



Complaint by Mr F about 24 Hours in Police Custody

Type of case	Fairness and Privacy
Outcome	Upheld in part
Service	Channel 4
Date & time	4 October 2021, 21:00
Category	Privacy
Summary	Ofcom has upheld in part this complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

Case summary

The programme, which followed the work of Bedfordshire Police as they conducted two interlinked investigations concerning drug supply and violence in Luton, included footage of Mr F during a police raid on his home and as he was taken into custody at a police station. The programme also included footage of Mr F giving an interview to the programme makers. Mr F complained that his privacy had been unwarrantably infringed because he did not provide his informed consent for the footage to be filmed and subsequently broadcast in the programme.

Ofcom's decision is that:

- Mr F had a legitimate expectation of privacy with regard to the obtaining of footage of his interactions with the police, in his home and at the police station on 11 September 2019. Ofcom was not in a position to come to a view as to whether Mr F had provided his informed consent to this filming. However, we considered that Mr F's legitimate expectation of privacy did not, on balance, outweigh the broadcaster's right to freedom

of expression and the public interest in the obtaining of this material, such that the infringement of Mr F's privacy arising by obtaining the material was warranted.

- Mr F had a legitimate expectation of privacy with regard to the obtaining of footage of him giving an interview to the programme makers on 19 September 2019. However, it was reasonable for the programme makers to conclude that they had obtained Mr F's informed consent for this filming. There was therefore no unwarranted infringement of Mr F's privacy in the obtaining of this material.
- Mr F had a legitimate expectation of privacy in relation to the footage shown of him in the programme. While we recognised that the programme makers considered that they had obtained Mr F's informed consent for the broadcast of this footage in the programme, on 23 September 2021 Mr F withdrew any consent that he had given previously for footage of him in which he was identifiable to be used in the programme. Therefore, the programme makers did not have Mr F's informed consent for the footage to be broadcast as it was at the time of the broadcast itself. In the circumstances, Mr F's legitimate expectation of privacy was not outweighed by the public interest in broadcasting the footage or the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without interference. Therefore, Mr F's privacy was unwarrantably infringed in the programme as broadcast.

Programme summary

On 4 October 2021, Channel 4 broadcast an episode of the programme *24 Hours in Police Custody* which centred on the work of Bedfordshire Police and, in particular, around two interlinked investigations concerning drug supply and violence in Luton, allegedly involving two rival families, which followed a street brawl in Luton on 16 September 2018.

In the programme's opening sequence, various pieces of CCTV and mobile phone footage were included which showed various separate incidents involving unidentified people fighting. This footage was interspersed with commentary from a number of people about the apparent rise in violent crime, including a local MP speaking in the House of Commons about the lack of police availability to respond to call outs.

The introductory sequence ended with video clips of a large street brawl taking place outside a chicken shop called "Peri Peri". Various men, with their faces blurred, could be seen fighting each other on the street outside the shop. The programme went on to focus on the street brawl and footage was shown which appeared to have been recorded by members of the public on mobile phones. The footage showed a large group of men fighting each other with what appeared to be baseball bats. At one point, footage showed someone carrying what appeared to be an axe; another person could be seen carrying a hammer. This mobile phone footage was interspersed with audio from three 999-calls made by members of the public reporting the incident.

Later, the programme showed several police officers reviewing the video footage which had been obtained following the incident. The presenter said, "*with violence in Luton escalating, footage of the fight outside the chicken shop is handed to detectives in the criminal investigation team*". The programme showed footage of an interview with a Detective Constable in the Criminal Investigation team. He said:

"I've dealt with violent crime before and people being stabbed and things like that but not on this scale. Sunday afternoon with loads of people around, nice sunny day, lots of families, just this mass of people just fighting in the road. Numerous people bleeding, one in a very serious way bleeding out on the floor. We've got a man who's had oil thrown over him; burning hot oil. At that point you don't know who the offenders are or what's gone on".

The programme included various clips of media reporting of the incident, and the presenter explained that *"... six men involved in the brawl are charged with violent disorder, they are given bail until the case can be heard in court"*.

Later, the programme showed footage of police officers reviewing the evidence gathered about the men's involvement in the "Peri Peri" incident, and other incidents of violent disorder in Luton, at an Intelligence Review Meeting. The following exchange took place between three investigating officers, one of whom was later introduced in the programme as Mr West, a Field Intelligence Officer (County Lines & Drug Supply):

Female officer: *"It looks like it's a sort of, a drug turf war.*

Mr West: *Mmm.*

Female officer: *Various members of the public came forward and said, so, [name] and his family are trying to control the area and they're taxiing local drug dealers".*

The programme then showed footage of a separate interview with Mr West, who said:

"What you'll find now is you'll have a lot of stabbings; you'll have a lot of violence. And people will try to put it down to postcodes, to gangs; you know, in my opinion and from my experience, it's all related to drugs, drug dealing and making money".

The programme then returned to footage of police officers discussing the case during the Intelligence Review Meeting:

Male officer: *"What about business? Have they got any legitimate businesses, or anything like that?"*

Female officer: *They have this chicken shop, and that actually could be part of what the violent disorder was about.*

Male officer: *Right ok.*

Female officer: *So, [name] is obviously remanded for the possession of the machete, and he was already on bail. Though this intel suggests that he's still using a stash house and they might be dealing out of...*

Mr West: *This group seems to have fully embraced this tactic of having numerous cuckooed locations within Luton and they seem to be moving around quite quickly which I imagine is to evade us and these other rival gangs that they've upset".*

The narrator continued in commentary:

“To try and prevent further violence, police decide to raid properties they believe are used to harbour drugs. They begin with an address linked to the [name] family”.

Mr West explained during his interview to camera:

“Cuckooing. We use this term because a cuckoo bird doesn’t make its own nest, it steals another bird’s nest for its eggs. What you’ll find is that a drug dealer will find a vulnerable person, befriend them, they will get into their flat; they might even give them some free drugs, but once that friendships been built, that will then switch round, and that house will be solely used for drug supply”.

The programme then showed footage, which appeared to have been obtained by cameras operated by the programme makers, as the police attempted to make entry into a flat. The following exchange took place between an officer and a woman speaking from inside the flat:

Police officer: *“Police, can you open the door please?”*

Woman: *My friend’s asleep.*

Police officer: *Right, at the moment, you either open [the door] or it goes in. You’ve literally got three seconds to do it”.*

Footage obtained by police body cameras showed a man – the complainant, Mr F – partially opening the door from inside the flat. Mr F’s face could be seen unobscured, and his undisguised voice could be heard as he spoke to the police officers.

Mr F: *“Hey.*

Police officer: *Right.*

Mr F: *What the fuck?*

Police officer: *What’s your name, buddy?*

Mr F: *Rob.*

Police officer: *Who else is in there?*

Mr F: *The guy you think is here, is not here.*

Police officer: *Ok, so at the minute I think someone might be wanted in there, so I’m coming in. [crosstalk]*

Mr F: *You haven’t got a warrant”.*

The programme showed several police officers entering Mr F’s flat. A needle and syringe and what appeared to be a machete, an axe and a hammer could be seen on surfaces inside the flat. A police officer was shown picking up a plastic box which contained white powder.

Police officer: *“He’s gonna need nicking. It’s his house.*

Second police officer: *Yep*”.

The programme showed Mr F sat on a bed visibly upset - he was crying and shaking. At all times, this footage appeared to have been obtained by cameras operated by the programme makers. The following exchange took place between Mr F and a third police officer:

Mr F: *“Do you know what’s going on here?”*

Third police officer: *We don’t know for certain, but at the moment—*

Mr F: *Why are you treating me like—*

Third police officer: *Basically, I found what I believe to be Class A; and because it’s your property—*

Mr F: *Oh right, yeah so, it’s my fault?!*

Third police officer: *This is why you’re being taken in because it’s suspicion.*

Mr F: *You’re threatening me basically.*

Third police officer: *We’re not threatening you.*

Mr F: *Yes, you are. You’re saying you either get nicked for possession of Class A, or you fucking tattle on people who might be able to hurt you severely.*

Third police officer: *No, that’s not what I’m saying.*

Mr F: *Well, it sounded like it!”*

The programme showed Mr F being handcuffed, as audio from Mr West’s interview could be heard. Mr West said:

“In regards to taking out those at the top, the reason they’re at the top is because they don’t get their hands dirty. Why pay somebody to deal drugs for you, when you can scare someone into doing it for free”.

The programme returned to footage of Mr F in his flat; he was shown sitting on a bed with his head down, speaking to officers:

Mr F: *“This is why they never catch drug dealers; you know that?”*

Police officer: *Come on mate, we got to go”.*

The programme showed CCTV footage of Mr F in handcuffs, being led out the back of a police van by two police officers and into the police station. The programme showed footage obtained from CCTV cameras located inside the police station, which showed Mr F being processed and taken into custody. Mr F appeared visibly upset. The following exchange took place between Mr F and the custody officer:

Custody officer: *“So, obviously, the officers have found some white powder in your premises. Obviously, they believe it to be Class A drugs.*

Mr F: *Mmm.*

Custody officer: *Are there any issues that might affect you whilst in custody, anybody else?*

Mr F: *Well, I could get beaten up for speaking to you.*

Custody officer: *But nothing inside in custody? You're not going to be beaten up in custody.*

Mr F: *Oh, is that right? That never happens, does it? Like two people have never crossed paths in the corridor, or nothing like that?*

Custody officer: *We will make sure that that won't happen, OK?"*

Footage captured by CCTV cameras located inside the police station showed Mr F being led to a cell by another police officer; further CCTV footage showed a police officer scanning Mr F with a metal detector. Mr F could be seen struggling to keep his eyes open. As this footage was shown, audio from a later interview Mr F had given to the programme makers could be heard. Mr F said:

"Biscott Road has definitely got shit going on. I mean, like, that's where the dealers themselves are at. That's their little manor. The level of violence that these guys are operating at is extreme".

