

## Complaint by Mrs E made on behalf of Mr F about 999: What's Your Emergency

<b>Type of case</b>	Fairness and Privacy
<b>Outcome</b>	Not Upheld
<b>Service</b>	Channel 4
<b>Date &amp; time</b>	24 June 2019, 21:00
<b>Category</b>	Privacy
<b>Summary</b>	Ofcom has not upheld this complaint about 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 followed the work of Northamptonshire's emergency services and focused on the increase in knife crime, both in Northamptonshire and across the UK. Footage was included of the complainant's son, Mr F, being arrested for possession of a knife, his house being searched, and in the police station. Mrs E complained that her son's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.

Ofcom found that Mr F had a legitimate expectation of privacy in connection with the obtaining of material included in the programme. However, we found that it was reasonable for the broadcaster to consider that they had obtained consent for the filming of him and, in any case, his legitimate expectation of privacy did not outweigh the broadcaster's and audience's right to freedom of expression rights and the public interest in the filming. Therefore, in these particular circumstances, we considered that Mr F's privacy was not unwarrantably infringed in this regard.

Ofcom also considered that in relation to the broadcast of the footage of Mr F and his home, he also had a legitimate expectation of privacy in the programme as broadcast. However, we considered that his legitimate expectation of privacy did not outweigh the broadcaster's and audience's right to freedom of expression rights and the public interest in the broadcasting of the footage. Therefore, we

considered that Mr F's privacy was not unwarrantably infringed in the broadcast of the footage of him and his home included in the programme.

### Programme summary

On 24 June 2019, Channel 4 broadcast an episode of *999: What's Your Emergency?*, a television series that follows the work of Northamptonshire's emergency services. This episode focused on the increase in knife crime, both in Northamptonshire and across the country. It featured emergency calls and footage of the police attending incidents of knife crime.

The programme included a telephone call to emergency services from, "Graham", who was reporting an incident he had been involved in:

Graham: *"Hiya, I was in Aldi about 45 minutes ago at the ATM machine and somebody has just turned around, he's carrying a knife. And he started to chase me up towards the, up to where the security guard was, up where one of the, up the aisles, and somebody told me to report it 'cause it will be on CCTV."*

Operator: *Yeah, definitely.*

Graham: *He lifted up his jumper and you could see like, what looked like, the handle looked like a steak knife.*

Operator: *I'm gonna put it on a priority 'cause of what's happened".*

Two police officers, PC Rudkin and PC McKenna, were then shown visiting Graham at his home. Graham described what had happened (as set out in the telephone call above) and provided to the police officers a description of the weapon that the suspect possessed. In particular, he told the police officers that the suspect had said "he's gonna stab me" and that Graham had "backed off" as soon as he was shown the knife. Graham also explained that he had not met the person before, but had had a "conflict" with him on social media about money owed to his friend. Graham also said:

*"Yeah, yeah, yeah, there's been loads of stuff on Facebook about him threatening other people – 'I'm gonna have to do this, I'm gonna have to do that, stab you, stab your mum'".*

The police officers were then shown getting into a police car. As they drove to the suspect's house to arrest him, the police checked whether he had any "markers" against him. PC McKenna then said:

*"He has got numerous warning markers: violent [inaudible] disorder, weapons from 2017 where he's got two baseball bats and two baseballs, one of which is inside a sock. They are all just kept inside the front door. There's a samurai sword kept in the living room in a metal pole. Oh fuck".*

The narrator explained that because the suspect had multiple markers against him, the police officers had to wait for back-up before they could arrest him. The programme later explained that it took two

hours before back-up was available. Four police officers were then shown entering a block of flats. A police officer was shown knocking the front door and when it opened, PC McKenna said: *"It's the police, can we come and have a quick chat with you, mate?"*

Mr F was heard saying *"yeah"*, and as the police officers entered the property, PC McKenna said:

*"Following reports from a member of the public, I'm going to be placing you under arrest for a Section 4 Public Order offence on possession of a bladed article, ok? So, you do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.*

*I believe you may be in possession of a knife, so you've got to go in handcuffs till I've searched you and I'm satisfied that you've not got anything on you that could harm me or my colleagues. Do you understand that, ok?"*

Mr F was then shown with his face unobscured. He said: *"Yeah, but nobody's been stabbed"*. The following conversation took place between the police officers and Mr F:

PC McKenna: *"Ok, I didn't say anybody had been stabbed. I said on suspicion of possession of a bladed article.*

Mr F: *I haven't got anything mate...*

Police officer: *Just so you're aware, we're gonna search the address for a knife matching the description of one used earlier, ok. Do you understand that?*

Mr F: *This is a fucking joke man. I ain't even done anything".*

The police were shown searching Mr F's property. In a separate interview, PC Rudkin explained that he knew the knife he was looking for. Footage was then shown of a police officer holding a knife (not the knife described by Graham) and PC Rudkin said in a separate interview that there were *"absolutely loads of knives"* which included, for example, ornamental and hunting knives. Three knives of different lengths were then shown laid on a bed and one of the police officers said that he was satisfied they matched the description of the knife handle provided by Graham.

