

Complaint by Ms H about *The Motorway Cops: Catching Britain's Speeders*

Type of case Fairness and Privacy

Outcome Not Upheld

Service Channel 5

Date & time 4 October 2021, 20:00

Category Privacy

Summary We have not upheld a 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 Ms H being pulled over, questioned, breathalysed, and arrested on suspicion of drink driving. Footage of her in the police station was also shown. Ms H complained that her privacy was unwarrantably infringed in both the filming and subsequent broadcast of this footage without her consent.

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

Programme summary

On 4 October 2021, Channel 5 broadcast an edition of *The Motorway Cops: Catching Britain's Speeders*, a documentary series following police and other emergency services as they attend incidents of "dangerous and criminal driving" around Britain.

Towards the end of the programme, the narrator introduced a segment on incidents involving drink driving in Cheshire:

“In 2020, Cheshire had the most drink driving convictions of anywhere in England and Wales. This worrying trend is something that its police are committed to stamping out. It’s Saturday night in central Warrington, while some people are enjoying a night out, PC Amy Hollis is on the lookout for drink drivers”.

PC Hollis was shown on patrol before spotting a car being driven without its lights on. PC Hollis said: *“I’m going for him actually, he’s not got his lights on”*. Dashboard camera footage from PC Hollis’ vehicle was then shown of her following the car as she attempted to get the driver to pull over. The narrator explained that *“Cars being driven at night without lights on will always attract the attention of the police”*.

The dashboard camera footage continued as PC Hollis explained:

“The Renault up there hasn’t got his lights on, so straight away you’re thinking ‘why haven’t you got your lights on?’. [It’s] sometimes used by criminals to get out of dodge or not to be noticed, but we’ll see what the reason is”.

As the car was shown pulling over, the narrator said: *“In Warrington, the car PC Amy Hollis is following has come to a stop right in the middle of a junction”*. As the car came to a stop, PC Hollis said: *“What a silly place to stop”*, before pulling up alongside and asking the driver to *“Just pull in here for me, that’s a bit of a bad place to stop...”*.

Further dashboard camera footage was included of the driver (the complainant, Ms H) as she got out of her car before being joined in the road by PC Hollis. The following exchange took place, during which Ms H was obscured from the dashboard camera’s view by PC Hollis, who was stood in front of her:

PC Hollis: *“Hiya, you alright?”*

Ms H: *Yeah, I’m alright.*

PC Hollis: *You didn’t have your lights on.*

Ms H: *Oh my God, I’m so sorry.*

PC Hollis: *No, it’s ok”.*

PC Hollis moved to one side so that Ms H became visible in the dashboard camera footage, and the conversation continued:

PC Hollis: *“[First name], have you had anything to drink tonight?”*

Ms H: *Yeah, I went for a meal earlier on tonight.*

PC Hollis: *Ok. Just come and have a sit in the back of my car...Just take a seat there for me [first name], thank you".*

Ms H accompanied PC Hollis as they moved out of view of the dashboard camera. Footage was then shown of Ms H as she was guided into the back of a police car. Footage of Ms H in the back of the police car was shown and which appeared to comprise a mixture of footage filmed by a camera attached to the passenger's side door of the police car, and a television camera on the pavement outside the car. The following exchange took place:

PC Hollis: *"I can smell alcohol on you, ok? You've been driving without your lights off. When was the last time you had anything to drink?"*

Ms H: *It was like, when did I go for the meal, seven o'clock, it was like a strawberry daiquiri.*

PC Hollis: *Have you had anything to eat or drink or smoke in the last twenty minutes?"*

Ms H: *Yeah, I've had a cigarette...I'd say about ten minutes.*

PC Hollis: *About ten minutes ago, ok. [a breathalyser is produced] So, I'm going to ask you to breathe into the tube for me, nice and slow, I'll keep hold of it, alright?"*

Ms H: *I've never done this before so, sorry..."*

Footage recorded by the camera inside the car was then shown as Ms H blew into the breathalyser, shortly after which, PC Hollis explained to Ms H that her breathalyser test was analysing her sample before going on to say:

"Right, and that's a fail, you've blown fifty-two. Ok, so at this time you are under arrest on suspicion of drink driving, [I] remind you that you're under caution, alright".