Mr F was shown being led into the back of a police van as the narrator said:

"Robert [the alias given to Mr F in the programme] is offered help with accommodation. He is not prepared to help police establish a connection between himself and [name of suspect]".

Towards the end of the programme, it was explained that, following a trial, four of the six men charged with violence outside the chicken shop were found not guilty.

The programme showed footage of Mr F walking his dog, as the narrator said:

"No evidence was presented to link [name of suspect] or Robert to any of the men on trial. [Mr F] is released after the powder in his flat tested negative for Class A".

Mr F said to camera:

"The police; their approach is kind of, I guess, operating let's just mop up the messiest bits. But it's not solving the problem. It's like, if you've got a burst pipe in your flat and you just spend a lot of time, spend a lot of money on mops".

Audio from Mr West's interview was then played:

"Our primary objective at the start was to prevent any more disorder on the streets of Luton and we haven't had any so in my opinion it's a success".

The programme returned to footage of Mr F's interview with the programme makers. Mr F said:

"I mean, I'm homeless. It's like, they've bust the crack house. So, what they've done is added another person to the streets, another person who's going to be a

drain on public resources. Because the thing is, even if they go around shutting down crack houses, that isn't dealing with the root of the problem, which is the drug supply. Luton town centre, yeah, you get drugs quicker than you can get—well the only thing you can get quicker is Peri Peri chicken”.

The programme ended with the following text on screen:

“Robert is no longer homeless and has now got a job”.

“The Home Office offered Bedfordshire Police an additional £14 million funding spread over three years, to specifically tackle violence and exploitation in the county”.

Summary of the complaint and broadcaster's response

Complaint

- a) Mr F complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because he had not given his informed consent to be filmed by the programme makers. Mr F said: “I was asked to provide consent for the footage containing me whilst ✂ [REDACTED]¹ and extremely vulnerable having been made homeless”.
- b) Mr F complained that his privacy was unwarrantably infringed in the programme as broadcast because he did not give consent for footage of him to be shown in the programme. Mr F said: “I asked the producer to not show my footage and that I revoked my consent for the footage to be shown”.

By way of background, Mr F provided screenshots of an exchange of messages which he had with the programme makers prior to broadcast of the programme. In a message dated 23 September 2021, Mr F had stated: “can I ask that you blank my face please?” and, in a further message dated 29 September 2021, Mr F had stated: “I withdraw my consent for my data being processed in this way”.

Broadcaster's response

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 is an important contribution to the fulfilment of its public service remit. It 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 said that certain episodes of the programme had demonstrably contributed to the public's understanding of crime and how it was tackled by police, citing an episode from a previous series concerning the knife crime epidemic which was shown at the Houses of Parliament by the All-Party Group on Violence and Knife Crime.

In relation to the episode featuring Mr F, titled *“Chicken Shop Wars”*, Channel 4 said that the programme raised serious issues of public interest, namely the impact of austerity cuts on the police

¹ This text and other information which appears as redacted in this decision has been redacted for legal reasons.

and their ability to respond to and keep communities safe from violence; how police conduct complex investigations involving drugs and violence and suspected money laundering; and whether the policing strategy of disrupting lower level crime is effective in tackling these crimes and those at the higher levels of the criminal hierarchy.

- a) Channel 4 did not accept that Mr F's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme.

Channel 4 said that Mr F had given his informed consent to be filmed by the programme makers and did not do so whilst he was ~~XXXX~~ [REDACTED] or in an extremely vulnerable position.

The broadcaster said that the programme makers had a number of detailed conversations and meetings with Mr F about how the filming (including the material captured when he was arrested, whilst he was in custody at Luton Police Station, and his subsequent on camera interview) might be used in the programme. Channel 4 said that, as a result of these conversations and meetings, Mr F provided his informed consent to be filmed and appear identifiably in the programme, which the broadcaster said was indicative of the level of informed consent that was both sought from him and provided by him.

The broadcaster said that the programme makers were highly experienced and approached informed consent as an ongoing process. Channel 4 said Mr F's interactions with the programme makers took place over multiple conversations and meetings and included additional filming in the form of an on-camera interview as well as the signing of a release form once the production team was entirely confident that he was not ~~XXXX~~ [REDACTED] and therefore capable of providing his informed consent.

Channel 4 provided Ofcom with a summary of the programme makers' engagement with Mr F in relation to the discussions around filming and consent, which it said was based on contemporaneous filming logs and detailed discussions with the relevant members of the production team (see Annex 1). It said that the programme makers fully discharged their duty of care towards Mr F. It said that the production team took "great care" to ensure Mr F fully understood what the programme was about, the nature of what was filmed, how his contribution was likely to be used in the programme, and the potential implications of being filmed identifiably. Channel 4 said that the programme makers worked to high ethical and editorial standards, Mr F was treated with care and sensitivity, and his vulnerabilities and capacity to consent were carefully considered throughout the programme makers' engagement with him. Channel 4 said that, despite his apparent vulnerabilities and ~~XXXX~~ [REDACTED], at that time the production team's general assessment of Mr F was that he was an intelligent man and was fully engaged in their discussions. Channel 4 said that the programme makers were confident from their meetings with Mr F that he had demonstrated a "clear, rational and insightful" understanding of the potential benefits and risks of doing an on-camera interview and taking part in an observational television programme of this nature.

Channel 4 said that although the description of Mr F's contribution on the release form was an interview with the director and producer, its position was that Mr F gave his informed consent to all aspects of the filming when he agreed to the additional filming of an on-camera interview and signed the consent form, and this was understood by Mr F when he had signed the form. It

said that the programme makers had talked Mr F through the release form at length before allowing him time to consider and sign it. The broadcaster said that Mr F had suggested the possibility of having someone else review the release form, which Channel 4 said again demonstrated the “informed dimension of his consent” as he had clearly thought through and understood the consequences of the filming.

Channel 4 said that, from an editorial perspective, the purpose of Mr F’s on camera interview was for him to provide his personal insight into the policing strategy of dealing with drugs and the wider drugs scene in Luton and to contextualise the police raid on his flat and detention in custody. Channel 4 said that, without the inclusion of this earlier filming, the on-camera interview would have made little or no sense editorially; it said that the earlier filming was the only reason that the producers sought an interview with Mr F given his relatively minor role in the two wider police operations. Channel 4 said at no point during his interaction with the production team did Mr F raise any concerns about the potential inclusion of the earlier filming in the programme.

Channel 4 said that, alternatively, were Ofcom to find that Mr F did not provide his informed consent to the filming, then the filming was, at all times, warranted in the public interest. Channel 4 said that there is a clear overarching public interest in the making and broadcast of this series as a whole, as outlined above, but in particular in relation to the issues explored in this particular episode of the programme.

Channel 4 said that, notwithstanding that Mr F was a vulnerable individual who was ultimately neither charged nor convicted of a criminal offence, at the time of the filming of the raid on his flat and his arrest and detention in custody, he was suspected of having committed a serious criminal offence including the suspected supply of Class A drugs. Channel 4 said that the raid of Mr F’s flat was tied to a large-scale police operation which was “intended to disrupt the money chain of criminal gangs involved in the supply of drugs and to prevent violence of an unprecedented nature spilling out into the streets of Luton”. Further, Channel 4 said that, at the time of filming, Mr F was a ⚡ [REDACTED] and was residing in premises which were being used for illegal purposes; as a consequence, he was suspected of criminal associations. Channel 4 said that it was not until March 2020 that the white powder found at Mr F’s flat during the police raid was forensically analysed and found not to be drugs.

Channel 4 said it was necessary and legitimate to undertake this filming in order to give a proper account of the police’s investigation, which was complex and comprised of several interlinked operations. Channel 4 said that there was a clear public interest in the filming of Mr F’s arrest and detention in custody as it served to illustrate the type of complex drug related investigation the police have to contend with and the ramifications for potentially vulnerable suspects who are exploited by those higher up in the criminal hierarchy.

Further, Channel 4 said that the programme raised serious issues of public interest, namely exposing or detecting crime, protecting public health or safety, and exposing dangerous or exploitative behaviour that could harm others. It said that the opening of the programme framed this investigation within the context of austerity cuts and the impact on the police and

their ability to respond to and keep communities safe from violence. Channel 4 said that, as set out in the programme, the incident of public disorder on Luton High Street that occurred on 16 September 2018 was raised in Parliament by the local MP who said: *“My constituents have rung and no police have been available”* and *“The Chief Constable wrote to me recently to say that on one Sunday last year the force literally ran out of officers”*.

Channel 4 further said that there is also a public interest in examining whether the policing strategy of disrupting lower-level crime is effective in tackling drugs and violence and those at the higher levels of the criminal hierarchy, given the vulnerabilities of a lot of drug users and the exploitative nature of cuckooing. It said that the filming of Mr F’s on camera interview was warranted in the public interest as it contextualised his arrest and detention for viewers; his first-hand account provided invaluable insight on the human impact of this policing strategy and the perpetuating cycle of ✂ [REDACTED] and homelessness. Channel 4 added that Mr F also reflected on the extreme level of violence that the drug dealers in Luton operate at. Channel 4 noted the comments made by Mr West at the end of the programme, that the police’s *“primary objective ... was to prevent anymore disorder on the streets of Luton and we haven’t had any so in my opinion it’s a success”*, which appeared to contradict Mr F’s reflection that:

“The police, their approach is kind of, I guess, you’re operating on a like let’s just mop up the messiest bits, do you get what I mean? But it’s not, it’s not solving the problem, it’s like if you’ve got a burst pipe in your flat and you just spend a lot of time, spend a lot of money on mops... I’m homeless, it’s like they’ve bust the crack [house] so what they’ve done is added another person to the streets, another person who’s gonna be a drain on public resources because the thing is even if they go around shutting down crack houses, that isn’t dealing with the root of the problem which is the drugs supply. Luton town centre, yeah, you get drugs quicker than you can get, well the only thing you can get quicker is Peri Peri chicken”.

