

Complaint by Ms X, made on her own behalf and on behalf of her four children (minors) about *24 Hours in Police Custody*

Type of case Fairness and Privacy

Outcome Not Upheld

Service Channel 4

Date & time 29 July 2019, 21:00

Category Privacy

Summary 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

This programme followed the work of Bedfordshire Police in its investigation into suspected financial fraud committed by Ms X's then husband.¹ The programme included footage of a police search at Ms X's house in Luton, in which she lived with her four children at the time. The programme included footage of the exterior and interior of the home, including personal belongings within it, as well as footage of Ms X inside her home. Ms X complained that her privacy, and the privacy of her four children, had been unwarrantably infringed in the filming and subsequent broadcast of this footage without her consent.

Ofcom found that:

- Ms X had a legitimate expectation of privacy in relation to the filming and subsequent broadcast of the footage of her inside her home during the police search without her consent. However, we considered that, in the circumstances of this case, Ms X'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.

¹ Although we refer to 'Ms X's husband' throughout this document, we understand that they were no longer together as at the date of broadcast and our Adjudication.

- Ms X and her four children had a legitimate expectation of privacy in relation to the filming and subsequent broadcast of the footage of the interior of their home without her consent. However, we considered that, in the particular circumstances of this case, Ms X and her four children'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.
- Ms X and her four children did not have a legitimate expectation of privacy in relation to the filming and subsequent broadcast of the footage of the exterior of their home without Ms X's consent.

Therefore, Ofcom found that there was no unwarranted infringement of Ms X's or her four children's privacy in the obtaining and broadcast of the material included in the programme.

Programme summary

On 29 July 2019, Channel 4 broadcast an episode of the programme *24 Hours in Police Custody*, which was a repeat of the original broadcast of the programme on 8 April 2019. The programme was a documentary about the work of Bedfordshire Police. This episode centred around a police investigation into the complainant's husband, Mr Anthony McGrath, to have committed insurance fraud after he had reported a burglary at the couple's rented home in Luton.

The programme opened with footage of the exterior of the Ms X and her husband's rented property in Luton which showed: the road-facing façade; a window to the rear of the property; as well as the police carrying out a search inside of the property, including as they descended into, searched and photographed the cellar. No possessions of note could be seen in this footage. As this footage was being shown, a recording of the 999 phone call made by her husband was played:

Operator: *"Evening, Bedfordshire Police. How can I help?"*

An on-screen slate was then shown which stated:

"THE DETECTIVE & THE SURGEON"

Footage of Detective Constable Dave Brecknock ("DC Brecknock") was then shown. The narrator explained that DC Brecknock had been in Bedfordshire Police for 24 years. The narrator said:

"In April, they received a 999 call from an orthopaedic surgeon who lives in the grounds of a stately home near Luton".

Footage of DC Brecknock speaking to a colleague was shown. DC Brecknock said:

"It's, it's an odd one. It's just a case we've got. A doctor with his family renting this house out and it looks like he's lost a major amount of stuff here, because a large amount of antiques are gone. I haven't dealt with many antique burglaries, but I know an antique burglar, and these are normally things stolen to order and they are out of the country very quick".

Shortly after, he said the following to camera:

“I just felt really sorry for him, you’ve had family heirlooms, you’ve had antiques from your deceased father’s estate stolen. For him, the sentimentality of a lot of the property outweighs the commercial value. This must be absolutely devastating”.

DC Brecknock was then shown speaking to another colleague:

“Dad [Ms X’s husband’s late father] was amazingly wealthy apparently, a very well-respected member of the community. Donated his Ming china collection to one of the museums”.

Later, the narrator said:

“The surgeon reports the burglary to his insurance company. His claim is for £250,000. For the next month, DC Brecknock presses him for pictures of the stolen items so he can identify if any have appeared on the antiques market”.

The programme showed DC Brecknock and a colleague looking through various photographs of the allegedly stolen items that had been provided by Mr McGrath to assist with the investigation, which included a photograph of a large marble fireplace, which Mr McGrath had claimed had been stolen from the cellar of the Luton property. The programme showed DC Brecknock holding photographs of the exterior of the Luton house which showed the alleged point of entry through a sash window. No other details about the property were shown. DC Brecknock explained his suspicion that Mr McGrath was committing fraud:

“By now, I’m suspecting he’s committing fraud...Something’s not right here. If you are going to smash a window to gain access to do a burglary of antiques, why do a window at the bottom of the sash? To undo the sash lock, you smash the window closest to the sash lock, you don’t go smash the corner to get your hand all the way through and try and undo that lock. No, it’s not right. I think the doctor’s up to something. This isn’t a burglary”.

Later in the programme, the narrator said:

“The surgeon reported the break into the police, but his wife’s [Ms X] account from the time of the burglary was different. DC Brecknock decides to call in on her at their rented property in the grounds of the stately home”.

Footage was shown of DC Brecknock driving towards Ms X and her husband’s rented property in Luton; the footage was taken by the programme makers from cameras within the police car. The footage showed the car approaching the gated entrance to a stately home on which the house was located. As DC Brecknock drove into the estate through an open gate situated off of a public road, a large red sign could be seen which appeared to identify the estate, although the details were not legible. The footage showed the grounds of the estate and the internal roads which enabled access to the properties located within it. As DC Brecknock drove towards the Ms X and her husband’s house up

its driveway the exterior of the property could be seen. The front door and house number were obscured by a large white van. Two cars could be seen parked outside the property; their number plates were not shown. As DC Brecknock drove, he further explained why he had reason to suspect that Mr McGrath was committing insurance fraud:

“Very lovely looking entrance as you sweep in...Suspensions arose from the way he asked us to investigate this. He wanted to be in control of everything. He wouldn’t let us, as in the police or me, talk to his wife [Ms X]. Now, his wife said to the SOCO² Officer nothing has gone. Her words were not even her jewellery has been touched upstairs. We’ve come to a point now, where we really have to, we really have to speak to her. So, fingers crossed she’s in. What I don’t want is a Maserati [Mr McGrath’s car] sat outside. I don’t want to talk to the doctor [Mr McGrath]... Right, we got a Maserati, so we have to go straight round”.

As DC Brecknock drove away from the property, further unidentified internal roads from within the stately home were shown.

Later in the programme, DC Brecknock was shown visiting an antiques dealer, who explained that Mr McGrath had tried to sell him a number of antique pieces. The dealer explained that Mr McGrath had told the dealer he was selling the pieces in order to raise money for Syrian refugees. Photographs of these antique pieces were shown.

