

## Complaint by Mr M about *Police Interceptors*

<b>Type of case</b>	Fairness and Privacy
<b>Outcome</b>	Not Upheld
<b>Service</b>	Channel 5
<b>Date &amp; time</b>	30 March 2020, 20:00
<b>Category</b>	Privacy
<b>Summary</b>	Ofcom has not upheld this complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.

### Case summary

The programme included footage of Mr M being arrested for being in charge of a motor vehicle while over the prescribed legal alcohol limit. Footage of him in the police station was also shown in the programme. Mr M complained that his privacy was unwarrantably infringed in both the filming and subsequent broadcast of this footage without his consent.

Ofcom found that Mr M had a legitimate expectation of privacy in relation to the filming and subsequent broadcast of the footage of him without his consent. However, we considered that, in the particular circumstances of his case, Mr M's legitimate expectation of privacy did not, on balance, outweigh the broadcaster's right to freedom of expression and the public interest in the material broadcast. Therefore, Ofcom found that there was no unwarranted infringement of Mr M's privacy in the obtaining and broadcast of the footage included in the programme.

### Programme summary

On 30 March 2020, Channel 5 broadcast an edition of *Police Interceptors*, a series which follows the work of different police units across the country. This programme followed the work of a police unit in West Yorkshire and showed a patrol driving back to the police station and noticing a car parked on the roadside with its windscreen wipers on and its engine running. On approaching the car, the police officers noticed that a man, the complainant, Mr M, appeared to be asleep in the driver's seat. The programme's narrator said:

*“But en route to the nick to sign off, they spot someone even more knackered than they are. A man who seems to be asleep at the wheel”.*

The following exchange took place between one of the police officers and Mr M:

PC Pearson: *“Let's give him a tap.*

Narrator: *[The weather is] bone dry, but his [windscreen] wipers are on.*

PC Pearson: *Ignition on, wipers on and everything”.*

The programme included footage of Mr M, with his face unobscured, being woken up by the police officers as they approached the driver's side of the car and opened the door.

Mr M: *“Whoa.*

PC Pearson: *Hello sunshine. Shut your car off.*

Narrator: *Oh dear. The car's running and he reeks of booze.*

PC Pearson: *Jump on out cocker, come on. You been drinking?*

Mr M: *About three hour[s] ago now.*

PC Pearson: *Why you sleeping in [the] car?*

Mr M: *Had an argument with our lass.*

PC Pearson: *Yeah, but you know what you're doing, don't you?”*

The programme showed Mr M being helped out of his car by one of the police officers and getting into the back of the police car. Footage from a camera located inside the police car showed Mr M sat on the back seat, while PC Pearson sat in the front. The footage showed Mr M with his head in his hands speaking to PC Pearson:

Narrator: *“Rip Van Winkle is going to be breathalysed.*

Mr M: *– Sake!*

PC Pearson: *Right, before we go any further, I'm just going to caution you. When we've come up to you, engine's running.*

Mr M: *I'm fast on my –*

PC Pearson: *Listen, listen, listen –*

Mr M: *I'm really sorry –*

PC Pearson: *Listen to me, OK? You're fast on, fair enough, engine's running, wipers are going, everything, OK? Right. So, what's going to happen is, is I'm going to do a breath test with you. I'm just going to grab a*

*tube, just chill out, alright, please, do not lose your temper, and try to relax.*

Mr M: *I won't.*

Narrator: *But, it's not his temper that he's worried about losing.*

Mr M: *Mate, I drive trucks for a living. 'Sake, I've [bleeped] life up.*

Narrator: *It seems losing his licence could also mean losing his job".*

Mr M was then shown being breathalysed in the back of the police car.

Narrator: *"The result is in.*

PC Pearson: *Right, at this minute in time you're under arrest on suspicion –*

Mr M: *Shit! How much? How much?*

PC Pearson: *Listen, listen, let me finish. OK. For being in charge of a motor vehicle whilst over the prescribed limit, alright? So, you don't have to, but it may harm your defence if you do not mention when questioned something which you later rely on in court, anything you say may be given in evidence. You've given a reading of 64, OK? And the legal limit is 35.*

Mr M: *Oh, mate!*

Narrator: *He's nearly twice the legal limit.*

PC Pearson: *You will be getting interviewed at the police station, OK?*

Mr M: *For what? For what can I ask?*

PC Pearson: *For being drunk in charge of a motor vehicle.*

Mr M: *Well, can't you just –*

Narrator: *As the Interceptors have not caught him actually driving, he's being accused of being drunk in charge of a motor vehicle.*