Mr F was shown in handcuffs and the following conversation took place between him, PC McKenna and another police officer:

Police officer: *"Who's triple six?*

Mr F: *Satan. 'Cause I'm a Satanist. That's my religion.*

Police officer: *Everyone's entitled to their own views and beliefs, aren't they?*

Mr F: *What is wrong with you man?*

PC McKenna: *Listen, the reason being that I think it's safe for us to go straight to custody.*

Mr F: *I don't want to be wearing these fucking flip flops".*

Mr F was then shown being escorted down the stairs by a police officer. Footage of a police station was shown, followed by footage of Mr F as he walked in to the police station with a police officer. Mr F said:

*"This is a fucking joke. And, I've got fucking flip flops with no fucking grips. And I've got to spend my evening here".*

Footage was then shown from a CCTV camera which filmed inside the police station and showed Mr F sitting down performing a rap song in the custody suite. PC Rudkin said in an interview with the programme makers:

*"I think he thinks that he is from the ghetto, talking to you as if he is some sort of gangster... Is this image of the gangster life because of the music that he's listened to, the rap that he's listened to, and the games that he's played?... Their perception of the world is that they carry weapons or knives or feel that they need protection, and this is what they need to do... But, to my knowledge he has no gangster links within the community or the county or anywhere else in the country, erm, and this is his belief that he's this big person involved in it when, I don't, he's not".*

Footage was shown of Mr F as he walked to the custody desk with PC Rudkin and another police officer. The following conversation then took place:

PC Rudkin: *"Hello Sergeant. I'm sure the Sarge is going to love your lyrical genius.*

Desk Sergeant: *What's the circumstances?*

PC Rudkin: *Erm, ok, so he has been identified being in Aldi on Rockingham Road at around quarter to three this afternoon, and there's an allegation that he has been threatening to stab another male within the store.*

Desk Sergeant: *Do you have any illnesses or injuries?*

Mr F: *I'm a crazy person, a mental patient.*

Desk Sergeant: *Have you been diagnosed with any mental health issues?*

Mr F: *Yeah.*

Desk Sergeant: *What you been diagnosed with?*

Mr F:           ADHD<sup>1</sup>.

Desk Sergeant: *Anything else?*

Mr F:           *Asperger's*".

Possessions, including a chain and a piece of black clothing, were shown being placed into a clear plastic bag. PC McKenna said in an interview with the programme makers:

*"It's worrying. This guy's extremely vulnerable. Vulnerable to the wonders of knives, or for the notoriety or just for the bravado of it. He comes into that, almost that rogue element of society of, you know, he's going to go out and do something silly one day which, when people look back on and review in a case review, there's probably more we could have done to help him".*

As footage was shown of possessions including a mobile phone, a wallet and a packet of cigarettes being placed on the counter by a police officer, Mr F said:

*"Do you know how many people hate you for having mental health, like?"*

PC Rudkin then said in an interview with the programme makers:

*"He's hugely vulnerable. I think that it is down to erm, his mental health, but the police can only do so much. This is down to the NHS and this is down to the other services, the GPs, to help these people. It's not all about the police. I can only do so much, can't I? He carried a knife, he's made a threat, somebody believed that they were, were in, were in fear of being hurt".*

As footage of Mr F's hands in handcuffs was shown, the sergeant asked whether Mr F had *"ever tried to harm yourself in the past?"* Mr F responded *"No"* and when probed further, he said:

*"No, I've never harmed myself. I just harm people that want to harm me, innit. 'Cause it's self-defence, innit".*

Mr F was shown being led to a cell. PC Rudkin said in an interview with the programme makers:

*"Criminalise him, what's it going to do? Erm, yeah, probably not a lot, for him. If anything, I think it'll probably support his ego and support his credibility of being a gangster because he's been into custody and he's carried a knife. Erm, but how else do you stop him?"*

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<sup>1</sup> Attention Deficit Hyperactivity Disorder.

At the end of the programme, footage was repeated of police officers entering Mr F's home and the narrator said:

*"The man who threatened someone over a message on Facebook was found guilty of a public order offence for his behaviour to the victim".*

Footage of Mr F at the police custody desk from earlier in the programme was repeated, Mr F said: *"I've never harmed myself, I've just harmed other people that want to harm me innit".*

The narrator said that Mr F had received a 12-week custodial sentence, suspended for 12 months.

No further footage of, or reference to, Mr F was included in the programme. Mr F was not named in the programme; however, his face was shown unobscured and his voice heard.

## **Summary of the complaint and broadcaster's response**

### **Complaint**

- a) Mrs E complained that her son's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because Mr F and the inside of his home were filmed without consent.
- b) Mrs E also complained that Mr F's privacy was unwarrantably infringed in the programme as broadcast because footage of Mr F and his home were included in the programme without consent. Mrs E also said that Mr F was shown in a distressed state and that the programme had revealed that he had Asperger's syndrome and ADHD. She added that the programme revealed where he lived and that, as a consequence, he had been harassed and targeted on social media all of which had had a detrimental impact on his mental health.  
Mrs E said that Mr F was a vulnerable person and that the broadcaster had not given this proper consideration when deciding to include him in the programme. In particular, Mrs E said that Mr F was under the care of mental health services, social services and his doctor, all of whom contacted the programme makers to say he should not be included in the programme because of the detrimental impact it would have on his health and wellbeing.