The programme later showed DC Brecknock on his computer looking at photographs of the allegedly stolen marble fireplace which had been sent to him by Mr McGrath. The programme showed DC Brecknock discovering the metadata attached to the image, which enabled him to identify that the image of the fireplace had been taken by Mr McGrath several weeks after he had reported the alleged burglary to the police. The information attached to the image also showed the latitude and longitude co-ordinates of where the image had been taken (these details were blurred). The narrator said:

“The GPS from the surgeon’s phone shows that the photo was taken at the family home in County Meath, Ireland”.

The programme later showed DC Brecknock briefing a team of police officers ahead of plans to arrest Mr McGrath and to simultaneously search both his residence in Luton and the property in Ireland.

The programme makers followed police officers as they arrived at the Ms X and her husband’s rented Luton property in the early hours of the morning; the programme showed them approach the house in darkness, such that the roads approaching and the house itself were not clearly visible. The programme showed officers approaching the front door of the property; the door number was not visible. Footage, including bodycam footage, was shown of Mr McGrath in the entrance way of the property as officers explained the purpose of their visit.

The following exchange took place:

² SOCO: Scenes of Crime Officer.

Sergeant Laws: *"Mr McGrath?*

Mr McGrath: Yes.

Sergeant Laws: *Sergeant Laws from Bedfordshire Police. Can I come in and have a word please?*

Mr McGrath: *Yes, course you can.*

Sergeant Laws: *Thank you. A warrant's been issued to search this premise, okay, and you are going to be arrested. My colleague is going to arrest you now, so you need to listen carefully to what he is going to say, okay.*

Police officer: *Okay Mr McGrath, the time by my watch at the moment is 06:29. You are under arrest of suspicion of fraud by false representation... Do you understand?*

Mr McGrath: Yes.

Sergeant Laws: *Any questions? I appreciate this is a shock.*

Mr McGrath: *Fraud of what?*

Sergeant Laws: *I appreciate this is a shock. You'll be explained all the intricacies of what you have been arrested for down at the police station.*

Mr McGrath: *So, the warrant is for fraud?*

Sergeant Laws: *The warrant has been served by a judge, okay, in relation to an investigation of fraud, yes.*

Mr McGrath: *Well...I think I know what it's about, so if we speak down at the police station".*

As the police carried out their arrest of Mr McGrath, the programme showed footage of Ms X, lasting approximately 11 seconds, which showed her wearing pyjamas and standing behind her husband in the hallway; her face was blurred. The footage also showed various decorative items in the hallway, such as paintings in ornamental frames, the details of which were blurred.

Later, the narrator explained:

"With the surgeon in custody, the police need to find the evidence to build their case for insurance fraud. Before the search of the Luton property begins, the contents have to be meticulously documented in case the surgeon tries to sue the police for damage".

Footage of the police searching the interior of Ms X and her husband's residence in Luton was shown, including a sitting room in which the police had set up recording equipment and where a wooden bookcase, artwork and numerous photograph frames could be seen (the detail of the photographs were blurred). The footage also showed a number of other rooms in the house revealing further

decorative items, various tables covered in documents (which were obscured). The footage focused on an ornamental clock and a sculpture.

The narrator continued:

“The police have 24 hours to search both houses, in Ireland and Luton. And with the surgeon in custody, there is no chance of the antiques being moved or hidden”.

Later in the programme, footage of Mr McGrath in a police interview was shown:

DC Layton: *“When you were arrested Anthony, you made a comment to the officer and you said, ‘I think I know what it’s about’. Do you remember saying that comment?”*

Mr McGrath: *Yes.*

DC Layton: *You do. Can you clarify what you mean by that?*

Mr McGrath: *It was a reassuring comment to my wife [Ms X]. You did not need to launch a Rambo style attack on my home this morning. I think it is appalling.*

DC Layton: *I am going to continue to ask some questions, okay.*

DC Layton: *Who called the police? Did you call the police about the burglary?*

Mr McGrath: *I can’t remember.*

DC Layton: *Okay.*

Mr McGrath: *It was either myself or my wife [Ms X]. I’m aware that if I talk and there’s any discrepancy you may then accuse me of something that I am not guilty of”.*

The narrator later explained that, apart from the marble fireplace, none of the other allegedly stolen items could be found in the property in Ireland. Footage of police officers searching Mr McGrath’s Luton property was shown. The interior of Mr McGrath’s home was shown, including possessions such as an ornamental mirror and a Persian rug, and footage of the police inspecting a couch, boxes, documentation (the details of which were not legible), and the inside of a cloakroom containing various coats and shoes. During this search, the police are seen entering the cellar and other rooms of the house, identifying a number of items that were alleged to have been stolen, such as: silverware; an ornamental clock; a hanging candelabra; and a tantalus (i.e. liquor and glassware set in a wooden box). Photographs in frames which appeared in this footage were blurred. The programme showed a notebook with the phrase: *“Seek and ye shall find!”* written on the cover.

No further footage of Ms X was shown in the remainder of the programme. No further footage of the interior of the Luton property was shown in the remainder of the programme, save for images of the

allegedly stolen items which the interviewing officer showed Mr McGrath during his police interview. At the end of the programme, two photographs of Mr McGrath were shown alongside captions which stated:

“In 2019, four years after reporting the alleged burglary and following two trials, Anthony McGrath was found guilty of Fraud and Perverting the Course of Justice. He was sentenced to eight years in prison. His wife [Ms X] was found not guilty of all charges”.

The programme ended. Ms X was not referred to by name in the programme and her face was blurred throughout the 11 second clip in which she had appeared. No footage of, or reference to, Ms X’s four children were included in the programme.

Summary of the complaint and broadcaster’s response

Complaint

- a) Ms X complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she was filmed inside the rented property in Luton (in which she was living at the time) during a police search without her consent.
- b) Ms X also complained that her privacy was unwarrantably infringed in the programme as broadcast because footage of her inside the rented property in Luton during the police search was broadcast without her consent.
- c) Ms X complained that her privacy and the privacy of her children was unwarrantably infringed in connection with the obtaining of material included in the programme because the exterior and interior of the rented property in Luton (in which they were living at the time), and of personal belongings within this property, was filmed without her consent.
- d) Ms X also complained that her privacy and the privacy of her children was unwarrantably infringed in the programme as broadcast because footage of the exterior and interior of the rented property, and of personal belongings within this property, was broadcast without her consent. For example, she said that footage of a notebook given to her by her late mother was included in the programme.

