



Coimisiún
na Meán

Draft Media Service Code

Fairness, Objectivity & Impartiality in News and Current Affairs

(Radio and Television Broadcasters)

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1. Introduction

- 1.1 Pursuant to Section 46N(1) of the Broadcasting Act 2009, as amended by the Online Safety and Media Regulation Act 2022, (the “**Act**”) Coimisiún na Meán (the “**Commission**”) may make codes (“**media service codes**”) governing the standards and practices of broadcasters and providers of audiovisual on-demand services.
- 1.2 Pursuant to Sections 46N(2)(a) and (b) of the Act, media service codes may provide for standards and practices to ensure that broadcasters comply with Sections 46K and 46L(1) to (3) of the Act.
- 1.3 Pursuant to Section 46N(11)(b) of the Act, the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs dated 1 July 2013 was continued in force with the establishment of the Commission.
- 1.4 In accordance with its statutory duties and obligations set out above, the Commission has prepared this media service code (the “**Code**”). The Code replaces the 2013 BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, which will be revoked as of the date this Code takes effect.

2. Scope and Jurisdiction

- 2.1 The Code applies only to broadcasters (as defined in this Code) that are under the jurisdiction of the State within the meaning of Section 2A of the Act.

3. Purpose and Preparation of the Code

Purpose

- 3.1 The purpose of the Code is to ensure that broadcasters that are under the jurisdiction of the State comply with the duties set out under Sections 46K and 46L(1) to (3) of the Act.

Preparation of the Code

- 3.2 Pursuant to Section 46N(6) of the Act, the Commission has had regard to the following matters when preparing the Code: -
 - the degree of harm or offence likely to be caused by the inclusion of a particular matter in programme material.
 - the likely size and composition of the potential audience for programme material.
 - the likely expectation of the audience as to the nature of programme material, and the extent to which the nature of the programme material can be brought to the attention of potential members of the audience.

- the likelihood of persons who are unaware of the nature of programme material being unintentionally exposed to it by their own actions.
- the desirability of securing that the provider of a broadcasting service informs the Commission of any change affecting the nature of the service and, in particular, of any change relevant to the application of media service codes.
- the desirability of maintaining the independence of editorial control over programmes.

3.3 The Code has been prepared in accordance with the procedures provided for by Section 46Q of the Act.

4. Regulatory Principles Relevant to the Code

4.1 In its interpretation, application and enforcement of the Code, the Commission must, in accordance with its public law duties, act lawfully, rationally and fairly.

4.2 More particularly, the Commission must act in accordance with:

- its general statutory objectives and functions under the Act.
- the rights conferred by the Constitution, the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights insofar as applicable under the European Convention on Human Rights Act 2003 and the EU Treaties.

4.3 Section 7(2) of the Act provides that, in performing its functions, the Commission shall endeavour to ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld, and that the interests of the public, including the interests of children, are protected, with particular commitment to the safety of children. The Commission shall also endeavour to ensure the Commission's policies in relation to broadcasting services best serve the needs of the people of the island of Ireland.

4.4 In addition, the Commission must endeavour to ensure that its regulatory arrangements (i) address programme material and other content which are harmful or illegal; (ii) take account of technological and societal change; and (iii) operate proportionately, consistently and fairly.

4.5 Section 7(3) of the Act provides that, in addition, the Commission shall, inter alia:

- stimulate the provision of high quality, diverse, and innovative programmes by providers of broadcasting services.
- provide a regulatory environment that will sustain independent and impartial journalism.
- promote and encourage environmental sustainability in the policies and practices of broadcasting services.

- engage in evidence-based decision-making in the exercise of its functions, and promote evidence-based decision-making by those with which it consults.
- encourage compliance with the provisions of the Act, and the provisions of any code, rule or other statutory instrument made under it, in any manner the Commission considers appropriate, including by the publication of guidance as to how those provisions may be complied with.

4.6 Pursuant to Section 7(4) of the Act, in performing its functions, the Commission shall have regard to: the safety of children, and published policies of the Minister for Children, Equality, Disability, Integration and Youth in respect of that matter; the regulation of gambling, and published policies of the Minister for Justice in respect of that matter; climate change and environmental sustainability, and published policies of the Minister for the Environment, Climate and Communications in respect of that matter; and published policies of the Government in respect of any of those matters.