Mr M: *Oh, what a [bleeped] ass hole.*

Narrator: *But it could have been even worse.*

PC Pearson: *If I had turned around and said you were driving, I'd have turned around and locked you up for driving whilst over the prescribed limit, what I've said is if I've arrested you for being drunk in charge, OK, of a motor vehicle.*

Narrator: *While the suspected offence is still serious, the courts can treat it slightly more leniently than drink driving, and he can have no complaints.*

PC Pearson: *The engine's running, the wipers are on, it's obviously been driven here this car, because you don't live here, OK, so it's got here somehow and you're blowing 64 now, so God knows what you were when you were driving.*

Narrator: *He might not know how he got there, but there's no doubt about where he's going.*

PC Pearson: *Come on mate, come on".*

The programme showed footage, lasting approximately ten seconds, of the complainant's car, including the vehicle's registration number, which was shown unobscured. The make and model of the car was clearly visible. The programme continued with further footage of Mr M, with his face unobscured, in the police station undergoing two further breathalyser tests:

Narrator: *"Straight to the nick to blow a tune on the official breathalyser.*

PC Pearson: *[To Mr M as the latter was shown blowing into a breathalyser machine] Let's go. Keep going, keep going, keep going, nice and steady, keep going, keep going, keep going. There we go that's it, that's one.*

Narrator: *They'll take the lower reading of the two tests.*

PC Pearson: *And here we go again. So, deep breath, seal your lips and blow. Keep going, keep going, keep going, keep going, keep going, keep going. Fantastic, there we go. Take a seat.*

Narrator: *And a few minutes later, the result is no surprise".*

Mr M was shown sat on a chair in the police station looking up at the ceiling as the results of the breathalyser were read to him:

PC Pearson: *"You've done 57 on the first one and 53 on your second one, so we're going to be taking your second reading which is 53. And the legal limit being 35, so we are a little bit above it.*

Narrator: *It's some sober thinking time for the suspect in the cells, and the end of a long shift for the boys".*

The two police officers were then shown talking to camera:

PC Pearson: *"It's a risk they're all taking which is quite frankly putting everybody at risk and their lives are at risk. It's a life changer for them, but then they'll feel sorry for themselves afterwards, but it's too late innit, especially if there's been a collision and there's somebody dead.*

PC Kenny: *Hopefully they'll learn.*

PC Pearson: *Hopefully*".

This part of the programme ended with the narrator explaining:

*"The driver [Mr M] was convicted of being in charge of a motor vehicle whilst over the prescribed limit. He kept his licence by the skin of his teeth, but got 10 points, a £269 fine, costs of £115, and one hell of a wakeup call".*

Mr M was not named or otherwise identified in the programme as broadcast. The programme concluded without further reference to, or footage of, him.

## **Summary of the complaint and broadcaster's response**

### **Complaint**

- a) Mr M complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because he was filmed without his consent. Mr M said that when the police arrived with the cameras, he had asked why the cameras were there and they explained that he was being recorded for a programme. He said that he told them that he did not want to be recorded and that he did not want his "face to be shown anywhere".
- b) Mr M also complained that his privacy was unwarrantably infringed in the programme as broadcast, because footage of him was shown, his face and car registration unobscured. Mr M said that he had not given his consent for this footage to be shown and that he was not given any warning that it would be broadcast.

### **Broadcaster's response**

#### **Background**

Channel 5 said that it is not the law in the United Kingdom that people have a right not to be on television, nor is it the law that footage or photographs of persons cannot be taken and then broadcast without their consent. It said that Article 8 of the European Convention on Human Rights ("ECHR") conferred a right to "respect" for privacy rather than an absolute right<sup>1</sup>. It added that it is neither possible nor desirable to seek to give individuals complete autonomous control over information that relates to them<sup>2</sup>, and there was a need to place sensible limits on the scope of Article 8 so that it is not read so widely that its claims become unreal and unreasonable<sup>3</sup>.

The broadcaster said that, accordingly, Article 8 does not protect information that is anodyne<sup>4</sup> and more generally, where information is "of a trivial nature, of a low level of personal significance, in

---

<sup>1</sup> *M v Secretary of State for Work and Pensions* [2006] 2 AC 91 at [83].

<sup>2</sup> *O'Halloran v UK* (2008) 46 EHRR 21.

