

**Guide to the Complaints Process for complaints made before 15th March 2023 (“*the Transitional Complaints Process*”)**

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# Introduction

Any viewer or listener who believes a programme or an advertisement/commercial communication that has been broadcast by an Irish broadcasting service did not comply with relevant statutory and/or regulatory standards has a right to make a complaint.

The right to make a complaint is set out in section 48(1) of the Broadcasting Act 2009 as amended by the Online Safety and Media Regulation Act 2022 (“*the 2022 Act”)*[[1]](#footnote-2). The 2022 Act, which commenced on 15th March 2023, has changed the process by which complaints are to be considered and investigated as well as establishing a new regulator, Coimisiún na Meán (“the Commission”), to carry out these functions, in place of the former Broadcasting Authority of Ireland (BAI). Section 69 of the 2022 Act establishes transitional arrangements for the handling of complaints that were made before the 2022 Act had commenced on 15th March 2023, but which had not been decided upon, had not been withdrawn or had not been resolved by that date.

This Guide explains how the transitional arrangements for the handling of broadcast complaints made before 15th March 2023 will operate under the 2022 Act (hereinafter “existing complaints”). In general, the transitional provisions provide that existing complaints will continue to be dealt with under the procedures which were in force before 15th March 2023 under the 2009 Act. However, there are some necessary changes as the former BAI and its statutory committees have been dissolved and the Commission has been established in their place since that date. This Guide therefore explains the relevant changes to the complaints process which have been made for existing complaints. This Guide does not purport to be an exhaustive account of the process and complainants are advised to study carefully the relevant statutory provisions.

The Commissionis preparing a separate guide for making complaints under the new complaints process established by the 2022 Act, which applies to broadcast complaints and also to audiovisual on-demand media service complaints made on or after 15th March 2023. This Guide will be published on the Commission’s website, [www.cnam.ie](http://www.cnam.ie).

# Who is this Guide for?

This Guide only applies to broadcast complaints which had been made but which remained undecided or unresolved on the date the Commission was established on 15th March 2023.

This Guide is for anyone who has:

1. Made a broadcast complaint to a broadcaster under its *Code of Practice for Complaints Handling* before 15th March 2023 and the complaint remained unresolved on that date, or
2. Made a broadcast complaint directly to the BAI or referred a complaint to the BAI before 15th March 2023 and the complaint was not decided and had not been withdrawn by that date.

# What is not covered by this Guide?

This Guide does not apply to broadcast complaints made on or after 15th March 2023.

Broadcast complaints made on or after 15th March 2023, whether to the broadcaster or to the Commission, will be handled in accordance with the new statutory process provided in the 2022 Act. The 2022 Act now also provides a right to make complaints in relation to programme material made available on audiovisual on-demand media services. The Commission is preparing separate guidance in relation to these complaints which will be published on the Commission’s website, [www.cnam.ie](http://www.cnam.ie), in due course.

# Broadcast complaints in progress with the broadcaster

If you have made a broadcast complaint to any of the commercial, community or public service radio or television broadcasters[[2]](#footnote-3) prior to 15th March 2023, your complaint will continue to be processed in accordance with that broadcasters’ *Code of Practice for Complaints Handling[[3]](#footnote-4)*. Such codes of practice explain a broadcaster’s process for handling complaints and the timeframe by which the broadcaster will respond to complaints, which is usually 20 working days from the date of receipt of a complaint. A broadcaster may reject, uphold or seek to resolve your complaint. Each complaint will be dealt with by a broadcaster on a case-by-case basis. The outcome of the complaint may entail an apology, a correction, the providing of clarification and/or the offer of a rebuttal.

If you are not satisfied with a broadcaster’s response to your complaint or you do not receive a response within 20 working days, you may refer your complaint to the Commission.

# Referring a broadcast complaint to Coimisiún na Meán

If you wish to refer a complaint to the Commission, you should do so promptly. The Commission considers 14 days to be a sufficient period within which to submit a complaint referral i.e., 14 days after you have received a response from the broadcaster or after the date by which a response was due.

If your referral occurs later than 14 days after a broadcaster’s decision or after the lapse of a broadcaster’s timeframe, you must provide a reasonable explanation for this delay. The Commission retains a discretion to accept referred complaints received later than 14 days after the broadcaster’s decision or the broadcaster’s failure to respond to the complaint. A complaint may not be accepted if there has been an undue delay in referring the complaint. Such decisions will be made on a case-by-case basis.

A complaint referral may be made by emailing [complaints@cnam.ie](mailto:complaints@cnam.ie) with your original complaint and any other relevant correspondence between you and the broadcaster.

