



Complaint by Mr E about *Dispatches: The Enemy Within: Inside Britain's Far-Right*

Type of case	Fairness and Privacy
Outcome	Not Upheld
Service	Channel 4
Date & time	9 May 2022, 20:30
Category	Privacy
Summary	Ofcom has not upheld this complaint about unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.

Case summary

This edition of *Dispatches* focused on the alleged “changing” tactics of Britain’s “new far right”. It investigated the activities of Patriotic Alternative (“PA”), a “growing movement” in the UK. In particular, the programme explored issues surrounding the potentially extreme views and the conduct of PA members in contrast to the group’s public facing image, and the extent to which PA was engaging with and recruiting children online. Part of the programme included secretly recorded footage of the complainant, who was referred to in the programme by his alias “Barkley Walsh”, as he attended a camping event organised by PA for its members. Mr E complained that his privacy was unwarrantably infringed in the obtaining and broadcast of the secretly filmed footage of him included in the programme.

Ofcom found that the complainant had a legitimate expectation of privacy in relation to the obtaining of footage of him and its subsequent broadcast in the programme. However, this did not outweigh the broadcaster’s right to freedom of expression, and the public interest in the obtaining

and subsequent broadcast of the footage. Therefore, we considered that there was no unwarranted infringement of the complainant's privacy in this case.

Programme summary

On 9 May 2022, Channel 4 broadcast an edition of its investigative programme *Dispatches* entitled *The Enemy Within: Inside Britain's Far-right*.

During the introductory sequence, the programme's narrator set out the premise of the programme:

"The UK's far-right is changing, exploiting COVID 19...and seizing on the culture wars...Dispatches is going undercover in Britain's new far-right...We infiltrate a growing movement that's sparking clashes on the streets...interfering with democracy...and recruiting the next generation".

Secretly filmed footage of the complainant at a camping event organised by PA was then shown. The complainant, whose face was not blurred, was shown for approximately two seconds sitting and talking with a man whose face was blurred. The complainant's voice was then heard as he said: "I watched a [bleeped] meme compilation, that is what's [bleeped] led me to being at a campsite with some of the most notorious neo-Nazis in the country".

The introduction ended with a clip from an interview with Dame Sara Khan, Lead Counter-Extremism Commissioner 2018-2021¹, who said: "I would describe Patriotic Alternative as a fascist, anti-democratic organisation who are engaged in what I call hateful extremism".

The narrator said: "the murder of George Floyd prompted unprecedented protests around the world. Activism swept across social media feeds, but so did the backlash". Mr Nick Lowles, Chief Executive of Hope not Hate², said that "the rise of Black Lives Matter, allowed the far-right to kind of assert a 'white identity' in a way that they hadn't done for several years". The narrator then said:

"There's one group whose loud assertion of a white identity stands out. Patriotic Alternative, or 'PA' for short, only launched in 2019, but they've since established regional groups across Britain, claiming up to 240 activists join their ranks each month...".

Mr Lowles explained:

"Certainly, Patriotic Alternative is the biggest far-right organisation in the UK at the moment...If we look back, you'd have to be hard to be on the far-right, which of course excluded quite a lot of people. Increasingly what we're seeing now is the emergence of a more online based, younger, more tech savvy far-right".

The programme explained that *Dispatches* was going undercover to "infiltrate Patriotic Alternative", stating that the filming began in 2020. The programme then focused on its undercover investigation into PA, including showing the undercover reporter "Elliot": taking part in PA's "white lives matter campaign"; attending a "PA hike" organised by "some of PA's top-ranking members", which the

¹ Dame Sara Khan was the UK Government's former Lead Counter-Extremism Commissioner 2018-2021.

² A UK based advocacy group which campaigns against racism and fascism.

programme said he was *“surprised to find that children are welcome”*; and distributing PA leaflets in Hull. This, the programme explained, was to appear *“convincing”* and to gain the trust of PA.

Later in the programme, the narrator said: *“...PA’s hateful messages aren’t just being heard on the streets. Their engaging videos are appealing to a new, younger audience online”*. The narrator explained that PA’s founder, Mr Mark Collett, the former youth leader of the BNP³, and who now had a *“cult like following online, attracting millions of views”*, and had been hosting online *“gaming nights, attended by teenagers. Public livestreams of warfare games, where he plugs his politics”*. The programme then included an interview with Dame Sara Khan, she said:

“Patriotic Alternative are actively targeting children online, attempting to use videos, memes, and other ways to radicalise and recruit young people to their cause. This type of radicalising into extremism is undoubtedly a form of grooming”.

A clip of a YouTube video featuring webcam footage of the complainant against a background of the PA logo was shown. In this footage, the complainant said: *“Eventually, PA will be the future for us”*. The clip continued with the audio muted, as the narrator said:

“Barkley Walsh [the complainant] is one of PA’s youngest members. He started following leader Collett when he was just 13 years old. Walsh is a so-called ‘Zoomer’ nationalist: a Gen Z recruit drawn to the far-right online”.