<sup>3</sup> *R (on the application of Wood) v Commissioner of Police of the Metropolis* [2010] 1 WLR. 123 (at [22]).

<sup>4</sup> *Campbell v MGN Ltd* [2004] 2 AC 45.

respect of which the claimant did not really have any expectation of privacy”, it does not attract the protection of Article 8<sup>5</sup>. Channel 5 said that it is also well accepted that the protection of Article 8 can be lost where information is manifestly public in nature and/or firmly in the public domain<sup>6</sup>.

Channel 5 said that it is only if the complainant establishes that their Article 8 rights were engaged that a balancing exercise must be undertaken weighing the complainant’s Article 8 rights against the broadcaster’s rights under Article 10<sup>7</sup>. It said that, if the complainant had no reasonable expectation of privacy, Article 8 would not be engaged and the claim falls at the outset. Channel 5 also said that Article 10(2) of the ECHR provides that the right to freedom of expression should not be interfered with by a public authority unless such interference is lawful and necessary in a democratic society in the interests of, for example, the economic well-being of the country, the prevention of disorder, and for the protection of the rights and freedoms of others.

Channel 5 said that its position was that there was no legitimate expectation of privacy in the filming or broadcast of footage of Mr M being dealt with by the police following the commission of a crime, during which no significant private information was disclosed, or no information that would not have already been disclosed in open court. Nor was there any legitimate expectation of privacy in relation to the broadcast of Mr M’s car registration number plate, particularly as Mr M was not named in the programme.

Channel 5 said that being in charge of a motor vehicle while over the prescribed limit is a criminal offence and there is judicial authority for saying that the commission of a criminal offence is not an aspect of a person’s private life that they are entitled to keep private<sup>8</sup>. Channel 5 said that even if Ofcom considered that Article 8 was engaged in relation to Mr M or his car registration, in relation to either the filming or broadcast or both, Channel 5 said that its Article 10 rights would have outweighed any such Article 8 rights.

Channel 5 said that there can be no doubt that the activities of police officers are matters of genuine public interest. The manner in which the law is utilised or ignored is a matter of acute public interest. Channel 5 acknowledged that each case will turn on its own facts and matters such as the unusual vulnerability of a particular person or situation impact on decisions to include particular footage in particular programmes. Channel 5 said that in the case of *Police Interceptors* there is undoubted public interest in seeing: how and in what manner police officers carry out their duties; how the investigation of criminal offences affects members of the public and society in general; and what difficulties and situations police officers encounter when performing their public duties. Channel 5 said that equally, there is clear public interest in members of the public seeing how the effective enforcement of legislation and regulations actually affects people who are arrested and convicted as a result of the actions of police officers. Seeing the impact of their transgressions on the actual transgressors,

---

<sup>5</sup> *Ambrosiadou v Coward* [2011] E.M.L.R. 21, recently cited with approval by the Court of Appeal in *Various 3rd Wave Claimants v MGN Ltd* [2019] EWHC 2122 (Ch).

<sup>6</sup> *Higinbotham (formerly BWK) v Teekhungam* [2018] EWHC 1880 (QB).

<sup>7</sup> *Murray v Express Newspapers plc* [2009] Ch 481 at [27]; *Associated Newspapers Ltd v HRH The Prince of Wales* [2008] Ch 57; *McKennitt v Ash* [2008] QB 73 at para 11.

<sup>8</sup> *Kinloch v HM Advocate* [2012] UKSC 62, [2013] 2 AC 93.  
*Issue 433 of Ofcom’s Broadcast and On Demand Bulletin*  
*1 September 2021*

conveys to members of the public the seriousness of such transgressions and the true consequences of breaking the law.

### *Response to the complaint*

Channel 5 then addressed each head of complaint in turn:

- a) Channel 5 said that, for the reasons set out above, it did not believe that Mr M had a legitimate expectation of privacy in relation to the filming of his arrest and his processing at the police station. It said that being in charge of a motor vehicle while over the prescribed limit was not an aspect of Mr M's private life that he was entitled to keep private, and while it was true that Mr M did not consent to the filming which occurred, such consent was not required in those circumstances.

Channel 5 said that the programme makers had filmed in a public place, as it was entitled to. In addition, it said that the programme makers were filming a police investigation; and that there was a clear public interest in seeing the way that the investigation played out and the issues that the police officers faced. Channel 5 added that Mr M was subsequently convicted of being in charge of a vehicle while over the prescribed alcohol limit.