- b) Channel 4 did not accept that Mr F’s privacy was unwarrantably infringed in the programme as broadcast.

Channel 4 reiterated its submissions in relation to informed consent, as set out above. Channel 4 said Mr F had provided his informed consent to be included in the programme at a time when the production team were satisfied that he had capacity to consent. Channel 4 said that it was reasonable for the programme makers to take the view that Mr F had capacity to consent and that they had secured his informed consent to the filming as he had agreed to further filming by way of an on-camera interview and had signed a release form (which also covered the broadcast of this material) after several meetings and detailed discussions, as set out at Annex 1.

The broadcaster said that the programme makers had offered Mr F the opportunity to be filmed either identifiably or non-identifiably, but he had opted for the former. Channel 4 said that, as Mr F’s contribution was filmed with the intention that he would appear identifiably in the programme, it was entitled to rely on that consent for the purposes of broadcast and that *“extensive editing of the programme and preparation for broadcast”* had taken place dependant on that.

22 September 2021 – 6 October 2021

Channel 4 said that, on 22 September 2021, 12 days prior to the broadcast of the programme, the programme makers sent a Facebook message to Mr F to inform him about the upcoming broadcast and what would be shown of him. Channel 4 said that Mr F replied the same day to ask that his face be blurred; Channel 4 said that this was the first time Mr F had stated he did not want to be featured identifiably in the programme.

Channel 4 explained that the programme makers exchanged several messages with Mr F between 22 September 2021 and 6 October 2021, and a member of the production team also spoke to Mr F by telephone on 26 September 2021 where he reiterated his wish to be blurred in the programme.

Phone call between Mr F and Executive Producer (“EP”) on 29 September 2021

Channel 4 said that, although Mr F made it clear in his correspondence with the programme makers that he did not wish to be identified and that he wished to withdraw his consent, this was inconsistent with his position during two “lengthy and detailed telephone conversations” that Mr F had with the EP on 29 and 30 September 2021. Channel 4 said that, in these conversations, Mr F said that he wanted the content which was filmed to be “published” but he did not want to be recognised. However, Channel 4 said he “repeatedly stated that, notwithstanding his change of mind about appearing identifiably, it was for the programme makers to decide what might be done to alleviate his concerns”.

Channel 4 said that, during the telephone call of 29 September 2021 and in order to identify Mr F’s concerns, the EP explored with Mr F the possible reasons why he no longer wished to appear identifiably and what could be done to alleviate his concerns. Channel 4 said that the EP explicitly probed whether there was a risk to Mr F’s safety, for example, from criminal gangs who may believe he was an informer. The broadcaster said that Mr F did not present any information to the EP that would lead him to believe that broadcasting Mr F identifiably might pose a risk to his safety, ✂ [REDACTED], or create or exacerbate existing mental health issues. ✂ [REDACTED].

Channel 4 said that the EP explored with, and was satisfied that, Mr F had provided his informed consent to the filming and to be featured identifiably in the programme but made it clear that changes could be made to ease any pre-broadcast anxieties he had. However, Channel 4 said that the EP did not think it would be appropriate to blur Mr F at this stage of the preparations for broadcast. Channel 4 said that the EP also talked Mr F through his contribution in the programme (including footage from the raid on his flat, his arrest and time in custody, and his on-camera interview) and reassured him that it is made clear that he was not charged or found guilty of any offences and ✂ [REDACTED]. Channel 4 said that the only parts of Mr F’s on camera interview included in the programme were filmed when they were confident that he had capacity.

Channel 4 said that Mr F was also offered a pre-transmission viewing to refresh himself of the filming and Mr F told the EP that “I can see you are a good guy and I trust that you will use your judgement to do what you’ve said you would and try to mitigate in the way you think will work best”. Channel 4 said that Mr F was explicit in the phone conversations with the EP that the reason he did not want to view the programme ahead of broadcast was because he had been advised to overstate his position (i.e. to say he withdrew his consent completely rather than to be featured identifiably) otherwise no changes would be made to the programme and that if he engaged with the content by viewing the programme after the changes were made it would be taken as a re-statement of his consent. Channel 4 said that Mr F said he believed that this would strengthen his ability to win financial compensation for being included in the programme. Channel 4 said that, despite being assured that the offer to make changes was entirely based on setting his mind at rest, Mr F said he would prefer to ‘reserve his position’ and that, as far as he was concerned, he could only do this if he was ignorant of the precise changes.

The broadcaster said that Mr F requested a copy of his signed release form; it was provided to him the next day along with a further offer for him to view his contribution in advance of broadcast (including on the day of transmission) in order to reassure himself about what the programme contained. Channel 4 said that Mr F declined this opportunity despite the offer to reimburse him if he had to sacrifice paid work to do so. Mr F responded to the programme maker’s email to say that “I categorically withdraw my consent to my image or voice being shown on your program” [sic].

Phone call between Mr F and Executive Producer on 30 September 2021

Channel 4 said that, during a further telephone call on 30 September 2021, the EP reiterated that he would use his judgement to mitigate what he understood Mr F’s concerns to be about his contribution in the programme. The EP also “expressed his surprise at the content and tone” of Mr F’s earlier email as it did not reflect their previous conversation with him on 29 September 2021. Channel 4 explained that, after some discussion on the public interest significance of the programme, Mr F said that he wanted the content which was filmed to be published but he did not want to be recognised.

Channel 4 provided Ofcom with copies of the emails and contemporaneous notes of the telephone conversations mentioned above.

Pre-broadcast amendments

Channel 4 said that, in order to mitigate any concerns Mr F had about appearing identifiably in the programme, the EP exercised his judgement as to what changes would be made to help obscure Mr F’s identity. Channel 4 said that a number of changes were made to the programme at very short notice prior to broadcast, including changing references to the complainant’s name to “Rob”. Channel 4 said that several pieces of footage were also removed from the programme that might have led some viewers to see Mr F in a “negative light” if they did recognise him.

Channel 4 said that the conversations between Mr F and the EP were lengthy, in depth, and wide ranging, and were designed to hear Mr F properly and then to probe why he wanted to

withdraw his consent to be identifiable in the programme. The broadcaster said that if Mr F had articulated concerns that could only have been met by him being rendered unidentifiable this would have been agreed; instead, substantial changes were made to the programme to address what was genuinely and reasonably felt by the EP to lie behind his request. It said that these changes sought to address thoughtfully Mr F's concerns as understood by the EP and that they were thoughtful as to how Mr F was represented.

Channel 4 said that Mr F's request to be blurred was carefully considered but ultimately the changes identified above were deemed to be appropriate and proportionate in mitigating any concerns he had about appearing identifiably in the programme during broadcast. Channel 4 said that this was a reasonable editorial decision to make given the reliance placed by the programme makers and broadcaster on Mr F's informed consent and the proximity to the broadcast of the programme. Channel 4 said that Mr F had not raised any concerns with the EP that appearing unblurred in the programme would have endangered his safety or wellbeing ✂ [REDACTED] which may have necessitated him being blurred. Channel 4 said that the decision not to blur Mr F in the programme as broadcast was editorially justified as "the public interest message he delivers to viewers about the dynamics of the local drugs market and personal insight into the human cost of the policing strategies adopted in tackling drugs and violence would be more powerful if he was not".

Channel 4 added that the programme makers had discussed the editorial rationale for appearing identifiably in the programme during their meeting with Mr F on 17 September 2019. The broadcaster said that, at this meeting, Mr F acknowledged that he was well known in the drug community in Luton and, therefore, those who knew him were highly likely to recognise him whether his face was blurred or not. The broadcaster said that, further, in the two-year period between filming and broadcast, Mr F had managed to take up a fitness regime which meant his appearance had changed, which minimised the chance of him being recognised by the wider public.

Channel 4 said that it is not unusual for contributors to seek to withdraw consent immediately prior to broadcast. However, it said that to insist that a contributor in these circumstances should be blurred would place an unfair burden on programme makers and broadcasters to make such changes at short notice prior to transmission. Channel 4 said that it, and the programme makers, acted reasonably and proportionately to address any concerns Mr F had after he sought to withdraw consent to be featured identifiably in the programme and that sufficient measures were taken to alter and obscure his identity, particularly given that he had left it to the EP to exercise his judgement on what these measures would be. Channel 4 said that Mr F's refusal to engage with the changes made to the programme before broadcast appears to have been based on a belief that he would somehow gain financially from any complaint made after broadcast. Channel 4 noted that Mr F had complained to Ofcom before he had seen the programme as broadcast and without having satisfied himself that the measures taken to obscure his identity were sufficient.

Channel 4 stated that it was entitled to continue to rely on Mr F's initial consent for the filming and broadcast of the police raid on his flat, his arrest and detention in custody and his on-

camera interview at the time of broadcast and after he sought to withdraw his consent, noting that the nature of the programme and his contribution had not changed in any material way. Channel 4 said that, alternatively, were Ofcom to find that Mr F did not provide his informed consent to the broadcast of the programme then it was at all times warranted in the public interest, for the reasons set out at head a) above. Channel 4 said that, despite Mr F's attempt to withdraw consent to be featured in the programme identifiably, the programme makers and broadcaster were warranted in the public interest to include his contribution in the programme as broadcast.

