

## Complaint by Mr Mark Acklom about Sky News

<b>Type of case</b>	Fairness and Privacy
<b>Outcome</b>	Not Upheld
<b>Service</b>	Sky News
<b>Date &amp; time</b>	12 August 2021, 06:15 and 22:30
<b>Category</b>	Privacy
<b>Summary</b>	We have not upheld this complaint about unwarranted infringement of privacy in connection with the obtaining of material included in the programmes, and in the programmes as broadcast.

### Case summary

Sky News broadcast two news reports explaining that Mr Acklom would be subject to a Serious Crime Prevention Order as part of his conditions for early release from prison. Both reports included an image of Mr Acklom aboard a flight during his extradition to the UK in 2019. One of the news reports also included a number of photographs of Mr Acklom which he said were “private family photographs”. Mr Acklom complained that his privacy had been unwarrantably infringed in connection with the obtaining of these images and their inclusion in the programmes as broadcast.

Ofcom found that Mr Acklom did not have a legitimate expectation of privacy in relation to the obtaining and subsequent broadcast of the image of him aboard the plane without his consent. Therefore, there was no unwarranted infringement of Mr Acklom’s privacy in connection with the obtaining and broadcast of the image of him aboard the plane included in the programmes.

With regard to the obtaining and subsequent broadcast of Mr Acklom’s family photographs, Ofcom found that Mr Acklom did have a legitimate expectation of privacy. However, Mr Acklom’s legitimate expectation of privacy did not, on balance, outweigh the broadcaster’s right to freedom of expression and the public interest in including the material in the programme in which the family photographs appeared. Therefore, there was no unwarranted infringement of Mr Acklom’s privacy in connection with the obtaining and subsequent broadcast of his family photographs included in that programme.

## Programmes summary

On 12 August 2021, Sky News broadcast two reports about the complainant, Mr Acklom. The reports, broadcast at 06:15 and 22:30 and repeated on 12, 13 and 14 August 2021, explained that Mr Acklom would be subject to a Serious Crime Prevention Order as part of his conditions for early release from prison.

### 06:15 broadcast (the “First Report”)<sup>1</sup>

In the First Report, an image of Mr Acklom was shown and the presenter introduced the report:

*“Britain’s most notorious conman, Mark Acklom, is about to be freed early from prison, but will have to live under tough restrictions ordered by a judge. The serial fraudster must declare his earnings, business dealings and assets, close any foreign bank accounts, and tell police of his movements. The curbs on his freedom come in a rare Serious Crime Prevention order that will last for five years. Our crime correspondent Martin Brunt reports”.*

The programme showed a photograph of Mr Acklom sitting in a window seat aboard a plane looking towards the direction of the camera, which appeared to be located in the aisle. Footage was then shown of Mr Acklom being led by police officers from a plane at Bristol Airport to an awaiting police van after being extradited to the UK in 2019. As this footage was shown, the reporter said:

*“Brought back to Britain in handcuffs, conman Mark Acklom was jailed for nearly six years. Now he’s about to be released early on licence”.*

As a police photograph of Mr Acklom was shown, the presenter continued:

*“But a judge has ordered him to live under severe restrictions for five years. Acklom’s been given a rare Serious Crime Prevention Order. Under the order, he must reveal his income savings, businesses and assets; close any foreign bank accounts; stop using false names; tell police where he’s living and if he plans to spend a night away from home. Acklom met his victim, Carolyn Woods in her Cotswolds boutique. She later wrote a book of their marriage plans, his lies and deceit and his theft of all her money”.*

The programme showed CCTV footage of Mr Acklom in Ms Woods’ boutique, and followed with an interview with Ms Woods, who said to camera:

*“He always does what is best for him, so I don’t think having a Serious Crime Prevention Order out in his name is really materially going to affect what he does unless he is physically tagged or something like that. So, you know, we all know that he’s a flight risk and I’m sure he will only comply with whatever will make life easier for him in the long run”.*

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<sup>1</sup> The segment was repeated at 07:00, 09:00, 10:00, 13:00, 14:00, 15:00 on 12 August 2021.