If you are unable to submit an electronic copy of your complaint, please submit your complaint[[4]](#footnote-5) in writing to:

Complaints Officer

Coimisiún na Meán

2 – 5 Warrington Place, Dublin 2

D02 XP29

If you have any queries in relation to making a complaint, please contact [complaints@cnam.ie](mailto:complaints@cnam.ie) or (01) 6441 200.

# Broadcast complaints already referred or made directly to the BAI

If you have already referred a broadcast complaint to the BAI or have made a complaint directly to the BAI before 15th March 2023 which remains undecided and has not been withdrawn, you are not required to take any particular action. Your complaint will be now processed by the Commission in accordance with the procedure described below and you will be contacted by staff of the Commission at various points as indicated in this procedure.

# Complaints handling procedure

The statutory complaints handling procedure has four stages – screening, information gathering, advice of the BCAC and decision - which are explained below.

**Stage 1: Screening**

The Commission will review your complaint and assess whether it is valid, with reference to the following criteria:

* Whether the complaint has been made in writing within the statutory timeframes, which are:
* No later than 30 days after the date of the broadcast if the complaint relates to one broadcast,
* No later than 30 days after the date of the earlier or earliest broadcast if the complaint relates to two or more *unrelated* broadcasts, or
* No later than 30 days after the date of the later or latest broadcast if the complaint relates to two or more *related* broadcasts.
* Whether the complaint has been referred to the Commission in a timely manner, which is generally within 14 days.
* Whether the complaint relates to a broadcaster and broadcasting service that is subject to the statutory complaints process.
* Whether the complaint sets out grounds for how a specified broadcast(s) did not comply with one or more statutory or regulatory requirements.
* Whether the statutory or regulatory requirements referenced in the complaint apply to the broadcast(s) complained of (e.g., fairness, objectivity and impartiality applies only to news and current affairs content).
* Whether the complaint is frivolous or vexatious or is not made in good faith (the criteria for such decisions are at Appendix 1 of this Guide).

If the Commission deems your complaint invalid, you will be notified of this decision and the reasons for it.

**Stage 2: Information gathering**

If your complaint is deemed valid, the Commission will forward your complaint (which will generally include the complainant’s name) to the broadcaster and to any relevant third party, such as an advertiser, and they will be offered the opportunity to respond.

An employee of the broadcaster or an independent producer may also request to comment on a complaint. If the Commission is of the opinion the complaint may adversely affect the interests of an employee of the broadcaster or an independent producer, the employee or producer concerned will be given the opportunity to make submissions on the complaint. Please note the onus is on the employee or the producer to make this request to the Commission.

When the complaint relates to an advertisement, to another commercial communication or to a public service announcement, the Commission will afford the person responsible for submitting the content an opportunity to make submissions in relation to it.

The Commission will send you any response received from the broadcaster and from any relevant third party. If you are satisfied with the response(s), you may withdraw or close your complaint by notification to the Commission. If you are not satisfied with the response, you can indicate to the Commission that you wish to continue with the complaint procedure. You are not required to provide any extra details or respond to the points raised by the broadcaster or third party. If you decide to respond, a copy of any response provided will then be sent to the broadcaster and third party, if applicable, and correspondence between the complaint parties will continue until either of the parties has concluded making submissions or the Commission determines that sufficient information has been provided such that a report may be prepared to the Commission.

**Stage 3: Advice of the BCAC**

The Broadcasting Complaints Advisory Committee (BCAC) will consider your complaint and provide advice to the Commission in relation to the matters raised by the complaint. The BCAC is an advisory committee established by the Commission, pursuant to section 19 of the 2022 Act, which will be comprised of five (5) members. It will be provided with terms of reference by the Commission to review and provide advice on broadcast complaints to the Commission to assist the Commission in its decision-making in relation to complaints.

The BCAC will generally be provided with copies of the substantive correspondence in relation to the complaint including:

* the original complaint,
* any responses/submissions made by all parties in relation to the complaint,
* any additional relevant information and documents provided in support of the complaint, and
* the relevant broadcast recording(s).

Complaints are reviewed at a meeting of the BCAC on their own merits and having regard to all the material provided in the complaint file, the relevant statutory and regulatory standards and any relevant contextual factors. A written report will be prepared upon each complaint which will include the advice of the BCAC in respect of the matters raised by the complaint.

The advice of the BCAC is a non-binding opinion as to whether the broadcast(s) complained of has breached the statutory and/or regulatory standard(s) which are applicable to the broadcast(s) in question. The Commission is not bound to follow any advice provided by the BCAC and it will make its own decisions upon complaints, having regard to all the material relevant to the complaint.