### **Broadcaster's response, including its response to further questions from Ofcom**

Channel 4 explained that the programme had the serious public service purpose of examining the workload of the emergency services and exposing the demands placed on them due to rising levels of crime. It said that the programme makers gained access to the Northamptonshire Police for a period of six weeks and the series was then edited over an eight-month period.

Channel 4 explained that the episode in question explored the prevalence of knife crime in the UK, which it said was an issue of huge public concern. It said that the episode made a valuable and timely contribution to the national debate around this important issue.

- a) Channel 4 said that Mr F gave ongoing informed consent to being filmed, and that he had capacity to give such consent. The broadcaster said that if this was denied and Mr F's privacy was infringed by such filming, that the infringement was warranted in the public interest.

In terms of how the programme makers sought to obtain Mr F's consent to the filming, Channel 4 explained that:

- Prior to meeting with Mr F, the programme makers understood from the police officers that Mr F was already known by the police and had recent previous convictions and warning markers on his record. The programme makers understood that Mr F had been considered fit to plead in relation to his previous convictions. On the basis of this background information, the programme makers took the view that Mr F was likelier than not to have capacity to consent.
- On 14 March 2019, the programme makers obtained Mr F's verbal consent while at his home with the police upon his arrest. Upon arrival at Mr F's home at 20:20, the police and filming team made Mr F aware of the presence and purpose of the cameras. The programme makers announced that they were following the work of the police for the purposes of a Channel 4 documentary. Once the programme makers confirmed that he understood and did not object, the filming crew entered Mr F's home and commenced filming. Approximately ten minutes later, once it was safe and appropriate to do so, the assistant producer explained again the purpose of the filming and Mr F acknowledged his understanding of the filming. Mr F appeared to be happy with the team's presence making comments such as, "smile for the camera" and stating he was "going on a Channel 4 documentary for crime". This indicated that he understood the reason for the filming. Mr F was courteous towards the programme makers for the duration of time they were in his home. At this point, the programme makers did not consider that there were any concerns about Mr F's capacity, and similarly the police officers did not raise any concerns about Mr F's capacity.
- Upon arrival in custody at approximately 21:00, Mr F continued to give verbal consent to be filmed. He showed a clear understanding of the premise and nature of the filming, for example he expressed that he would be "going on a Channel 4 documentary for crime". At 23:00 while Mr F was in his cell, the programme makers reiterated their presence and explained the purpose of the series in further detail. He agreed to be filmed and got excited about the prospect of being on TV. He gave the programme makers his telephone number so that they could contact him. The programme makers explained to him that any decision about whether footage would be included in the programme would be taken after filming had concluded and in light of the outcome of the criminal investigation, in accordance with standard practice.
- Upon his arrival at the station, Mr F disclosed his medical history to the custody sergeant, which was when the team first became aware of the specific nature of Mr F's medical conditions. The programme makers made "compliance notes" stating these medical conditions, namely that he had "mental health issues – ADHD, bi polar, Asperger syndrome". In order to consider Mr F's mental health and well-being, the programme makers took the opportunity to discuss Mr F's capacity to consent in relation to the filming with both Mr F's appropriate adult from The Appropriate Adult Service ("TAAS"), and with his solicitor. Both these parties were satisfied that Mr F was capable of providing full and informed consent and were supportive of the programme makers seeking written consent from Mr F, if he was

happy to provide it. Mr F's written consent was sought after this discussion, and he signed a release form.

- Following the filming, on 28 March 2019, the programme makers were contacted via text by Mrs E, who stated that Mr F wanted to "withdraw consent for participation". The programme makers informed Mrs E that they would contact Mr F directly, and said that this was the appropriate course of action given that Mr F: was 26 years old, living independently, had the ability to engage independently with the criminal justice procedure, and the programme makers had been informed by his appropriate adult and his solicitor that he had capacity to consent.
- The programme makers met with Mr F on 4 April 2019 and spoke about his life and experiences and about the programme and what participation would entail. Mr F explained that he was happy to give his consent, but that he was nervous about how he would come across in the programme. The programme makers asked if Mr F would like to provide a sit-down interview and he agreed, signing a second release form. The programme makers had talked through the release form at length explaining it before he signed. Having had four days to reflect on his decision, Mr F went on to film a retrospective formal interview which lasted just under three hours. Channel 4 said that because Mr F was prepared to give such an interview – and because he signed a second consent form in respect of it – this was indicative of the level of ongoing and informed consent that was both sought from him and provided by him throughout the filming process. Channel 4 also said that the programme makers were confident from this meeting that Mr F had demonstrated "a clear, rational and insightful understanding of the potential benefits, risks and future impact of doing a sit-down interview and taking part in an observational television programme of this nature".

Channel 4 provided Ofcom with a note of the consent discussions taken at the time Mr F was filmed in custody. Below are extracts from the note that we considered were relevant to Mr F's consent and his capacity to consent:

"23:00 SR [part of the filming team] spoke to [Mr F] in his cell. He agreed to be filmed and actually got excited about being on TV. Gave me his phone so we can contact him..."