The programme then showed footage of the exterior of the prison, HMP Erlestoke, as the reporter said:

*“Acklom has spent much of his time here. He tried and failed to launch an appeal, but he’s due to be freed in a fortnight. Acklom will have spent barely a third of his sentence in prison. But, although there’s a detailed plan to monitor him after his release, his freedom could yet be postponed”.*

The programme included footage filmed in 2015 of Mr Acklom in a Spanish courtroom where he faced charges relating to property fraud. The footage showed him in handcuffs sitting in front of a panel of judges and giving evidence in Spanish. As this footage was shown, the reporter said:

*“And he’s already a wanted man again. In Spain, the Spanish are trying to extradite him; in this hearing in Cartagena in 2015, he was jailed for three years for fraud. He was given temporary release and fled abroad. He still has 18 months to serve”.*

The programme then showed an interview with a former senior detective of the Metropolitan Police, Mr Kevin Hurley:

*“When you consider the criminality that goes on in Spain, serious violence, people trafficking, they’re probably not going to be overly keen to keep him in prison for too long anyway, so I’m pretty sure he will find a way of talking his way out for an early release”.*

The reporter said: *“The Spanish authorities are expected to launch a bid for Acklom’s extradition soon”.*

The report ended.

## 22:30 broadcast (the “Second Report”)<sup>2</sup>

In the Second Report, the presenter introduced the report:

*“Britain’s most notorious conman, Mark Acklom, refused to leave his cell today for an extradition hearing. Spanish authorities want to try him for fraud. He’s due to be released early from jail here in the UK but will have to live under tough restrictions ordered by a judge. Our crime correspondent Martin Brunt reports”.*

As footage was shown of Mr Acklom in a Spanish court in 2015, the reporter said:

*“Jailed for fraud six years ago in this Spanish court, conman Mark Acklom later appealed, was freed temporarily, then fled abroad. Now, Spain wants him back to finish his sentence”.*

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<sup>2</sup> The segment was repeated at 17:00 and 22:00 on 13 August 2021 and 00:00 on 14 August 2021.

The programme showed footage of the exterior of HMP Erlestoke, as the reporter continued:

*“He’s currently in a Wiltshire prison about to be freed from another fraud sentence. He was due to be arrested there on a Spanish extradition warrant, but he refused to leave his cell”.*

The reporter was shown standing outside Westminster Magistrates Court, as he said:

*“Acklom was to have been brought here: the UK’s Extradition Court for the start of the extradition process. That’s had to be postponed and it may have to wait now until he walks out of his Wiltshire prison in a fortnight’s time”.*

Various photographs of Mr Acklom were shown, and the reporter continued:

*“Even if he fights extradition, Acklom will have to live in the UK under tough restrictions ordered by a judge. He’s been given a rare Serious Crime Prevention Order. Under the order, he must reveal his income savings, business dealings and assets; lose any foreign bank accounts; stop using false names and tell police where he’s living and if he plans to spend a night away from home”.*

The programme showed the photograph of Mr Acklom sitting aboard the plane, which was featured in the First Report, and also showed the footage of Mr Acklom being led by police officers from the plane at Bristol Airport to an awaiting police van after being extradited to the UK. A caption read “2019” as the image and footage were shown. The reporter continued:

*“Two years ago, Acklom was brought back to the UK in handcuffs; he’d been on the run from another fraud. He was jailed for six years. Acklom met his UK victim Carolyn Woods in her Cotswolds boutique. She later wrote a book of their marriage plans, his lies and deceit and his theft of all her money”.*

The programme then showed CCTV footage of Mr Acklom inside Ms Woods’ boutique, which was followed by footage of the reporter interviewing Ms Woods. The following exchange took place:

Reporter: *“How’s Acklom likely to respond to the Serious Crime prevention Order?”*