The programme went on to include further footage of Ms H in the back of the police car as the narrator explained that her "breath sample" was "one and a half times the legal limit". Footage of Ms H from inside the car was shown as she attempted to use her mobile phone before PC Hollis said: "just because you're under arrest at the moment, you can't be on your phone". Ms H continued to be recorded by the cameras both inside and outside of the car as PC Hollis' voiceover was heard:

"It's always the stereotype of 'oh it's a male', and I think women, they think more forward. So, they'll think, that's my driving licence gone, that's my job gone, that's this gone, I can't pick the kids up from school anymore. Whereas, I think with men [they think], 'right, I'm being charged with this, what's going to happen next?' Men, it's more the here and now, they don't think a year down the road".

Ms H was then shown being placed in handcuffs and put into the back of a waiting police van as the narrator explained that she was being “taken into custody”. PC Hollis was shown following in her vehicle, she said:

“The thing is with drink driving, it’s such a bugbear of mine, and drug driving as well. It doesn’t bear thinking about what could have happened. She didn’t have any lights on, someone crossing the road equally intoxicated could have stepped out, she could have hit them. So, I will always stop a drink driver, someone I think is a drink driver, because I see this now as me stopping someone from losing their life tonight”.

Footage from PC Hollis’ dashboard camera was shown of Ms H being escorted out of the police van and into a police station. This was followed by footage of Ms H inside the police station as the narrator said: “back at the station, the driver takes a further breath test”. The following captions were shown:

“Pleaded guilty to: drink driving.

Disqualified 14 months.

Fined £120 + court costs”.

The programme then went on to show PC Hollis in her vehicle, saying:

“It’s life decisions at the end of the day, isn’t it? And some people make bad ones. I’m sure she’ll regret it in the morning”.

The programme ended with no further reference to the incident, or footage of Ms H being shown. Ms H was referred to by her first name twice in the programme and her face was shown unobscured.

Summary of complaint and broadcaster’s response

Complaint

- a) Ms H complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she was not made aware that she was being filmed until after she had been arrested when “a gentleman came over to me and asked if I wanted to appear on a television show”.
- b) Ms H complained that her privacy was unwarrantably infringed in the programme as broadcast because footage of her was included in the programme without her consent. Ms H said that after she had been arrested “a gentleman came over to me and asked if I wanted to appear on a television show”, to which she said she responded: “no as my punishment was already embarrassing enough for me”.

Ms H explained that she had been asked by the programme makers to state her name, date of birth, and that she did not want to appear in the programme, to the camera, and that she had been provided with the programme makers’ contact details. She said that she had contacted the programme makers prior to the broadcast of the programme to inform them that she “did not

want to appear on their programme". Ms H said that the programme makers had noted that she did not wish to appear and informed her that "a decision as to whether you will be identified in the programme will be made at a later date in conjunction with Channel 5". Ms H said that she had not been "made aware of anything" by the programme makers and only became aware that she had appeared in the programme after being told by her father. She added that "every other person was blurred out in the show and only [I] was visible in the programme".

Broadcaster's response

- a) Channel 5 said that it did not believe that Ms H's privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme. It said that Ms H was repeatedly made aware of the fact and purpose of the filming, including:
- Being informed about the filming and purpose by the camera operator as soon as the police officer arrived on scene to which Ms H responded "Oh yeah don't worry... don't worry";
 - Filming notices being placed prominently underneath the passenger seat headrest in the police car Ms H was seated in, which listed the programme makers' contact details and stated: "CAMERAS INSIDE & OUTSIDE THIS VEHICLE ARE FILMING FOR A CHANNEL 5 TV SERIES 'MOTORWAY COPS' (WORKING TITLE) FOLLOWING THE WORK OF CHESHIRE POLICE INVESTIGATING ROAD TRAFFIC INCIDENTS".
 - Following her arrest, while sitting in the back of the police car, being told by the cameraman that the filming was taking place for *Motorway Cops* and that it might be used for broadcast on Channel 5, notwithstanding her lack of consent. Ms H was then handed a card by the cameraman providing further contact information for the programme makers and a link to their online privacy policy, and which read: "YOU HAVE BEEN INCLUDED IN FILMING CARRIED OUT BY PURPLE PRODUCTIONS FOR THE TELEVISION PROGRAMME 'MOTORWAY COPS' (WORKING TITLE) WHICH FOLLOWS THE WORK OF CHESHIRE POLICE AND IS INTENDED FOR BROADCAST ON CHANNEL 5 IN THE UK AND ON OTHER CHANNELS INTERNATIONALLY WHETHER OR NOT YOU ARE IDENTIFIED IN THE BROADCAST WILL BE A MATTER CONSIDERED BY PURPLE AND CHANNEL 5 AT A LATER STAGE IN COMPLIANCE WITH THE LAW AND OFCOM BROADCASTING CODE".
 - The camera operator who wore a high-vis tabard throughout with "CHANNEL 5 FILM CREW" clearly printed on it.