"23:20 SR spoke to appropriate adult ... to ask for permission to film the interview on the rig [fixed automated cameras]. She says if the DP [Mr F] is happy to be filmed then she doesn't mind. She calls her manager to make sure the appropriate adult agency she works for are happy with the filming. They say to her – if the DP wants to be filmed they can't stop him".

Channel 4 also said the filming of Mr F in relation to his arrest and time in custody was at all times warranted in the public interest for the following reasons:



- The filming of Mr F and his home occurred only after the police had viewed CCTV footage of Mr F committing a crime and had sufficient evidence to arrest him. At no time was speculative filming undertaken. Prior to his arrest, it was made clear to the arresting officers that Mr F was known for prior offending. An officer was featured in the programme saying: *“He’s got numerous warning markers: violence, mental disorder, weapons from 2017 where he’s got two baseball bats and two baseballs, one of which is inside a sock. They are all just inside the front door. There’s a samurai sword kept in the living room in a metal pole...”*. The police were sufficiently worried about the warning markers (in particular, the fact that he had stored a number of weapons inside his home) that they waited for police back-up for two hours before attempting to make an arrest. Channel 4 said that these elements formed “vital knowledge for the police in determining how they would apprehend Mr F and, in informing and explaining Mr F’s behaviour, the factors were also an inherent part of the crime he committed”. Channel 4 said that it therefore became important for the programme makers to follow this discussion.
- Mr F’s prior engagement with the criminal justice procedure demonstrated that Mr F should have the capacity to provide informed consent to filming. The broadcaster said that this assessment was undertaken before filming occurred.
- The programme makers decided that attempting to film the work of the police arresting Mr F would satisfy three known examples of public interest, comprising: “exposing or detecting crime”, “protecting public health or safety” and “exposing dangerous or exploitative behaviour that could harm others”. Channel 4 said that best practice was followed on arrival at the property: as soon as the police had secured the situation, the programme makers reiterated to Mr F the reason and purpose for the filming.
- It was necessary and legitimate to film inside Mr F’s house in order to give a proper account of the police investigation, particularly after the police had been informed that Mr F kept weapons in his home. The filming within the house remained proportionate at all times. Filming was limited to covering the actions of the police which were relevant to Mr F’s crime, for example it showed the police locating several knives in the property.
- There was inherent public interest in examining how police services respond to individuals who commit crimes but who also struggle with behavioural or developmental disorders. Mr F made it known to the duty police sergeant that he suffered from ADHD and Asperger’s syndrome. The filming of Mr F’s time in custody illuminated a key social question: is criminalisation always the appropriate course of action in circumstances where individuals have committed crimes which may have been influenced by their disorders?

Channel 4 also said that, having spent more than six hours with Mr F at his home and in custody on the night of his arrest, and after thoroughly discussing his mental health and wellbeing with him, his appropriate adult, his solicitor and the police, the filming was carried out without causing him distress.

- b) Channel 4 relied on the arguments they had made under head a) above. Channel 4 said that after filming had concluded, Mr F himself did not withdraw his consent but instead, Mrs E contacted the programme makers to explain that Mr F wished to withdraw his consent to appear. Channel 4 said that it was surprising that such contact did not come from Mr F himself, considering the frequent and close contact he had with the filming team, and considering that his appropriate adult and solicitor felt he had the ability to make these types of decisions.

Channel 4 said that irrespective of whether or not Mr F had given his informed consent to the broadcast, any infringement of Mr F's privacy in the broadcast of the programme was clearly warranted in the public interest.

Channel 4 said that Mr F was found guilty on 7 June 2019 of a section 4 public order offence, comprising the use of threatening, abusive or insulting words or behaviour and was also found guilty of criminal damage. Channel 4 said that, at this point, Mr F's identity and the details of his crime became a matter of public record upon which Channel 4 was entitled to report. Channel 4 said that there was the utmost public interest in a broadcaster reporting on the outcome of a criminal investigation and examining the role of the police in that investigation, particularly in respect of an offence intertwined with the knife crime epidemic. It said that the broadcast of this information contributed to the national discourse around knife crime and served the public purpose of demonstrating that those who carry knives can be successfully prosecuted for their actions. Channel 4 also said that it took into account that this was not the first offence for which Mr F had been convicted.

Channel 4 said that Mr F's behavioural and developmental disorders were central to the crime he had committed and as a result, references to them had to be included in the programme to ensure a fair and accurate account of the incident. Channel 4 said that, as acknowledged by Mr F's GP, Mr F's medical conditions may have had a bearing on his criminal behaviour. The broadcaster said that identifying these conditions within the programme helped to contextualise and explain elements of Mr F's behaviour. It said that the resulting programme treated the audience fairly by providing an accurate account of the incident and the factors influencing it. Moreover, it said that the programme treated Mr F fairly by demonstrating that his crime was not entirely arbitrary or solely malevolent, but it was influenced by multiple factors, some of which may have been beyond his control.