Ms Woods: *He always does what is best for him, so I don’t think having a serious crime prevention order out in his name is really materially going to affect what he does unless he is physically tagged or something like that. We all know that he’s a flight risk and I’m sure he will only comply with whatever will make life easier for him in the long run”.*

The programme then showed three photographs. The first showed Mr Acklom with his face unobscured standing next to an unidentified adult and two figures which appeared to be children, whose faces had been blurred. The photograph appeared to have been taken inside a house. The

second photograph showed Mr Acklom and an unidentified adult, whose face had been blurred, on what appeared to be a balcony overlooking a harbour. The third photograph showed Mr Acklom crouched in front of a swimming pool with a child whose face had been blurred. The first and second photographs appeared to be “selfies”, taken by the complainant. As these photographs were shown, the reporter said: *“Acklom’s wife and children live in Spain. He may agree to extradition to be near them, and for another reason”*.

The programme then showed an interview with a former senior detective of the Metropolitan Police, Mr Kevin Hurley:

*“When you consider the criminality that goes on in Spain, serious violence, people trafficking, they’re probably not going to be overly keen to keep him in prison for too long anyway, so I’m pretty sure he will find a way of talking his way out for an early release”*.

The reporter said in commentary, as footage was again shown of Mr Acklom in the Spanish court: *“As always with Britain’s most notorious fraudster, nothing is simple or straightforward”*.

The report ended.

## **Summary of the complaints and broadcaster’s response**

### **Complaint**

- a) Mr Acklom complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programmes because:
  - the reporter had photographed him while he was inside a plane, whilst being extradited from Switzerland to the UK in 2019. Mr Acklom said that his fellow passengers had complained about the reporter taking photographs at the time, and that the reporter had been “ordered to delete those images by the captain”; and
  - a number of “private family photos” included in the Second Report, had been obtained by the broadcaster, without his knowledge or consent.
- b) Mr Acklom complained that his privacy was unwarrantably infringed in the programmes as broadcast because:
  - an image of him inside a plane while being extradited from Switzerland to the UK in 2019 was shown in both programmes. Mr Acklom said that he had understood that the reporter had deleted all images which he had taken of him, at the request of the captain; and
  - the Second Report had included a number of “private family photos” which showed him with his family.

### **Broadcaster’s response**

#### **Background**

Sky News noted that Mr Acklom had previously made a complaint to Ofcom<sup>3</sup> about footage included in news reports of his arrest and extradition in 2019 and noted that on that occasion he complained

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<sup>3</sup> See [Issue 425](#) of Ofcom’s Broadcast and on Demand Bulletin, published on 26 April 2021.  
*Issue 457 of Ofcom’s Broadcast and On Demand Bulletin*  
30 August 2022

about footage taken of him being remanded from the plane into police custody. Sky News said that in relation to this footage, “Ofcom took the view that the fact of his extradition did not constitute private information, he did not appear to be in a particularly vulnerable state, nor did he appear visibly distressed or upset”. Sky News noted that on that basis, “Ofcom concluded that the footage which had been obtained did not include any images of a particularly private or sensitive nature. Accordingly, he did not have a reasonable expectation of privacy and his privacy was not unwarrantably infringed”.

Sky News said that it believed this to be the correct conclusion and that the same conclusion should be reached in respect of the similar images referred to in this decision.

#### *Response to entertained complaint*

Sky News addressed each head of Mr Acklom’s complaint in turn:

- a) Sky News said that the image which showed Mr Acklom in the plane was a still taken from a video filmed during the flight. It said that the reporter is not aware of the captain “ordering” the deletion of any images, but said that it is correct that the reporter was asked by cabin crew what they were doing and to delete images. Sky News said that the reporter had politely refused, on the basis that they believed there was a legitimate public interest in obtaining the footage, and the matter was taken no further by the airline.
- b) Sky News said that the family photographs were obtained from a business associate of Mr Acklom and were used to illustrate that Mr Acklom was leading an “outwardly respectable and blameless life in the community while evading justice in the UK”. Sky News said this was particularly relevant given the nature of the fraudulent conduct Mr Acklom had been accused of, and further said that it had taken the decision to anonymise the identities of anyone other than Mr Acklom in the photographs. Sky News said that there was a public interest in exposing Mr Acklom’s conduct while on the run, and this outweighed any right to privacy he may have in relation to the photographs. However, it had recognised the same could not be said of his family so took steps to protect their identities.