**Stage 4: Decision**

The Commission, comprising a minimum of three (3) Commissioners (collectively referred to as “the Commission”), will consider each complaint and the report of the BCAC before deciding whether the complaint is:

* **Upheld**

*Where the Commission decides that the broadcast content in question has not complied with or has breached particular statutory and/or regulatory requirements which were the subject of the complaint.*

* **Upheld in part**

*Where the Commission decides that the broadcast content has not complied with or has breached some but not all of the statutory and/or regulatory requirements which were the subject of the complaint.*

* **Rejected**

*Where the Commission decides that it is not satisfied that the relevant broadcast content breached or failed to comply with the statutory and/or regulatory requirements which were the subject of the complaint.*

Decisions on complaints are made at meetings of the Commission undertaken in accordance with rules established for such meetings, further to the 2022 Act and the *Code of Practice for the Governance of State Bodies[[5]](#footnote-6)*.

The complainant, the broadcaster and any other relevant party are notified of the Commission’s decision and the reasons for it as soon as possible after it is made. Notifications will be made in advance of the Commission publishing the decision, if applicable (see section 9 below).

# Broadcasting complaint decisions

Where a broadcast complaint is upheld or upheld in part, the broadcaster concerned will broadcast a summary of the Commission’s decision within 21 days of being notified of the decision, unless the Commission considers it inappropriate to do so. (The circumstances in which it may be inappropriate to broadcast complaint decisions are set out at Appendix 2 to this Guide.) The broadcast of the Commission’s decision will be at a time and manner suitably similar or close to the timing of the original broadcast which prompted the complaint. The broadcast may include the complainant’s name, at the discretion of the Commission and where the complainant has not been granted anonymity. The wording of the broadcast will be subject to approval by the Commission.

# Publishing complaint decisions

Complaint decisions made by the Commission in the transitional broadcast complaints process will be published on the Commission’s website unless the Commission considers it inappropriate to do so. (The circumstances in which it may be inappropriate to publish complaint decisions are set out at Appendix 2 to this Guide). Complaint decisions will be notified to the complainant, broadcaster and any other relevant party before being published.

Published complaint decisions will generally include the following:

* Name of the complainant (unless a request for anonymity has been granted)
* Details of the broadcast (programme title/advertisement, broadcast date and time, channel)
* Summary of the complaint
* Summary of the broadcaster response and other third-party response, if applicable
* The Commission’s decision and the reasons for it

# Requesting anonymity

The Commission requires complainants to provide their name and contact details in making or referring complaints to be considered by the Commission. The complainant’s name will generally be published with the complaint decision at the end of the process. Publication of a complainant’s name allows the Commission to assess, to some degree, the bona fides of a complainant. However, there may be occasions where publication of a complainant’s name may give rise to an unreasonable encroachment on an individual’s privacy. Accordingly, complainants are provided with an opportunity, when making or referring a complaint to the Commission, to request anonymity.

Requests for anonymity should set out the basis upon which anonymity is requested, with reference to:

* The nature of the complaint
* The relevance of the subject matter to the complainant
* The relevance of the subject matter to other individuals named in the complaint, if any
* The impact of publication on the complainant or upon other individuals and the public interest
* Whether granting anonymity may impinge on due process for any party to the complaint

The Commission will have regard to each of the above considerations when deciding to either grant or refuse a request for anonymity.

Where a request for anonymity is refused, the complainant can choose whether to proceed with the complaint or withdraw it.

# Appeals

A decision of the Commission in relation to a complaint under the transitional broadcast complaints process is final and there is no avenue to bring an appeal.

# Costs arising from making a complaint

The Commission does not have the power to award costs or expenses to any party related to the making or the processing of a broadcast complaint.

# Confidentiality

The Commission undertakes the transitional broadcast complaint process in a confidential manner and requests all parties to a complaint to respect this confidentiality of the process. Parties involved in a complaint are asked not to make any public comment on the complaint before the decision on the complaint has been issued to them by the Commission.

# Use of Information

Information provided to the Commission in making, referring or processing a complaint will be used to process the complaint in accordance with section 48 of the Broadcasting Act 2009 and Part 16 of the Online Safety and Media Regulation Act 2022, which contain the transitional arrangements for the broadcast complaints process. Information on the publication of complaints and complainant information are set out under the headings of ‘Broadcasting complaint decisions’, ‘Publishing complaint decisions’ and ‘Requesting anonymity’ in this Guide.

The Commission shall comply with its obligations under the General Data Protection Regulation (“GDPR”), Data Protection Act 2018 and any other applicable data privacy laws and regulations. The Commission is obligated and committed to protecting all personal data submitted. The Commission has an appointed Data Protection Officer who is registered with the Data Protection Commission. Information on how the Commission processes personal information is provided in this published policy at: [https://www.bai.ie/en/about-us/data-protection-policy](https://www.bai.ie/en/about-us/data-protection-policy/).

