the story as they developed up to the day of the broadcast. The emphasis of the programme was on statements on behalf of the couple whose family featured in the poster and responses from *Mothers and Fathers Matter*. While a detailed statement on behalf of the couple was read in full, the Committee saw no issue with this, given that they were the focus of the story itself. The criticisms of the couple were counter-pointed by the statements of *Mothers and Fathers Matter* and the presenter and programme researcher did not comment on the merits of the views set out by either party involved.
- For these reasons, the Committee did not agree that the programme infringed the Broadcasting Act or the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Complaint Reference 121/15

- In considering this complaint, the Committee had regard to the fact that the programme was broadcast on the Monday after the polling day for the *Marriage Referendum*. This poll has resulted in the passing of the 34th Amendment to the Irish Constitution. As such, the campaign had concluded and the matter, while one that constituted news or current affairs, was no longer deemed to be one of public controversy or debate at the time of the broadcast.
- The Committee noted that the presenter gave his opinion on the outcome of the *Marriage Referendum* and while the BAI's regulations prohibit the articulation by a presenter of a partisan position, they do not prohibit a presenter, when dealing with a current affairs issue, from giving opinions. This differs from news presenters since news is centrally concerned with the presentation of facts, and the BAI considers it inappropriate that news presenters would give their views when relaying such facts. In the case of programme presenters, the BAI also acknowledges that some current affairs output can be synonymous with personalities, where the manner in which the presenter presents or interviews contributors can be keenly anticipated by audiences. To prohibit presenters giving opinions on current affairs would therefore likely impact on audience enjoyment and engagement. However, broadcasters must also guard against their presenters articulating a partisan position which results in the content being skewed such that it becomes unfair or lacks objectivity or impartiality. In the case of the programme in question, the Committee found that, given the content and having regard to the comments made by the presenter, the presenter did not articulate a partisan position.
- The Committee noted that the passing of the *Referendum* changed the fundamental legal basis for the State and conferred new rights on Irish citizens who had been the subject of discrimination for many years and who would reasonably have cause to celebrate the passing of the *Referendum*.

Reflecting this change in the Constitution and drawing on the experiences and reactions of these and other citizens was considered by the Committee to be a legitimate editorial focus, particularly given that the question of whether to change the Constitution had been settled once the voting had concluded.

- In reaching this view, the Committee also had regard to the fact that broadcasters are free to choose the editorial angle that will be taken to the coverage of a current affairs story once that angle is fair, objective and impartial. A focus on a particular aspect of a story is not *de facto* evidence of bias and the Committee found that there was nothing in the programme content to indicate that the views of those who opposed the Constitutional change were treated unfairly.
- In view of the above, the Committee did not agree that the programme infringed the Broadcasting Act or the *BAI Code of Fairness, Objectivity or Impartiality in News and Current Affairs* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

Broadcasting Complaint Decisions

Complaint made by: Mr. Eric Walsh

Ref. No. 131/15

Station:

Cork City Community Radio

Programme:

Happy Talk

Date:

23rd August 2015

1. Programme

The complaint concerns *Happy Talk*, which is a lifestyle/entertainment programme broadcast each Sunday evening from 9.00pm to Midnight.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(b)(harm & offence); the *BAI Code of Programme Standards* (Principle 1: Respect for Community Standards and Principle 5: Respect for Persons and Groups in Society).

3. Complaint Summary

The complainant highlights a comment that he said was made by a female presenter on the show when she stated '*one thing I cannot stand is racists and foreign nationals*'. The complainant states that the male co-presented also made what he considers were problematic comments regarding a student, who is awaiting asylum status, and who had obtained seven 'A' grades in her *Leaving Certificate* examination. The complainant states that the *Minister for Education* rang this student to assure her that she had a place in college and could apply for a grant to further her studies. However, the complainant states that the male presenter made a comment that the *Minister's* assurance was unfair to families of Irish national parents, who he suggested had to '*go out and clean toilets*' to put their children through college. The complainant states that the male presenter then went on to say '*I hope the children enjoy going to the beach in Inchydoney tomorrow*', again referring to asylum seekers, in this case, those housed in the *Kinsale Road Asylum Centre*. The complainant states that this comment suggested that these children did not deserve to go to the beach because of their status.

