



Complaints made by: <u>Cllr. Brid Smith</u>	<u>Ref. No. 74/14</u>
<u>Ms. Patricia McKenna</u>	<u>Ref. No. 75/14</u>
<u>Mr. Paul Murphy, M.E.P.</u>	<u>Ref. No. 76/14</u>

<u>Station:</u>	<u>Programme:</u>	<u>Date:</u>
RTÉ One	The Nine O'Clock News	03 May 2014

Complaint Summary:

The complaints are submitted by Messrs. MacGeehin Toale, Solicitors, on behalf of the above named complainants, under the Broadcasting Act 2009, 48(1)(a)(*fairness, objectivity & impartiality in current affairs and the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs – Rule 4.1. Councillor Smith's complaint is also made under Rule 19 and under Rule 27 (BAI Guidelines in Respect of Coverage of Local and European Elections).*)

Two of the complainants, Cllr. Smith and Mr. Murphy M.E.P. are candidates for the Dublin Constituency in the forthcoming European Elections. All three complainants refer to a report on the RTÉ Nine O' Clock News regarding Sunday Business Post/Red C opinion poll findings and believe the coverage of this poll by RTÉ on this programme failed to be fair, objective and impartial.

MacGeehin Toale Solicitors, on behalf of all three complainants, state that in this broadcast, RTÉ only highlighted candidates with over 10% of support in the polls. They state that this led to the exclusion of both Cllr. Smith (with 9%) and Mr. Murphy M.E.P. (with 7%). They state that given the increase in support, the transfer pact between these candidates, Mr. Murphy's status as a sitting M.E.P., and the fact that the last edition of the Sunday Business Post indicated that (at least) either Mr. Murphy M.E.P. or Cllr. Smith could get elected, the exclusion of these two candidates was irrational. MacGeehin Toale Solicitors state that on the basis that one only needs 25% of a quota to recover election expenses (in the case of Dublin that would be 6.25% of the vote), the approach adopted by RTÉ was unreasonable and unlawful. They further state that the effect of this report was to exclude Mr. Murphy M.E.P. and Cllr. Smith and to damage their credibility as candidates for the European Parliament Elections.

It is the view of the complainants that what they describe as the selective reporting on the opinion poll and other election coverage sends a message to the electorate about which candidates are the real contenders for election and which are not. They state that by excluding candidates below 10%, RTÉ are giving voters an impression that certain candidates are not being covered and therefore are not credible.



MacGeehin Toale Solicitors state that Cllr. Smith brought her concerns to the attention of RTÉ, who initially replied by way of letter which stated that the report "*sought to show which of the thirty-seven candidates stood the best chance of winning a seat at this point in the campaign*". MacGeehin Toale Solicitors submit that it is not for RTÉ, its servants or agents to second guess the voters' decision and give a definitive view on which candidates are likely to be elected. All of the complainants firmly believe that opinion polls are not always correct and RTÉ acted in breach of its statutory duty by adopting what the complainant's state was an arbitrary process in reporting on opinion poll data. The notion, which they state was evident from the report, that the complainants going forward for election, particularly where one is a sitting M.E.P., are unlikely to get elected merely on foot of a particular poll, is clearly unfair, imbalanced and irrational. In adopting such a position, MacGeehin Toale Solicitors submits that RTÉ acted in breach of its statutory duties pursuant to the Act and in violation of the complainants' constitutional rights.

In her complaint, Ms. McKenna states that she has not lent her support to any election campaign and her complaint is strictly in relation to the democratic process and RTÉ's obligation to abide by the legislative restrictions placed upon it. Ms. McKenna states that her main concern, as a voter, is the right to a fair campaign and to have reasonable access to impartial information that is presented in a non-biased manner. A further stated concern of Ms. McKenna's is the possibility that RTÉ, in its approach to presenting the findings of opinion polls, may influence the outcome of the vote in a manner that breaches their statutory duty and the broadcasting codes. In Ms. McKenna's view, the approach taken to the coverage of this report was an attempt by RTÉ to influence public opinion.

Broadcaster's Response (response from RTÉ's Solicitors' Office)

Initial response to complainant:

In its reply to MacGeehin Toale Solicitors, RTÉ state that the poll was introduced as showing that Sinn Féin was "*still in contention in each constituency*" despite the fact of the arrest of Mr. Gerry Adams T.D., which was an item reported earlier in the news broadcast. The broadcaster states that the introductory section also indicated that the poll of 500 people demonstrated that Fine Gael support was "*holding steady*". Following this, a summary of what the poll showed was then provided in respect of each constituency.