Channel 4 said that there is a genuine public interest in programmes which follow police officers and convey to viewers an understanding of the challenging situations they face. It said that, in the context of the programme, there is a clear public interest in examining the way in which the police deal with suspects who may be potentially vulnerable on account of drug addiction and the human impact of policing strategies which aim to tackle drug related crime and violence. Furthermore, Channel 4 said that there is a significant public interest justification in the broadcast of the raid on Mr F's flat, his arrest and subsequent detention in custody, as well as the follow up on camera interview. It said that the broadcaster's and audience's right to freedom of expression and the public interest in broadcasting the footage of Mr F outweigh his expectation of privacy in relation to its broadcast.

Channel 4 said that, notwithstanding that the police took no further action against Mr F in relation to drug offences linked to the police raid on his flat after the powder was forensically analysed and found not to be drugs, Mr F was uniquely placed to speak to matters of significant public interest. Channel 4 said that there is a clear public interest in the broadcast of Mr F's contribution as it served to illustrate the type of complex drug related investigation the police have to contend with and the ramifications for potentially vulnerable suspects who are exploited by those higher up in the criminal hierarchy. The broadcaster said that Mr F himself recognised the significant public interest in having his voice heard and being identifiable to viewers when communicating, through his on-camera interview, his thoughts and experiences as an individual ✂ [REDACTED] at the sharp end of the criminal justice system.

Channel 4 said that there is also a particular public interest in examining whether the policing strategy of disrupting lower-level crime is effective in tackling drugs and violence and those at the higher levels of the criminal hierarchy given the vulnerabilities of a lot of drug users and the exploitative nature of cuckooing. It said that Mr F's first-hand account provides invaluable insight on the human impact of this policing strategy and the perpetuating cycle of ✂ [REDACTED] and homelessness. Channel 4 said that Mr F was uniquely placed to humanise and provide an alternative perspective of the police investigation, as reflected in his observations in the on-camera interview at the conclusion of the programme, as set out above.

Preliminary View

Ofcom prepared a Preliminary View that the complaint should be upheld in part. Both parties were given the opportunity to make representations on the Preliminary View. Only the broadcaster made

representations, which are summarised below insofar as they are relevant to the complaint entertained and considered by Ofcom.

Broadcaster's representations

Filming of Mr F in the flat and the police station

Channel 4 said that it was “pleased” with Ofcom’s preliminary determination that there was no unwarranted infringement of Mr F’s privacy in the obtaining of the material in the programme. However, Channel 4 requested that Ofcom reconsider its statement that “it was not reasonable for the programme makers to conclude they had obtained Mr F’s informed consent for this footage to be obtained” in respect of the filming in the flat and the police station. Channel 4 said that the basis for Ofcom’s conclusion seemed to be Ofcom’s contention that:

“in assessing whether a contributor has given informed consent for their participation, Ofcom will consider the information that was provided to the contributor prior to the recording of the contribution.... informed consent to be filmed had not been secured prior to or during filming of Mr F at his flat and at the police station”.

Channel 4 said that, in police and other access documentaries, “it is not always possible or practicable, and, in many cases, extremely unlikely that informed consent can be obtained prior to the filming of a police raid or similar covert operation”. The broadcaster said that operations such as these are “highly sensitive, and for reasons of confidentiality and risk of jeopardy, often programme makers are not informed or are given little notice of the police force’s intended raid locations before accompanying them”. The broadcaster said that, in such cases, there is “obviously no way to obtain consent from the individuals included in the footage prior to them being filmed”, and to suggest that programme makers should do so would be to put “far too high a burden on obtaining prior consent when it is perfectly legitimate to obtain retrospective informed consent in such situations”.

Channel 4 said that, in relation to the filming of Mr F in the flat and the police station, the programme makers considered it “inappropriate” to approach him to obtain his prior consent to filming as it was a “fast-moving crime scene, and particularly given Mr F’s potential incapacity & [REDACTED]”. Channel 4 said that, nevertheless, the programme makers considered the filming warranted in the public interest (as also acknowledged by Ofcom in its Preliminary View). The broadcaster said that, even during the raid, and after noticing the cameras filming and querying their presence, Mr F was reassured by a police officer that the production team were following the police, and that he would not be featured in the programme without his consent. Channel 4 reiterated its position that, subsequent to the filming, the programme makers followed a “thorough process” to obtain Mr F’s informed consent (including retrospective consent for filming the raid and at the police station), as described in detail above, which culminated in Mr F signing a written release form.

Channel 4 said that the experienced producers confirmed their assessment that Mr F had a good understanding about the use of the body worn camera material. The broadcaster added that, in the course of two separate consent conversations, Mr F demonstrated a knowledge of the programme and how his interview might give context to what had already been captured at the raid and in the police station.

Channel 4 said that, in its view, it was clear Mr F’s informed consent was obtained “retrospectively” in relation to the footage captured in his flat and at the police station. Channel 4 noted that, in its

Preliminary View, Ofcom had accepted that it was reasonable to conclude at the point Mr F signed the release form that he was “comfortable with appearing in the programme identifiably and had provided his informed consent to do so”. The broadcaster “urged” Ofcom to acknowledge that it was also reasonable to conclude that Mr F had retrospectively consented to being filmed, leaving aside the issue of his later withdrawal of consent near the time of broadcast. Channel 4 said that it was important to acknowledge that, in principle, contributors are able to provide informed consent after the event in certain circumstances.

Consent

Channel 4 explained that, in access documentaries such as *24 Hours in Police Custody*, consent is obtained in varying ways and often verbally, as the programme makers agree with the police that, while filming, they would not bring pens into custody suites for safety and security reasons.

Channel 4 said that, in the present case, Mr F provided the programme makers with a signed written release form at the first appropriate time (thereby contractually agreeing to the broadcast of his contribution to the programme), having previously discussed the release form at length with them, and after raising the possibility of having someone else review it. Channel 4 said that Mr F “clearly thought through and understood the consequences of appearing in the programme”. Channel 4 argued that a finding that Mr F was entitled to withdraw his consent, especially in these circumstances (i.e. at a late stage of the post-production process, very close to transmission, and after previously close engagement and agreement with the programme makers), could suggest informed consent (written or otherwise) cannot be reasonably relied upon as contributors are permitted to change their minds despite agreeing to a contractual obligation to permit broadcast. The broadcaster said that this finding would be “very difficult for programme makers and broadcasters to navigate, creating an insurmountable burden on programme makers in relation to consent”.

Channel 4 said that it nevertheless respectfully acknowledged that, in some cases, accepting withdrawal of consent (even at a very late stage) and entering into a new agreement will be “wholly justified and necessary”. However, Channel 4 said that it believed that in certain circumstances it may be reasonable for programme makers to rely on informed consent obtained previously. Channel 4 referred to the legal case of Tobe Leigh v Nine Lives Media & Channel 4 Television Corporation [2017] EWHC 1564 (QB) where a withdrawal of consent had occurred, but programme makers and the broadcaster wished to continue to use the contribution. Channel 4 said that, after a weighing of the Article 8 and 10 ECHR rights of the contributor and the broadcaster respectively, the Court refused an injunction application brought by the contributor close to broadcast. Channel 4 said that evidently, pursuant to case law, it follows that where a contributor attempts to withdraw consent after entering into the original contractual agreement, the other party (in this case, the programme makers under the auspices of Channel 4 as the broadcaster) is entitled to consider whether that withdrawal of consent is on its own conclusive, or if there are other ways in which the potential breach of contract can be remedied. Channel 4 said that it followed that withdrawal of consent “is not simply incontestable”.

Channel 4 said that, in relation to Mr F’s case, the programme makers were faced with “ambiguity” as Mr F “purported to withdraw his consent, whilst also telling the programme makers to exercise their judgement and decide what might be done to alleviate his concerns”. Channel 4 said that Mr F’s “purported withdrawal of consent” was “clearly inconclusive” and therefore the programme makers chose to work with Mr F to remedy his potential breach of contract, as this looked to be a viable option for both parties, given the course of dealings and the way in which Mr F was engaging

in conversation with the programme makers. Channel 4 said that, in these circumstances, the programme makers were entitled not to treat the “intimation of withdrawal of consent” as “the end of the matter” but to discuss with Mr F the ways in which a varied consensus could be reached. The broadcaster said that this was especially so when the original consent had been relied upon and where substantial editing and preparation of the programme had depended on it.

Channel 4 said that, although Mr F’s contribution was filmed with the intention that he would be identifiable in the programme (after he had specifically opted for this), the programme makers continued to ask Mr F to share his concerns about the programme, so appropriate steps could be taken. The broadcaster said that it was not until 22 September 2021 (12 days before broadcast) that Mr F asked that his face be blurred: this was the first time Mr F had stated he did not want to be featured identifiably in the programme. The broadcaster further added that, in two “lengthy” telephone conversations approximately a week later, Mr F said that he wanted the content which was filmed to be published but he did not want to be recognised. Channel 4 said that, crucially, Mr F repeatedly stated that, notwithstanding his change of mind about appearing identifiably, it was for the programme makers to exercise their judgement and decide what might be done to alleviate his concerns.

Channel 4 said that it believed there is an onus on both programme makers and contributors to be clear about issues and concerns regarding identification, and for programme makers to be transparent as to what mitigations can be implemented to alleviate such concerns. Channel 4 said that Mr F was “not forthcoming” in sharing his concerns and specific reasons for wanting not to be identified. Instead, the Executive Producer had to “interpret his pre-broadcast anxieties and act accordingly”. Channel 4 said that Mr F did not take up the offer of a pre-transmission viewing to refresh himself of the filming, instead telling the Executive Producer that “I can see you are a good guy and I trust that you will use your judgement to do what you’ve said you would and try to mitigate in the way you think will work best”. Channel 4 said that, if Mr F had viewed the programme and indicated specific concerns, the programme makers could have addressed them. Instead, the Executive Producer had to exercise his judgement as to what changes would be made to help obscure Mr F’s identity, after a discussion with him following Mr F’s email purporting to withdraw consent. Channel 4 said that “if Mr F had articulated concerns that could only have been resolved by him being blurred, this may well have been agreed; instead substantial changes were made to the programme to address what was genuinely and reasonably believed to lie behind his request (namely the substantial reediting of the programme to mitigate the extent of his involvement in ~~✂~~ [REDACTED] and giving him a different name so that new people he met would not easily link the “Robert” from the Programme with Mr F as he presented now)”. The broadcaster said that, without sufficient information from Mr F, the programme makers and broadcaster acted reasonably and proportionately to address the concerns they believed were being articulated.