A screen recording of the complainant’s online chat show in which he was talking with another person, whose identity was obscured, was shown. The complainant said: *“[Bleeped] the Muslims brother, [bleeped] the Muslims, am I right?”*. The narrator continued:

“He [the complainant] now produces his own offensive material, including this chat show, livestreamed on PA’s YouTube Channel”.

Another screen recording of the complainant’s chat show was shown in which his voice could be heard. He said: *“You don’t see us in advertising anymore, all these mixed-race couples, it’s all white erasure at the end of the day”*.

Further footage of the interview with Dame Sara Khan was shown, she said:

“We are increasingly seeing more young people being drawn into far-right extremism. We have seen how children have gone on to commit acts of violence, in some cases they have been drawn into terrorism...Although PA claim they don’t support violence or terrorism, the fact that they are promoting the same ideology, the same dangerous, anti-minority narratives as extreme right-wing terrorists...they are fundamentally helping to create a climate that is conducive to terrorism and violence. The law at the moment in this country is not adequate to deal with hateful extremist groups like Patriotic Alternative”.

The narrator continued:

³ British National Party.

“Undercover reporter Elliot learns that Walsh [the complainant] was arrested by police for handing out PA leaflets on his way to school. He was never charged. Online, PA’s leaders give him their full support”.

The programme showed the undercover reporter logging on to watch a PA stream featuring the complainant, who was being addressed by Mr Collett and Ms Laura Towler, one of PA’s “top-ranking members”. The complainant was not shown, but his voice could be heard. The following conversation took place:

Mr Collett: “Hello, how are you doing?”

Complainant: Despite everything, I’m doing very well. Thank you, Mark.

Mr Collett: We’re very, very proud of you...I am going to make sure you get a free ticket for the next conference, where you will definitely be introduced as a guest of honour for what you’ve been through.

Ms Towler: We’re always here for you if you need anything”.

The programme explained that “news of [the complainant’s] arrest soon spreads”. Footage filmed by the undercover reporter of a PA member was included as he said: “Obviously everything with Barkley [the complainant], I think people are bricking it aren’t they? Or some people are. A lot of the Zoomers have all just run off...”. The narrator continued: “And next time [the undercover reporter] meets with PA, numbers are down”.

The programme then showed the undercover reporter’s participation in a number of other PA events, including leafletting, a Christmas party and “group hike”. The programme then went on to explore a number of other topics, including; PA’s approach to “promoting home-schooling”; the rejection of PA’s application to become a political party; the exposure of some of its members’ true identities online; the history of some PA members with “far-right group” National Action, and; PA posting “thousands of fake Labour [Party] leaflets through letterboxes” in the Batley and Spenningsdale by-election and “months later” trying to “interfere in another by-election, mimicking the Conservatives”.

The final segment of the programme focused on PA’s annual camping trip. The narrator explained that undercover reporter, Elliot, and another undercover reporter “have been invited to PA’s summer camp – their mass, national gathering...around 150 people from across Britain are descending on the Peak District. They’ve told the campsite owners they’re a community group, who help the homeless”. Secretly filmed footage was included which showed the undercover reporters entering the campsite, being escorted by “PA’s security”, and pitching a tent. The complainant was briefly shown in the footage sitting in the campsite in conversation with an individual who was partially out of shot and whose identity was obscured. All other individuals shown in this footage had their identities obscured. The narrator said: “As usual, PA’s Code of Conduct applies. It claims to prohibit racial slurs and the promotion of violence”.

The secretly filmed footage also showed the reporters moving around the campsite and interacting with the others at the site. A voiceover, interspersed with clips of PA members voicing racially offensive and antisemitic views, said:

“The camp is attended by many people who defy the far-right stereotype including someone who says he’s a trainee teacher and a scout’s volunteer, a

regular PA member...As the day wears on, our reporters encounter yet more antisemitism including from a law student in his early twenties...PA's Zoomers flock to leader Collett, including teenage protégé Barkley Walsh [the complainant]".

Secretly filmed footage of the complainant was then shown of him sitting with some of the other campers. The complainant said: *"Let's get a good photo with Mark [Mr Collett]. Alright, Mark, Mark..."*. He was then shown getting up to take a photograph with Mr Collett and a woman, a copy of the photograph was then shown. The complainant was then shown briefly for approximately two seconds laughing as the narrator said: *"Later, Walsh talks about his Jewish teacher"*:

"She's literally got Hebrew tattooed on her arm, I thought they marked them with numbers, personally. [Laughter] Right, good that got a laugh because that's going in my PA speech. I was debating that joke...I think Mark said that if I'm a super good boy, when I'm 18, then he'll let me do a speech at the PA conference".

More secretly filmed footage was shown of the complainant talking with a man, whose identity was obscured, for approximately two seconds. The narrator said: *"[The complainant] explains his entry into the far-right, after the death of a relative"*. The footage continued and Mr Walsh was no longer in shot, however his voice could be heard in the following exchange:

Complainant: "I became quite reclusive, you know I started watching trolling videos, like, cringe compilations and stuff like that.