Channel 4 said that Mr F's disorders were aired in open court, before the broadcast of the programme, by his own defence team in an attempt to mitigate his sentence, and therefore had become matters of public record. Channel 4 said that Mr F's defence team deliberately revealed that he had ADHD and Asperger's syndrome in order to demonstrate Mr F's potential vulnerability if a prison sentence was imposed. Channel 4 said that the magistrate also referred to Mr F's conditions during the hearing decision, noting that Mr F was deemed to have capacity to make his own decisions and was fully aware of the consequences of his crime. Channel 4 said that this information belonging to Mr F was now public and could not retain its private nature.

Channel 4 contended that it would be contrary to the principle of open justice, as well as contrary to Channel 4's right to freedom of expression, to restrict it from broadcasting information about

Mr F's mental wellbeing in circumstances where the same information had already been disclosed in open court and was being relied upon by Mr F as mitigation for the crime he had committed.

Channel 4 explained that the fact that Mr F was found to be 'fit to plead' in a court of law had a significant bearing on the decision to feature Mr F in the programme. Channel 4 said that he was found to be responsible for his actions and capable of making informed decisions and that no mental health related restrictions were put in place at his sentencing.

In respect of Mrs E's complaint that the programme revealed where Mr F lived and as a result led to Mr F being harassed and targeted on social media, Channel 4 said that Mr F's address was not revealed in the programme and Mrs E had produced no evidence of Mr F being harassed as a result of his address being revealed. Channel 4 also said that Mr F's surname, which was already in the public domain following his conviction, was omitted from the programme to minimise the likelihood that he would be discovered on social media. Channel 4 also said that Mr F had previously had acrimonious contact with the victim of his crime on social media and as revealed in the programme, this contact sparked Mr F to commit the crime featured in the programme for which he was convicted. Therefore, any targeting on social media was likely to be linked to Mr F's criminal behaviour rather than to any steps taken by the programme makers or Channel 4.

In respect of Mrs E's complaint that Mr F was a vulnerable person and the broadcaster did not give proper consideration to this when deciding to include him in the programme, Channel 4 said that careful steps were taken to continually assess Mr F's robustness and to account for any vulnerability both in the consent process and in the editing of the programme. For example:

- On 10 April 2019, the programme makers were contacted by a social worker from Northampton Social Services, who explained that Mrs E had contacted them to raise concerns about Mr F's contribution to the programme and whether he had capacity to consent at the time of the filming and whether he fully understood the consequences of being in the programme. As a result, the programme makers asked to meet with Mrs E to discuss the filming to date and to hear her concerns more fully. The programme makers spent two hours with Mrs E on 25 May 2019 listening to her concerns. The programme makers subsequently explained the nature and purpose of the series as well as the strong public interest in filming Mr F in relation to the serious allegation against him. The programme makers reassured Mrs E that Mr F had been a willing participant in the filming and that he had given his consent on an ongoing basis. Channel 4 said that following this explanation, Mrs E said that she felt reassured that the programme makers had sensitively taken Mr F's vulnerability into consideration before obtaining his consent and that she would leave it to Mr F to decide whether he would still like to appear in the programme. Channel 4 provided a note made by the programme makers of this meeting which indicated that the meeting concluded with Mrs E agreeing to speak to Mr F about the interview. It also said that the programme makers did not hear any further from Mrs E until she contacted them on 3 June 2019 to state that Mr F did not "give permission to appear".
- Channel 4 said that the programme makers also spoke to Mr F's GP on 18 June 2019 about the impact and potential risks of the broadcast of the programme on Mr F. Channel 4 said that the

GP explained that Mr F was a vulnerable patient and that she thought this might have affected his decision-making process in relation to the offence of which he was found guilty. Channel 4 said that the GP accepted that Mr F had been found guilty of the offence in a court of law after these concerns had been raised in his defence and were appropriately weighed by the Court. The programme makers said that “She [the GP] stated that she would not take a side and would support Mr F and his family around broadcast.” Following this conversation and with the knowledge that Mrs E had informed the broadcaster that Mr F wanted to withdraw his consent, the programme makers decided that it would not be appropriate to include Mr F’s formal interview in the programme.

Channel 4 said that the decision as to whether to include Mr F identifiably in the programme was referred to senior editorial level who considered: Mrs E’s concern about the effect of the broadcast on her son’s mental health; the conversations between the programme makers and Mr F’s GP; that Mr F had been convicted in open court of a serious crime, relating to threats of knife violence during a knife crime epidemic; that Mr F’s crime, his ADHD and his Asperger’s syndrome were now matters of public record; that Mr F’s learning and behavioural disorders were an important aspect of his crime and had affected police procedures as to how they had to deal with his offending; and that he had been found to be fit to plead. Channel 4 said that after taking all these factors into account, it decided that Mr F’s conviction and the nature and seriousness of his offence justified the inclusion of him in the programme, and that the relevance of Mr F’s mental health disorders justified references to them in the programme. It said that at a time where violent knife crime is rising, and police are increasingly burdened with trying to prevent it, Channel 4 decided that any infringement of Mr F’s privacy in broadcasting the programme was warranted in the public interest.

In response to further questions from Ofcom relating to information it had provided in its response (which is incorporated above) Channel 4 also provided Ofcom with certain documents, which are referred to in Ofcom’s decision, as relevant.