5. Severability

5.1 If any provision of the Code is found to be unlawful, invalid, prohibited, unenforceable or inapplicable (either generally or with respect to a particular broadcaster) in any respect, on the basis of any law (including the Constitution and European law), such finding shall not affect the lawfulness, validity, enforceability or applicability of any other provision of the Code or part thereof, unless the finding is declared to be applicable to such other provision or part thereof, or the same is the subject of the relief granted by a court.

5.2 Without prejudice to the foregoing, all of the other provisions and/or parts of the Code shall remain fully effective, applicable and enforceable. To the extent necessary any provision or part of the Code, found to be unlawful, invalid, prohibited, unenforceable or inapplicable, shall be severed from the Code.

6. Waiver

6.1 The fact that the Commission does not respond to or comment upon any submission, assessment, proposal, report, compatibility statement or any analogous document submitted to it by a broadcaster shall not be deemed to be an acceptance or approval of the contents of any part of the same and shall not imply that the broadcaster has complied with its obligations under the Act and/or the Code.

6.2 Without prejudice to the foregoing, the fact that the Commission does not respond or comment on any such document shall not create an estoppel against, or constitute a waiver by, the Commission of any of its powers or rights pursuant to the Act and/or the Code.



7. Compliance and Enforcement

- 7.1 Pursuant to Section 46N(10) of the Act, a failure by a broadcaster to comply with the Code shall be a contravention for the purposes of Part 8B of the Act.
- 7.2 A broadcaster shall ensure that it has systems and controls in place to demonstrate compliance with the obligations contained in this Code.
- 7.3 Pursuant to Section 47(3) of the Act, a broadcaster is required to prepare and implement a code of practice for the handling of complaints relating to, among other obligations, the failure of the broadcaster to comply with a media service code.

8. Complaints

- 8.1 A person may make a complaint if they believe a broadcaster has not complied with this Code. Coimisiún na Meán advises complainants to make their complaint to the broadcaster in the first instance as this is the quickest way to have a complaint considered and responded to.
- 8.2 Information on the complaints handling process, including Coimisiún na Meán's process, is available on our website (www.cnam.ie) or you can contact Coimisiún na Meán on + 353 1 963 7755 or at usersupport@cnam.ie.

9. Guidance

- 9.1 The Commission may provide general non-binding guidance regarding the provisions of the Code on request or as and when it is deemed necessary. The Commission reserves the right to publish and amend guidance from time to time as it sees fit.
- 9.2 Requests for guidance must include the relevant material linked to the request for guidance. The request should clearly state the section(s) of the Code, which the requestor believes are relevant, and set out the specific question about which the requestor would like a view. The Commission accepts no liability for any decision (or consequences arising therefrom) made following receipt of non-binding general guidance from the Commission.

10. Definitions

Terms not defined here have the meanings given by the Act. Key definitions from the Act are:

“broadcast” means the transmission, relaying or distribution by electronic communications network of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not.

“broadcaster” means a person who supplies a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service (whether that person transmits, relays or distributes that material as such a service or not).

“broadcasting service” means a service which comprises a compilation of programme material of any description and which is transmitted, relayed or distributed by means of an electronic communications network, directly or indirectly for simultaneous or near-simultaneous reception by the general public, whether that material is actually received or not, and where the programmes are provided in a pre-scheduled and linear order, but does not include:

(a) a service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes, or

(b) any other service which is provided by way of the internet, if the service does not provide audiovisual programmes.

“children” means persons under the age of 18 years.

“programme” means a sound programme or audiovisual programme.

11. Code Objectives

The objectives of the Code are:

- To set out clearly the minimum standards and practices that are expected of broadcasters in their treatment and broadcast or availability of news and current affairs content.
- To provide general guidance to broadcasters to assist in their decision-making processes, as they pertain to news and current affairs content.
- To promote independent and impartial journalism in the provision of news and current affairs content.
- To inform and generate awareness among the public with regard to standards they may expect in relation to news and current affairs content.
- To protect the interests of the public, in their right to access fair, objective and impartial, news and current affairs content.
- To ensure news and current affairs content complies with applicable Irish and European legislation and has regard to international conventions.