Unidentified man: Wow, nice one, you entered through the meme angle.

Complainant: Literally, like, it's quite funny to think. I watched a [bleeped] meme compilation, that is what's [bleeped] led me to being in a campsite with some of the most notorious neo-Nazis in the country".

The segment featuring the secretly filmed footage ended, and the narrator said:

"Mark Collett and Laura Towler told us that Patriotic Alternative is proud to advocate 'for the rights of the indigenous people of the British Isles', and that 'it is our constitutional right to organise'. They said PA activists engage in 'legal, democratic and peaceful political activities', and denied 'exploiting global events and the culture wars'. They told us that 'to characterise persuading other people to join a cause through discussion or by presenting...alternative ideas as grooming is completely outrageous', and that the programme takes events 'out of context' and misrepresents. Barkley Walsh [the complainant] did not respond to our allegations".

The programme concluded with further footage from the interview with Dame Sara Khan, she said:

"There is no good reason why we should allow hateful extremist groups like PA to operate, and I believe there is an obligation on...our government to outlaw the activity of groups like Patriotic Alternative. To not do so, I think, would be a failure".

Summary of the complaint and broadcaster's response

Complaint

Mr E complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, and in the programme as broadcast, because undercover footage of him at a PA camping event was filmed and subsequently broadcast in the programme without his permission.

Mr E said that the programme included footage of him filmed in private at a camp site when he was 16 years old. He said that his face had not been blurred out in the programme, and that this had led to “threats of violence” against him. The complainant said that there was “no justifiable reason” for not masking his identity in the programme.

Broadcaster's response

Channel 4 said that programme, which took over two years to make, investigated the changing face of the UK's far-right. In particular, it examined the growing movement and prominence of PA, including the ideologies and strategies it has been using to gain support. Channel 4 said that the programme investigated allegations about: PA's recruitment tactics and behaviour, including in relation to children and young people; the use of racist, antisemitic, offensive and violent language contrary to its claims and public code of conduct; and, its interference in the democratic process.

Channel 4 said that the programme makers found evidence to suggest that PA members' behaviour online was at odds with the organisation's code of conduct, and that young people were actively being targeted by PA through their online activities, including memes and gaming sessions. Channel 4 said that there was a high level of public interest and topicality in the subject matter, given the current concerns from anti-extremist groups, the police, and the security services about the increasing threat of far-right extremism and the involvement of children. Channel 4 made reference to a warning given by the Director General of the Security Service, Mr Ken McCallum, in which he said that extreme right-wing terrorism “...has some challenging characteristics: a high prevalence of teenagers, including young teenagers...” and “always, always, the online environment – with thousands exchanging hate-filled rhetoric or claiming violent intentions to each other in extremist echo chambers – leaving us and the police to try to determine the individuals amongst those thousands [that] might actually mobilise towards violence”. The broadcaster added that the concern about the involvement of children was also shared by Mr Matt Jukes, Assistant Commissioner, Metropolitan Police, who said that of the 20 children (under aged 18) arrested for terror offence last year, 19 were linked to extreme right-wing ideology. He also suggested that online material and gaming was a major concern.

Channel 4 said that, given the secretive nature of PA's activities (namely, that none of the organisation's events were publicly advertised in advance) and the fact that the programme makers had ascertained that PA members and associates were much more extreme in their statements in closed and private forums, investigating undercover both online and offline was the only way that the programme makers would have been able to accurately research and gather further evidence that would reveal information about PA's activities and any threat they may pose. Channel 4 said that, following consideration of the evidence gathered by the programme makers, it had approved the use of surreptitious filming.

Channel 4 said that, in advance of the secret filming, the programme makers had spent a great deal of time tracking the activities of people involved in PA, both on public and private forums, and that it quickly emerged that the complainant was active within PA and was associating with the highest ranks of the organisation. It said that the complainant “made no secret of his offensive beliefs publicly”, sharing them, with his face unblurred, in public videos on platforms such as YouTube. In further submissions provided to Ofcom, Channel 4 said that, while it recognised that the complainant had said he was 15 years old in these public videos, viewing this content and taking it into consideration as evidence did not infringe his privacy in an unwarranted fashion. It added that, having used a public forum to post highly offensive content, it was difficult to see what reasonable expectation of privacy the complainant had in relation to it. The broadcaster provided Ofcom with examples of these videos, the majority of which were no longer publicly available. Channel 4 added that the complainant also took part in other live streams with PA where he appeared to be building a profile for himself within the organisation. Channel 4 also shared a tweet which the complainant had posted.