Sky News said that the public interest in the reporting significantly outweighed any right to privacy Mr Acklom may be able to claim. The broadcaster said that when considering the balance between Mr Acklom’s reasonable expectation of privacy and the public interest in the reporting of the continuing legal developments around his case (which include his return to the UK to face trial for significant crimes for which he was then imprisoned), there was a significant public interest in illustrating the process by which he was eventually returned to the UK along with an exploration of how he conducted himself while a fugitive.

#### *Further representations from the broadcaster*

Ofcom asked the broadcaster to provide further information about the “business associate” of Mr Acklom from whom the broadcaster obtained Mr Acklom’s family photographs. Ofcom also requested that the broadcaster provide the unobscured versions of the photographs in the original state that they were obtained by the programme makers.

In its response, the broadcaster said that it was not in a position to provide further information about the business associate, or the circumstances under which the photographs were obtained. It said that the business associate was a confidential journalistic source and, as such, the information provided was carefully framed to ensure their anonymity. The broadcaster was also unable to provide unobscured versions of the photographs.

### **Ofcom's Preliminary View**

Ofcom prepared a Preliminary View that Mr Acklom's complaint should be not upheld. Both parties were given the opportunity to make representations on the Preliminary View. The broadcaster chose not to make representations. The complainant chose to make representations which are summarised below, insofar as they are relevant to the complaint entertained and considered by Ofcom.

Mr Acklom disagreed with Ofcom's Preliminary View not to uphold his complaint, stating that this amounted a determination that he had "no rights whatsoever". Mr Acklom said that the programmes focus on a "relatively minor crime a decade ago", for which he had served his full sentence, was "simply not fair". Mr Acklom also stated that the Preliminary View "contradicts its previous [decision] [regarding] photos on the plane<sup>4</sup>".

Regarding the photograph taken of him whilst aboard the plane, Mr Acklom said, "the real question is should [the reporter] have ever been on that plane. That is a question for the courts". Mr Acklom said that the family photographs shown in the Second Report were not taken while he was "on the run". Mr Acklom claimed that the photographs were "stolen" in 2016 when he was on bail and prior to him being the subject of a European Arrest Warrant. Mr Acklom said that he had was no previous "business partner" and said, "a thief, a burglary. That is the 'source' of these private family photographs."

### **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programmes, and both parties' written submissions. We also took into account Mr Acklom's representations on Ofcom's Preliminary View. However, after

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<sup>4</sup> [Ofcom Adjudication: Complaint by Mr Mark Acklom about Conman: The Life and Crimes of Mark Acklom](#), Issue 425 of Ofcom's Broadcast and On Demand Bulletin, published on 26 April 2021.



careful consideration of these representations, we considered that the points raised did not materially affect the outcome of Ofcom's decision to not uphold the complaint.

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")<sup>5</sup> which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In addition to this Rule, Section Eight (Privacy) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

- a) Ofcom first considered Mr Acklom's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programmes, in that he was photographed aboard a plane during his extradition to the UK, and that a number of "family photos" had been obtained by the broadcaster without his consent.

In considering this part of the complaint, Ofcom had regard to Practice 8.5 of the Code, which states: "Any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted".

#### *Filming of Mr Acklom aboard a plane*

##### *Legitimate expectation of privacy*

We first assessed the extent to which Mr Acklom had a legitimate expectation of privacy in the particular circumstances in which the relevant material was obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be assessed in light of the circumstances in which the individual finds him or herself. The Code's statement on the meaning of "legitimate expectation of privacy" makes clear that such an expectation: "...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place...".