Broadcaster’s response

Background

Channel 4 said that the programme makers had a distinguished track record of making responsible observational documentaries such as *24 Hours in Police Custody*. It said that the programme was one of Channel 4’s most important documentary programmes and was an important contribution to the fulfilment of its public service remit. It said that certain episodes of the programme have demonstrably contributed to the public’s understanding of crime and how it is tackled by police, including a number of episodes from the previous series concerning the knife crime epidemic which were shown at the Houses of Parliament by the All-Party Group on Violence and Knife Crime.

In relation to the programme subject to the complaint, Channel 4 said that there was a clear public interest in the programme, as it followed the work of the Bedfordshire Police and gave viewers an insight into the workings of the criminal justice system. It emphasised that the programme was made in close collaboration between the programme maker and Channel 4, and that the programme had been made to the highest ethical standards and in full compliance with all of the broadcaster's legal and regulatory obligations.

Channel 4 said that the episode featured the police investigation into the allegations of burglary reported by Mr McGrath (husband of Ms X) and subsequent investigation into allegations of fraud. The broadcaster noted that the programme was initially broadcast on 8 April 2019 after the successful prosecution and sentencing of Mr McGrath to eight years in prison for the crime of fraud and perverting the course of justice. (Ms X's complaint related to the repeat of the programme broadcast on 29 July 2019.) Channel 4 added that the programme clearly stated that Ms X was found not guilty of the charges against her; an end card had unambiguously stated: *"His wife was found not guilty of all charges"*.

Response to complaint

Channel 4 said that Ms X had complained about a programme in which neither she nor her four children were identified by name and her face was not shown unobscured. It said that the programme related to a high-profile criminal investigation and trial in which Ms X had been identified by name and in photographs in widespread press reporting. Channel 4 provided Ofcom with to a collection of press reports of the case against Ms X which included photographs of Ms X and details of the charges against her and the items which were the subject of those charges (details of which were not included in the programme subject to complaint). The broadcaster drew Ofcom's attention to a report in one publication which reported:

"[Ms X] of Clarence Road, St Albans pleaded not guilty to three counts of fraud relating to her failure to tell the insurance company she was still in possession of a pair of sapphire earrings and a diamond and sapphire ring and causing the earrings to be sold at auction at Bonhams".

Channel 4 said that despite Ms X being the subject of an investigation and trial of allegations of serious financial fraud, for editorial reasons, the focus of the programme had been on Mr McGrath's crimes. It added that Ms X was featured fleetingly for approximately 11 seconds in the programme, and that the only image of her children was in a photograph that appeared in the Luton property, which had been treated to obscure their identity.

Channel 4 then addressed each head of Ms X's complaint in turn:

- a) Channel 4 denied that Ms X's privacy was unwarrantably infringed when she was filmed inside her rented property in Luton (in which she was living at the time) without her consent. It maintained that the filming of Ms X was warranted in the public interest as being part of the police's investigation into the serious financial fraud committed by her husband, Mr McGrath.

Channel 4 said that the filming complained of lasted approximately 11 seconds and the complainant appeared fully obscured, in the background of a crucial point in the police's investigation as her husband's rights were being read to him and the grounds of his arrest and

nature of the investigation disclosed. Channel 4 said that the footage legitimately and justifiably featured the arrest of her husband, and since Ms X had been present during the arrest, she was filmed inside the rented property briefly. It emphasised that Ms X's identity was obscured in this scene and both Ms X and her husband were subjects of the police investigation at the time.

Channel 4 argued that the filming of Mr McGrath's arrest in which Ms X appeared was fully justified in the public interest as it recorded a crucial point in the police's investigation. It said that the programme made clear that the arrest was carefully planned by the police to coordinate the searches of the properties in Luton and Ireland. Channel 4 said that it was essential that the programme makers could follow the police and record for the public record their procedures and actions during their investigation into Mr and Ms X.

- b) Channel 4 argued that the broadcast of the footage of Ms X inside the rented property in Luton during the police search was warranted without her consent.

It said that the footage was an inherent part of the police's investigation into the serious insurance fraud committed by her husband. Channel 4 reiterated that her identity had been obscured, and the programme, whilst not identifying or naming her, had made it clear that she was found not guilty of the charges against her.

The broadcaster argued that the footage in which Ms X had appeared, had recorded a crucial point in the police investigation into serious criminal financial fraud which they suspected had been carried out. It repeated that the arrest of Mr McGrath had been carefully planned by the police to coordinate searches at the properties in Luton and Ireland, and that it was essential that the programme makers could show viewers the police's procedures and actions during an investigation of this nature.

Channel 4 reiterated that: the footage of Ms X lasted approximately 11 seconds; her face was obscured; and her voice could not be heard. It said that the obscured image of Ms X had appeared in the background at the very moment Mr McGrath was having his rights read to him and the grounds of his arrest are explained, therefore the footage showed a vital part of the police investigation as it captured the nature of the investigation as disclosed to him and his reaction, namely to say: *"... Well I think all I can say is that I think I know what it's about. So, if we speak down at the police station"*. Channel 4 noted that this specific comment was referred to by police officers during Mr McGrath's police interview featured later in the programme.

- c) With regards to Ms X's complaint that her privacy and the privacy of her children was unwarrantably infringed by the filming of the exterior and interior of the rented property in Luton (in which they were living at the time), and of personal belongings within this property, Channel 4 said that all sequences showing the interior and exterior of the house in Luton were fully justified as they were part of the police's investigation into the potential financial fraud which they suspected had been carried out.

Channel 4 said that the production team took care to film only those parts of the property that were directly relevant to the investigation. It highlighted that, in this case, the Luton property and its contents were an integral and inherent part of the offences Mr McGrath had committed, and

that it was thus essential that the programme makers could follow and capture the procedures and actions of the police during their investigation of this crime.

Channel 4 said that the filming was necessary and legitimate to give a proper account to the public of the police's investigation, and the nature and gravity of the crimes of which both Mr McGrath and Ms X were accused. Channel 4 said that when the programme maker approached Ms X at the most appropriate time during filming, it was duly noted that she did not consent to being filmed. Channel 4 said that she was subsequently not visually identified in the programme (despite its position that identification may have been justified under the law and/or Ofcom's Broadcasting Code³ (the "Code")). With regards to the children, the broadcaster argued that the children were not filmed at the property, and that no personal possessions of the children were filmed.

Channel 4 highlighted that the programme had shown a major police investigation into a financial crime that continued for three years at a considerable cost to the public. It said that the investigation further involved an unusual cross border operation in the Irish Republic, and that the filming for the programme was therefore clearly warranted in the public interest. Given the difficulty and expense of investigating and prosecuting financial crime, Channel 4 said it was crucial that the programme makers could obtain the footage recording the police's work in this area. It further argued that the filming within and outside the rented property in Luton was crucial to follow the police's investigation, as it showed why the police officers suspected a false burglary report because of the unusual way in which an exterior window had been broken for the purposes of gaining entry.