### **Preliminary View**

Ofcom’s Preliminary View was that the complaint should be not upheld. Both parties were given the opportunity to make representations on the Preliminary View. Mrs E, on behalf of Mr F, submitted representations which, insofar as they are relevant to the complaint entertained and considered by Ofcom, are summarised below.

Mrs E reiterated that Mr F is a vulnerable person and is unable to make decisions on his own, including those which relate to his own wellbeing. Mrs E also reiterated that following the broadcast of the programme, her son had been “tormented via email social media” and that he had also been verbally and physically attacked. Mrs E added that the broadcast of the programme had had a detrimental impact on Mr F’s mental health. Mrs E also submitted a letter of support from Mr F’s social worker, in which the social worker stated that she had reason to believe that Mr F did not understand the consequences of taking part in the programme and questioned whether he had the capacity to give his consent.

Channel 4 chose not to make representations on the Preliminary View. Channel 4 responded to some of the concerns raised by Mrs E in her representations, but as they did not relate to the complaint entertained, we did not consider them to be relevant to our adjudication on the complaint.

## Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from an 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 the decision in this case, we have carefully considered all the relevant material provided by both parties. This includes a recording of the programme as broadcast and transcript, the unedited footage and transcript, both parties' written submissions and supporting evidence, correspondence between the parties via text and email, a response from the broadcaster to our further questions and representations made by Mrs E on behalf of Mr F in response to the Preliminary View. After careful consideration of the representations, we considered that the points raised by Mrs E on behalf of Mr F did not materially affect the outcome of Ofcom's Preliminary View to not uphold the complaint.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression and of the audience to receive ideas and information without undue interference under Article 10 of the European Convention on Human Rights. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the [Ofcom Broadcasting Code](#) (the "Code"), which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

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

- a) Ofcom considered Mrs E's complaint that Mr F's privacy was unwarrantably infringed in connection with the obtaining of material in the programme as broadcast because Mr F and the inside of his home were filmed without consent.

Ofcom had regard to:

- Practice 8.5 which states that 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 8.21 which states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from: a parent, guardian or other person of eighteen or over in loco parentis; and wherever possible, the individual concerned; unless the subject matter is trivial or uncontroversial and the participation minor or it is warranted to proceed without consent; and
- Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

### *Legitimate expectation of privacy*

Ofcom first considered the extent to which Mr F had a legitimate expectation of privacy in the particular circumstances in which the material included in the programme had been 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 judged in light of the circumstances in which the individual concerned finds him or herself.

The broadcast and unedited footage showed that Mr F was filmed: being arrested by the police at his home for a public order offence involving suspected possession of a bladed article; while the police searched his home for the knife allegedly used in the incident; arriving at the police station and in the custody suite while he was awaiting processing and subsequently being processed by the custody sergeant and then in a cell; being interviewed by the police in respect of his alleged offence; and being released from custody accompanied by his appropriate adult. It is important to note that the fact that a person may be involved in criminal conduct does not mean that that person is necessarily deprived of a legitimate expectation of privacy in relation to his or her interaction with the police. As set out above, Ofcom will consider whether a legitimate expectation of privacy arises in connection with the obtaining of material included in a programme, in light of all the relevant circumstances in which the individual concerned is filmed and what footage and information was subsequently broadcast.

We first considered whether Mr F had a legitimate expectation of privacy in relation to the filming of his arrest and the police search of his home. We took into account that he was filmed being arrested and was therefore, in our view, filmed in a sensitive situation in which he might have been feeling unsettled and under pressure. We considered that Mr F may have been particularly vulnerable in the circumstances given his mental health conditions, which might have impacted on his ability to fully comprehend the situation at the time (as discussed further below). We also took into account that Mr F was aware of the camera crew and did not object to the filming or ask for it to be stopped, and it did not appear from the unedited or broadcast footage that Mr F was particularly distressed. The programme makers filmed inside Mr F's home, an environment where he would not ordinarily expect to be filmed without his consent, and the police search of his belongings, in particular of what appeared to be his bedroom where the police were searching for knives. We recognised that the footage filmed focused specifically on Mr F's interaction with the

police while he was being arrested and taken into custody, and the police's search of his home, and showed his personal reaction to these events. We also acknowledged that the footage included comments that he made to the police officers about what he characterised as his satanic beliefs, but did not reveal any other particularly private or sensitive information about his personal life. For example, while the unedited footage showed the police officers asking Mr F if he had any medical conditions, Mr F did not disclose any information about his medical conditions at this stage. Taking all of the above factors into account, we considered that Mr F had a legitimate expectation of privacy in relation to the filming of this material.

We next considered whether Mr F had a legitimate expectation of privacy in relation to the filming of him in custody in the police station and being interviewed. As recognised in Practice 8.8 of the Code, police stations are considered potentially sensitive places, and we consider that Mr F was filmed in a sensitive situation where someone may be feeling vulnerable. A person's involvement in police investigations is often not a matter of public record until a person has been charged with a criminal offence and in Ofcom's view, the arrest, processing at the police station and stay in custody of a person may be events of some sensitivity to them. We also took into account that Mr F has mental health conditions which might have meant that he was particularly vulnerable in the circumstances, as demonstrated by the fact that an appropriate adult had to be present before he could be interviewed by the police.