Channel 4 said that, should Ofcom make a finding that consent had been withdrawn in these circumstances, Ofcom would be setting a “challenging precedent”. Channel 4 said that Mr F’s consent had been relied upon for many months: he approached the programme makers with a change of position at a late stage of production and without a full and detailed explanation of why consent was being withdrawn; he did not engage in a full straightforward discussion about what steps could have been taken to alleviate any concerns and to enter into a varied agreement; and his communication with the programme makers was changeable.

Channel 4 said that the programme makers “did their best to ascertain what his wishes were” and made a good faith editorial decision that the editing before broadcast reflected the varied

agreement they considered had been reached. The broadcaster said that even if one party (the contributor) seeks to end the contract they have entered into, the case of *Leigh* referred to above shows that that is not an end to the matter. Channel 4 said that, in relation to Mr F's case, as with any contract, the programme makers were entitled to say they were not accepting the withdrawal of consent and, as happened, seek to reach a compromise by varying the agreement. Channel 4 said that this is what the programme makers tried to do, and Mr F asked them to exercise their judgement to resolve the concerns insofar as he had articulated them.

Channel 4 said that Ofcom's position in the Preliminary View correctly seemed to be that the absolute withdrawal of consent to not feature at all did not need to be accepted and that by 29 September 2021 Mr F had withdrawn consent to "being identifiably featured in the broadcast". Channel 4 said that this highlights the difficulty that the programme makers had; the programme makers were entitled not to accept the total withdrawal of consent but there was continuing ambiguity in Mr F's position including on 30 September and used their editorial judgement to resolve that ambiguity. Channel 4 argued that Mr F was not advising of a change in circumstances since his original agreement that necessitated a complete removal of his contribution. For example, he was not suggesting that including him identifiably or not would lead to harm from others.

Channel 4 argued that Ofcom's Preliminary View looked at the programme maker's judgement "in hindsight" and is adjudicating that a different editorial decision to disguise should have been made. Channel 4 said that the editorial decision makers at the time had the benefit of assessing the actual communications with Mr F including telephone discussions and they had had previous dealings with him. Channel 4 said it therefore "seems harsh to dismiss their judgement and progress immediately to a conclusion that they had not achieved consent to edit the programme for broadcast as they did". Channel 4 said that it is open to Ofcom to disagree with the editorial judgement but also not to hold that Mr F's legitimate expectation of privacy has been infringed. Channel 4 said "what precisely that legitimate expectation was given the to and fro regarding consent is obscured and difficult to discern. It is open to Ofcom to accept that and consider that the question of consent is unresolved".

Channel 4 invited Ofcom to reconsider its position on this finding. Alternatively, should Ofcom not be minded to change its position, Channel 4 said that it would invite Ofcom to make it clear that in some circumstances it would be perfectly proper and legitimate for programme makers to rely on informed consent previously obtained even when a contributor attempts to withdraw consent and that it is also legitimate for programme makers to try to vary the agreement to deal with a contributor's concerns if they seek to withdraw consent.

Warranted

Channel 4 said that it appreciated that the programme showed Mr F in "some very sensitive situations", however it reiterated its position that broadcasting unobscured footage of Mr F "goes to the heart of the public interest argument in examining the way in which the police deal with suspects who may be potentially vulnerable ✂ [REDACTED], the human impact of policing strategies tackling drug related crime and violence, and the perpetuating cycle of ✂ [REDACTED] and homelessness". Channel 4 reiterated its position that Mr F was "uniquely placed" to humanise and provide an alternative perspective of the police investigation. The broadcaster said that, in discussions with the programme makers, Mr F had recognised the significant public interest in having his voice heard and being identifiable to viewers when communicating his thoughts and experiences, through his on-camera interview, as an individual ✂ [REDACTED] at the "sharp end of the criminal justice system".

Channel 4 said that the programme makers were faced with a difficult situation: removing Mr F's contribution from the programme would have resulted in a key thread being lost and would have destroyed not only the continuity of the programme, but also a key part of the public interest benefit in filming and broadcasting it. Channel 4 said that Mr F "purported to withdraw his consent"; at that point the programme makers had the option to simply accept that position, or to hold Mr F to the agreement they had relied upon, or to enter into discussions to reach a new agreement by varying the programme to try to deal with the concerns he had voiced. Channel 4 said that the last option was the choice the programme makers elected to take.

Channel 4 said that, as set out above, despite Mr F's complaint being about the use of the material at all, Ofcom has accepted that it was warranted to use Mr F's contribution albeit in a disguised way. Channel 4 said that the decision to disguise or not was one of editorial judgement based on the programme makers' assessment of their dealings with Mr F; on that assessment they were entitled to edit as they did, and this was warranted.

Channel 4 said that, alternatively, if Ofcom considers that the programme maker's judgement was incorrect then it does not necessarily follow that use of the material was an unwarranted infringement of privacy. Channel 4 said that it was open to Ofcom to disagree with the editorial judgement but go no further in their decision making and, given the difficulty in discerning Mr F's position, it would be fair to take that approach.

Conclusion

In conclusion, Channel 4 submitted that there was no unwarranted infringement of Mr F's privacy in the broadcast of the programme. Channel 4 maintained that the programme fully complied with the Code and the relevant Practices to be followed.

Based on the facts of the case and our arguments above, Channel 4 invited Ofcom to reconsider its Preliminary View and find instead that it was reasonable for the programme makers to conclude they had ultimately obtained Mr F's informed consent for all the footage to be included as finally edited in the programme, and that "in the confusing situation that arose shortly before broadcast" the broadcast of Mr F's contribution to the programme undisguised did not amount to an unwarranted infringement of Mr F's privacy.

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 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, 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 and both parties' written

submissions.² Ofcom also carefully considered Channel 4's representations on Ofcom's Preliminary View. However, for the reasons set out below, we did not consider these representations materially altered Ofcom's Preliminary View that the complaint should be upheld in part.

In Ofcom's view, the individual's right to privacy must be balanced against the competing rights 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 ("the Code")³ 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 considered Mr F's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because he had not given his informed consent to be filmed by the programme makers.

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".

Practice 8.8: "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). If the individual will not be identifiable in the programme, then separate consent for broadcast will not be required".

² Channel 4 explained that it did not intend to provide Ofcom with copies of the unbroadcast footage as the substantive discussions relating to the issue of informed consent, as set out in the Entertained Complaint, were not filmed.

³ See the [version of the Code in force at the date of broadcast](#).

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

Filming in flat and the police station

Legitimate expectation of privacy

As set out in the “Programme summary” above, the programme included footage of Mr F which had been captured by cameras operated by the programme makers, as well as body camera equipment worn by Bedfordshire police officers, as officers entered Mr F’s flat to search the property on 11 September 2019. Further footage was also obtained of Mr F as he was taken into custody, which was captured by CCTV cameras located inside the police station.

We first considered whether Mr F had a legitimate expectation of privacy in relation to the material which showed his interactions with the police in his flat and at the police station. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds themselves.

We took into account that the programme included footage of Mr F during a police raid on a flat, which we understood was his primary place of residence at the time the footage was obtained. The footage showed the police entering and searching the property and captured Mr F’s reaction to this; he appeared at times in the footage to be visibly distressed and crying. The footage also captured Mr F speaking with police officers and disclosing that he felt threatened.

We also took into account that, based on the broadcast footage, some personal items inside Mr F’s flat were captured during the filming such as a bed and picture frames. However, we recognised that the filming of these items was incidental to the filming of the police’s investigation and the majority of the footage captured, as broadcast in the programme, focussed on items that concerned the police’s investigation such as weaponry and items which were suspected at the time to be Class A drugs. In our view, despite the context of a related criminal investigation, the filming of the interior of a person’s private place of residence, which is a naturally private and personal environment, could reasonably be regarded as attracting a legitimate expectation of privacy. We recognised that the moment of Mr F’s arrest was not broadcast, however, Ofcom considered that being questioned by officers in your home could reasonably be regarded as sensitive and a situation where a person may expect some degree of privacy. We further recognised that a person’s involvement in police investigations is usually not a matter of public record until a person has been charged with a criminal offence and, in this instance, Mr F was not charged with any criminal offence following his arrest.

We also assessed Mr F’s general demeanour as shown in the footage that was captured of him and broadcast in the programme. He was shown visibly distressed by the presence of the police; at times he was crying, he appeared disorientated and his voice appeared to be slurred. We also took into account that, prior to the police’s raid on the flat, it was explained to viewers that the police had reason to suspect that Mr F’s flat had been “cuckoo-d” for the purposes of drug supply, as explained by Mr West:

“What you’ll find is that a drug dealer will find a vulnerable person, befriend them, they will get into their flat; they might even give them some free drugs, but

once that friendship's been built, that will then switch round, and that house will be solely used for drug supply".

We therefore considered that it would have been understood by the programme makers, at the point at which they accompanied the police as part of their investigation in order to obtain footage of the raid on the flat, that it was likely that any persons occupying the property may be in a sensitive situation. We also noted Channel 4's submissions that the production team filming with the police considered Mr F was "unsteady and sluggish" and a decision not to approach Mr F was made while he slept ✂ [REDACTED]. In the light of all of these factors, we considered Mr F to be in a clearly sensitive state at the time of filming.