In relation to the justification for secretly filming the complainant, Channel 4 said that the complainant was only filmed on one occasion at the PA camping event. It submitted that it was necessary to film him without his consent as it was unlikely that he would have agreed to the filming had he been approached. It was also important to capture his authentic opinions and reactions. It said that, given the complainant’s growing affiliation with PA, the programme makers and Channel 4 had reasonable grounds to suspect that he would “open up” about his route into the organisation and voice some of his more extreme beliefs at the camp. The broadcaster said that the obtaining of the material was proportionate because, given the camping event was by invitation only and had a strict verification process, it was considered that those attending were either members of, or had an interest in, PA and its beliefs. Those present were therefore likely to have some opinions or information in relation to the group’s ideology or planned activities. It said that footage was only obtained in public spaces and in group settings, such as by the campfire.

Channel 4 said that there was a strong public interest given the potential threat the far-right poses in the UK and, in particular, the involvement of children. It added that it was necessary for the credibility and authenticity of the programme to reflect the unfiltered opinions of the members and associates of PA, as well as the contrasting public facing image the group portrayed, in order to enable viewers to see this and make up their own minds about PA.

The broadcaster said that, while filming undercover at the camping event, there were several discriminatory statements made by the complainant, including a number that Channel 4 chose not to include in the programme for harm and offence and audience expectation reasons, but which demonstrated the complainant openly held and expressed antisemitic, racist, and homophobic views. Channel 4 said that the complainant had also boasted of offensive content he had produced online, which had resulted in his YouTube channel being deleted.

Channel 4 said that careful consideration had been given to the complainant’s age at the time of being filmed. It said that the complainant was a 16-year-old individual who was actively making publicly available offensive content and whose activities had been reported previously in local and national newspapers. It said that the complainant could competently and articulately take part in PA’s internet programming and was able to travel to the weekend camping event independently, without a parent. Channel 4 also said that it was also in the public interest for viewers to see how an ordinary teenager could become a key part of a far-right group such as PA, and that it encourages public debate about the safety of young people online and the methods far-right groups are using to

engage with them. Therefore, it was determined that, overall, the complainant had capacity to understand the consequences of his actions and, given the highly offensive and antisemitic nature of his comments, it was justifiable and warranted for the programme to expose this discriminatory behaviour in the public interest.

Channel 4 accepted that the complainant was filmed surreptitiously and without his consent. It said that there was a strong public interest in the activities of far-right groups in general and the potential risk they pose to society, and in the complainant himself, given the clear evidence of his extensive public involvement in PA and his use of offensive views and slurs both online and in person. The broadcaster said that the evidence showed that there were reasonable grounds to suspect that members of PA, including the complainant, would reveal more about the true position of PA, their involvement in the organisation, and their extreme views at the camping event. Channel 4 said that in these circumstances, the surreptitious filming of the complainant without his consent was clearly warranted. The broadcaster added that the rise of far-right extremist groups was a clear national security concern and that investigating whether PA members held extremist beliefs, and how an ordinary teenager like the complainant could become involved in such a group, encouraged important public debate about the far-right, how groups like PA market themselves to children, online safety, and other topical issues.

The broadcaster said that it would not have been possible for filming to be carried out openly, given the secretive nature of the organisation's meetings and the potential risk to the undercover reporters involved. It said that contacting the complainant openly for an interview could have resulted in him avoiding questioning, or not expressing his actual views. It said that secretly filming the complainant and others captured the complainant's true and unfiltered opinions and meant that evidence was obtained which showed the audience how easily a group such as PA could be entered via the internet by an ordinary teenager, thus alerting viewers to the risks of the online world. Channel 4 said that surreptitious filming was necessary to the credibility and authenticity of the programme because viewers would not otherwise be able to see the views expressed by those associated with or interested in PA amongst themselves, and how those compare with the public face of PA, without showing who they are and what they say.

Channel 4 said that the complainant did not appear to be in a vulnerable state while being filmed and he would have been visible to any of the estimated 150 people who attended the camping event, and who might have been present at the time the footage was obtained and who would have heard his statements. It said that, as such, the complainant's legitimate expectation of privacy should be low, especially as the complainant had placed identifiable offensive content of himself in the public domain and continued to post online and publicly attend and be photographed, unobscured, at PA events. Channel 4 said that any infringement of privacy in obtaining the footage complained of and the subsequent broadcast in the programme was warranted in the public interest.

Channel 4 said that it understood that the complainant claimed that the transmission of the programme had impacted his education and that he received "threats of violence" against him. The broadcaster said that it had received no evidence to support this, and that subsequent online statements from the complainant appeared at odds with his claim. Channel 4 provided Ofcom with a link to two PA livestreams and partial transcripts of them in which the complainant appeared to suggest that he had not been particularly adversely affected by the broadcast of the programme, and included him saying that although people had expressed concern for his wellbeing, he was "absolutely fine". The broadcaster said that, in addition to the statements made in the livestreams,

the complaint was openly continuing to attend PA events in August 2022 which were filmed and posted online by PA, and that at no stage did he appear to conceal his identity. It said that the complainant also appeared unobscured in photographs taken at two further public protests in July and August 2022 which featured in national and local newspapers. Channel 4 said that, if the complainant had suffered negative consequences from his activities, it may be that these had followed on from the repeatedly public nature of his publication of his offensive views and not the reporting of his attendance at the PA camping event and what he said at it, which was warranted.