12. General Obligations

12.1 In their treatment of news and current affairs content, broadcasters shall comply with section 46L of the Act.

12.2 In their treatment of news and current affairs content broadcasters shall comply with the following general obligations: -

Fairness

12.3 Broadcasters shall ensure that individuals and organisations that are the subject of news and current affairs content, or persons who contribute to news and current affairs programmes or items, are treated fairly and honestly.

Objectivity & Impartiality

12.4 Broadcasters shall ensure that news and current affairs content is compiled, produced and presented in a manner which is and can be seen as independent, unbiased, and without prejudgement.

Accuracy & Responsiveness

12.5 Broadcasters shall ensure that coverage of news and current affairs is accurate. Accuracy shall always take priority over the speed with which content can be delivered.

12.6 Where, despite best efforts, inaccurate information is conveyed, providers of broadcasters shall ensure that fair, timely and appropriate remedies are adopted in respect of the broadcast or availability of inaccurate information.

Transparency & Accountability

12.7 Broadcasters shall ensure that practices and procedures adopted in the sourcing, compilation, production and presentation of news and current affairs are visible, open to scrutiny, robust and accessible. This is particularly the case where a decision to broadcast or make available certain content may impact on an individual's privacy.

12.8 Section 12.7 shall not place an obligation on broadcasters to disclose sources of confidential information, including the names of individuals or organisations providing confidential information.

13. Fairness

13.1 In the normal course of events, broadcasters shall ensure that interviewees for news and current affairs content are made aware of the subject matter and the nature and format of their contribution, so that their agreement to participate constitutes informed consent.

- 13.2 A broadcaster shall not generally broadcast or make available any news or current affairs interview with any person without the consent of that person. The broadcast or provision of any news or current affairs content in the absence of consent must be editorially justified. Requests for withdrawal of consent shall be given due consideration by the broadcaster having regard to the public interest, natural justice and the principles of fairness, objectivity and impartiality.
- 13.3 Care shall always be taken with the inclusion of interviews with children or vulnerable people in news or current affairs content. In all cases, the over-riding principle must be to avoid the broadcast or availability of material that may be unfair or detrimental to their interest.
- 13.4 The consent of a parent, guardian or legal representative shall generally be obtained prior to the broadcast or availability of any interview with a child less than 16 years of age or a vulnerable person, where the subject matter is of a sensitive or serious matter or where not to do so could be deemed unfair. A decision to broadcast or make available an interview in the absence of such consent must be justified in the public interest.
- 13.5 Where a person or organisation refuses to contribute to news or current affairs content or chooses to make no comment, the content shall make this fact clear and shall report in a reasonable manner the person/organisation's explanation for declining to participate, where not to do so could be deemed unfair.
- 13.6 The refusal of a person or organisation to participate in a programme will not preclude the broadcast or availability of news or current affairs content. However, the broadcaster has a responsibility to reflect, as far as practicable, the views of the absent party and to do so fairly.
- 13.7 The editing process shall not distort the context or meaning of the original interview.
- 13.8 A broadcaster shall ensure that the re-use of any material in a news or current affairs context, including the use of archive material, does not create unfairness or result in inaccuracies.
- 13.9 The re-construction or re-enactment of an event in news or current affairs content shall be clearly identified as such and should be authentic in its depiction of the event(s) in question.
- 13.10 The use of secret or undisclosed recording or filming in current affairs content shall only be used in exceptional circumstances. It must be warranted, and a broadcaster shall have appropriate procedures in place for the authorisation of such recordings at the most senior editorial level. Such authorisation shall be in writing.