In relation to the filming of Mr F as he was taken into custody and processed at the police station, Practice 8.8 recognises that police stations are potentially sensitive environments in which filming without permission is restricted, and Ofcom considers that police stations, in particular the custody area where Mr F was filmed, are private and secure places that are not readily accessible to members of the public. Moreover, in this instance, Mr F was filmed in a cell being searched by officers using a metal detector, which we considered to be a potentially sensitive situation. We also took into account that Mr F was filmed expressing concerns regarding his safety while in custody: *"I could get beaten up for speaking to you"*.

Taking all the factors above into account and in the particular circumstances of this case, Ofcom considered that Mr F had a legitimate expectation of privacy in relation to the situations in which he was filmed, both in his home and at the police station. In Ofcom's view, the obtaining of the footage of Mr F for inclusion in the programme was a significant intrusion into his legitimate expectation of privacy given that the filming clearly captured him in a sensitive state, in sensitive locations (inside his home and at a police station) and the material obtained included sensitive information about him as described above.

Consent

We then went on to consider whether Mr F had given his informed consent to this footage being obtained. Practice 8.5 explains that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted. "Consent" for these purposes means "informed consent". Practice 7.3 of the Code (albeit in the fairness part of the Code) indicates the type of information which should normally be given to a person who has been invited to contribute to a programme (unless the subject-matter is trivial or their participation is minor) in order to ensure that the consent which they give for their participation is "informed".

We took account of Mr F's position that, "I was asked to provide consent for the footage containing me whilst ✂ [REDACTED] and extremely vulnerable having been made homeless". We recognised that, in making out his complaint to Ofcom, Mr F did not provide further specific details on his recollection of the conversations which he had with the programme makers regarding the filming of him in the above circumstances. In its submissions, Channel 4 explained that the substantive discussions relating to the issue of informed consent, as set out in the entertained complaint, were not filmed. Therefore, Ofcom was not in a position to have clarity on the exchanges which took place between Mr F and the programme makers during filming. For example, it was unclear whether Mr F was informed that he had been filmed by body camera equipment worn by police officers as they entered his flat or that he was being filmed by CCTV cameras inside the police station.

However, it was apparent from the footage which was broadcast of Mr F that he had been filmed openly by cameras operated by the programme makers as they entered his flat alongside the police. We took into account Channel 4's submissions that the programme makers did not approach Mr F to obtain his consent to the filming at this stage or at any point during the raid, as it was considered inappropriate in a fast-moving crime scene and his potential lack of capacity due to intoxication. However, we did take account of a transcript which Channel 4 provided to Ofcom, which recorded a conversation between Mr F, a police officer, and a member of the production team regarding the presence of the programme makers cameras during the raid on the flat:

Police Officer: *"We're gonna try and help you mate, alright. Because, because what we can do [name], is, [unclear] that allows you, and only you to be here, anyone else, anyone else that's here, is arrestable.*

Mr F: *Can I, can I ask you some questions?*

Police Officer: *Course you can, go on.*

Mr F: *Right. Why is there TV cameras?*

Police Officer: *No, they're for us, they're not for you, alright, so that's not gonna...*

Mr F: *Yeah, but I've seen that 24 Hours in Police Custody.*

Officer: *Yeah, they're not, they won't be putting you on there [name] alright, without your permission, alright dude?*

Mr F: *Alright okay, right, so.*

Programme maker: *I can, I can talk to you afterwards.*

Mr F: *Will that be on national TV, yeah, alright? [unclear]"*

It appeared to Ofcom from this exchange that, notwithstanding the potential that Mr F may have been intoxicated, he had been aware of the presence of the programme maker's cameras at the time the footage of him was obtained and had been informed that a possible outcome of this filming was that the footage would be included in a broadcast programme.

We took into account the broadcaster's position, which was reiterated in its representations on Ofcom's Preliminary View that, by agreeing to the additional filming of an on-camera interview and signing a release form on 30 September 2019, Mr F gave his informed consent to all aspects of the filming, i.e. at his flat and in the police station, and this was understood by Mr F when he had signed the form. Ofcom carefully assessed Channel 4's argument that it was reasonable for the programme makers to conclude they had obtained Mr F's informed consent for the filming of him in his flat and at the police station, retrospectively, on account of Mr F's decision to sign this form.

In assessing the extent to which Mr F had provided his informed consent for the filming, we took into account that it appeared from the broadcast footage that Mr F had been aware of the

presence of the programme makers' cameras and, based on the transcript provided by Channel 4, did not appear to have raised any objections to this filming. The broadcaster acknowledged that Mr F's consent to be filmed had not been secured prior to or during filming of Mr F at his flat and at the police station. It was also notable that, even if Mr F had consented to be filmed by the programme makers during filming, there was a clear question about whether such consent could have been "informed" consent given Mr F's apparently intoxicated state.

We had careful regard to the broadcaster's representations on Ofcom's Preliminary View that, in police and other access documentaries, "it is not always possible or practicable, and, in many cases, extremely unlikely that informed consent can be obtained prior to the filming of a police raid or similar covert operation". Ofcom took account of Channel 4's representations that, due to the sensitivity and fast-paced nature of such cases, obtaining consent from the individuals included in the footage prior to being filmed would be challenging and place too high of a burden on programme makers.

We acknowledged that, in the present case, it would not have been possible for the programme makers to have sought to obtain Mr F's informed consent prior to the filming of him in his flat. The programme makers had accompanied the police during an unannounced raid on Mr F's flat, and the filming of Mr F had taken place during a key element of the police's investigation into serious crime. Furthermore, as highlighted above, there was also a question as to whether Mr F would have had capacity to provide "informed" consent, given his apparent intoxicated state both in his flat and later at the police station. Channel 4 argued that Mr F's informed consent to the filming had been obtained "retrospectively", as evidenced by his decision to sign a release form on 30 September 2019. We carefully assessed the broadcaster's detailed explanation in its representations on the Preliminary View, regarding why it deemed this approach to be reasonable in the circumstances.

Practice 7.3 sets out that, in order for a contributor to make an informed decision about whether they wish to contribute to a broadcast programme, they should be given sufficient information about the programme's nature and purpose and their likely contribution to it at an **appropriate stage** (Ofcom's emphasis). When examining whether a contributor has provided their informed consent to contribute to a programme, Ofcom considers whether they were provided with sufficient information to understand the nature of their expected contribution. Ideally, in Ofcom's view, informed consent should be obtained prior to filming taking place wherever possible, however we acknowledge that particular circumstances arising during the making of the programme may mean that this is not always practicable.

Having considered Channel 4's representations in response to Ofcom's Preliminary View on this issue, in this current case where there was a public interest in making a programme about the work of the police, Ofcom recognised that it would not have been possible for the programme makers to have obtained Mr F's informed consent to film him prior to the filming given that Mr F was filmed as part of an unannounced police raid on his flat where the programme makers had been unaware that Mr F was residing in the property at the time. Therefore, having considered Channel 4's further representations on this point in response to Ofcom's Preliminary View, Ofcom considered that it was appropriate in these particular circumstances for the broadcaster to seek Mr F's consent to the filming of him after the footage had been obtained, and once the programme makers were satisfied that Mr F had capacity to give such consent.

Ofcom went on to consider whether, in fact, Mr F had provided his informed consent at this stage. We took into account Channel 4's detailed description of the programme makers'

interactions with Mr F following the filming in the flat and at the police station, and prior to his signing of the release form on 30 September 2019. Channel 4 said that over the course of several days, the production team had several face-to-face interactions with Mr F. During these interactions, the programme makers took “great care” to ensure Mr F fully understood what the programme was about, the nature of what was filmed, how his contribution was likely to be used in the programme, and the potential implications of being filmed identifiably. Channel 4 said that these conversations culminated in Mr F choosing to sign the release form on 30 September 2019.

Channel 4 said that although the description of Mr F’s contribution on the release form was an interview with the director and producer (on the streets of Luton Town Centre), its position was that, in reality, Mr F gave his informed consent to all aspects of the filming when he agreed to the additional filming of an on-camera interview and signed the consent form, and this was understood by Mr F when he had signed the form. We noted that Mr F did not make representations on Ofcom’s Preliminary View, and therefore had not commented on the broadcaster’s description of his understanding during his interactions with the programme makers prior to, and at the point at which he had signed the release form. Nevertheless, we acknowledged that Mr F’s complaint to Ofcom was that he been “asked to provide consent for the footage containing me whilst ✂ [REDACTED] and extremely vulnerable having been made homeless”.

We recognise that it is possible for a broadcaster to obtain verbal informed consent from a contributor. However, it may be helpful for broadcasters to ensure that written records of discussions with contributors are maintained, and that release forms provide clear and complete details of all the relevant footage in relation to which a contributor’s consent is sought. We consider it good practice for a broadcaster to create written records of a contributor’s decision to provide their informed consent to specified filming, ideally at the point at which informed consent is provided. We consider this to be particularly important in the context of filming of a sensitive nature or involving vulnerable contributors.

We acknowledged the broadcaster’s description of the programme makers’ face-to-face interactions with Mr F, and the information it said the programme makers provided to Mr F verbally. We also took into account that Mr F had been provided with a release form, which he had signed. However, we noted that the release form, which the broadcaster partly relied on to demonstrate that informed consent had been obtained, referred only to Mr F’s on-camera interview, and did not refer to the prior filming of Mr F in his flat and at the police station.