Channel 4 said that consideration was given in relation to the inclusion of the unblurred content, balancing the complainant's right to privacy with regards to the obtaining and broadcast of the footage with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. It said that the complainant was referred to by his alias "*Barkley Walsh*" throughout the programme, and that his inclusion was limited to what was necessary to demonstrate how he became involved in PA and his extreme beliefs. Channel 4 also said that the statements selected for inclusion in the programme about his teacher were a proportionate, justifiable, and accurate reflection of the complainant's expression of his beliefs and, given the extreme nature of his views and his rise within PA, it is strongly believed there was an overriding public interest in including these sequences, particularly when the complainant himself appeared "proud of his statements publicly".

Channel 4 added, in further submissions to Ofcom, that editorially, the complainant's inclusion in the programme was firmly in the public interest as it demonstrated to viewers how young people appeared to be gravitating towards the far-right, and that PA, and in particular Mr Collett, were going out of their way to attract and befriend them. The broadcaster said that, given the dangers that online indoctrination was posing to society, it was "crucial for viewers to see the people behind the rhetoric, particularly as [the complainant] was appearing to become a rising star and face of a tech-savvy and sanitised emerging far-right movement", who were using gaming sessions which appealed to children to talk about PA's ideology. Channel 4 said that it was crucial to show the public how people under the age of 18 were already a key part of PA and how they were being utilised to recruit new members. The broadcaster said that it was therefore warranted to identify the complainant so that any young people who encountered his public pronouncements could see the full context of his "abhorrent views".

Channel 4 also referred to the test applied in the case of *Re: S*⁴ and said that, as the Article 8⁵ rights of the complainant and the Article 10 rights of the broadcaster were in conflict, an "intense focus" was adopted by the programme makers and Channel 4 when assessing the interests and competing rights. The broadcaster said that great care was exercised when deciding to include the complainant unblurred in the programme, particularly given he was under 18 years of age. Channel 4 said that it was determined that his Article 8 rights had already been limited by his own actions in publicising his activities with PA, and that showing him in the programme was necessary and proportionate for the protection of the rights of others, including viewers' right to receive information regarding an important matter of public interest. The broadcaster said that each person included in the programme had their contribution evaluated on an individual basis, and that it made a decision on who to obscure based on a number of factors, including the strength of the evidence uncovered during the investigation, and any information received about individual circumstances and

⁴ Re S [2004] UKHL 47.

⁵ Articles 8 and 10 of the European Conventions of Human Rights (ECHR).

vulnerabilities as a result of right to reply letters that were sent. It said that this was a process that needs to be carried out in relation to each individual and was not a comparative exercise involving others.

Channel 4 said that, in the interest of fairness, the programme makers had approached the complainant to offer him a right of reply to the allegations made in the programme, and to inform him that identifiable footage of him would be broadcast. The broadcaster provided Ofcom with a copy of a letter to this effect, which it said was sent to the complainant by the programme makers via email on 28 April 2022. It said that there was evidence from subsequent livestreams that the complainant took part in, which indicated that he had received the email. It said that if the complainant had concerns about his inclusion in the programme, then this was an opportunity to raise them. Channel 4 said that the programme makers received no response from the complainant and that this was reflected in the programme.

Preliminary View

Ofcom prepared a Preliminary View that Mr E's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme, a transcript of the unedited footage, and both parties' written submissions and supporting material.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression and the audience's right to receive ideas and information without undue interference. Neither right as such had precedence over the other and where there is a conflict between the two, it is necessary to focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. This is reflected in how Ofcom applies Rules 8.1 of the Code, which stated that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

In addition to this rule, Section Eight (Privacy) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

Filming of the complainant

In considering the complaint that the privacy of Mr E was unwarrantably infringed in connection with the obtaining of material of him at a camping event, Ofcom had regard to the following Code Practices:

Practice 8.5: “any infringement of privacy in the making of a programme should be with the person’s and/or the organisation’s consent or be otherwise warranted”.

Practice 8.9: “the means of obtaining material must be proportionate in all the circumstances and, in particular, to the subject matter of the programme”.

Practice 8.13: “Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is *prima facie* evidence of a story in the public interest;
- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the programme”.

Mr E complained that he was secretly filmed at a PA camping event, a fact not disputed by Channel 4. In assessing the complaint, we therefore first considered whether, in accordance with Practice 8.13, the use of surreptitious filming was warranted in the circumstances.

The complainant was 16 years old and not yet an adult at the time the filming took place and, in Ofcom’s view, it was therefore necessary for the broadcaster to have demonstrated strong grounds for undertaking any surreptitious filming of him in the circumstances of this case. We took into account the focus of the programme as described by Channel 4, which was an examination of the “changing face” of far-right movements in the UK and, in particular, the growth in prominence of PA amid concerns about an increasing threat from far-right extremism and the involvement of children. This included the groups’ ideologies and strategies used to gain support, the behaviour of its members and alleged recruitment of young people.