As set out in the "Programme summary" above, both programmes included a still image which showed Mr Acklom sat in a seat aboard a plane during his extradition from Switzerland to the UK in 2019. The broadcaster explained that the image was taken from footage obtained by the reporter during the flight, who appeared to have captured the footage of the complainant from the aisle of the plane. The image captured Mr Acklom sitting in the general seating area amongst

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<sup>5</sup> See the [version of the Code in force at the date of broadcast](#).



other passengers; an area in which he would have been visible to passengers on the same flight and the cabin crew aboard. We also took into account that there was no suggestion that Mr Acklom was filmed surreptitiously; indeed, Mr Acklom was shown in the photograph looking towards the camera, and it was clear from Mr Acklom's complaint that he, and the cabin crew, had been aware of the presence of the camera. However, we recognised that he may not have been aware that footage of him was being obtained for the purposes of inclusion in a broadcast programme.

Ofcom acknowledged that a person may expect a degree of privacy when aboard a plane as it is a location where access is restricted and is accessible only to a limited number of people: i.e., passengers on the same flight and cabin crew. We recognised that, as reflected in his representations on Ofcom's Preliminary View, Mr Acklom was particularly aggrieved that the reporter was able to access the flight in his capacity as a journalist. We also took into account the circumstances in which the footage of Mr Acklom had been obtained, namely, that Mr Acklom had been *"brought back to the UK in handcuffs"* after being *"on the run from another fraud"*. We recognised that obtaining footage of a person being extradited back to the UK is likely to be a sensitive situation for the person concerned. However, we considered that whether someone has a legitimate expectation of privacy in footage of an arrest or a person in custody will depend on all the circumstances of a particular case. In this case, we understood that the complainant's identity as a suspect in relation to serious criminal offences, as well as the fact of his extradition to the UK had been released into the public domain at the time the footage was obtained. Further, while we understood from Mr Acklom's complaint that he had been aggrieved by the reporter capturing footage of him on the flight, Mr Acklom did not appear to be in a particularly vulnerable state, nor did he appear visibly distressed or upset in the image. Given this, therefore, we did not consider that the footage obtained included any images or information of a particularly private or sensitive nature about Mr Acklom.

Taking the above factors into account, Ofcom considered, in the particular circumstances of this case, that Mr Acklom did not have a legitimate expectation of privacy, and that his privacy was not unwarrantably infringed in connection with the obtaining of the material included in the programmes in this respect.

### *Family photographs*

#### *Legitimate expectation of privacy*

Next, we considered the extent to which Mr Acklom had a legitimate expectation of privacy in relation to the obtaining of what he said were private family photographs without his knowledge or consent. The Second Report included three photographs: the first showed Mr Acklom with his face unobscured standing next to what appeared to be an adult and two children – their faces had been blurred; a second photograph showed Mr Acklom and an unidentified adult, whose face had been blurred, on what appeared to be a balcony overlooking a harbour; and the third photograph showed Mr Acklom crouched in front of a swimming pool with a child whose face had been blurred. As the photographs were shown, the reporter said: *"Acklom's wife and children live in Spain. He may agree to extradition to be near them, and for another reason"*. The Second Report then showed an interview with a former senior detective of the Metropolitan Police, Mr Kevin Hurley, who said:

*“When you consider the criminality that goes on in Spain, serious violence, people trafficking, they’re probably not going to be overly keen to keep him in prison for too long anyway, so I’m pretty sure he will find a way of talking his way out for an early release”.*

The broadcaster explained in its response to the complaint that the photographs had been obtained from a “business associate” of Mr Acklom. Although the broadcaster was not able to elaborate further on the circumstances in which its source came into possession of the photographs, we took into account that in making out his complaint to Ofcom, Mr Acklom had described the photographs as “private” and said that he had no knowledge of how the photographs had been obtained. This was reiterated by Mr Acklom in his representations on Ofcom’s Preliminary View, and we took into account that Mr Acklom had said that he had no previous “business partner” and that the photographs were obtained by “a thief”. While it is not Ofcom’s role to make a determination on this claim, in these circumstances, it appeared to Ofcom that the photographs were not widely accessible at the point at which they were obtained, for example, it did not appear that they were available openly on social media.