Channel 5 said that it understood that after Mr M was woken up by the police and had stepped out of his car, the camera operator, who was wearing a tabard with "Channel 5 TV Crew" on it, informed Mr M that the programme makers were filming for *Police Interceptors* and that the police officers were wearing Channel 5 body cameras. Channel 5 added that there was also a laminated notice inside the police car just below the passenger seat headrest informing the occupant:

"THIS CAR IS FITTED WITH TV CAMERAS AND MICROPHONES, THE POLICE ARE ALSO WEARING CHANNEL 5 BODY-CAMERAS, YOU MAY APPEAR ON CHANNEL 5 POLICE INTERCEPTORS, FOR MORE INFORMATION PLEASE ASK FOR A CARD".

Channel 5 said that it understood that, while in the back of the police car as it took Mr M to the police station, the camera operator informed Mr M that he might be on *Police Interceptors*, that there were cameras in the police car recording and that the police officer in front was also wearing a Channel 5 body camera. The camera operator also said he would give Mr M a business card in case he had any questions. The business card read:

"YOU ARE BEING FILMED FOR TV  
THE POLICE ARE ALSO WEARING CHANNEL 5 BODY CAMERAS  
YOU MAY APPEAR ON CHANNEL 5 POLICE INTERCEPTORS".

The broadcaster said that the other side of the business card provided the programme makers' contact details. Channel 5 said that it further understood that while taking the breathalyser test at the police station, Mr M was filmed openly throughout by the programme makers' main camera.

Channel 5 said that in the above circumstances, Mr M could have no legitimate expectation of privacy as he knew throughout that he was being filmed by the programme makers and that the filming was for *Police Interceptors*.

Channel 5 said that Mr M did not appear to be in a particularly vulnerable state while interacting with the police, nor did he disclose any significant private information, or information that was not likely to have been disclosed in open court. Channel 5 added that Mr M had not identified or specified in his complaint any significant matters that intruded into his privacy during the filming, nor had he identified any significant private information about himself that he said was disclosed while he was being filmed and which was not disclosed in open court.

Channel 5 said that while its position was that in all the circumstances, Mr M did not have a legitimate expectation of privacy over the circumstances in which the footage was obtained, if Ofcom disagreed, then it was Channel 5's view that any such expectation was outweighed by Channel 5's Article 10 rights to receive and impart information and ideas and viewers' rights to receive such information.

Channel 5 said that Ofcom has "consistently recognised" that filming the varied and often difficult incidents experienced by police officers in dealing with traffic offences and in developing the public's understanding of the range of situations dealt with by the police is a matter of public interest. It said that in particular, Ofcom had recognised the public interest in filming the work of the police in circumstances which illustrate the challenges faced by police officers when confronted with instances of individuals over the prescribed limit for driving. It said that highlighting the dangers to the public of this particular type of behaviour is significant. Channel 5 added that Ofcom has also made clear its view that it would be undesirable for programme makers to be unduly constrained when filming and that what is important is that the broadcaster takes steps to ensure that the subsequent broadcast of material filmed does not result in an unwarranted infringement of privacy.

Channel 5 concluded by reiterating that in all the circumstances, it did not believe that there was any unwarranted infringement of Mr M's privacy in the filming of his interactions with the police.

- b) Channel 5 said that it did not believe that Mr M had a legitimate expectation of privacy in relation to the programme as broadcast. It added that while it was true that Mr M did not consent to the broadcast, such consent was not required.

Channel 5 said that Mr M was convicted in open court of being in charge of a vehicle while over the prescribed limit. The fact of his arrest and other information contained in the broadcast will have been referred to in open court and was capable of being reported in accordance with the ordinary principles of "open justice". Channel 5 said that it was established in case that there is no reasonable expectation of privacy in relation to proceedings in open court<sup>9</sup>. Mr M's conviction, the circumstances in which he was found by the police and his interactions in the police car and at the police station were not a matter about which Mr M has any expectation of privacy given that his trial had concluded, and he was convicted and sentenced, in open court.

In relation to the broadcast of unobscured footage of Mr M's vehicle registration number, Channel 5 said that was not something that could be reasonably regarded as disclosing anything that was private, personal or confidential about the complainant. Channel 5 referred to a previous Ofcom

---

<sup>9</sup> *Khuja v Times Newspapers Ltd and others* [2017] UKSC 49.