In its response to the complainants, RTÉ states that it does not consider it was required to recite every result shown by the poll and was entitled to report on who was shown to be leading in the polls. They state that for this reason, that element of the report on the Dublin Constituency indicated that Mr. Brian Hayes T.D., Minister of State for Public Service Reform and the Office of Public Works, was in front at 18% and then outlined that a number of candidates were "*closely bunched*" together. It was observed that the poll showed that it would be a "*closely run contest*".



RTÉ claim that it is not irrational, in a thirty-second summary, to identify the candidates the poll showed to be leading and to confine the report to the top six in a three-seat constituency. They state that the report is confined to identifying what the poll demonstrates. They state that the result of a poll of 500 persons is not conclusive on the issue of whether the complainants “*could get elected*”. Furthermore, RTÉ state that it does not consider that the fact that reference was not made to every candidate serves to damage the credibility of those candidates. They state that the report adopted a consistent editorial approach as it did not mention several other candidates on similar levels of support. RTÉ believe that this was an objective and valid editorial approach to the reporting of a news item.

The broadcaster states that there were six or seven candidates ahead of the complainants and given that there are just three seats in the Dublin Constituency and that the quota will be 25%, their not featuring in this 30-second news overview was a valid and impartial decision in keeping with the editorial brief to look at the frontrunners in each constituency. The broadcaster states that a similar approach was applied in respect of other candidates. For example, no reference was made to the sitting Fine Gael M.E.P., Jim Higgins (10%), Senator Deirdre Clune, Fine Gael (8%), and Independent, Senator Rónán Mullen (6%). These candidates are running in constituencies where there is one seat more than in Dublin and accordingly, they potentially need less support to win a seat than do Cllr. Smith or Mr. Murphy M.E.P.

Response to BAI:

RTÉ states that the opinion poll which was the subject of this brief news report, looked at the then current view by voters of thirty-seven candidates across the three European constituencies. The broadcaster states that radio and television reports of such third-party polls require that broadcasters, due to the constraints of time, make necessary editorial judgements as to what aspects of an opinion poll are of the most news value to their audiences.

RTÉ state that according to the BAI’s Guidelines in Respect of Coverage of Local and European Elections “*decisions in respect of editorial content rest with broadcasters*”. RTÉ submits that as an independent media organisation, it has the editorial discretion to focus on the aspects of an opinion poll which it believes to be of most interest to its viewers or listeners.

The broadcaster states that this news report, of slightly less than two minutes, identified the candidates constituency by constituency, who, according to the opinions of the voters polled by Red C at that particular time, appeared to be leading. RTÉ believes that this was a valid and objective editorial decision which was applied fairly and impartially in its reporting of the poll results in three constituencies.



The broadcaster states that there was no *"arbitrary decision"*, as claimed by one of the complainants, to exclude the complainant or any other candidate. Rather, they state that there was a consistent and objective editorial approach to reporting of the poll; and it was this editorial approach, applied impartially, which resulted in the complainant, in common with the majority of candidates, not being cited in the report.

RTÉ also states that they did not make, as is claimed in the complaint BAI Ref 75/14, *"an arbitrary decision to cut of [sic] any candidate polling less than 10% from its news item on this issue."* The view that the report *"was only highlighting candidates over 10%"* is also expressed in the letter of 08.05.14 to RTÉ from MacGeehin Toale Solrs, cited in the complaint BAI Ref 76/14. The broadcaster states that this view is inaccurate. Candidates with less than 10% were not excluded from the report; for example it was noted of Labour's Phil Prendergast M.E.P. that, alongside her criticisms of her party's leader, she received a higher rating in this poll than a survey a week earlier, another newsworthy point validly brought to the audience's attention.

RTÉ claim that the report did not state, imply or suggest that any candidate(s) would win the election; it did not offer any view, whether of the broadcaster's or of the reporter's, in relation to the outcome of the election. It reported on a third-party poll of voter intentions at a particular point in the campaign, three weeks before Election Day.

One of the complainants (BAI Ref 75/14) submits that RTÉ erred in this report *"by presenting to the voters those [candidates] which it thought had the best chance."* RTÉ state that it did not *"present"* any candidates and neither did it report the poll in a biased manner as is stated by the complainant. Rather, RTÉ claims it reported the outcome of the poll in terms of its indication of the then-current preferences of those polled. Neither did the broadcaster *"give a definitive view on which candidates are likely to be elected"* as is stated in correspondence from MacGeehin Toale Solicitors.