Channel 4 said that although the description of Mr F’s contribution on the release form was an interview with the director and producer, Mr F gave his informed consent to all aspects of the filming when he agreed to the additional filming of an on-camera interview and signed the consent form, and this was understood by Mr F when he had signed the form. It also said that the programme makers had talked Mr F through the release form at length before allowing him time to consider and sign it. However, there was no record of this and the handwritten elements on the release form referred only to a specific filming date, location and description of contribution, i.e. an interview with the director and producer in Luton. Channel 4 was therefore unable to provide an evidential basis which demonstrated that Mr F had provided his informed consent to this filming, and, based on Mr F’s complaint to Ofcom i.e. that he was “asked to provide consent for the footage containing me whilst ✂ [REDACTED] and extremely vulnerable having been made homeless”, there remained a dispute as to whether or not informed consent

had in fact been obtained. Given all of these factors, Ofcom was not in a position to determine whether or not the broadcaster had obtained Mr F's informed consent for the filming of Mr F at his flat and at the police station.

In view of the fact that we were unable to determine whether Mr F had provided his informed consent to the filming of him in his flat and at the police station, Ofcom went on to consider whether the infringement of Mr F's legitimate expectation of privacy in connection with the obtaining of this footage was warranted.

Warranted

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

In its submissions, and in its representations on Ofcom's Preliminary View, Channel 4 had argued that there was a public interest in filming the raid of Mr F's flat as the raid was tied to a large-scale police operation which was "intended to disrupt the money chain of criminal gangs involved in the supply of drugs and to prevent violence of an unprecedented nature spilling out into the streets of Luton". Channel 4 further argued that it was necessary and legitimate to undertake this filming in order to give a proper account of the police's investigation, which was complex and comprised of several interlinked operations. Channel 4 said that there was a clear public interest in the filming of Mr F's arrest and detention in custody as it served to illustrate the type of complex drug related investigation the police have to contend with, and the ramifications for potentially vulnerable suspects who are exploited by those higher up in the criminal hierarchy.

We recognised that it is important for broadcasters to make programmes which show the activities of the police and to report on serious issues such as those relating to large scale incidents of public disorder, as referenced in the programme. In Ofcom's view, there existed in this case a substantial public interest in obtaining footage which showed the nature and extent of the police's investigation into crime of the nature detailed in the programme. We considered that there was a strong and clear public interest in obtaining footage which showed the public how the police respond to these incidents in order to protect public health and safety. We therefore considered that the obtaining of this material by the programme makers for inclusion in a broadcast programme was proportionate and directly relevant to the subject matter of the programme.

Having taken all the factors above into account, Ofcom carefully balanced Mr F's right to privacy regarding the obtaining of the footage with the public interest in it being obtained and the broadcaster's right to freedom of expression and the audience's right to receive information. Ofcom considered that, on balance, the public interest in obtaining the footage and the wider rights of the broadcaster and the audience to freedom of expression outweighed Mr F's expectation of privacy as regards the obtaining of footage of him in his flat and at the police station in circumstances where Ofcom was not in a position to come to a view as to whether Mr F had provided his informed consent.

Ofcom therefore considered that there was no unwarranted infringement of Mr F's privacy in connection with the obtaining of this material for inclusion in the programme.

Filming of Mr F during his on-camera interview

Legitimate expectation of privacy

Next, we considered the filming of Mr F by the programme makers during the interview he gave on 19 September 2019. We understood Mr F's position to be that he was asked to provide consent for the obtaining of this footage "whilst ✕ [REDACTED] and extremely vulnerable having been made homeless".

We recognised that the comments which Mr F made during his interview, as broadcast in the programme, largely concerned his personal impression of the actions of the police and their approach to tackling violent crime in Luton. However, we also took into account that the footage obtained of Mr F on this occasion revealed that he had previously occupied a "crack house" and was now "homeless". Mr F further stated: "what [the police have] done is added another person to the streets, another person who's going to be a drain on public resources". We considered that the comments made by Mr F revealed information about his personal circumstances at the point at which the footage was obtained which could reasonably be regarded as sensitive and where a person may expect some degree of privacy.

Taking all the factors above into account and in the particular circumstances of this case, Ofcom considered that Mr F had a legitimate expectation of privacy in relation to the situation in which he was filmed.

Consent

We had regard to the broadcaster's explanation of its interactions with Mr F prior to the date of his on-camera interview on 19 September 2019. In particular, we noted that Mr F had a number of conversations with the programme makers over several days, following the raid on his flat and prior to the interview being conducted. Based on the broadcaster's explanation of these engagements, we understood that, between 16 and 19 September 2019, Mr F had been informed about the following matters:

- The concept of the programme, the focus on the police's investigation, and that the police raid on his flat was related to this investigation.
- That the programme makers considered his case to demonstrate the nature of the drug market in Luton, that Mr F had first-hand knowledge of how drugs fuelled violence and, now he had been removed from the crack house, that he could comment on whether the police approach to drug enforcement was effective.
- An on-camera interview would give context to the filming the programme makers had already done (namely the raid on Mr F's flat, arrest and time in custody), and more widely to the drug situation in Luton.
- The programme makers wanted to do a follow up on camera interview with Mr F to discuss drug dealing and drug use in Luton and frame Mr F's earlier arrest and his story in the wider police operation.

Channel 4 said that, during these conversations, it was clear that Mr F was familiar with the programme and understood in practical terms how the on-camera interview would work. Channel 4 said that, for example, Mr F provided lots of ideas of where to film, and what he would be doing on an ordinary day. We took into account Channel 4's position that, based on these exchanges, it was clear that Mr F also understood how the on-camera interview would work conceptually and said that he knew a lot about the drugs world as he had also worked for a rehabilitation unit previously and that he thought he would be a good person for the programme makers to speak to because he was not a ✕ [REDACTED].

Channel 4 said that the programme makers met with Mr F on 19 September 2019 to film the on-camera interview. On that day, Mr F was provided with a release form, which Channel 4 said he read but did not sign. On 30 September 2019, he signed the release form which, as mentioned above, referred explicitly to filming on the streets of Luton town centre (i.e. Mr F's on-camera interview contribution). The broadcaster said that Mr F was invited to sign the release form only when the programme makers were entirely confident that he was not ✕ [REDACTED] and therefore capable of providing his informed consent. As discussed above, Ofcom considers it good practice for broadcasters to keep records which demonstrate that informed consent has been obtained, particularly when dealing with vulnerable contributors involved in filming of a sensitive nature. As also discussed above, Ofcom recognises that it was appropriate in these particular circumstances for the broadcaster to seek Mr F's consent to the filming of him once the programme makers were satisfied that Mr F had capacity to give such consent.

In assessing whether a contributor has given informed consent for their participation, Ofcom will not only look at the information that was provided to the contributor but, where possible, Ofcom will also consider the contribution itself. Based on the broadcaster's description of their interactions with Mr F prior to the filming, it appeared that he had understood what the programme was about, the nature of what was filmed, how his contribution was likely to be used in the programme, and the potential implications of being filmed identifiably via an on-camera interview. Furthermore, while Ofcom's role is not to make a factual determination of Mr F's state of mind at the time the footage was obtained, we do assess the extent to which the programme maker's belief that a contributor understood the nature of their likely contribution was reasonable in the circumstances of the case. In this regard, we noted that Mr F was shown in the footage fully engaging with the programme makers on a one-to-one basis and was shown freely discussing his views and opinions on the police's approach to tackling violent disorder in Luton. We considered that Mr F did not appear to be uncomfortable or concerned about talking to the programme makers while being filmed and that he had set out his views on the topic in a clear and articulate manner.

On balance, therefore, Ofcom was satisfied that in relation to this aspect of the filming, the broadcaster had provided an evidential basis which showed that by 30 September 2019, the programme makers had obtained Mr F's informed consent retrospectively, in relation to his on-camera interview for inclusion in a broadcast programme. It was not therefore necessary for Ofcom to consider whether any infringement of Mr F's privacy in the obtaining of the material was warranted. Given this, Ofcom has decided that Mr F's privacy was not unwarrantably infringed in connection with obtaining this material included in the programme.

Ofcom therefore considered that there was no unwarranted infringement of Mr F's privacy in connection with the obtaining of this material for inclusion in the programme.

The broadcast footage

- b) We next considered Mr F's complaint that his privacy was unwarrantably infringed in the programme as broadcast because he did not consent to footage of him being shown in the programme. Mr F said: "I asked the producer to not show my footage and that I revoked my consent for the footage to be shown".

We had regard to Practice 8.6 of the Code which states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. We first considered the extent to which Mr F had a legitimate expectation of privacy in relation to the footage of him included in the programme. We applied the same objective test set out in head a) above.

Legitimate expectation of privacy

As set out in detail at head a) above, the programme included footage of Mr F as the police searched his home and while in police custody. Further footage was also included of Mr F giving an interview to the programme makers at a later date. As explained in more detail in head a) above, the broadcast footage of Mr F's interactions with the police showed him in a very sensitive situation, namely whilst his home was being searched by the police and being detained in police custody, and the broadcast footage of Mr F giving an interview to the programme makers at a later date showed him disclosing information about his personal circumstances following the police's raid on his home, namely, that he was homeless and had previously been living in a "crack house".

We considered that Mr F was identifiable in the footage as broadcast. We recognised that the broadcaster had taken steps prior to broadcast to address what the programme makers considered were Mr F's concerns around appearing in the programme identifiably; for example, he was referred to as "Rob" in the programme. However, at all times Mr F's face was shown unobscured and his voice was heard undisguised.

Overall, for the reasons set out in detail at head a) above, we considered that the programme revealed very personal and sensitive information about Mr F's private life, including footage of him in an upset and distressed state during the raid on his home and whilst in police custody. Accordingly, we considered he had a legitimate expectation of privacy in relation to the broadcast of this footage.

Consent

We took into account Channel 4's submission that it took careful steps to continually assess Mr F's capacity to provide his consent to be featured in the programme. We had regard to Channel 4's detailed explanation (repeated in its representations on Ofcom's Preliminary View) of the programme makers' interactions with Mr F regarding informed consent, as set out in Annex 1, which spanned numerous meetings across several days. We took into account the broadcaster's submissions that the fact that Mr F was prepared to give an on-camera interview and appear identifiably in the programme as a consequence was indicative of the level of informed consent that was both sought from him and was provided by him. Channel 4 said that the programme makers were confident from their meetings that Mr F had demonstrated a "clear, rational and

insightful understanding of the potential benefits and risks of doing an on-camera interview and taking part in an observational television programme of this nature”.