- d) With regards to Ms X's complaint that her privacy and the privacy of her children was unwarrantably infringed by the broadcast of the footage of the interior and exterior of their rented home in Luton, Channel 4 said that, together with the programme maker, it had carefully considered the footage of the house to ensure that nothing was included in the programme which was outside the ambit of the police investigation into Mr McGrath and Ms X. By way of example, it said that the programme maker ensured that any family photographs or portraits were obscured. Likewise, it said that detail on documentation was appropriately obscured.

Channel 4 further submitted that the programme did not name or identify any of Ms X's four children, and that relatives like deceased parents were only mentioned (but not named) because they formed an integral part of the understanding of the defence given by Mr McGrath in his police interview.

Channel 4 said that it was necessary and legitimate to capture the detail about the properties and items within them such as family heirlooms. With regards to the footage of the rented house in Luton, it said that it was necessary and legitimate to obtain this footage as it is the house which Mr McGrath falsely claimed had been burgled and helped the viewer to understand various salient details of the house. By way of example, it said that this footage showed how the police came to believe that the window that Mr McGrath said had been smashed to gain entry would not be one a burglar would normally smash, and that it was unlikely that some of the items he claimed had been stolen, including a large and heavy marble fireplace stored in the cellar, could have been

³ See the [Ofcom Broadcasting Code in force at the date of broadcast](#).
Issue 438 of Ofcom's Broadcast and On Demand Bulletin
8 November 2021

removed from the house in a burglary. It said that the principal footage from the interior of this house used in the programme was when the police found various items during their search, including silverware and a tantalus, which they believed to be the same as items which Mr McGrath falsely claimed had been stolen.

Channel 4 repeated that neither Ms X nor her children were identified in the programme and that measures were taken to obscure any personal details relating to Ms X or her children in the interior of the property. The broadcaster argued that at the time of broadcast, Ms X and her children had not been living at the rented property for a considerable period of time. It further argued that the programme did not reveal where they were now residing despite this information being in the public domain as a result of the extensive press coverage of the trials. Channel 4 said that the programme was careful only to include internal details of the property and its contents which were of relevance to the police investigation.

In relation to the notebook given to Ms X by her mother shown in the programme, Channel 4 said that the shot of the notebook was brief and did not contain any private or sensitive information relating to Ms X. Channel 4 said that while its position was that there was no private or confidential information on the cover of the notebook, it recognised that the notebook had sentimental value to Ms X and as a gesture of goodwill, it had agreed to obscure the cover of the notebook while the programme was available online and in any subsequent repeat.

Channel 4 said that a substantial amount of personal material disclosed in Court by either Ms X, Mr McGrath or the prosecution had not been included in the programme out of respect to Ms X's children, and also because it considered that such details were not relevant to the police's investigation.

Channel 4 argued that nothing in the programme could infringe Ms X's privacy as the relevant information in the programme was already in the public domain at the time of broadcast, as a result of the wide reporting in the media of Ms X's public trial. Channel 4 drew Ofcom's attention to a report on the BBC's website which included photographs of Ms X and details of the properties in which she has lived. Channel 4 also referred to the selection of links referred to above (see footnote 2), and stated that the "extensive coverage" included numerous photographs of the possessions which Mr McGrath claimed had been stolen, and photographs of the exteriors and interiors of the properties in far more precise detail than what was provided in the programme. For example, it noted that unlike the programme, this coverage had referred to the house in Luton by its name.

Channel 4 said that in light of the above, it was "plain that there is no case of any unwarranted infringement of privacy to answer by either the programme maker or Channel 4, in either the filming of the material or the broadcast of the programme".

Channel 4 said that while its position was that the complainants did not have a legitimate expectation of privacy in either the obtaining or the subsequent broadcast of the footage subject to complaint, it argued that should Ofcom find that their privacy was infringed, any infringement was warranted in the public interest for the reasons set out above.

Complainant's comments on broadcaster's response

Ms X said that she received no contact from the programme makers prior to the broadcast of the first airing of the programme on 8 April 2019. She said that she only received notification that the broadcast of the programme would be repeated, via her solicitors, on 29 July 2019 (the same day as the repeat broadcast).

Ms X said that she did not accept Channel 4's submission that her voice could not be heard in the footage as broadcast. She said that her voice could "clearly" be heard at the point of Mr McGrath's arrest.

Ms X also said that Channel 4's assertion that at the time of filming, she too was under police investigation, was inaccurate. She said that it was established in court that she was not a suspect at the time her husband was arrested, although a police officer "chose to treat me as one". The complainant said that the footage that was shown in the programme all related to the period before she was arrested or charged with any offence⁴.

Ms X requested that any footage obtained of her children by the programme makers during the search of the property be provided to Ofcom. She reiterated that the broadcaster had trespassed "unannounced into a private home and filmed unrestricted"; she said the warrant held by the police to search the property "didn't cover a camera or production crew".

Broadcaster's further submissions regarding footage of the children

Channel 4 confirmed that approximately four seconds of footage of two of Ms X's children had been obtained during the search of the Luton house. Channel 4 provided a copy of this unedited footage to Ofcom⁵. Channel 4 said that the children's faces could not be seen as they are walking away from the camera, and the filming was not intrusive. It added that the footage was filmed in a communal area of the house during the execution by the police of the arrest and search warrants and was not included in the programme as broadcast.

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. We did not receive any representations from Ms X within the deadline provided, and Channel 4 chose not to make representations on Ofcom's Preliminary View. In line with our published procedures⁶, Ofcom prepared a final Adjudication on the complaint. Before publication of the Adjudication in Ofcom's Broadcast and On Demand Bulletin, Ms X requested an extension of time in which to submit representations on Ofcom's Preliminary View, which Ofcom granted on an exceptional basis. Ms X did not provide written

⁴ We understand that Ms X was tried and acquitted of the charges of insurance fraud made against her.

⁵ Ofcom considered this unedited footage in order to reach a decision on Ms X's complaint. However, we did not consider it necessary to be provided with the full unedited footage obtained in connection with the making of this programme in order to reach this decision, and relied only on the broadcast footage included in the programme of the exterior and interior of the Luton home (in addition to the unedited footage of the children).

⁶ [Procedures](#) for the consideration and adjudication of Fairness and Privacy complaints.

representations on Ofcom's Preliminary View within the time specified and Ofcom therefore proceeded to make the final adjudication of her complaint.