The following considerations are essential elements in determining if secret or undisclosed recording or filming is warranted:

- the item being covered is demonstrably in the public interest and the provider of the broadcasting service has evidence of matter that merits coverage;
- the co-operation of the subject is unlikely to be forthcoming; and

- there is reason to believe that coverage of the subject matter will be frustrated as the content cannot reasonably be obtained by other means.
- 13.11 Any person secretly filmed or recorded shall be afforded the opportunity to participate in the news or current affairs content that will include the recording if, in the opinion of the provider of the broadcasting service, not affording the opportunity to participate would be unfair to that person.
- 13.12 By its nature, a direct unarranged approach (“door-stepping”) to an interviewee may contravene fairness. However, in appropriate circumstances it may be justifiable to dispense with the normal practice of making arrangements for an interview directly with an interviewee, or with a representative, and with suitable notice.
- “Door-stepping” may be appropriate in circumstances where:
- the item being covered is demonstrably in the public interest;
 - the interviewee is unlikely to co-operate if approached in the normal way; and
 - the approach to the individual(s) is necessary to the authenticity and credibility of the content in question.
- 13.13 A broadcaster shall have in place appropriate policies and procedures for handling contributions via social media.
- 13.14 Any undertaking given to a contributor relating to confidentiality or anonymity shall be clear and be honoured. Any associated audio-visual techniques utilised in both filming and editing shall be carefully applied to ensure complete confidentiality is achieved and commitments given are fully honoured.

14. Objectivity & Impartiality

- 14.1 News and current affairs content shall be presented with due accuracy, having regard to the circumstances and the facts known at the time of preparing and broadcasting or making available the content.
- 14.2 Two, or more, related programmes may be considered as a whole if the programmes are transmitted or made available within a reasonable time period and such links are made clear to the audience.
- 14.3 Views and facts shall not be misrepresented or presented in such a way as to render them misleading. Presenters should be sensitive to the impact of their language and tone in reporting news and current affairs so as to avoid misunderstanding of the matters covered.
- 14.4 A significant mistake shall be acknowledged and rectified by a broadcaster as speedily as possible, in an appropriate and proportionate manner. A correction or clarification shall have regard to the time and circumstances of the original broadcast. In the case of a correction or clarification the broadcaster shall have regard to the prominence and level of original mistake.

- 14.5 A news presenter and/or a reporter in a news programme may not express his or her own view on matters that are either of public controversy or the subject of current public debate. However, a broadcaster may express its view on a proposal concerning a policy with regard to broadcasting which is of public controversy or the subject of current public debate and is being considered by the Government or the Minister. Nevertheless, under these circumstances, the broadcaster should do so in an objective and impartial manner.
- 14.6 It is an important part of the role of a presenter of a current affairs programme to ensure that the audience has access to a wide variety of views on the subject of the programme or item; to facilitate the expression of contributors' opinions – sometimes by forceful questioning; and to reflect the views of those who cannot, or choose not to, participate in content. This being so, a presenter and/or a reporter on a current affairs programme shall not express his or her own views on matters that are either of public controversy or the subject of current public debate such that a partisan position is advocated.
- 14.7 'Personal view' or 'authored' current affairs segments or programmes can be appropriate, subject to normal editorial controls. This does not exempt the segment or programme – or a series of related segments/programmes – from the broadcaster's statutory obligations to be impartial, objective and fair to all interests concerned. Similarly, an 'authored' item or programme may be permitted if part of a series of related segments/programmes which, taken together, will discharge the statutory obligations.
- 14.8 A 'personal view' or 'authored' programme or segment shall be clearly signalled to the audience at the outset, or, in the case of a series of segments or programmes, at the start of each one.
- 14.9 A broadcaster shall have and implement appropriate policies and procedures to address any conflicts of interests that may exist or arise in respect of anyone with an editorial involvement in any news or current affairs content, whether such person appears in the content or part of its production.
- 14.10 Any personal, professional, business or financial interest of anyone with an editorial involvement in news or current affairs content that calls into question (or that might reasonably be perceived as calling into question) the fairness, objectivity or impartiality of a programme or item, shall be brought to the attention of the audience. To this end, a broadcaster shall satisfy itself that it is in a position to be aware of the relevant interests of the personnel concerned, and to determine whether the interest concerned is of such extent as would warrant the withdrawal of any person from further involvement in the item or programme.

15. Election & Referendum Coverage

- 15.1 Coverage of an election or a referendum shall comply with guidelines or codes of practice issued from time to time by the Commission.

16. General

- 16.1 A broadcaster shall adhere to all legislative requirements when sourcing, compiling, producing and presenting news and current affairs content.
- 16.2 A broadcaster shall have due regard to guidance issued by the Commission from time to time in respect of this Code.