As with the filming inside his home, Mr F was filmed openly and was aware of the camera and did not appear to be distressed by the filming of him – for example, in the unedited footage he was shown rapping in front of the camera. The footage included Mr F discussing with the police details of his mental health conditions, how they affected him and what adjustments had been made in the past due to his mental health. We also took into account that Mr F made it clear in the unedited footage that he did not want the programme to include his medical conditions because he considered this to be sensitive information. We considered that the information about his mental health conditions and how he felt about them was highly personal and sensitive information which a person would not ordinarily expect to be obtained or disclosed without his or her express consent.

Taking all these factors into account, we considered that the material obtained throughout the filming, including at the point of arrest and during his time in custody, included very personal and sensitive information about his private life, and therefore, we considered that Mr F had a legitimate expectation of privacy in relation to the filming of this footage of him, and that this expectation was significant given the information filmed included references to his mental health conditions.

### *Consent*

Having established that Mr F had a legitimate expectation of privacy, we went on to assess whether the programme makers had secured his informed consent to the filming of him and his home.

As explained above, Mrs E has complained that Mr F was a vulnerable adult due to his mental health conditions. We also took into account Mrs E's further representations on this matter which

were made in response to the Preliminary View, and the letter from the social worker in which she expressed her opinion that Mr F would not have understood the consequences of the filming for him. During his booking at the police station, Mr F disclosed that he suffers from ADHD, bipolar disorder and Asperger's syndrome. Channel 4 had clarified in its representations that this was the first point at which the programme makers became aware of the specific nature of Mr F's medical conditions.

We recognise that a person's mental health is a factor that might result in them being a "vulnerable person", such that consent would usually need to be obtained under the Code from a parent, guardian or other person of eighteen or over in loco parentis. However, the fact that a person may have mental health problems does not necessarily mean that the person is unable to provide informed consent to contributing to a television programme and falls into the category of a "vulnerable person" as envisaged by the Code<sup>2</sup>. Ofcom will therefore assess whether, on the basis of the evidence before us, it appears that the broadcaster was able to secure informed consent in the particular circumstances of this case.

From the unedited footage, we observed that Mr F required the assistance of an appropriate adult before he was interviewed by the police, and the rights that had been read to him during processing were later reiterated in the presence of the appropriate adult when they arrived. In our view, it appeared that the police had assessed Mr F to be potentially vulnerable at least within the meaning of Code C of the Code of Practice for the detention, treatment and questioning of persons by Police Officers under the Police and Criminal Evidence Act 1984. The broadcast footage also included two police officers stating their view that Mr F was vulnerable as a result of his mental health. Although this did not necessarily mean that Mr F lacked capacity to provide his informed consent to the filming, we considered this should have indicated to the programme makers that Mr F was likely to be potentially vulnerable in the circumstances in which he was filmed, and special care needed to be taken to assess whether or not he was in the position to provide informed consent himself, or whether the informed consent of an appropriate adult would also be required in the circumstances.

We took into account Channel 4's submission that the programme makers had discussed Mr F's capacity to consent in relation to the filming with his solicitor and his appropriate adult and that both parties were "satisfied that Mr F was capable of providing full, informed consent" and were supportive of written consent being sought from Mr F. Channel 4 provided a note taken at the time of filming by the programme makers in relation to their discussion with Mr F's appropriate adult. This note indicated that the programme makers spoke to the appropriate adult to ask for permission to film the police interview on "the rig" i.e. the automated cameras set up in the police station. The appropriate adult had confirmed that, if Mr F was happy to be filmed then "she did not mind". The appropriate adult had also called her superior to check that they were happy for the filming and she was told that, "if [Mr F] wants to be filmed they can't stop him". In our view, this note did not indicate that the issue of Mr F's mental capacity was specifically discussed with the solicitor or the appropriate adult, nor did it necessarily indicate that both the solicitor and

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<sup>2</sup> The meaning of 'vulnerable people' "varies, but may include those with learning difficulties, those with mental health problems, the bereaved, people who have been traumatised or who are sick or terminally ill".



appropriate adult were “satisfied that Mr F was capable of providing full, informed consent” as the broadcaster has stated. However, the note did indicate that his appropriate adult had confirmed that she was content for Mr F’s police interview to be filmed, if he was happy to be filmed.

We also took into account Channel 4’s explanation that the programme makers took the view that Mr F was likelier than not to have capacity to consent to the filming given he was found fit to plead in relation to his previous convictions. We did not consider that a court’s assessment of Mr F’s fitness to plead was determinative of whether, in the particular circumstances in which he was filmed, he was capable of giving his informed consent to the filming. Any assessment undertaken for the purposes of Mr F’s trial and sentencing would have been focused specifically on questions of whether the defendant was capable of understanding the charges against him, entering a plea and participating in the proceedings, not whether he would necessarily have been capable of understanding the implications of participating in a television documentary and providing his informed consent to this. However, we recognised that this was one factor that Channel 4 could have reasonably taken into account when considering whether Mr F had capacity to consent to being filmed. We also took into account the further steps taken by Channel 4 when considering whether Mr F was likely to have capacity to consent.