# Freedom of Information

Information held by the Commission is subject to its obligations under law, including under the Freedom of Information Act 2014.

If there is any aspect of your complaint which contains personal information[[6]](#footnote-7), information you deem commercially sensitive or information you wish to make in confidence, please identify such information and the reasons why you believe it should be exempt from release / publication under the Act. The Commission will consult with you about this information before making a decision on any Freedom of Information request received.

# Appendix 1

# Criteria for frivolous, vexatious or not made in good faith

A complaint may be considered frivolous, vexatious or not made in good faith if, in the opinion of the Commission, it meets any of the criteria in the list below. This does not purport to be an exhaustive list and there may be other circumstances in which the Commission decides a complaint may be frivolous, vexatious or not made in good faith.

1. The complaint constitutes an abuse of the complaint process.
2. The complainant is not acting bona fide.
3. The complaint is obviously unsustainable or lacking in merit.
4. The complaint is made for a purpose other than what appears to be the substance of the complaint (for an ulterior motive).
5. The complaint is unintelligible.
6. The complaint is in substance the same as a complaint which has previously been decided by the Committee.
7. The complainant is seeking to pursue an obviously unmeritorious complaint and/or is seeking manifestly unrealistic redress or an unreasonable outcome.
8. The complainant is seeking to pursue a potentially meritorious complaint in a manifestly unreasonable manner.
9. The complainant has, without good cause, failed to co-operate and/or comply with reasonable requests or requirements of the Commission.
10. The complaint is manifestly trivial.

# Appendix 2

# Broadcast/publication criteria

The Commission may decide it would be inappropriate to publish the particulars of a complaint on the Commission’s website and/or for the broadcaster to broadcast a decision in relation to a complaint, in the circumstances listed below. This does not purport to be an exhaustive list and there may be other circumstances in which the Commission decides it would be inappropriate to publish or to broadcast a complaint decision.

1. In certain circumstances, the complainant may wish to keep his/her name undisclosed as publication of his/her identity may impact negatively on him/her. This may be particularly relevant to complaints which concern an alleged invasion of privacy. In general, the onus is on the complainant to make the case for non-publication of his/her name.
2. In certain circumstances, the complainant may wish to keep the subject matter of the complaint undisclosed. The onus is generally on the complainant to make the case for non-publication in these circumstances.
3. A complaint about an offensive item may not be suitable for publication and/or broadcasting.
4. Publishing or broadcasting the complaint decision could cause unnecessary further offence.
5. When a complaint is considered under ‘harm and offence’, it may not be appropriate to draw further attention to the subject matter of the complaint.
6. Where an individual feels that their privacy has been invaded, or reputation damaged, it may not be appropriate to publish or to broadcast the complaint decision as it may result in a further invasion of the person’s privacy or in further damage to the person’s reputation.
7. Where the publication of the content of the complaint or associated material could be considered to be defamatory to a particular individual or could otherwise damage that person's reputation and/or impinge upon that person’s constitutional rights.
8. Where publication could prejudice ongoing or potential legal proceedings.

---ENDS---

1. <https://www.irishstatutebook.ie/eli/2022/act/41/enacted/en/print> [↑](#footnote-ref-2)
2. For the avoidance of doubt, a ‘broadcaster’ refers to the organisation operating the broadcasting service. It does not refer to individual programme presenters, producers etc., employed or contracted by the broadcaster. [↑](#footnote-ref-3)
3. Codes of Practice for Complaints Handling can usually be found in the ‘contact us’ or ‘complaints section’ of a broadcaster’s website. If you have any difficulty accessing these codes, you should contact the broadcaster directly. At present, contact details for broadcasters can be found on the BAI website: [https://www.bai.ie/en/broadcasters**/**](https://www.bai.ie/en/broadcasters/). Coimisiún na Meán intends to publish these on its website shortly. In the event you continue to have trouble accessing the broadcaster’s complaints procedures, you can contact the Commission. [↑](#footnote-ref-4)
4. Complaint referral forms available upon request. [↑](#footnote-ref-5)
5. The Code of Practice for the Governance of State Bodies can be found here: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/138835/1d213280-29b8-41ec-92c4-ca8974db5224.pdf#page=null> [↑](#footnote-ref-6)
6. Personal information is defined in section 2 of the Freedom of Information Act 2014: <https://www.irishstatutebook.ie/eli/2014/act/30/enacted/en/html> [↑](#footnote-ref-7)