In assessing this element of the complaint, we took into account that Mr Acklom’s right to privacy under Article 8 of the European Convention on Human Rights (“ECHR”) encompasses a right to a family life and we recognised that the photographs appeared to capture Mr Acklom’s interactions with members of his immediate family. We also considered that it was reasonable for Mr Acklom to expect that copies of these photographs, access to which he believed to have been limited, would not be provided to a broadcaster for the purpose of inclusion in a broadcast programme without his knowledge or consent.

Taking these factors into account, therefore, Ofcom considered that Mr Acklom had a legitimate expectation of privacy in relation to the circumstances in which these photographs were obtained on this occasion. However, we considered that this expectation was limited, given that the information about Mr Acklom’s family as shown in the Second Report did not reveal any sensitive information about him, or the nature of his interactions with his family members.

### Consent

It was not in dispute that Mr Acklom’s consent was not obtained in connection with obtaining of these photographs. We therefore went on to consider whether the infringement of Mr Acklom’s legitimate expectation of privacy was warranted on the particular facts of this case.

### Warranted

The Code states that “warranted” means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations, or disclosing incompetence that affects the public.

Ofcom carefully balanced the comparative weight of Mr Acklom's right to privacy with regard to the obtaining of the photographs with the broadcaster's and audience's right to freedom of expression in the particular circumstances of the Second Report.

Ofcom recognised the importance of the broadcaster's right to freedom of expression in its selection of material to use in the Second Report, provided that it would not lead to an unwarranted infringement of an individual's privacy or otherwise be unlawful. We took into account the broadcaster's position that the family photographs were obtained to illustrate that Mr Acklom was leading an "outwardly respectable and blameless life in the community while evading justice in the UK". We acknowledged Mr Acklom's representations on Ofcom's Preliminary View that the photographs were taken in 2016, before he was the subject of a European Arrest Warrant and therefore the images were not taken while he was "on the run". However, we also took into account that the context in which the photographs were included in the Second Report was that the reporter was speculating that, as Mr Acklom's wife and children lived in Spain, he might agree to extradition to be near them or for "*another reason*" and included comments from a former senior detective of the Metropolitan Police that, given the level of criminality in Spain, it may be that he would receive a reduced sentence. Further, while we considered that Mr Acklom had a legitimate expectation of privacy regarding the obtaining of these photographs, this expectation was limited, as explained above.

Taking all of the above factors into account, Ofcom considered that, in these particular circumstances, the broadcaster's right to freedom of expression outweighed Mr Acklom's limited legitimate expectation of privacy in relation to the obtaining of his photographs without his consent.

Ofcom considered, therefore, that Mr Acklom's privacy was not unwarrantably infringed in connection with the obtaining of the material included in the Second Report in this respect.

- b) We next considered Mr Acklom's complaint that his privacy was unwarrantably infringed in the programmes as broadcast in that they both showed an image of him aboard a plane during his extradition to the UK, and that the Second Report included a number of "private family photos".

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

Practice 8.4: "Broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted".

Practice 8.6: "If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted".

### *Image of Mr Acklom inside a plane*

#### **Legitimate expectation of privacy**

Ofcom applied the test as set out in head a) above, as to whether a legitimate expectation of privacy arose in relation to the image of Mr Acklom aboard the plane being broadcast in the programmes. We took into account that Mr Acklom was shown in both programmes with his face unobscured, sitting in the general seating area of a plane, and in police custody during his extradition to the UK to face serious criminal charges. At the time of broadcast, Mr Acklom had been convicted of a number of charges and was “*currently in a Wiltshire prison*”, however, Ofcom did not consider that the fact that Mr Acklom had been convicted of criminal offences following his extradition removes all rights of privacy that he might reasonably expect. Specifically, Ofcom took the view that information which showed Mr Acklom’s presence aboard the plane was not otherwise likely to be in the public domain or known to a wide number of people at the time of broadcast, other than those people who might have witnessed his presence aboard the plane at the time.