Fairness and Privacy Adjudication on a different episode of *Police Interceptors* in which Ofcom had considered that the broadcast of unobscured footage of a person's car registration number could not reasonably be regarded as disclosing anything which is private, personal or confidential<sup>10</sup>.

Channel 5 said that the footage included in the programme was filmed openly by the programme makers in a public place and in full view of any members of the public who drove past. It said that Mr M: was not in a particularly vulnerable state; appeared to be calm and engaged willingly with police officers; and was not shown engaged in any conduct or action which could reasonably be regarded as being particularly sensitive or private to him. It reiterated that Mr M had not identified in his complaint to Ofcom any private or sensitive information about him that was disclosed by the footage, and his only objection in his complaint to Ofcom appeared to be that he did not want his face broadcast in the programme and did not consent to that.

The broadcaster said that while its position was that in all the circumstances, Mr M did not have a legitimate expectation of privacy over the footage as broadcast, if Ofcom disagreed and considered that Mr M had some legitimate expectation of privacy, then for the reasons set out above, Channel 5 said that any expectation of privacy that Mr M might be found to have would be outweighed by Channel 5's Article 10 rights to impart information to viewers and the viewers' right to receive such information.

Channel 5 said that it is unarguable that being in charge of a vehicle while over the prescribed limit is a serious crime and that the detection, apprehension and conviction of such individuals is a matter of genuine public interest. It follows that broadcasting the segment involving Mr M and his criminal actions was in the genuine public interest. Finally, Channel 5 said that the manner in which the story was told is within the editorial control of the programme maker and Channel 5 and the Article 10 right to convey the story to viewers, who have their own Article 10 rights to see the story, includes the right to choose which sections of the recordings to include.

Channel 5 concluded by reiterating that in all the circumstances, it did not believe that there was any unwarranted infringement of Mr M's privacy in the filming of his interactions with the police.

## **Preliminary View**

Ofcom prepared a Preliminary View that the complaint should be not 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

---

<sup>10</sup> See [Issue 268 of Ofcom's Broadcast and On Demand Bulletin](#), published on 1 December 2014, p38.

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, the unedited footage of Mr M taken at the roadside, in the police car and at the police station, and both parties' written submissions.

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 of the audience to receive ideas and information without undue interference. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely 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 Rule 8.1 of Ofcom's Broadcasting Code<sup>11</sup>, which states 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.

- a) We considered Mr M's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because he was filmed without his consent being arrested for being in charge of a motor vehicle while over the prescribed legal alcohol limit.

In considering this complaint, Ofcom had regard to the following Code Practices:

Practice 8.5 which states:

"Any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted".

Practice 8.8 which states:

"...in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for broadcast from those in sensitive situations (unless not obtaining consent is warranted)".

Practice 8.9, which states:

---

<sup>11</sup> See the [version of the Code in force at the date of broadcast](#).  
*Issue 433 of Ofcom's Broadcast and On Demand Bulletin*  
*1 September 2021*

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

We first assessed the extent to which Mr M had a legitimate expectation of privacy in the particular circumstances in which the footage included in the programme 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 assessed in light of the circumstances in which the individual finds him or herself.

The Code’s statement on the meaning of “legitimate expectation of privacy” makes clear that such an expectation:

“...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place...”.

We viewed the unedited footage filmed by the programme makers, as well as the footage of Mr M that was broadcast in the programme. The programme showed that Mr M was filmed being approached by police officers as he sat in the driver’s seat of his car, apparently asleep. He was also filmed as police officers questioned him about his alcohol consumption and why he was asleep at the wheel of this stationary vehicle, and then being asked to get into the back of the police car. Mr M was then filmed speaking to PC Pearson in the police car and being breathalysed, where he was then arrested for being in charge of a motor vehicle while over the prescribed legal limit. Mr M was subsequently filmed in the police station where he was breathalysed again.

Ofcom first considered the footage that was obtained of Mr M being questioned, breathalysed, and then arrested in a police car.