The complainant states that the male presenter went on to make reference to the female anatomy in relation to an advert broadcast on *Classic Hits 4FM*, which dealt with surgery to help women who have a bladder problem. The complainant states that he also used an extremely offensive slang term ('Fanny') for the female genitalia.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

Cork City Community Radio states it is their assertion that neither presenter was being inappropriate or unfair towards people living in migrant centres. They state that the female presenter used sarcasm to show-up racists for what they are and, in turn, was defending all people who racists may choose to subject to this behaviour.

Broadcasting Complaint Decisions

In respect of the male presenter, the broadcaster states that he pointed out that, whilst it was a good thing that the successful student should be rewarded with a place in college, he stressed that all society should be equal, no matter what their ethnic background might be. The broadcaster states that this presenter also stated that the granting of college places should be on a fair and equitable basis and inclusive of all. He also made what is a fair comment that, when it came to affording a position at university, some sections of society would have to work at what might be considered menial tasks to get the money together to pay for same, while a special exception may be made for others because of their ethnic background or place of abode. The broadcaster states that, again, the presenter called for fairness here. The broadcaster states that this presenter also made the point that, while wishing the kids well on their day out, he also left an open question as to why kids from other sections of society were not also going on a day out, implying that fairness should be for everyone across society. The broadcaster states that not once did either presenter use racist or inflammatory language while on this topic.

In respect of the advertisement on 4FM regarding bladder issues, the broadcaster states that the presenters dealt with this subject with a great deal of sensitivity whilst obviously seeing the funny side of the advertisement, which is in fact an advert for *Femilift*. The broadcaster states that *Femilift* is what the presenter said during this segment and not once did he use the word 'Fanny'. The bladder issue discussed by the presenters can be a very embarrassing and inconvenient complaint to have and the broadcaster states that nowhere in this segment was it trivialised.

4.2 Broadcaster's Response to BAI

The same response, as above, was forwarded to the BAI.

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

Having considered the broadcast and the submissions from the complaint parties and having had regard to the Broadcasting Act 2009, Section 48(1)(b)(harm & offence) and the *BAI Code of Programme Standards* (Principle 1: Respect for Community Standards and Principle 5: Respect for Persons and Groups in Society), the Committee has decided to reject the complaint.

In this regard:

- In assessing a complaint the BAI will have consideration to a range of contextual factors. These factors include the time of day at which a broadcast has aired and the type of programme broadcast.

These contextual factors reflect the reality that the tastes and interests of Irish radio and television audiences are not the same and the need and suitability of broadcasters providing different programming to serve these different audiences. Balancing the different needs of audiences will often involve airing content that has the potential to offend some listeners and viewers.

Broadcasting Complaint Decisions

- The BAI's regulations allow for the airing of offensive content but this is accompanied by the obligation for responsible broadcasting. This includes a prohibition on content that would breach community standards, the obligation to ensure that content that has the potential to offend is justified for creative, editorial or other reasons and the requirement to use audience information mechanisms that minimise the chance that audience members will be offended. This includes the use of prior warnings and appropriate scheduling, such as after the Watershed.
- In the case of the programme about which the complaint has been made, while acknowledging that some audience members may have found the content puerile and offensive, the Committee did not agree with the complainant that the content was such that it would infringe Principles 1 and 5 of the *BAI Code of Programme Standards*. In particular, the Committee noted that the programme included a clear prior warning and that it was broadcast after 9pm in the evening. The Committee also noted the type of programme and the style of programme presentation. It noted that the tone was 'tongue & cheek' and was deliberately provocative. It also noted that the format depended on the interplay of the three presenters with different views being aired on the topics included in the programme.
- In the case of the comments about migrants and refugees, the Committee found that the item involved one presenter stating a critical view of what he felt were different standards between the treatment of Irish citizens and those who were not. While audience members might have reasonably found his comments objectionable and compliance issues may well have arisen had they been stated in isolation of any other opinions, the Committee noted that this presenter's views were challenged by his co-presenters. In this regard, the other presenters talked about how refugees and migrants were part of the Irish education system and should be treated equitably, regardless of their legal status. Furthermore, the importance of immigrants to the future of Ireland was commented upon where it was stated that Ireland needs bright young people in a context where Irish adults are emigrating.
- The Committee also found that some of the comments were nuanced in parts. In one case, a co-presenter, when criticising the presenter who had made the remarks about migrants and refugees said "*Two things I hate...racists and foreigners*" and it was clear that this remark, directed at her presenter, was intended to highlight what she perceived as a contradiction in the presenter's views.
- On the references to the advert for *Femilift*, the Committee found that the word 'Fanny' was not used during the item.
- Having considered the broadcast and the submissions, it was the view of the Committee that the programme did not infringe the Broadcasting Act or the *BAI Code of Programme Standards* in the manner specified. Accordingly, the complaint has been rejected. Notwithstanding this, in deliberating on this matter, the Committee was of the view that greater care should have been taken by the presenter when commenting on migrants/refugees and the broadcaster is advised to have regard to this finding when dealing with this topic in future.

