



Guidance Notes

**Section 8:
Privacy**

Section Eight

Privacy

Guidance

This guidance is non-binding. It is provided to assist broadcasters interpret and apply the Broadcasting Code. Research which is relevant to this section of the Broadcasting Code is indicated below.

Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case.

We draw broadcasters' attention to the legislative background of the Code which explains that:

"Broadcasters are reminded of the legislative background that has informed the rules, of the principles that apply to each section, the meanings given by Ofcom and of the guidance issued by Ofcom, all of which may be relevant in interpreting and applying the Code. No rule should be read in isolation but within the context of the whole Code including the headings, cross references and other linking text."

Practice to follow 8.1 An infringement of privacy in connection with obtaining material

Ofcom may only consider an infringement of privacy in the making of a programme if the programme is broadcast.

Private lives, public places and legitimate expectation of privacy

Privacy is least likely to be infringed in a public place. Property that is privately owned, as are, for example, railway stations and shops, can be a public place if readily accessible to the public. However, there may be circumstances where people can reasonably expect a *degree* of privacy even in a public place. The degree will always be dependent on the circumstances.

Some activities and conditions may be of such a private nature that filming, even in a public place where there was normally no reasonable expectation of privacy, could involve an infringement of privacy. For example, a child in state of undress, someone with disfiguring medical condition or CCTV footage of suicide attempt.

Practice to follow 8.11 Doorstepping

Doorstepping may be used (depending on the circumstances) where there has been repeated refusal to grant an interview (or a history of such refusals) or the risk exists that a protagonist might disappear. In such circumstances, broadcaster may themselves require programme-makers to refer to the responsible editor first.

Doorstepping in public places is most frequently and in most circumstances acceptably used in news programmes, where journalists often film and record those in the news without having pre-arranged the interview.

Practice to follow 8.12 Telephone calls

It is acceptable to record telephone calls for note taking purposes.

Practice to follow 8.13 Surreptitious filming or recording

Broadcasters normally have their own procedures in place to authorise such filming or recording. In such circumstances, broadcaster may themselves require programme-makers to refer to the responsible editor first.

Practice to follow 8.14 The broadcast of material gained by surreptitious filming and recording

When broadcasting material is obtained surreptitiously, whether in a public or private place, broadcasters should take care not to infringe the privacy of bystanders who may be caught inadvertently in the recording e.g. by obscuring the identity of those recorded incidentally.

Broadcasters should be aware that 'innocent' bystanders can be inadvertently caught (potentially causing an unwarranted infringement of privacy) with the transmission of material gained through surreptitious filming or recording.

Broadcasters should apply the same practice to follow to material shot surreptitiously by others (including CCTV footage) as they do to their own recordings in taking the decision whether to broadcast the material.

Practice to follow 8.16 People caught up in emergencies, victims of accidents, or those suffering a personal tragedy

As has been explained in the foreword to Section Eight: "there may be a strong public interest in reporting on an emergency situation as it occurs and ...there may be pressures on broadcasters at the scene of a disaster or emergency that may make it difficult to judge at the time whether filming or recording is an unwarrantable infringement of privacy. These are factors Ofcom will take into account when adjudicating on complaints." For instance, when news crews arrive at the scene of emergencies etc, they often film and record as much

information as possible (which could result in infringements of privacy). However, it is then later, when the broadcaster actually transmits the footage that appropriate decisions can be made in an edit suite in the 'cold light of day'. Ofcom has a statutory duty to consider unwarranted invasions of privacy irrespective of the circumstances and genre of programmes. Nevertheless, in the light of a complaint, Ofcom will always take the full circumstances into account as well as the context in which the original footage was obtained.

At funerals, programme-makers should respect requests that they should withdraw.

Broadcasters should also respect any reasonable arrangements made by the emergency services to supervise media access to victims of crime or accident or disaster, or their relatives, in the immediate aftermath of a tragedy.

Practice to follow 8.17 People in a state of distress

Even if grieving people have been named or suggested for interview by the police or other authorities broadcasters and programme makers will need to make their own judgements as to whether an approach to such people to ask them to participate in a programme or provide interviews may infringe their privacy.

Practice to follow 8.22 Persons under the age of sixteen and vulnerable people

A child of five has a very different view and understanding of the world around it than a 15 year old teenager has. Questions need to be appropriate to both age and development whether the child or young person is taking part in a factual programme or an entertainment programme.

Care must be taken to not to prompt children and that they should be allowed to speak for themselves. Questioning that is likely to cause distress should be kept to a minimum.