We also had regard to the reasons put forward by Channel 4 to explain the decision to film at the camping event and the complainant in particular.

We took into account that Channel 4 said that, through the programme makers’ research and contact with PA and anti-extremist groups prior to filming, and the undercover reporter’s experiences while posing as a PA member (including the undercover reporter’s visit to the camping event), they had gathered evidence relating to PA which suggested that there were concerns regarding PA’s increasing prominence as a far-right organisation. This included that the behaviour of PA’s members online was at odds with the groups’ public facing image and code of conduct on the use of racial slurs and holding extremist beliefs, and that young people were actively being targeted and recruited by PA through its online activities.

In relation to the capturing of the footage of the complainant at the PA camping event, we took into account that Channel 4 said that the programme makers had spent time researching and tracking

the activities of people involved in PA and had found evidence that the complainant was a young person who had been open in holding offensive views publicly online and was active within PA and associating with the highest ranks of the organisation. We also took account of the broadcaster's submissions that the rise of far-right extremist groups was a clear national security concern and a matter of significant public interest, and that investigating whether PA members held extremist beliefs, and how a teenager like the complainant could become involved in such a group, encouraged important public debate about the far-right, how groups like PA market themselves to children, and issues of online safety.

While we acknowledged the complainant's age at the time of filming, we took the view that given what Channel 4 told Ofcom in its submissions, the broadcaster had demonstrated that there was *prima facie* evidence of a story in the public interest relating to concerns about the emerging prominence of groups such as PA, the extent to which its members held extremist beliefs and the targeted recruitment of young people online, like the complainant, that warranted the surreptitious filming of Mr E in the circumstances.

In reaching this view, we took into account Channel 4's submission that the evidence showed there were reasonable grounds to suspect that members of PA, including the complainant, would reveal more about the true position of PA, their involvement in the organisation and their extreme views at the camping event. We also had regard to the broadcaster's argument that investigating undercover was the only way that the programme makers would have been able to accurately gather further evidence that would reveal information about PA's activities and any threat they may pose. We took account of Channel 4's submission that, given the complainant's growing affiliation with PA, the programme makers had reasonable grounds to suspect that he would "open up" about his route into the organisation and voice some of his more extreme beliefs at the camping event. We also took into account that the broadcaster's submission that filming the complainant surreptitiously captured his true and unfiltered opinions and meant that evidence could be obtained which showed the audience how easily a group such as PA could be entered via the internet by an ordinary teenager, thus alerting viewers to the risks of the online world. In that regard, we were satisfied that the programme makers had reasonable grounds to suspect that further evidence could be obtained by surreptitious filming.

Given the nature of the issues the programme set out to explore, we considered it unlikely that the programme makers could have captured footage of the complainant speaking openly and candidly without secretly filming him, which was necessary to allow the programme makers to obtain the material of the complainant interacting with other PA members who had attended the camping event. Therefore, we considered that the surreptitious filming was necessary for the credibility and authenticity of the programme, and we had regard to Channel 4's submission that approaching or filming the complainant openly could have resulted in him avoiding questioning, or not expressing his actual views, and it was important to capture his authentic opinions and reactions. Taking all these factors into account we took the view that, although the complainant's age made the decision to secretly film him a more sensitive one, the programme makers' actions in filming Mr E surreptitiously in his capacity as an active member of PA who had been recruited by the group as a teenager, had been proportionate in the circumstances and was in accordance with Practice 8.9.

We next assessed the extent to which the complainant had a legitimate expectation of privacy in the particular circumstances in which the relevant material was obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

From the broadcast footage, we observed that the complainant was filmed with a hidden camera during the undercover reporters' visit to a PA camping event. At the time of filming, the complainant was 16 years old. Mr E was filmed sitting in conversation with other camp attendees, on one occasion having a photograph taken with Mr Collett and an unidentified woman. Footage was also captured while the complainant spoke to some other camp attendees about how he had become a PA member, namely, through accessing content online, although the complainant was not shot during the conversation and only his voice could be heard. The transcript of the unedited footage showed that the complainant also appeared to have been recorded talking about other personal matters, such as the death of a relative, and other personal issues. As the complainant was surreptitiously filmed by the programme makers, he would not have been aware that his interactions with other PA members at the event might subsequently be included in a television programme.

We took into account Channel 4's argument that the footage was only obtained in public spaces and in group settings, such as by the campfire. We also had regard to the broadcaster's submission that the complainant would have been visible to any of the estimated 150 people who attended the camp, and who might have been present at the time the footage was obtained and would have heard his statements. However, we noted from Mr E's complaint that he considered the PA camp to be a private area, and Ofcom understood from the information provided by the broadcaster that PA events were not publicly advertised in advance, and that the camping event was by invitation only and had a "strict verification process" for attendees. We therefore considered that the secret filming took place in circumstances where the complainant believed that he was at a private event attended by people who were either PA members, or who had completed the group's verification process, and it was in this context that he spoke about his personal journey to joining PA and shared some of his political views.