RTÉ claim that the broadcaster offered no view whatsoever on this issue. Neither did the report suggest that any candidate whosoever, whether complainants or others, were *"unlikely to get elected"*, as is also claimed in the letter from MacGeehin Toale Solicitors.



Decision of the Compliance Committee

The Committee considered the broadcast and the submissions from the broadcaster and the complainants. Having reviewed the material, the Committee has decided to uphold the complaint *in part*. In reaching this decision, the Committee had regard to the following:

- As independent media organisations, broadcasters have editorial discretion in terms of how they choose to cover news and current affairs content. This includes discretion in terms of the angle taken on such content, the contributors chosen to participate on-air and the duration of the item. Nevertheless, this discretion does not abrogate the obligation, placed on broadcasters by the Broadcasting Act 2009 and the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, to ensure that its coverage is fair, objective and impartial. These requirements are particularly important in the case of coverage of elections and in this context, the *BAI's Guidelines in Respect of Coverage of Local and European Elections* require that "*Broadcasters that cover elections must ensure fairness, objectivity and impartiality in the exposure given to candidates and/or political parties fielding candidates in an election*".
- In this regard, the Committee noted that the majority of the report in question focused on the results of the Sunday Business Post/Red C poll in each of the constituencies where voting would take place in the forthcoming European Elections, and that the report examined in particular the poll results in respect of those candidates which the broadcaster interpreted as those leading the poll at the time that the survey was undertaken.
- Having considered the broadcast in this context, the Committee did not agree with the complainant that the approach taken to the reporting of the poll was undertaken on the basis of an arbitrary 10% cut-off in terms of poll results. In addition, the Committee agreed with the broadcaster that coverage of every element of the poll is not an obligation, in principle, so as to ensure compliance with the requirement for fair, objective and impartial coverage of news and current affairs.
- However, it was the view of the Committee that the exclusion in the reports of poll results in respect of Councillor Bríd Smith and Mr. Paul Murphy M.E.P. was unfair to these two candidates. The Committee has reached this view having had regard to the approach taken to the analysis of the poll results in the broadcast, in particular the decision to report on the prospects of Fianna Fáil's Pat 'The Cope' Gallagher M.E.P. and Senator Thomas Byrne in the Midlands North West Constituency.



- In this respect, the Committee noted that in examining those candidates in the lead in this Midlands North West Constituency, the report included reference to the combined results of the aforementioned Fianna Fáil candidates and had implicit regard to vote transfers between these two candidates and the consequence of these transfers on their party's potential electoral performance in the Constituency. The Committee also noted that a formal transfer pact is in place in respect of Cllr. Bríd Smith and Mr. Paul Murphy M.E.P.
- Having had regard to this transfer pact, to the fact that the Sunday Business Post/Red C poll results indicated that the combined potential level of electoral support for Cllr. Bríd Smith and Mr. Paul Murphy M.E.P. was higher than a number of those Dublin candidates that were featured in the report, it was the Committee's view that their exclusion in the report was unfair to these two candidates in circumstances where similar results in respect of the Midland's North West Constituency were included and considered relevant to the focus of the report on those candidates identified in the broadcast as leading in terms of voter choice at the time of the poll.

Furthermore, it was the Committee's view that the context for the broadcaster's analysis of the results of the poll was insufficiently transparent for viewers, contrary to the requirement of the *BAI's Guidelines in Respect of Coverage of Local and European Elections*. This was evident to the Committee from the handling of transfers as set out above and their impact as well as the analysis of the report with reference to a range of other seemingly unrelated factors, including political party performance in some constituencies and individual and party performances based on external factors in the case of other constituencies (such as the impact of the arrest of Gerry Adam's T.D. and comments made by Phil Prendergast M.E.P. in respect of her party leader).

- Accordingly, in excluding the poll results in respect of the above candidates, the broadcast was found to infringe the requirement for fairness in current affairs (including that element of Rule 4.1 of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* pertaining to fairness in current affairs). The broadcast was also found, in respect of coverage of these two candidates, to infringe Rule 27 of this Code (requirement to comply with the *BAI Guidelines in Respect of Coverage of Local and European Elections*).
- The Committee found no evidence, on the basis of this report, that would support those elements of the complaint which argued that the approach taken to the report was an attempt to influence public opinion in respect of these two candidates or that the approach taken by the broadcaster to the report lacked objectivity or impartiality in terms of news or current affairs content and these elements of the complaint were rejected by the Committee.



Signed: p.p. Neil O'Brien Date: 21/05/2014
Chairperson, Professor Christopher Morash