We took into account Channel 5’s submissions that Mr M had been filmed openly by the programme makers in a public place, and that he had been informed verbally, as well as in writing on a note located in the police car and on a business card provided to him by the programme makers, that he was being filmed and that he may appear in the programme. It was apparent to Ofcom from the unedited footage, as well as the footage which was broadcast in the programme, that Mr M had been filmed openly by the programme makers and that the cameras had been in full view throughout this part of the filming. Furthermore, we had regard to the unedited footage, in particular, footage from a body camera worn by PC Pearson. As Mr M was helped out of his vehicle and stood in the road, the following exchange took place:

Mr M: *“Who’s this guy?”*

PC Pearson: *This is urm, Channel 5 camera man.*

Mr M: *Never mate!*

Programme maker: *Channel 5 Police Interceptors mate –*

Mr M: *– This is terrible!*

Programme maker: *And the officers have police body cameras as well, Channel 5 body cameras”.*

The unedited footage captured Mr M being helped into the police car where he was breathalysed, as shown in the broadcast footage. The unedited footage also captured Mr M, as he was driven back to the police station, sitting in the backseat of the police car next to the programme maker. The following exchange took place:

PC Pearson: *“Do you understand why this gentleman is at the side of you?*

Mr M: *It’s how pretty I am, ain’t it?*

PC Pearson: *You what?*

Mr M: *It’s how pretty I am, is it not? [inaudible] Channel 5 [inaudible].*

Programme maker: *Channel 5 Police Interceptors, yeah.*

Mr M: *Is it that guy, yeah. I’m not going to be on that shit, am I?*

Programme maker: *Hmm, well, you might. You might.*

Mr M: *Do I have to be? That was terrible, terrible arrest [inaudible].*

Programme maker: *All DUIs<sup>12</sup> [inaudible] Yeah, you might be on the show, I can’t guarantee. But as I say, there are Go-Pros in here recording, and the officers in front there’s Channel 5 body-cameras. I’ll give you a business card, in case –*

Mr M: *Oh nice! [Laughter].*

Programme maker: *In case you have any questions; someone to contact –*

Mr M: *[Laughing]”.*

It was clear to Ofcom from this footage that Mr M would have been aware that his interactions with the police were being filmed, and for what purpose. Further, we noted that Mr M had said in his complaint to Ofcom that he had told the programme makers that he did not want to be recorded and that he did not want his “face to be shown anywhere”. However, having carefully watched the unedited footage, Ofcom was satisfied that Mr M did not state clearly at the time that he did not consent to be filmed. While we recognised that Mr M had expressed some reservations about the possibility that footage of his arrest might be shown in the programme, Ofcom was again satisfied that Mr M did not state clearly that he did not wish to be on the programme.

---

<sup>12</sup> DUI: Driving under the influence (of alcohol).

The footage of Mr M's interaction with the police officers as they approached his vehicle and assisted him out of his car, had been obtained by body cameras belonging to Channel 5 and worn by the police officers, as well as the programme makers' main camera from the public street next to the complainant's car. While we considered that these interactions were likely to have been visible to any member of the public who may have been nearby, Ofcom acknowledged that there may be circumstances where someone can have a legitimate expectation of privacy, even in a public place and where the person is aware that he or she is being filmed. Furthermore, in relation to the footage of Mr M being breathalysed and subsequently arrested, we took into account that this footage had been obtained by the fixed cameras within the police car. In the particular circumstances of this case, we took into account that, while Mr M's initial interaction with the police officers would have been visible to members of the public passing by, the interaction between Mr M and the police officers, including his arrest and reaction to it, was filmed by a fixed camera located within the police car and therefore his interaction with officers, including the audio of his voice, would not have been accessible to anyone outside the car.

Ofcom also considered that the situation in which Mr M had been filmed. The footage obtained showed him being awoken by police officers and audio was included in which Mr M could be heard explaining that he had recently had an argument with his partner. Ofcom considered that the situation in which Mr M had been filmed could reasonably be regarded as potentially sensitive in those circumstances. Similarly, Ofcom considered that being questioned, breathalysed, and subsequently arrested could reasonably be regarded as sensitive, and also be a situation where a person may expect some degree of privacy. We recognised that a person's involvement in police investigations is usually not a matter of public record until a person has been charged with a criminal offence and that the arrest of an individual may be an event of some sensitivity. The fact that a person may later be charged with the relevant criminal offence does not, in itself, mean that they are deprived of any rights to privacy in connection with their arrest. We took into consideration that while in the police car, Mr M expressed feelings of regret that his actions could have an impact on his livelihood: *"Mate I drive trucks for a living. 'Sake, I've [bleeped] life up"*. While we acknowledged Channel 5's submissions that the programme contained information relating to Mr M's arrest that was likely to have been later disclosed in open court, Ofcom considered that Mr M appeared to be in an emotional state at the time the footage of him had been obtained, and therefore the footage showed a situation where a person may expect some degree of privacy.