Ofcom recognises that a person may have a legitimate expectation of privacy in relation to their personal political views which may need protection from unwarranted intrusion. It is therefore necessary to consider carefully all the relevant circumstances of a particular case in order to determine whether an individual has a legitimate expectation of privacy in connection with the filming or broadcast in such circumstances.

In this case, the complainant had himself shared his personal political views in videos and social media posts published online in the public domain. The undercover filming did, however, also capture some significant further personal information shared by the complainant about his private life. In particular, the complainant was filmed by the undercover reporter speaking about the death of a relative, and other personal matters which Ofcom considered that the complainant might reasonably consider to be private and sensitive to him. Therefore, for all the above reasons, we considered that the complainant had a legitimate expectation of privacy in relation to the obtaining of the broadcast footage of him. In addition, Ofcom considered that the complainant's legitimate expectation of privacy was heightened by his age (although he was 16 years old at the time he was filmed, he was yet to reach adulthood).

The broadcaster did not dispute that the complainant was filmed without his consent. Ofcom therefore went on to consider whether the infringement of his legitimate expectation of privacy in the obtaining of the material was warranted.

The Code states that "warranted" has a particular meaning. This is that, where broadcasters wish to justify an infringement of privacy, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the

broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

Ofcom has carefully balanced the complainant's right to privacy with regards to the obtaining of the footage with the broadcaster's right to freedom of expression (and the audience's associated right to receive information and ideas).

We took into account that the complainant said that he had been filmed secretly without his consent at a private camping event. As set out above, we also considered that the complainant's legitimate expectation of privacy was heightened by his age at the time the filming took place. In this regard, we took into account Channel 4's argument that, despite his age, the complainant was actively making publicly available "offensive" content, his activities had previously been reported about previously in local and national newspapers, and he could competently and articulately take part in PA's internet programming. In Ofcom's view, the fact that the complainant appeared able to engage with PA and its content and had become an active and prominent member in the organisation with close links to the leadership of the organisation demonstrated that the complainant possessed a level of maturity and that he was capable of making decisions about the extent of his involvement in the group. Ofcom also noted that Section Eight of the Code includes three practices which aim to afford increased protection to the privacy of individuals under 16 and vulnerable people, but not specifically to persons aged 16 or over.

For the reasons set out above, we considered that there was a clear public interest in the programme makers exploring the activities of far-right groups in the UK such as PA, the threats they may pose, their ideologies and the beliefs, and activities of their members. We also considered that there was a genuine public interest in the programme investigating concerns around the safety of children online and the methods used by groups like PA to engage with young people, and in the complainant's specific case, as someone who had become an active member of PA after engaging with the group and consuming material online. Ofcom also considered that the material had been obtained proportionately as the footage obtained provided evidence which was relevant to the subject matter of the programme, in the form of contemporaneous evidence of the extreme racist and antisemitic views held by PA members in contrast with its public code of conduct, and of the experiences and views of the complainant as someone who had joined PA as a teenager.

For the same reasons above, Ofcom also considered that, in accordance with Practice 8.13, the programme makers had reasonable grounds to suspect further material evidence could be obtained through surreptitious filming, and that the surreptitious filming was necessary to the credibility and authenticity of the programme (in that it could be expected to provide evidence as to whether concerns over the threats PA may pose as regards its members holding extremist beliefs and the targeted recruitment of young people, were founded). We considered that without this material, the programme's credibility and authenticity would have been significantly diminished.

Given these circumstances, and the public interest justification of obtaining the footage described above, we considered that the means of obtaining the footage featuring the complainant was proportionate and warranted. Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage of the complainant and the audience's right to receive information outweighed his legitimate expectation of privacy in the circumstances.

Therefore, we considered that the complainant's privacy in connection with the obtaining of material included in the programme and the use of surreptitious filming was not unwarrantably infringed.

Inclusion of the footage of the complainant in the programme

We went on to consider the complaint that Mr E's privacy was unwarrantably infringed in the programme as broadcast because footage of him at the camping event was included. In considering this aspect of the complaint, we had regard to the following Practices of the Code:

Practice 8.6: "if the broadcast of the programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted".

Practice 8.14: "Material gained by surreptitious filming and recording should only be broadcast when it is warranted".

As explained in detail above, Ofcom considered that while the relevant footage filmed of the complainant had been obtained surreptitiously without his knowledge or consent, the use of surreptitious filming was warranted in the circumstances. We next assessed whether the complainant had a legitimate expectation of privacy regarding the broadcast of footage of him included in the programme. We applied the same objective test as set out above.