Channel 5 acknowledged that Ms H did not consent to being filmed, and submitted that such consent was not required, given the circumstances in which she was filmed, i.e. being stopped by the police, and subsequently arrested on suspicion of drink driving.

Channel 5 said that the programme makers had filmed in a public place, as they were entitled to do. 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 how the police officers conduct their duties, especially in Cheshire where police forces have to deal with a disproportionately high number of drink driving offences. It said that Ms H was also filmed openly by the programme maker's camera at the police station.

Channel 5 said that being in charge of a motor vehicle while over the prescribed limit is a criminal offence and the commission of a criminal offence is not an aspect of a person's private life that

they are entitled to keep private. It said that Ms H could have had no legitimate expectation of privacy because she knew throughout that she was being filmed by the programme maker and that the filming was for *Motorway Cops*.

Channel 5 said that Ms H did not appear to be in a particularly vulnerable state while interacting with the police, nor did she disclose any significant private information, or information that was not likely to have been disclosed in open court. Channel 5 added that Ms H had not identified or specified in her complaint any significant matters that intruded into her privacy during the filming, nor any significant private information about herself that was disclosed while she was being filmed, and which was not disclosed in open court. Channel 5 said that, for the reasons set out above, it did not believe that Ms H had a legitimate expectation of privacy in relation to the filming of her arrest.

Channel 5 said that if Ofcom considered that Ms H did have a legitimate expectation of privacy, then 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. It said that there can be no doubt that the activities of police officers are matters of genuine public interest, including the manner in which the law is utilised or ignored. Channel 5 said that, in the case of *Motorway Cops*, 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 affected people who are arrested and convicted as a result of the actions of police officers, and that seeing the impact of their transgressions on the actual transgressors conveys to members of the public their seriousness and the true consequences of breaking the law.

- b) Channel 5 said that it did not believe that Ms H's privacy was unwarrantably infringed in the programme as broadcast. It said that, while it was true that Ms H did not consent to the broadcast, such consent was not required.

Channel 5 said that Ms H was convicted in open court of being in charge of a vehicle while over the prescribed limit, and that the fact of her arrest and other information contained in the broadcast would 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 there is no reasonable expectation of privacy in relation to proceedings in open court.

In response to Ms H's point of complaint that she had not been "made aware of anything" by the programme makers and only became aware that she had appeared on the programme after being told by her father, Channel 5 said that the programme makers had sent an email to Ms H on 8 June 2021, which stated:

"A decision as to whether the footage will be transmitted and/or whether you will be identified in the programme will be made at a later date in conjunction with Channel Five and will always be in compliance with the Ofcom code and any applicable privacy laws".

Channel 5 said that it did not consider that it was under any obligation to inform Ms H of the decision it reached, nor did the programme makers or the broadcaster agree to make her aware of the identification decision. It reiterated that Ms H was repeatedly made aware that filming was taking place and was informed that there was a chance that she would feature in the programme as broadcast.

Channel 5 referred to Ms H's submission that "every other person was blurred out in the show and only [she] was visible in the programme" and said that the manner in which the story was told was within the editorial control of the programme makers and the broadcaster. It said that the Article 10 right to convey the story to viewers, who have their own rights to see the story, includes the right to choose which sections of the recordings to include, and which contributors to identify. It said that Ms H was not the only individual identified in the programme.

Channel 5 reiterated 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 Ms H appeared to be calm and engaged willingly with police officers, and that she was not shown engaged in any conduct or action which could reasonably be regarded as being particularly sensitive or private to her. The broadcaster said that Ms H's conviction, the circumstances in which she was found by the police and her interactions in the police car and at the police station are not matters about which Ms H has any expectation of privacy given that she was convicted and sentenced in open court. The broadcaster said that it therefore follows that Ms H had no legitimate expectation of privacy in the circumstances and the broadcast of the footage did not unwarrantably infringe any aspect of Ms H's private life.

The broadcaster said that, if Ofcom considered that Ms H had some legitimate expectation of privacy, then for the reasons set out above, any expectation of privacy that Ms H 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 said that it therefore follows that broadcasting the segment involving Ms H was in the genuine public interest, and that the broadcast did not constitute an unwarranted infringement of any privacy rights Ms H may have had.

Preliminary View

Ofcom prepared a Preliminary View that Ms H's 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

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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 its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of both the programme and the unedited footage of Ms H at the roadside, in the police car, and at the police station. We also considered the complaint as entertained by Ofcom, and the broadcaster's response, which is summarised above and below insofar as Ofcom considered it relevant to its consideration of the entertained complaint.