Broadcasting Complaint Decisions

Complaint made by: Ms. June Twomey

Ref. No. 136/15

Station:

RTÉ Radio 1

Programme:

The Ray D'Arcy Show

Date:

4th August 2015

1. Programme

The complaint concerns *The Ray D'Arcy Show*, which is a lifestyle/entertainment programme broadcast each weekday afternoon from 3.00pm to 4.30pm. The topic discussed was medically difficult pregnancies, including pregnancies involving foetuses with fatal abnormalities. The item was prompted by an article in the *Irish Independent* newspaper, written by *Fine Gael Councillor*, Ms. Kate O'Connell, where she set out her experience of a pregnancy involving a foetus with a medical problem.

2. Complaint Category

The complaint is submitted under the Broadcasting Act 2009, Section 48(1)(a)(fairness, objectivity and impartiality in current affairs); the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Section 4: Rules 1 and 2).

3. Complaint Summary

The complainant states that, in her opinion, the presenter supported the views of his interviewee, Cllr. O'Connell. The complainant states that, in her opinion, the presenter focused on all the negative details with a view to influencing listener opinion. The complainant states that the story told by Cllr. O'Connell was of a sad situation that had turned out very well. However, the complainant states that the presenter focused on abortion as a solution, not only to fatal foetal abnormalities, but also in the case of pregnancies arising from rape, including incest.

The complainant states that Cllr. O'Connell's opinion was that she would have no problem permitting abortion in the case of fatal foetal abnormalities and believes others should be able to have abortions too. The complainant states that there was no-one on the programme to counteract that opinion nor was anyone brought on who had an experience similar to Cllr. O'Connell but who did not believe in encouraging abortion as a choice.

The complainant states that, in her opinion, the programme gave 30-minutes to the promotion of abortion in the case of pregnancies involving foetuses with genetic defects and pregnancies arising from rape and framed the issue only in terms of choice. The complainant states that the presenter endorsed this view.

The complainant also states that Cllr. O'Connell stated that the recent 2013 legislation dealing with abortion in certain circumstances was "*fudged*" and that the matter should be dealt with via a referendum. The complainant states that, again, there was no one on the programme to offer a counter argument. Finally, the complainant states that most of the text messages read out were what she characterises as 'pro-abortion'.

Broadcasting Complaint Decisions

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

RTÉ states that in keeping with their entitlement to make decisions on editorial matters, such as the format of a programme, *The Ray D'Arcy Show* does not generally host debates. They states that the interview with Cllr. Kate O'Connell was in keeping with that editorial format and presentational manner.

The broadcaster states that Cllr. O'Connell made it clear as a personal citizen and as a *Fine Gael* Councillor that she is in favour of abortion in Ireland and of repealing the 8th Amendment of the *Bunracht na hÉireann* and having a Referendum on this subject in Ireland.

The broadcaster states that the presenter asked Cllr. O'Connell where that position sat with her own political party, whether anyone had been in contact with her from *Fine Gael* with a reaction and he was told that there had been no contact and no reaction that she knew of.