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 unjust or unfair treatment and 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, some unedited footage and both parties' written submissions.

In Ofcom's view, the individual's right to privacy under Article 8 of the European Convention of Human Rights ("ECHR") has to be balanced against the competing right of the broadcaster and of the audience to freedom of expression under Article 10 of the ECHR. 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 the Code, 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 first considered Ms X's complaint that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she was filmed inside the rented property in Luton (in which she was living at the time) during a police search without her consent.

In considering this complaint, 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 organisation's consent or be otherwise warranted"; and,

- Practice 8.9:

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

We first assessed whether Ms X had a legitimate expectation of privacy in the particular circumstances in which the footage of her 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 reviewed the footage of Ms X that was obtained and included in the programme, as detailed above in the “Programme summary”. Ms X was filmed inside her family home in Luton which was rented and occupied by Ms X, Mr McGrath and their four children at the time of filming. In the footage, Ms X was filmed in her pyjamas in the hallway of the house as police officers entered and carried out the arrest of her husband in connection with suspected financial fraud early in the morning.

We considered that Ms X was filmed without prior warning in the early hours of the morning when the police arrived unannounced to arrest her husband and conduct a search of the house. We also considered that being filmed in these circumstances could reasonably be regarded as both sensitive and distressing. We also considered that the inside of a person’s home could reasonably be regarded as particularly private and personal in nature, and it is our view that ordinarily, the filming of a person in their home should be regarded as attracting a legitimate expectation of privacy. Overall, we took the view that the sensitive and private situation in which Ms X was filmed would be sufficient to fall within the scope of “private and family life” protected by Article 8 of the European Convention of Human Rights (“ECHR”)⁷.

Despite acknowledging the sensitivity of the circumstances in which she was filmed, we also considered that in this case, Ms X herself was not filmed engaged in any conduct of a particularly private nature. We took note of Channel 4’s submission that, at the time of filming, Ms X had been the subject of the police investigation along with her husband, who is seen being arrested in the footage in which Ms X appears. We acknowledged that this was disputed by Ms X, who had said that the suggestion that she was a suspect at the time was false and contrary to evidence given

⁷ Article 8 of the ECHR stipulates that “[e]veryone has the right to respect for his private and family life, his home and his correspondence”.

under oath at trial. However, it is not for Ofcom to adjudicate on this issue of fact. We did not consider that the fact that she was later charged with, and tried for, the crime of insurance fraud alongside her husband would deprive her of any right to privacy in connection with the circumstances in which she was filmed.

Taking all these factors into account, Ofcom considered that on balance, the circumstances in which Ms X was filmed by the programme makers gave rise to a legitimate expectation of privacy.

There was no dispute between the parties that Ms X's consent had not been obtained in connection with the filming of her as described above. Accordingly, it was not necessary for Ofcom to consider this point further. We therefore went on to consider whether the infringement of Ms X'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 Ms X'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 4's argument that there was a public interest in the filming of the footage of her husband's arrest in which Ms X was also filmed. It said that obtaining this footage was fully justified in the public interest as it recorded a "crucial point" in the police investigation into her husband's financial fraud and demonstrated the carefully planned and coordinated nature of the arrest and searches of the houses in Luton and Ireland. Channel 4 also said that Ms X had appeared in the background "at the very moment" her husband was having his rights read to him and the grounds of his arrest being explained, and therefore "this is a vital part of the record of the police investigation as it captures the nature of the investigation as disclosed to him and his reaction, namely to say: *"... Well, I think all I can say is that I think I know what it's about. So, if we speak down at the police station"*. We also considered Channel 4's submission that it was important that the programme makers were able to follow and record for the public the police's procedures and actions during their investigation of her husband, which was the main focus of the programme.

Ofcom considered that there was a genuine public interest in obtaining footage that conveyed to viewers an understanding of the work involved in major police fraud operations, which are complex and costly. We considered that the obtaining of footage which showed the police investigation into her husband provided an opportunity for the programme to illustrate how an investigation of this nature unfolds and in particular, to highlight the complexity of coordinating an arrest and property search across two jurisdictions. In our view, obtaining footage of the police arresting her husband inside his house, which incidentally captured footage of Ms X, was proportionate to achieve this end.

Therefore, having established the public interest in the footage obtained by the programme makers, Ofcom next focussed on determining where the balance lies between the competing rights under Articles 8 (Privacy) and 10 (Freedom of Expression) of the Convention on this issue.

Ofcom considered that in this case, the interference with Ms X's right to privacy caused by the filming of her inside her house as her husband was arrested represented an intrusion into her private life. However, the significance of this intrusion was reduced by the fact that Ms X had only appeared in the background of footage and her face was obscured, therefore, she was not the focal point of the footage, which focussed on the police conducting her husband's arrest and her husband's response to this. We also took into account that, despite the sensitivity and private nature of what the footage captured in relation to Ms X, the footage did not reveal anything else of a particularly private or sensitive nature within her home.

Ofcom also considered whether, in accordance with Practice 8.9, the material had been obtained proportionately in all the circumstances. As outlined above, we considered that the filming focussed on the work of the police in entering and arresting her husband and that such filming was only done to the extent necessary to capture this moment in the police investigation. We also considered that the material obtained was relevant to the subject matter of the programme. Ofcom took the view that, because the episode concerned the police investigation of her husband's suspected financial fraud, the filming of his arrest was relevant to demonstrate how the police conducted a key moment of this investigation.

Given these circumstances and the public interest justification of in obtaining this footage described above, we considered that the means of obtaining the footage featuring Ms X was proportionate and warranted.

Taking all of the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage of her husband's arrest outweighed Ms X's legitimate expectation of privacy in the circumstances.

- b) We then considered Ms X's complaint that her privacy was unwarrantably infringed in the programme as broadcast because footage of her inside the rented property in Luton during the police search was broadcast without her consent.

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

- Practice 8.4:

"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:

“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 Ms X 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, including that Ms X was shown incidentally, in the background of footage which had focussed instead upon her husband’s arrest. The footage, which had lasted approximately six seconds, showed Ms X wearing pyjamas while stood in the hallway of the Luton house as the police entered and carried out the arrest of her husband in connection with suspected insurance fraud. Ms X’s face was blurred.

We took account of Channel 4’s submission that the programme did not disclose any significant private information about Ms X, as she was not identified by name and her face was not shown unobscured. We also took into account Channel 4’s submission that Ms X’s identity and her relationship to her husband was already in the public domain at the time of broadcast, as a consequence of media coverage of her husband’s trial, in addition to coverage of the charges of insurance fraud that were made against Ms X (in relation to which she was tried and acquitted). However, in Ofcom’s view, while the court proceedings relating to Ms X and her husband may be a matter of public record, we do not consider that this fact, of itself, obviates all rights of privacy that a person subject to those proceedings might reasonably expect in relation to the matter.