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](#), 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) Ofcom first considered Ms H's complaint that her privacy was unwarrantably infringed in connection with the obtaining of material that was subsequently shown in the programme. In considering this head of 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:

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

Legitimate expectation of privacy

We first assessed the extent to which Ms H 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 watched the unedited footage filmed by the programme makers of the incident and Ms H’s interaction with the police very carefully, and we took into account the broadcaster’s submissions about the manner in which the filming took place.

We recognised that Ms H’s initial interaction with PC Hollis at the roadside after being pulled over was filmed by the programme makers’ main TV camera from the public street next to Ms H’s car, and by the dashcam in PC Hollis’ police car. Ms H was also filmed by the fixed cameras within the police car being questioned, breathalysed, and subsequently arrested. Ms H was then filmed by the programme makers’ main TV camera having handcuffs placed on her, being escorted into a police van and being processed at the police station.

We took into account that Channel 5 said that Ms H had been filmed openly by the programme makers in a public place and that conversely, Ms H said that she had not been made aware of the filming until after her arrest. In our view, it was apparent to Ofcom from the unedited footage that Ms H had been filmed openly by the programme makers, and that the cameras had been in full view throughout the filming. It was also apparent to Ofcom from the unedited footage taken by the TV camera operated by the programme makers that Ms H had been informed about the nature of the filming. For instance, shortly after Ms H had been pulled over, the camera operator had said to her: *“Just to let you know we’re filming with Channel 5”*, to which Ms H replied: *“Ah don’t worry yeah... Yeah don’t worry”*. We also took into account that after her arrest and while sitting in the back of the police car, the programme makers again explained to her that: *“...we’re filming for Channel 5. It’s a documentary series called Motorways Cops, we’re filming with the Cheshire Police Traffic Unit”*. Ms H acknowledged this, but also made it clear to the programme makers that she did not want to be shown in a programme if the footage was to be used and this was further confirmed when she responded *“no, no”* when asked by the programme makers whether she wanted to feature. The programme makers then gave Ms H an information card which she was shown reading. Given the above, we considered it more than likely that Ms H

would have been aware that the incident and her interactions with the police were being filmed, and for what purpose, particularly given that she had clearly expressed to the programme makers that she did not want to appear in a programme.

Ofcom also considered the overall situation in which Ms H had been filmed. We considered that Ms H's initial interactions with PC Hollis at the roadside were likely to have been visible to any member of the public who may have been nearby. However, we 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. Further, in relation to the footage of Ms H being questioned, breathalysed, and subsequently arrested, we took into account that, while Ms H's initial interaction with the police officer would have been visible to members of the public passing by, the interaction between Ms H and PC Hollis, including her arrest and her reaction to it, was filmed within the police car and therefore would not have been accessible to anyone outside the car.

We took into account that the footage obtained showed Ms H being pulled over for driving without headlights and questioned by PC Hollis about this, and her alcohol consumption. In our view, the situation in which Ms H was filmed could reasonably be regarded as being potentially sensitive in the circumstances. Similarly, Ofcom considered that being questioned, breathalysed, and subsequently arrested could also reasonably be regarded as being sensitive, and circumstances where a person may expect some degree of privacy. We recognise 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 a person may be an event of some sensitivity. The fact that a person may later be charged with a criminal offence does not, in itself, mean that they are deprived of any rights to privacy in connection with their arrest. In this particular case, we took into account that the unedited footage also showed that, when in the police car, Ms H expressed feelings of embarrassment at being arrested: *"Yeah I've never had this ever oh my God I feel so embarrassed"*. We also understood that Ms H was under the influence of alcohol at the time of her arrest. While Ofcom acknowledged Channel 5's submissions that the programme contained information relating to Ms H's arrest that was likely to have been later disclosed in open court, Ofcom considered that Ms H was likely to have been in emotional state at the time the footage of her had been obtained, and therefore, in our view, the footage showed a situation where a person may expect some degree of privacy.

Ofcom then turned to the filming of Ms H at the police station. Practice 8.8 recognises that police stations are potentially sensitive environments in which filming without permission is restricted. While Ofcom understood that the programme maker had permission to film within the custody reception area by the desk Sergeant, we considered that the process of being booked into a police station was likely to be a sensitive situation for Ms H.

Taking all the factors above into account, and in the particular circumstances of this case, Ofcom considered that Ms H had a legitimate expectation of privacy in relation to the situations in which she was filmed by the programme makers.