As set out above, and in the "Programme summary" above, the programme included footage of the complainant at a PA camping event. This included the programme sharing details about how he had become involved with PA, namely that it had happened following the death of a relative. Footage was also included of the complainant as he shared his views with other members of PA, including an antisemitic comment about one of his teachers, and as he had a photograph taken with PA's leader. As explained in detail above, we considered that the programme showed the complainant in an environment which he might reasonably have considered to be private, and where he would not generally expect to be observed by anyone other than a closed group of other PA members who had either been invited to the camping event and/or had passed the verification process to attend.

We considered the extent to which the complainant was identifiable in the footage as broadcast. We observed that the complainant was not referred to in the programme by his real name, rather by the pseudonym "*Barkley Walsh*", which Ofcom understood was the name the complainant used in his online videos and other public appearances. However, the programme included footage of the complainant in which his face was shown unobscured, and his voice was not disguised. We therefore considered that the complainant was likely to have been identifiable to people who knew him.

We recognised that the complainant was filmed surreptitiously, and that the programme had included his unguarded interactions with other PA members at the camp event. We also acknowledged that the complainant was 16 years old in the footage included in the programme as broadcast. However, we considered that there were limits to the complainant's legitimate expectation of privacy in relation to the footage broadcast in the programme, given that, with the exception of the narrator revealing that the complainant had first become involved in PA following the death of a relative, the complainant had made public his association with PA and had been open about his views.

As at head a) above, we considered that the complainant's legitimate expectation of privacy was heightened by his age, and that the footage of him was broadcast without the complainant's

knowledge and/or consent. We therefore went on to consider whether the broadcast of this material was warranted under the Code.

We again carefully balanced the complainant's right to privacy regarding the inclusion of the relevant footage of him in the programme with the broadcaster's right to freedom of expression and the audience's right to receive information broadcast without unnecessary interference.

We took into account Channel 4's submission that the broadcast of the footage of the complainant was clearly warranted in the public interest to expose discriminatory behaviour, and that the footage featuring the complainant's interactions with other PA members at the camping event corroborated concerns expressed in the programme about the potentially extreme views held by PA members and of the involvement of children in the group's activities. We also had regard to Channel 4's further submission that the complainant's inclusion was firmly in the public interest as it demonstrated to viewers how young people appeared to be gravitating towards the far-right and that, given the dangers posed by online indoctrination, it was crucial for viewers to see the complainant's emergence as a "rising star" within PA and how people under the age of 18 were already a key part of the organisation. As explained above, we considered that there was a clear public interest in the issues raised by the programme and the questions raised about the conduct of PA members, like the complainant, contrary to their public code of conduct, and the ease with which the group could be entered by young people via the internet. In particular, we considered that there was a genuine public interest in broadcasting footage of the complainant, as someone who had been attracted to the group at a young age, actively participating in PA activities, explaining how he had become associated with PA and demonstrating his antisemitic views. We considered that this was particularly important when considering the purpose of the programme was to highlight to the public the extent to which there was an increasing threat of far-right extremism in the UK, the involvement of children in far-right groups and the techniques used by groups such as PA to appeal to young people online. Given this, we considered that the public interest in broadcasting extracts of the secretly filmed footage outweighed the complainant's legitimate expectation of privacy regarding the broadcast of footage of him included in the programme.

In weighing up the competing rights of the parties, we also considered that the footage of the complainant included in the programme did not represent a significant intrusion into his privacy, given that the footage mainly related to his publicly stated views and association with PA, both of which the complainant had previously posted about online in the public domain. In particular, we acknowledged Channel 4's submission (along with the evidence provided by the broadcaster to support this claim) that the complainant had placed content of himself expressing views consistent with those featured in the programme, in which he was identifiable, in the public domain and that he continued to post online and publicly attend PA events, at which he has also been photographed unobscured after the broadcast of the programme.

We also took into account Channel 4's further submissions that it was for these reasons that it had included the complainant unblurred in the programme, and that the complainant's right to privacy had already been limited by his own actions publicising his activities with PA, and that showing him in the programme was necessary and proportionate for the protection of the rights of others, including viewers' right to receive information regarding an important matter of public interest. Taking the above into account, we considered that the footage of the complainant included in the broadcast did not reveal anything of a particularly sensitive or personal nature. We acknowledged the complainant was 16 years old in the footage of him included in the broadcast, and therefore his expectation of privacy was heightened. However, taking into account that the complainant already

had an online presence where he publicised many of the views expressed in the footage of him in the programme, and had demonstrated that he was capable of making decisions about his public engagement with PA (and that such engagement continued after the broadcast), we did not consider that the inclusion of the footage of him infringed his privacy in this regard.

Taking all the relevant factors set out above into account, and having carefully weighed the competing rights of the parties, Ofcom considered that, on balance, the broadcaster's and audience's right to freedom of expression and the public interest in broadcasting the footage of the complainant in the circumstances of this particular case outweighed the complainant's legitimate expectation of privacy in relation to its broadcast. Therefore, we considered that the complainant's privacy was not unwarrantably infringed in the programme as broadcast.

Ofcom has not upheld Mr E's complaint of unwarranted infringement of privacy in the programme as broadcast.