The broadcaster states that the programme is a daily live show covering a diverse range of issues, stories, guests and talking points. They states that this was a human interest story focused on the difficult choice faced by one woman. The presenter dealt with the topic in a fair and even-handed manner facilitating Cllr. O'Connell to describe her personal experience. The broadcaster states that the presenter said that there were other views on the issue. In this regard, after the interview, the presenter read out a text from a listener who had experienced a devastating diagnosis when pregnant and went to term with the pregnancy holding her dead new born baby in her arms, an experience the woman said she never regretted and she would never support abortion.

They also states that a member of the production team also contacted this person to ask her if she would be interested in telling her personal story on the programme but the invitation was declined as she wished her identity to remain private.

4.2 Broadcaster's Response to BAI

RTÉ states the programme's editorial format does not generally include the hosting of debates between antagonists and the interview was conducted in the exploratory, conversational style which is known and expected by the programme's audience. They state that it was, for the most part, focused on Cllr. O'Connell's personal experience of pregnancy and the way in which that experience affected her views on the practice of termination of pregnancy in Ireland.

Through questions by the presenter and his reading of a selection of comments from listeners, which accurately reflected the balance of the audience response to the interview, listeners were consistently reminded of points of view other than that of Cllr. O'Connell.

Broadcasting Complaint Decisions

The broadcaster states that, while there was reference to legislative and constitutional provisions, the interview was substantially of a personal nature; it was made clear that Cllr. O'Connell's view on termination is an individual one and not a matter on which she claims to represent the view of her party. *RTÉ* states that, in the interests of transparency, Cllr. O'Connell's political involvement and ambitions were made clear.

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

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

In this regard:-

- The Committee noted that the context for the interview was a newspaper article wherein Cllr. O'Connell wrote about her own experience of dealing with a complicated pregnancy.

From its review of the programme, the Committee found that the majority of the interview was focused on her personal experiences and, in this regard, the interview included discussions on, amongst other matters:

- The specific medical problem encountered during the pregnancy, what this entailed, the impact on the foetus, including whether it would survive the pregnancy and how it might impact on her child's long term health.
- Her own emotional and psychological responses to the situation, as well as the response of her husband.
- How she dealt with questions about her pregnancy asked by people who were not aware of the medical complications.
- Details of the birth of her son and its immediate aftermath.

The Committee found that, in this regard, the presenter drew out responses to questions that audience members would be likely to have had and also facilitated the free expression of her experiences and how it impacted on her.

- The Committee also found that the item included discussion about how her experiences had impacted on her political perspective on the issue of abortion and in this regard the presenter questioned her on how her experience led her to hold the position that abortion on demand should be permitted in Ireland, subject to certain restrictions.

Broadcasting Complaint Decisions

The Committee noted that the presenter asked her whether this position would have a negative impact on her political career, how she expected this might inform questions that she would be asked when canvassing during the forthcoming general election and whether her public comments on her experiences were motivated by purely political considerations, given her candidacy in the forthcoming *General Election*.

- Having considered the item, the Committee was of the view that it was predominantly a human interest item which explored the issue of abortion through the experiences of Cllr. O' Connell. While the content constituted current affairs, there is no automatic requirement to challenge the views of a contributor on a current affairs topic.

It is also legitimate for a broadcaster to choose an editorial focus on a current affairs story and, in this case, the programme makers chose to examine the topic of abortion from the perspective of a politician who had personal experience of a matter that is current public debate. While the audience may have benefited from the expression of other perspectives during the programme, the Committee found that, overall, the approach to the interview by the presenter was fair, objective and impartial.

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

Broadcasting Complaint Decisions

Complaint made by: Mr. Declan Murray

Ref. No. 137/15

Station:

iRadio

Programme:

Cracked i

Date:

10th September 2015

1. Programme

The complaint concerns the *Cracked i*, which is a lifestyle/entertainment style show broadcast each weeknight from 8.50pm. The complaint concerns language used on the programme.