Consent

It was not in dispute by Channel 5 that Ms H's consent was not obtained in connection with the filming of her. We therefore went on to consider whether the infringement of Ms H's legitimate expectation of privacy was warranted.

Warranted

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 H's right to privacy with regard to the obtaining of the footage of her 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 submissions 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 that there is a genuine public interest in programme makers being able to film situations that demonstrate to the public the potential consequences of drink driving. In our view, in this particular case, the filming of Ms H as she was stopped, questioned, breathalysed, arrested, and booked into the police station without her consent, served this public interest, as it provided a real-life case study of someone committing a serious road traffic offence and the work of the police to prevent Ms H from potentially endangering herself and other members of the public. In Ofcom's view, the programme makers filmed Ms H in order to capture footage that was directly relevant to the police's work in investigating and gathering evidence relating to Ms H'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 Ms H's legitimate expectation of privacy in relation to the filming of her without her consent.

Ofcom therefore took the view that Ms H's privacy was not unwarrantably infringed in connection with the obtaining of footage included in the programme.

- b) We then considered Ms H's complaint that her privacy was unwarrantably infringed in the programme as broadcast because footage of her was included in the programme without her

consent. Ms H said that she was not given any warning that it would be broadcast. She also said that she was the only person who was identified in the programme.

In assessing this head of complaint, Ofcom had regard to 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”.

Legitimate expectation of privacy

Ofcom began by assessing whether Ms H had a legitimate expectation of privacy in the programme as broadcast in relation to the footage included in the programme. As already set out above, the test 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. Ms H was shown in the programme being pulled over by a police officer and shown to a police car. Ms H was then shown being questioned by PC Hollis in the police car; and being breathalysed, where she was subsequently arrested for being in charge of a motor vehicle while over the prescribed legal limit. Ms H was later shown arriving at the police station in a police van and being booked in. Ms H was referred to by her first name twice in the programme, her face was shown unobscured, and her voice could be heard throughout. In those circumstances, we considered that Ms H 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 her, and that Ms H had not identified in her complaint to Ofcom any private or sensitive information about her that was disclosed by the footage.

As discussed above, the programme showed Ms H being pulled over and questioned by PC Hollis at the roadside. Ms H was then shown being questioned further about her alcohol consumption, breathalysed, and subsequently arrested while sitting in the back of a police car. We had regard to Channel 5’s submission that Ms H was not in a particularly vulnerable state while interacting with

the police, nor did she disclose any significant private information. However, as set out above, the complainant was shown in sensitive circumstances (i.e. being questioned, breathalysed and arrested) where a person may expect some degree of privacy. In addition, Ms H was shown being breathalysed and arrested for the first time, stating *“I’ve never done this before so, sorry...”*. We also understood that Ms H was under the influence of alcohol. In Ofcom’s view, Ms H was therefore shown in a potentially vulnerable situation. Further, 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 Ms H’s interaction with PC Hollis in the police car would not have been audibly accessible to members of the public passing by. Ofcom considered that the situation in which Ms H 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 Ms H was convicted in open court and that the fact of her 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 Ms H’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 her 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.

Having taken all the factors above into account, we considered that, in the particular circumstances, Ms H 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, Ms H had been convicted of a criminal offence in relation to the events relating to her arrest featured in the programme.

Consent

As set out above at head a), Ms H made clear to the programme makers that she did not consent to the broadcast of the footage of her in the programme and it was not disputed that Ms H’s consent was not obtained prior to the broadcast of the programme. We therefore went on to consider whether the infringement of Ms H’s legitimate expectation of privacy was warranted.

Warranted

We again carefully balanced Ms H’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 Ms H’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 Ms H, without her consent, as she 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 Ms H from endangering herself 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 Ms H'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 Ms H's legitimate expectation of privacy in relation to the inclusion of the footage of her in the programme as broadcast. We therefore considered that Ms H's privacy was not unwarrantably infringed in the programme as broadcast.

In relation to Ms H's complaint that she was not informed prior to broadcast that she would feature in the programme, we considered that there was nothing in the unedited footage to suggest that she had been told that this would happen. Also, with regard to Ms H's complaint that she was the only person identified in the programme, we took the view that it is an editorial matter for the broadcaster to decide whether to broadcast footage in which a person is identifiable or whether to obscure their identity, provided that it would not lead to an unwarranted infringement of their privacy or otherwise be unlawful. For the reasons already set out above, we considered that the public interest in the broadcast of this footage of Ms H outweighed her legitimate expectation of privacy in the circumstances of this particular case.

Ofcom has not upheld Ms H's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.