We first took account of Ms X’s submission that the programme had included footage in which her voice could be heard. Having carefully listened to the footage, Ofcom concluded that the complainant’s voice included in the programme as broadcast was not so distinctive as to be identifiable. We took the view that any words which might have been spoken by the complainant at the time of her husband’s arrest could not be distinguished from the dialogue between her husband and the arresting officers, who were the focus of the footage in this scene. In Ofcom’s view the programme did not contain any audio which could be distinguished as that of the voice Ms X, and which might have identified her to a wider audience such as might afford her a legitimate expectation of privacy.

Ofcom recognised that significant steps had been taken by the broadcaster to limit any intrusive effect that the broadcast of her husband’s arrest might have had on the complainant. For example, we took into account that: Ms X was not named in the programme; her face was blurred in the background of the footage of her husband’s arrest; and the programme did not make any reference to the nature of the relationship between her husband and Ms X, or the fact that Ms X had been charged with insurance fraud apart from the caption at the end that clarified that *“His wife [Ms X] was found not guilty of all charges”*. Nevertheless, we recognised that her husband had been arrested in the early hours of the morning, in the home which he shared with his wife and four children. In such circumstances, it was likely that viewers would have concluded that only

close family or friends of her husband would have also been present in the house during this time. We also took into account that earlier in the programme, DC Brecknock had approached the home in Luton to “call in on” the suspect’s wife to discuss her account of the burglary, so the audience may have understood that woman that appeared in the footage of her husband’s arrest was his wife. Furthermore, her husband was asked in his police interview to clarify what he meant in his reaction to his arrest, namely his statement: “... Well I think all I can say is that I think I know what it’s about. So, if we speak down at the police station”, to which her husband had explained that the statement was intended as a “reassuring comment to my wife”.

On balance, however, while Ofcom considered that it was unlikely that Ms X would have been identifiable to the majority of viewers who did not have prior knowledge of her or her husband, it was reasonable to conclude that she may have been identifiable to some viewers who already knew her and her association with Mr McGrath.

We also had regard to what the footage had showed. As discussed in detail above, the complainant was stood inside her home wearing pyjamas during the police’s unannounced visit to the property to conduct a search of the property and arrest her then-husband. We took into consideration Channel 4’s submission that the complainant did not have a legitimate expectation of privacy over the information broadcast in the programme as a consequence of the wide reporting in the media of Ms X’s public trial. However, we considered that the footage as broadcast showed the complainant in a potentially private and sensitive situation, and the general reporting of the complainant and her then-husband’s court case did not obviate the complainant of the right to privacy that she might reasonably expect in relation to the matter.

Having taken all the above factors above into account, in Ofcom’s view, while steps had been taken by the broadcaster to limit any intrusive effect that the broadcast of her husband’s arrest might have had on the complainant, Ms X was identifiable in footage which could reasonably be considered to show a private and sensitive moment. Therefore, taking all the above factors into account, we considered that, in the particular circumstances, Ms X had a legitimate expectation of privacy in relation to the broadcast of the footage of her during her husband’s arrest. However, the significance of this intrusion was reduced by the fact that Ms X only appeared in the background of the footage and was not the focal point of the footage, which focussed on the police conducting her husband’s arrest and her husband’s response to this, and in addition her face was obscured and the footage broadcast was very brief.

Ofcom then considered whether the programme maker had obtained Ms X’s consent for the footage of her to be broadcast in the circumstances detailed above. We took into account that Ms X disputed that she had been notified by the programme makers prior to the first broadcast of the programme on 8 April 2019, and that she had only received notification “as a courtesy” that the programme would be repeated on 29 July 2019, the same day as the broadcast. There is no suggestion from the representations of Ms X or Channel 4, or from a copy of the 19 July 2019 notification that was provided to Ofcom, that these notifications sought the consent of Ms X in relation to either broadcast. There therefore appeared to be no dispute between the parties that Ms X’s consent had not been obtained in connection with the broadcast of the footage described above. Accordingly, it was not necessary for Ofcom to consider this point further. We therefore

went on to consider whether the infringement of Ms X's legitimate expectation of privacy was warranted on the particular facts of this case.

Ofcom carefully balanced the comparative weight of Ms X's right to privacy with regard to the footage as broadcast with the broadcaster's and audience's right to freedom of expression in the particular circumstances of the programme.

As already noted above in relation to head a), we considered that there was a significant public interest in the broadcast of footage which showed an inherent part of the police's investigation into the serious insurance fraud committed by Mr McGrath. We agreed that the footage in which Ms X appeared in the programme as broadcast served to show viewers the police's procedures and actions during an investigation of this nature and we recognised the public interest in showing a key part of the police investigation as it captured the nature of the investigation as disclosed to him and his reaction to his arrest.

In weighing up the competing rights of the parties, we considered that, while the programme contained information which might have identified Ms X, we did not consider the information shown in the programme represented a significant intrusion into her private life. As outlined above in head a), we considered that, other than potentially revealing Ms X's identity, the footage in which Ms X featured did not appear to reveal anything particularly private or sensitive about her, and that it was brief, her face was obscured and she was not the focus of the footage. We also took into account that the programme did not make reference to Ms X's charges of insurance fraud, with the exception of the caption at the end that clarified that she was found not guilty.

Having taken all the factors above into account, Ofcom considered that, on balance, the interference with Ms X's rights to privacy in this case was not of a nature and gravity as to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster.

Taking all the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in broadcasting the footage of Ms X outweighed her legitimate expectation of privacy in relation to the filming of her in her home.

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

- c) We next considered Ms X's complaint that her privacy and the privacy of her children was unwarrantably infringed in connection with the obtaining of material included in the programme because the exterior and interior of the rented property in Luton (in which they were living at the time), and of personal belongings within this property, was filmed without her consent.

We first assessed whether Ms X and her four children had a legitimate expectation of privacy in the particular circumstances in which the footage of the exterior and interior of the rented property in Luton included in the programme was obtained. As referenced above, 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.

Footage of the exterior of the Luton house

As set out in the “Programme summary” above, the programme makers obtained footage of the exterior of the property in Luton, including footage of the road-facing façade from an access road within the grounds of the estate on which it is located and a window to the rear of the property. While the footage showed that entry to the grounds was gated, the gate was open, and it did not appear that access or the roads within the property were closed to the public. Accordingly, the footage captured no more than would otherwise be visible to the public from these internal roads and the footage did not capture any distinctive features of the house such as the house name or number.