We also took into account that Mr F had signed a release form on 30 September 2019, which stated: “I understand the nature and content of the Programme and my Contribution which has been fully explained to me”. As set out above, we noted that this release form referred only to Mr F’s on-camera interview, rather than the filming at his flat and the police station. We considered that it was reasonable for the broadcaster to conclude that, at the point at which Mr F signed the release form on 30 September 2019, he was comfortable with appearing in the programme identifiably in relation to the on-camera interview and had provided his informed consent to do so. We also recognised that the broadcaster had viewed Mr F’s decision to sign the release form as representative of the fact that Mr F was providing his informed consent to the broadcast of footage of him in his flat and at the police station. However, as highlighted at head a) above, given that the release form referred only to the filming on the streets of Luton Town Centre, we were not in a position to conclude that the broadcaster had demonstrated that by signing the release form Mr F had provided his informed consent for the inclusion of the footage of him at his flat and the police station in the programme. In any case, we took into account that, on 23 September 2021, Mr F wrote to the programme makers and stated: “can I ask that you blank my face please?”. He explained that he was “getting on with [his] life” and did not “necessarily need [his] work colleagues etc. seeing [him] in that light”. In a further message dated 29 September 2021, Mr F had stated: “I withdraw my consent for my data being processed in this way”. In its representations on Ofcom’s Preliminary View, Channel 4 argued that any finding that Mr F was entitled to withdraw his consent so close to transmission, and after previously close engagement and agreement with the programme makers, could suggest informed consent (written or otherwise) cannot be reasonably relied upon as contributors are permitted to change their minds despite agreeing to a contractual obligation to permit broadcast. The broadcaster said that such a finding would be “very difficult for programme makers and broadcasters to navigate, creating an insurmountable burden on programme makers in relation to consent”.

Ofcom recognises that programme production may be difficult if contributors seek to withdraw their consent to be included in the programme at a very late stage after the recording of their contribution and shortly prior to the date of broadcast. Indeed, we acknowledged that Channel 4 considered it would not have been appropriate to blur Mr F at this stage of the preparations for broadcast. Further, we recognised that there had not been a significant change to the nature of the programme from that which Channel 4 said it described to Mr F at the point at which he signed the release form and consented to the footage the programme makers had filmed of him during the on-camera interview being featured in the programme.

We took account of the broadcaster’s submissions, which were repeated in its representations on Ofcom’s Preliminary View, that senior members of the production team undertook significant steps to engage with Mr F to understand why his position had changed. Channel 4 explained that the programme makers exchanged several messages with Mr F between 22 September 2021 and 6 October 2021, and a member of the production team also spoke to Mr F by telephone on 26 September 2021. We recognised that Channel 4 said it would have rendered Mr F unidentifiable had it considered this to be the only way to meet the concerns he raised during these conversations. We also took into account that, instead, Channel 4 made other changes to the

programme, such as changing Mr F's name and removing certain footage, which it felt were appropriate and proportionate in mitigating what it believed to be Mr F's concerns.

We noted that, in its representations on the Preliminary View, the broadcaster said that a finding that consent had been withdrawn would set a "challenging precedent", and that it had relied on the complainant's consent for many months. It reiterated that it considered Mr F's position at the time was "ambiguous" and that it was entitled not to accept the withdrawal and instead use its editorial judgement to resolve Mr F's concerns. Channel 4 further argued that Ofcom's Preliminary View looked at the programme maker's judgement "in hindsight" and that Ofcom was adjudicating that a different editorial decision to disguise should have been made. Channel 4 said that the editorial decision makers at the time had the benefit of assessing the actual communications with Mr F, including telephone discussions, and that they had had previous dealings with him. Channel 4 said that it was therefore "harsh" for Ofcom to dismiss their judgement and progress immediately to a conclusion that they had not achieved consent to edit the programme for broadcast as they did.

While Ofcom noted the broadcaster's position, we considered that Mr F had made it clear to the programme makers that he no longer wished to appear identifiably in the broadcast. This was evidenced by the correspondence provided to Ofcom by the broadcaster and based on the broadcaster's own account of the telephone calls which the programme makers had with Mr F, which revealed that Mr F had repeatedly made clear his request that he did not wish to appear in the programme identifiably. In Ofcom's view, Mr F's messages to the programme makers on 23 and 29 September 2021 had a significant bearing on the issue of consent in that they demonstrated that, by at least 23 September 2021 and certainly by 29 September 2021, any consent Mr F had previously given, or the broadcaster understood had been given, to being identifiably featured in the broadcast had clearly and unequivocally been withdrawn.

In these circumstances, while we recognised the challenges faced by the broadcaster from the complainant's decision to withdraw his consent at a late stage and close to the date of broadcast, we did not consider that the broadcaster could rely on Mr F's earlier signing of a release form or the changes it made to the programme as demonstrating that Mr F continued to provide his informed consent to appear identifiably in the programme. In reaching that conclusion, we were mindful that Mr F's earlier signing of the release form to appear in the programme did not mean that he lost his right to privacy in all circumstances and for all purposes. In that context, we had particular regard to the sensitive nature of the information which was to be disclosed about Mr F in the broadcast programme. Accordingly, our view was that the broadcaster no longer had Mr F's informed consent to be identifiably featured in the programme as broadcast. We therefore went on to consider whether the inclusion of the footage of Mr F in the programme as broadcast was warranted in the circumstances.

Warranted

Ofcom carefully balanced Mr F's right to privacy regarding the inclusion of the relevant footage in the programme as broadcast on 4 October 2021 with the public interest in broadcasting the footage of Mr F and the wider rights of the broadcaster to freedom of expression and of the audience to receive information broadcast without unnecessary interference.

We had regard to Channel 4's position that there is a genuine public interest in programmes which follow police officers and convey to viewers an understanding of the challenging situations they face. We also took into account Channel 4's submission that there is a particular

public interest in examining whether the policing strategy of disrupting lower-level crime is effective in tackling drugs and violence and those at the higher levels of the criminal hierarchy given the vulnerabilities of a lot of drug users and the exploitative nature of cuckooing.

We recognised that there existed a public interest in programming which broadcasts footage showing the work of the police in responding to serious crime of the nature detailed in the programme. As referenced at head a) above, we considered that there was a strong and clear public interest in footage which showed the public how the police respond to these incidents in order to protect public health and safety. However, in assessing this aspect of the complaint, we specifically considered whether the public interest arguments advanced by the broadcaster outweighed Mr F's right to privacy such that the broadcasting of footage which showed Mr F identifiably was warranted.

As acknowledged above, Ofcom recognises that programme production may be difficult if contributors seek to withdraw their consent to be included in the programme at a very late stage after the recording of their contribution and shortly prior to the date of broadcast. In weighing up the competing rights of the parties, we took into consideration the broadcaster's submissions that Mr F himself recognised the significant public interest in having his voice heard and being identifiable to viewers when communicating, through his on-camera interview, his thoughts and experiences as "an individual X [REDACTED] at the sharp end of the criminal justice system". We also took into account Channel 4's position, reiterated in the broadcaster's representations on Ofcom's Preliminary View, that Mr F's first-hand account provides invaluable insight on the human impact of this policing strategy and the perpetuating cycle of X [REDACTED] and homelessness, that Mr F was uniquely placed to "humanise and provide an alternative perspective of the police investigation", and that the public interest message he had to deliver would be more powerful if he appeared identifiably in the programme.

We recognised that there is a public interest in examining the way in which the police deal with people who may be potentially vulnerable on account of exploitation by criminals through the practice of "cuckoo-ing", of which Mr F appeared to be a victim. We also recognised that there was a public interest in viewers seeing and hearing first-hand the experiences of those caught up in the type of crime detailed in the programme. We recognised that showing footage of Mr F brought the impact of crime in Luton to life in a way that merely describing the practice of cuckooing may not have done.

We also acknowledged the steps taken by the broadcaster to protect Mr F's privacy following the withdrawal of his informed consent, for example changing his name and removing certain scenes prior to broadcast that may have reflected Mr F in a negative light. We also considered Channel 4's representations on Ofcom's Preliminary View that the programme makers were faced with a "difficult situation", as removing Mr F's contribution from the programme would have resulted in a "key thread being lost and would have destroyed not only the continuity of the programme, but also a key part of the public interest benefit in filming and broadcasting it", but note that Mr F's concern was about being identifiable in the programme rather than having his contribution removed entirely.

Having carefully considered Channel 4's representations, we weighed up the competing rights of the parties and took into account that the programme showed Mr F in some very sensitive situations, namely his home being searched; being detained in police custody; and disclosing sensitive information about his personal circumstances (e.g. that he was homeless). We also considered that he was identifiable in the footage as broadcast. For the reasons set out above,

we considered this was information in relation to which Mr F had a significant legitimate expectation of privacy.

We recognised that the decision to change Mr F's name and remove certain scenes was done after careful consideration and based on judgements informed by close interactions with Mr F. However, taking all of the above factors into account and with particular regard for the highly sensitive information disclosed about Mr F in the broadcast programme, we considered that the significant intrusion into Mr F's privacy arising from the broadcast of the footage in which he was identifiable without his consent was not justified by the public interest. Mr F's right to privacy therefore outweighed the broadcaster's right to freedom of expression and the audience's right to receive information and ideas about the matters explored by the programme.

We therefore considered that there was an unwarranted infringement of Mr F's privacy in the programme as broadcast.

Ofcom has upheld in part Mr F's complaint of unwarranted infringement of privacy.

Annex 1 redacted in its entirety.