

Presentation by John Purcell, Chair, Independent Broadcasters of Ireland

To meeting of Joint Oireachtas Committee on Tourism, Culture, Art, Gaeltacht,
Sport and Media

Wednesday January 17th 2024

Re: Non – Court – based resolution mechanisms for the handling of media
related complaints

[Check Against Delivery]

Thank you for the invitation to attend the meeting here today.

The independent radio sector has operated under a non-court based resolution mechanism for many years.

The system is overseen by the broadcasting regulator, currently Coimisiun na Meán and up until last year by the Broadcasting Authority of Ireland.

The system provides a detailed framework for how complaints are to be dealt with in two levels i) at broadcaster level and ii) at the level of the Regulator where the complainant is dissatisfied with the handling of the complaint by the broadcaster or in certain defined circumstances where it is deemed appropriate that a complaint can be made in the first instance to the regulator.

We have submitted a document to the Committee which outlines how the process works both at the individual broadcaster level and in instances where complaints are made to the regulator. We have also identified a number of issues and how we feel the system could be improved.

We believe that it is always preferable to seek to address complaints outside the realm of the law courts and the system has largely worked well.

One of the positive points about a non- courts based complaints resolution mechanism is that the barriers to making a complaint are quite low. There is no charge and the mechanism places responsibilities on broadcasters to respond to and address complaints in a very rapid manner. This is a two edged sword.

While not especially old, the processes and procedures regarding complaints were framed and developed in something of a different age. They are grounded on assumptions of complainants always acting in good faith and without much consideration being given to mobilisation of mass campaigns of complaining.

Unfortunately we now live in an age of outrage and radicalisation. In other jurisdictions there is an increased trend towards the weaponization of complaints processes where complaints can become part of a strategy aimed towards political ends. It is a system built on good faith which can and increasingly, is abused

Thankfully we are not in an unmanageable situation yet however we have no reason to believe that this trend may not emerge in this country. We have seen some isolated incidents. This will become very problematic for broadcasters

and indeed for the regulatory system. It should be borne in mind when consideration is being given to changes to current structures and the development of further structures.

To date, complaints regarding broadcasters submitted to the regulator regardless of the scale, complexity or detail are addressed in the same manner.

Namely once a complaint is submitted the broadcaster is required to submit a detailed explanation and defence of its position.

Given the ramifications of a complaint being upheld, all broadcasters will usually devote a great deal of time to formulating a response regardless of whether the issue is of the utmost gravity or at the end of the scale that could be covered by frivolous or vexatious. This is because unfortunately there is no mechanism to determine at an early stage that a complaint is without basis or is vexatious or frivolous.

We believe that in future, development of the complaints procedure operated by the regulator should provide a variety of options depending on the seriousness of the complaint and indeed there should be an initial process where it is considered whether the broadcaster has a case to answer before requiring them to engage in submitting a full defence of their position.

In the Judicial System, not all cases start at the Supreme Court and the judicial system operates on the basis of District, Circuit, High and Supreme Courts all based on the gravity / complexity or the universality of the issues involved.

Indeed before a case is taken to Court there is a procedure to establish whether there is a case to answer.

In further developing non - Court based resolution mechanisms for media, we believe that while seeking to avoid the cost and barriers of entry involved in legal action, ensure accessibility, fast resolution and low barriers to entry, the system should reflect the varying levels, complexities and contexts of the various types of complaints that arise and should at an early stage seek to provide guidance to broadcasters or indeed other media operators who may be adopting such a system whether or not there is a case to answer and if so on what scale of seriousness the complaint rests.

In conclusion thank you to the Committee for the opportunity to present our thoughts on this important issue.