Taking these factors into account, Ofcom did not consider that the footage of the exterior of the house in which Ms X and her four children lived at the time of filming captured any information of a particularly private or sensitive nature, or that the filming was particularly intrusive. Accordingly, we considered that Ms X and her children did not have a legitimate expectation of privacy in relation to the filming of the exterior of their house in Luton.

Given this, it was unnecessary for Ofcom to consider whether any infringement of Ms X’s, and her children’s, privacy relating to the obtaining of this footage was warranted.

Footage of the interior of the Luton house

We reviewed the footage of the interior of the rented property in Luton that was obtained and included in the programme, as detailed above in the “Programme summary”. The footage was obtained by the programme makers who had accompanied the police as they entered and searched the property in connection with their fraud investigation. The footage showed various decorative items in several rooms throughout the property, including footage of a sitting room in which the police had set up recording equipment which showed a wooden bookcase, artwork and numerous photograph frames, and focused on items that were alleged to have been stolen. From the footage, it did not appear that the programme makers had concealed the fact that they were filming, although Ofcom acknowledged that the complainant had been unaware of the purpose of the filming. Body camera footage was also shown in the programme.

Ofcom also had regard to the unedited footage of Ms X’s children which had been obtained by the programme makers during the search of the property. The footage lasted approximately four seconds and showed two children (one child was being carried) as they walked away from the camera into a room off the hallway. The children’s faces could not be seen. We considered that the inside of a person’s home could reasonably be regarded as private and personal in nature, and it is our view that ordinarily, the filming of the inside of a person’s home should naturally be regarded as attracting a legitimate expectation of privacy. We also took into consideration that the house in Luton was Ms X and her four children’s place of residence at the time of filming. Furthermore, in this particular case, the footage had been obtained as part of a police operation, in which officers had attended the property unannounced to arrest her husband and search the property. In this context, we took into account Channel 4’s submission that the programme makers only filmed the interior of the property and possessions within it to the extent that this was directly related to the police investigation into her husband’s suspected insurance fraud. Ofcom considered that, in these particular circumstances, the otherwise private and personal parts of the houses captured by the footage were important context to the fraud offence of which

her husband was ultimately convicted. However, despite the context of a related criminal investigation, we consider that the filming of the interior of a person's private place of residence, which is a naturally private and personal environment, without prior warning, could reasonably be regarded as attracting a legitimate expectation of privacy.

In relation to the footage that was obtained of Ms X's children, we had regard to Code Practice 8.20, which states:

"Broadcasters should pay particular attention to the privacy of people under sixteen. They do not lose their rights to privacy because, for example, of the fame or notoriety of their parents or because of events in their schools".

At the time the footage was obtained, Ms X's children were ages 1, 4, 10 and 11 years old. As the children were all under the age of sixteen, Ofcom carefully scrutinised the programme maker's decision to obtain the footage of the interior of the house in which the children resided at the time of the police search and the arrest of their father. We took into account that the programme makers obtained footage of the interior of their house and that two of the children had been filmed in their home. Ofcom took account of Channel 4's argument that the filming was necessary and legitimate to give a proper account to the public of the police's investigation into her husband, which included their search of the home, and that no personal possessions of the children were filmed. Nevertheless, we considered that the children did not lose their rights to privacy because of the police's interest in their father. In Ofcom's view, given the ages of the children, and the private and personal nature of the interior and contents of their home should naturally be regarded as attracting a legitimate expectation of privacy, particularly in circumstances where the filming also captured footage of two of the children.

Taking into consideration the factors referred to above, Ofcom considered that the situation in which footage of the interior of the Luton home had been obtained could reasonably be regarded as sensitive and private. This was particularly so in relation to the footage obtained of Ms X's children, as it had captured two young children in their home, the filming of which could reasonably be regarded as more sensitive than the capturing of footage of the contents of the Luton property only. Consequently, Ofcom found that Ms X and her four children had a legitimate expectation of privacy in relation to the obtaining of the material, as set out above, in these particular circumstances.

As detailed at a) above, it was not in dispute that Ms X's consent was not obtained in connection with the filming of the interior of the Luton property in respect of herself or her children, as described above. We therefore went on to consider whether the infringement of Ms X and her four children's legitimate expectation of privacy was warranted on the particular facts of this case.

Ofcom carefully balanced the comparative weight of Ms X and her four children'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 4's argument that it was necessary and legitimate to obtain footage which showed the interior of the Luton property as it was the house which her husband falsely

claimed had been burgled and helped the viewer to understand various salient details, for example, why the police came to suspect that her husband had made a false claim. We also took into account Channel 4's submission that the programme makers only filmed the interior of the properties and possessions within them to the extent that they were directly related to the police investigation into Mr McGrath's suspected insurance fraud.

As outlined above under head a), Ofcom considered that there was a genuine public interest in the making of this programme, in that its purpose was to convey to viewers an understanding of the work involved in major police fraud investigations which are complex and costly. We considered that Mr McGrath's case provided an opportunity for the programme to illustrate the process of a police investigation of this nature and how it led to a subsequent arrest and conviction. In our view, obtaining footage of the police inside Ms X and her husband's house during their search assisted in achieving this objective. Ofcom considered that, in these particular circumstances, the otherwise private and personal parts of the house captured by the footage gave important context to the fraud offence of which Mr McGrath was ultimately convicted. We also took into account Ms X's submission that the search warrant obtained by the police did not extend authority to the programme makers to film these searches. However, we considered that the programme makers entered and filmed the interior of Ms X and her husband's house in order to capture footage that was directly relevant to the police's work in investigating and gathering evidence relating to Mr McGrath's suspected crime, and was thus proportionate and directly relevant to the subject matter of the programme.

Having established the public interest in the footage obtained by the programme makers, Ofcom next focused on determining where the balance lies between the competing rights of the parties under Articles 8 and 10 of the Convention that are in issue.

Ofcom took into account that both Ms X and her children were at home at the time, would have been present during the police search and filming by the programme makers, and therefore were captured by some of the footage obtained of the interior of the house. We also took into account that the filming took place after the police had arrived at the property unannounced to arrest Ms X's then husband, and that the police search of the house was likely a sensitive situation for them. However, we also acknowledged that the filming of the interior of the house and possessions within it helped to illuminate the decisions made and evidence gathered during the police search of the property, and we accepted Channel 4's argument that the programme makers only captured footage of the interior of the property and possessions within it to the extent that this was directly related to the police investigation.