Ofcom then turned to the filming of Mr M being breathalysed for a further time at a police station. Practice 8.8 recognises that police stations are potentially sensitive environments in which filming without permission is restricted, and Ofcom considers that police stations, in particular the custody area where Mr M was filmed, are private and secure places that are not readily accessible to members of the public. Moreover, in this instance, Mr M was filmed being breathalysed, which we considered to be a potentially sensitive situation.

Taking all the factors above into account and in the particular circumstances of this case, Ofcom considered that Mr M had a legitimate expectation of privacy in relation to the situations in which he was filmed by the programme makers, both in the police car and at the police station.

It was not in dispute that Mr M's consent was not obtained in connection with the filming of him in both the police car and at the police station, as Channel 5 accepted it had not been, as described above. We therefore went on to consider whether the infringement of Mr M's legitimate expectation of privacy was warranted on the particular facts of this case.

The Code states that "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, 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 carefully balanced the comparative weight of Mr M's right to privacy with regard to the obtaining of the footage with the broadcaster's and audience's right to freedom of expression in the particular circumstances of the programme.

We took into account Channel 5's submission that there was a public interest in obtaining footage which showed the varied and often difficult incidents experienced by police officers in dealing with traffic offences and in developing the public's understanding of the range of situations dealt with by the police. In Ofcom's view, there was a significant public interest in obtaining footage which showed the work of the police who are expected to act as public servants acting in the public interest. We recognised, as referenced by PC Pearson in the programme (*"It's a risk they're all taking which is quite frankly putting everybody at risk and their lives are at risk"*), that there is a genuine public interest in filming situations that demonstrate to the public the potentially fatal consequences of being in charge of a vehicle while over the prescribed limit. In our view, filming footage of Mr M as he was questioned, breathalysed and arrested without his consent, served this public interest, as it provided a case study of someone committing a serious road traffic offence and the work of the police to prevent Mr M from potentially endangering himself and members of the public. In Ofcom's view, the programme makers filmed Mr M in order to capture footage that was directly relevant to the police's work in investigating and gathering evidence relating to Mr M's suspected crime and was thus proportionate and directly relevant to the subject matter of the programme.

Taking all of the above factors into account, Ofcom considered that, in these particular circumstances, the broadcaster's right to freedom of expression and the public interest served by enabling the filming of footage illustrating the impact of traffic related offences, and the experience of the police of dealing with such situations, was proportionate and warranted, and outweighed Mr M's legitimate expectation of privacy in relation to the filming of him without his consent.

Ofcom considered, therefore, that Mr M's privacy was not unwarrantably infringed in connection with the obtaining of footage included in the programme.

- b) We then considered Mr M's complaint that his privacy was unwarrantably infringed in the programme as broadcast because footage of him was shown, his face and car registration number

unobscured. Mr M said that he had not given his consent for this footage to be shown and that he was not given any warning that it would be broadcast.

In considering this head of complaint, Ofcom had regard Practice 8.8 (as set out above), and to the following Code Practices:

Practice 8.4 which states:

“Broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted”.

Practice 8.6 which states:

“If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted”.

Ofcom began by assessing whether Mr M had a legitimate expectation of privacy in the programme as broadcast in relation to the footage included in the programme. As set out at head a) above the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

We took account of the material shown in the programme, as described in the “Programme summary” above. Mr M was shown in the programme being awoken by police officers as he sat in the driver’s seat of his car, apparently asleep. He was also shown being helped out of his car by police officers, who then questioned him about his alcohol consumption and why he was asleep at the wheel of this stationary vehicle. Mr M was then shown: being led to the police car by a police officer; speaking to PC Pearson in the police car; and being breathalysed, where he was arrested for being in charge of a motor vehicle while over the prescribed legal limit. Mr M was subsequently shown in the police station where he was breathalysed again. Mr M was not named in the programme. However, his face was shown unobscured and his voice could be heard throughout. In those circumstances, we considered that Mr M was identifiable in the footage as broadcast.

We took account of Channel 5’s submission that the footage included in the programme was filmed openly by the programme makers in a public place and in full view of any members of the public who might have driven past. We also took into consideration Channel 5’s submission that the complainant was not shown engaged in any conduct or action which could reasonably be regarded as being particularly sensitive or private to him, and its submission that Mr M had not identified in his complaint to Ofcom any private or sensitive information about him that was disclosed by the footage. As referenced above, Mr M had expressed some reservations about the possibility that footage of his arrest might be shown in the programme, Ofcom was satisfied that Mr M did not state clearly that he did not wish to be on the programme.