As discussed at head a) above, we recognised that the broadcast of an image which showed a person during their extradition process is likely to be a sensitive situation for the person concerned. However, we considered that a legitimate expectation of privacy in footage relating to an arrest or a person in custody will depend on all the circumstances of a particular case. In this instance, the image revealed Mr Acklom’s appearance which, in our view, did not reveal any personal or sensitive information about him. This was particularly so, given that the complainant’s identity as a convicted criminal in relation to serious criminal offences, as well as the fact of his extradition to the UK, was in the public domain at the time the footage was broadcast. Further, the picture did not appear to show Mr Acklom in a particularly vulnerable state, nor did he appear visibly distressed or upset. We also recognised that Mr Acklom would have been visible to any member of the public who might have been present at the time the footage was obtained, although we appreciated that this was limited to the number of passengers and cabin crew who were present on the same flight.

In Ofcom’s view, and for the same reasons as outlined above at head a), Mr Acklom did not have a legitimate expectation of privacy with regards to the inclusion in the programmes of the image of him aboard the plane, and as such, his privacy was not unwarrantably infringed in the programmes as broadcast in this respect.

### *Family photographs*

#### **Legitimate expectation of privacy**

We had regard to the photographs which were included in the Second Report, as described at head a) above. Although there was little to suggest from the information included in the Second Report that Mr Acklom was, at the time the photographs were taken, doing something of a particularly private or sensitive nature, we took into account that Mr Acklom’s right to privacy under Article 8 of the ECHR also encompasses a right to a family life, and we recognised that the photographs captured Mr Acklom’s interactions with his close family members.

Taking these factors into account, Ofcom considered that Mr Acklom had a legitimate expectation of privacy in relation to the broadcast of his family photographs. Although we considered that this expectation was limited, given that the photographs showed Mr Acklom’s appearance, which, for

the reasons highlighted at head a) above, we did not consider constituted private or sensitive information about him.

### Consent

It was not in dispute that Mr Acklom's consent was not obtained in connection with the broadcast of his family photographs. We therefore went on to consider whether the infringement of Mr Acklom's legitimate expectation of privacy was warranted on the particular facts of this case.

### Warranted

Ofcom carefully balanced the comparative weight of Mr Acklom's right to privacy with regard to the broadcast of the photographs with the broadcaster's and audience's right to freedom of expression in the particular circumstances of the Second Report.

We took into account the broadcaster's position that the family photographs were used to illustrate that Mr Acklom was leading an outwardly respectable and blameless life in the community while evading justice in the UK. We acknowledged Mr Acklom's representations that the photographs were taken in 2016, before he was the subject of a European Arrest Warrant and not while he was "on the run". However, we also took into account that the context in which the photographs were included in the Second Report was that the reporter was speculating that as Mr Acklom's wife and children lived in Spain, he might agree to extradition to be near them or for "*another reason*" and included comments from a former senior detective of the Metropolitan police that, given the level of criminality in Spain, it may be that he would receive a reduced sentence.

As explained in relation to head a) above, we considered that Mr Acklom's legitimate expectation of privacy regarding his family photographs was a limited one as the photographs themselves revealed little information about Mr Acklom and his interactions with his family. We also considered that the programme makers took steps to ensure that Mr Acklom's family members were obscured in the photographs, meaning that the details of Mr Acklom's interactions with his family were not shown in the programme as broadcast, which we considered further limited the intrusion that the programme as broadcast would have had on Mr Acklom's rights to a private and family life.

Taking all of the above factors into account, Ofcom considered that, in the particular circumstances of this case, the broadcaster's right to freedom of expression outweighed Mr Acklom's legitimate expectation of privacy in relation to the broadcast of the photographs without his consent. We therefore considered that Mr Acklom's privacy was not unwarrantably infringed in the programme as broadcast in this respect.

**Ofcom has not upheld Mr Acklom's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programmes, and in the programmes as broadcast.**