For the reasons set out under head a), we also considered that the means of obtaining the material had been proportionate and warranted in the particular circumstances. Taking all of the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage outweighed Ms X and her children's legitimate expectation of privacy in relation to the filming of the interior of their house.

Ofcom found that the privacy of Ms X and her children was not unwarrantably infringed in connection with the obtaining of footage included in the programme.

- d) We finally considered Ms X's complaint that her privacy and the privacy of her children was unwarrantably infringed in the programme as broadcast because footage of the exterior and interior of the rented property, and of personal belongings within this property, was broadcast without her consent. For example, she said that footage of a notebook given to her by her late mother was included in the programme.

Exterior of home

We considered whether Ms X and her children had a legitimate expectation of privacy in relation to the footage of the exterior of their house included in the programme as broadcast.

As set out in the "Programme summary" above, the programme opened with footage of the exterior of the property in Luton which showed the road-facing façade and a window to the rear of the property. Later in the programme, footage was shown of DC Brecknock driving towards Ms X and her husband's rented property in Luton from internal roads within the grounds of the estate within which the house was located. The footage also showed the car approaching the open gated entrance to the estate, which was situated off of a public road, and a large red sign which appeared to identify the estate, although the details were not legible. The front door and house number were obscured in the programme as broadcast by a large white van. Two cars could be seen parked outside the property; their number plates were not shown. Later, police officers were shown arriving at the property in darkness, such that the roads approaching and the house itself were not clearly visible.

In Ofcom's view, the programme depicted the exterior of the property as it would ordinarily be seen by members of the public. Ofcom considered that the filming and inclusion in a programme of the exterior of an individual's home, which would be visible from a public road, alone, could not reasonably be regarded as attracting a legitimate expectation of privacy. However, in considering this point, in addition to having regard to Practice 8.6, we also took account of Practice 8.2 which states:

"Information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted".

We took into account that, although the programme disclosed details of the wider geographical region where the property was located, it did not specify the road name, estate name, or contain any other reference points. Ofcom considered that in the absence of this information, the inclusion in the programme of the footage referenced above would not have enabled the location of the property in Luton to be identified. We therefore considered it unlikely that viewers who were not already familiar with the house in the area would have been able to identify the property's location from the footage included in the programme. We also considered that the exterior of the Luton house was not so distinctive as to be easily identifiable, particularly given that the footage did not capture any additional distinctive features such as the house name or number. In the circumstances of the case, we did not consider that Ms X or her children had a legitimate expectation of privacy with regards to the footage of the exterior of the house in this respect. It was therefore unnecessary for Ofcom to consider whether any infringement of Ms X or her children's privacy relating to the inclusion of this footage in the programme as broadcast was warranted.

Interior of home

As referenced in the “Programme summary”, the programme included footage of the police searching the interior of Ms X and her husband’s rented property. This footage captured several items which Mr McGrath had alleged had been stolen, which were shown unobscured. We also acknowledge Ms X’s complaint that the footage captured personal belongings within her and her children’s home, including a notebook given to her by her late mother.

We took account of Channel 4’s submission that it took care to ensure that nothing appeared in the programme that was outside the ambit of the police investigation and the principal footage used in the programme as broadcast was captured when the police found items of relevance to the investigation. Other than the footage broadcast of Ms X discussed at head b) above, no footage of Ms X or her children was broadcast in the programme, nor were they referred to by name in connection with the footage broadcast of the search of the house. We also considered the fact that any items that appeared incidentally in the footage alongside items directly relating to the investigation, such as family photographs and documents, were obscured in the programme as broadcast.

We gave further consideration to Channel 4’s submission that the possessions shown had already entered the public domain through the conduct and reporting of Mr McGrath and Ms X’s criminal trial. However, Ofcom considered that the fact that her husband was subsequently charged and convicted of offences in relation to which the police search of Ms X and her husband’s house was carried out, does not, of itself, obviate all rights to privacy that Ms X and her children might reasonably expect in relation to their private and family homes, even in cases where these homes and their contents are connected with another individual’s crime.

Ofcom considered that the footage of the interior of Ms X’s house in the programme as broadcast revealed an environment and possessions of a private nature comprising a part of Ms X and her children’s “family life” in respect of which they might reasonably expect a level of privacy pursuant to Article 8 of the Convention, notwithstanding any information in the public domain as a result of her husband’s trial.

Taking all these factors into account, in the circumstances of the case, we considered that Ms X and her four children had a legitimate expectation of privacy in relation to the inclusion of footage of the inside of their home in the programme as broadcast.

There was no dispute between the parties that the footage of the interior of the house was included in the programme as broadcast without consent. We therefore went on to consider whether the infringement of Ms X and her four children’s legitimate expectation of privacy was warranted on the particular facts of this case.

As above in head a), we took into account Channel 4’s argument that there was a public interest in broadcasting the footage in that it showed the work of the Bedfordshire Police in investigating large scale and costly fraud, and more specifically the development of the investigation that resulted in the successful prosecution of Mr McGrath for fraud. We also took into account Channel 4’s submission that the footage included in the programme as broadcast did not exceed what was proportionate and legitimate to enable viewers to understand the work of the police in

investigating and gathering the necessary evidence to prosecute the insurance fraud committed by Mr McGrath.

We considered that there was a genuine public interest in the programme including the story of the police's investigation of Mr McGrath, including the development of this investigation from Ms McGrath's initial report of a burglary to his arrest and being charged for fraud offences and perverting the course of justice. We acknowledged that this programme showed how the police developed and confirmed their suspicions of Mr McGrath, and the police search of Ms X and her husband's house constituted an important part of this process. It was in this context that Ofcom considered that there was a public interest in broadcasting the footage of the interior of the Luton house, including personal belongings, as the footage enabled the broadcaster to illustrate the various stages and challenges involved in this investigation. In this context, we accepted Channel 4's argument that the programme makers had only broadcast footage of the interior of the property and possessions within it to the extent that this was directly related to the police investigation. We also took into account that any personal possessions which showed particularly personal or sensitive information, such as family photographs and documents, were obscured in the footage as broadcast, and nothing was broadcast, other than the footage of Ms X discussed at head b) above, that would have been likely to identify Ms X or her children.

Taking all of the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in the broadcast of the footage outweighed Ms X and her children's legitimate expectation of privacy in relation to the broadcast of the footage of the interior of their house.

Ofcom's therefore considered that Ms X and her four children's privacy was not unwarrantably infringed in connection with the broadcast of this footage included in the programme.

Ofcom has not upheld Ms X's complaint of unwarranted infringement of privacy on behalf of herself and her four children in connection with the obtaining of material included in the programme and in the programme as broadcast.