As discussed above, the programme showed Mr M being awoken by police officers while he was sitting in the driver's seat of his car and was then shown being questioned, breathalysed and subsequently arrested while in a police car. The audio included in the programme referred to a recent argument between Mr M and his partner, as well as Mr M's reaction to his arrest: *"Mate I drive trucks for a living. 'Sake, I've [bleeped] life up"*. We had regard to Channel 5's submission that Mr M was not in a particularly vulnerable state, had been calm, and had engaged willingly with police officers. However, we took the view that the complainant was shown in the programme in a potentially emotionally vulnerable state, as indicated by: his reaction to his arrest; and by PC Pearson's warning: *"chill out all right please, do not lose your temper, and try to relax"*, which indicated to viewers that Mr M may have felt he lacked control. As discussed above, we considered, in accordance with Practice 8.8, that being in a police car and police station, are both potentially sensitive environments, and that Mr M's interaction with the police officers in the police car would not have been audibly accessible to members of the public passing by. Ofcom considered that the situation in which Mr M was shown could reasonably be regarded as potentially sensitive in those circumstances and could also be a situation where an individual may expect some degree of privacy.

We considered Channel 5's submission that Mr M was convicted in open court and that the fact of his arrest and other information contained in the broadcast would have been referred to in open court. We acknowledged that a criminal conviction may be a matter of public record, and an individual will not usually have a legitimate expectation of privacy in connection with the mere reporting of the fact of their conviction. However, we do not consider that this fact obviates all rights of privacy that a person subject to those criminal proceedings might reasonably expect, especially in relation to events occurring before a charge has been laid. Moreover, detail of Mr M's interaction with the police officers at the roadside, in the police car and at the police station was unlikely to have been in the public domain prior to and at the time of the broadcast of the footage of him in this situation in the programme. We further considered that the locations in which the footage broadcast was obtained, being the police car and police station, are both potentially sensitive environments pursuant to Practice 8.8.

In relation to the footage of the registration number of the complainant's car, we recognised that the footage of the complainant's car's registration number plate had been brief and had featured in the programme for approximately ten seconds. We also noted that the complainant had not explained why the disclosure of this information had unwarrantably infringed his privacy. In Ofcom's view, the registration plate did not in itself reveal any sensitive or personal information about the complainant such as might afford him a legitimate expectation of privacy.

Having taken all the factors above into account, we considered that, in the particular circumstances, Mr M did have a legitimate expectation of privacy in relation to the broadcast of the footage in the police car and in the police station. However, we considered that this expectation was limited given that, by the date of broadcast, Mr M had been convicted of a criminal offence in relation to the events relating to his arrest featured in the programme.

It was not in dispute that Mr M's consent was not obtained prior to the broadcast of footage of him in both the police car and at the police station, as described above. We therefore went on to



consider whether the infringement of Mr M's legitimate expectation of privacy was warranted on the particular facts of this case.

We again carefully balanced Mr M's right to privacy over the relevant footage in the programme with the broadcaster's right to freedom of expression. In particular, we considered whether there was a sufficient public interest which might justify the infringement of Mr M's limited legitimate expectation of privacy in broadcasting the footage.

In Ofcom's view there was a significant public interest in broadcasting footage which showed: the work of the police, who act as public servants in the public interest; how they interact with members of the public; and specifically, how they approach and tackle suspected crime. We recognised, as discussed at a) above, that there is a genuine public interest in showing situations that demonstrate to the public the potentially fatal consequences of being in charge of a vehicle while over the prescribed limit. In our view, showing footage of Mr M, without his consent, as he was questioned, breathalysed and arrested served this public interest, as it provided an example of someone committing a road traffic offence and the work of the police to prevent Mr M from endangering himself and members of the public. In Ofcom's view, the footage shown was directly relevant to the police's work in investigating and gathering evidence in the public interest relating to Mr M's suspected illegal and potentially dangerous conduct and was thus proportionate and directly relevant to the subject matter of the programme.

Taking all of the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the viewer's right to receive information and ideas without undue interference outweighed Mr M's limited legitimate expectation of privacy in relation to the inclusion of the footage of him in the programme as broadcast. We therefore considered that Mr M's privacy was not unwarrantably infringed in the programme as broadcast.

**Ofcom has not upheld Mr M's complaint of unwarranted infringement of privacy in connection with the material included in the programme as broadcast.**