2. Complaint Category

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

3. Complaint Summary

The complainant states that at 11.35pm he was listening to the *Cracked i* with his daughter in the car. She asked that they listen to 'her station'. The complainant states that, between songs, the presenter stated that there was a competition for different names for the female genitalia. The presenter then stated that he had a good one - "*it's a cock socket*". The complainant states that, as a station aimed at younger audiences, he believes that this language was completely unacceptable. He further states that such content encouraged the degradation of women as objects of use for men.

4. Broadcaster's Response

4.1 Broadcaster's Response to Complainant

No response was received by the complainant. *iRadio* notified the BAI that the complaint went straight into their spam folder because of words contained within the email.

4.2 Broadcaster's Response to BAI

iRadio states that this is the show which specifically focuses on making a strong connection with its demographic. The broadcaster states that the content of the show covers topics which are relevant and topical. They states that it is vital that *iRadio* communicate these topics in a manner that is non-patronising, relevant and through language and tone that reflects modern day youth society.

The broadcaster further states they are very sensitive to the time of day in which it will '*push the boat out*' with its content. They state that the piece referred to was aired at approximately 11.30pm and that at this time of night one would expect to see and hear adult themed content across many TV channels and other media outlets.

Broadcasting Complaint Decisions

The broadcaster states that the *Cracked i* carries a very strong audio warning at the top of each hour so that listeners are warned of upcoming adult themed content. It states: “Warning, the topics discussed on this show are of an adult nature, you must be over eighteen to keep listening, listener discretion is advised, it will offend.”

The broadcaster states that the item arose from a regular feature where the presenters read a term from the Urban Dictionary website and ask listeners to figure out what the terms means. The programme invites the listener to text-in with their answers and, in this instance, the term in question was mentioned as a listener had sent a text suggesting this was a more appropriate term than the one the presenters had discovered on Urban Dictionary.

The broadcaster states that, given the time of broadcast, audience warnings and audiences expectations, the content was in line with the tone of the show but also compliant with relevant broadcasting codes and rules.

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

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

In this regard:

- The Committee noted that Principle 1 of the *BAI Code of Programme Standards* requires broadcasters to take account of general community standards when making programmes. This Principle also recognises that in order to reflect the rich diversity, plurality and realities of contemporary Irish society, programmes can include content that may cause offence to viewers and listeners which is justified for creative, editorial or other reasons.
- In addition, Principle 2 of the aforementioned Code also highlights the importance of context. This recognises that content can cause offence because the material is not in line with audience’s expectations. For this reason, broadcasters are required to show due care by taking into account a range of contextual factors which can influence the viewer or listener’s perception of programme material and hence the harm or offence that can occur. The factors include the time at which a programme is broadcast, the likely expectations of the audience of the particular programme or broadcast service, the use of audience information, including the degree to which the nature of the content was brought to attention of the audience, the type of broadcasting service on which the material is broadcast and whether the material complained of was editorially justified.

Broadcasting Complaint Decisions

- Having considered the above, it was the view of the Committee that while some audience members would likely to have been offended, the content would not have infringed the requirement to show respect for general community standards. In reaching this decision, the Committee noted that the programme included a clear prior warning indicating that the content would be likely to offend some audience members and that care is therefore required. It also noted that the content was broadcast at 11.30pm in the evening when children were not likely to have been members of the audience and also at a time when the responsibility for ensuring content does not offend children is shared not only by the broadcasters but also by parents and guardians. Furthermore, the Committee noted that the item had editorial justification since it was part of a regular item on the programme that derived from urban slang and that regular listeners to the programme would have been familiar with the item. Moreover, the programme was in line with what would be expected from a youth-focused broadcaster in that the content was edgy and provocative and would have appealed to the intended audience, namely those who are young adults and older.
- The Committee also noted that the slang words used were not treated uncritically on the programme, in particular, the female presenter described some of the slang words variously as 'rotten', 'vile' and 'disgusting'. She also teased the presenter about the slang words that he might himself use when engaged in a sexual relationship.
- In view of the above, the Committee did not agree that the programme infringed the Broadcasting Act or the *BAI Code of Programme Standards* in the manner specified by the complainant. Accordingly, the complaint has been rejected.