On the evidence before us, it appeared that the appropriate adult did not raise any capacity issues or object to the filming, and Channel 4 also explained that the police officers did not raise any concerns about Mr F’s capacity either. We also took into account that, from the broadcast and unedited footage of Mr F, he appeared to understand the nature and purpose of the filming and that the footage was likely to be broadcast in a Channel 4 documentary, and he did not appear distressed or confused about the filming of him. Taking all of the above factors into account, based on the evidence before us, we considered that it was reasonable for the broadcaster to take the view that Mr F was capable of providing his informed consent to the filming of him, or to rely on the consent of his appropriate adult to the filming of him. It was therefore not necessary for Ofcom to reach a definitive view on whether Mr F was a “vulnerable person” within the meaning of the Code.

We therefore proceeded to assess whether the programme makers had sought and obtained Mr F’s informed consent to the filming of him. The Foreword to Section Eight (Privacy) of the Code sets out that where consent is referred to in Section Eight, it refers to ‘informed consent’ as set out in Practice 7.3 of the Code. Practice 7.3 sets out that individuals who are invited to make a contribution to a programme should normally, at an appropriate stage, be given sufficient information about (amongst other things): the nature and purpose of the programme; when (if known) and where the programme is likely to be first broadcast; the kind of contribution the individual is expected to make (for example, whether it will be live or pre-recorded, edited or unedited); the areas of questioning and, wherever possible, the nature of other likely contributions; and any changes to the programme that might affect their decision to contribute. Taking these measures is likely to result in any consent that is given being ‘informed’ consent (which, for the purposes of Rule 8.1 and the Code more generally means ‘consent’). We have considered the extent to which Channel 4 had taken steps to provide Mr F with the information set out above at each stage of the filming.

We observed in the unedited footage that, on arrival at Mr F's home, the programme makers explained they were filming for a Channel 4 documentary and that they would provide further details later on. We considered that it might not have been practicable to seek to provide Mr F with any further information at this stage, particularly given the need for the police to be able to go about their business in arresting Mr F and searching the property. Channel 4 further explained that, shortly after this, when it was appropriate and safe to do so, the assistant producer again explained (off-camera) the purpose of the filming to Mr F and that he appeared to acknowledge he had understood and did not object to this. We also took into account Channel 4's argument that Mr F appeared happy about the team's presence making comments such as "Smile for the camera". From the unedited footage, Mr F did not appear outwardly distressed by, and did not appear to object to, the filming of him, nor at any point did he ask it to be stopped. It appeared that he understood the purpose of the filming stating that he would be "going on a Channel 4 documentary of crime". We acknowledge that the question of whether a person is capable of giving consent to participate should not be based solely on whether or not they appear to be outwardly distressed or uncomfortable and should also involve consideration of whether a person is capable of understanding the potential implications for them of participating in a programme. In this case, we considered that given that Mr F was in the process of being arrested and his home searched, he might not have been focusing fully on the implications of the filming at the time, particularly taking account of his mental health conditions.

In relation to the filming of Mr F while in custody, the unedited footage showed him acknowledging that he was being filmed for a documentary on TV – for example, when asked for his address, he said "I don't wanna say it on the TV man" and later he stated that he was going to be on a documentary for crime. Channel 4 said that the programme makers spoke to Mr F later about the filming while he was in custody and they provided Mr F with a release form to sign. Ofcom reviewed the contents of the release form which was signed by Mr F. In our view, the description in the release form provided a clear indication of what the programme would be about i.e. that the programme "follows the works of Northamptonshire Police; from the emergency 999 phone calls, with the response teams on the ground, and in custody using handheld/rigged camera & microphones to observe and capture the police work". The form also explained that the programme makers were producing the documentary for transmission on Channel 4, and set out the contractual rights and obligations of the programme makers and broadcaster. The release form also stated that "the nature and subject matter of the Programme have been fully explained to me". Channel 4 also provided Ofcom with a note taken by the programme makers at the time the release form was signed, which read that the programme maker "spoke to [Mr F] in his cell. He agreed to be filmed and actually got excited about being on TV", and it noted that Mr F had given them his phone number so that they could contact him.

Channel 4 also provided a note, referred to above, taken at the time of the filming which recorded that Mr F's appropriate adult did not object to the filming of Mr F's interview, if he was happy to be filmed. Channel 4 also told Ofcom that Mr F's solicitor had also given his consent to the filming of his interview.

Therefore, taking all of the above circumstances into account, we were of the view that it was reasonable for the programme makers to consider that they had obtained Mr F's informed consent to the filming of him at an appropriate stage, or to rely on the consent of his appropriate adult to the filming of him.

### *Was the filming warranted?*

Having reached the view that it was reasonable for the programme makers to consider that they had obtained consent to the filming of him, it was not necessary for Ofcom to consider whether any infringement of his privacy was warranted. However, given there appeared to be a dispute of fact between the complainant and Channel 4 as to whether Mr F was capable of giving his informed consent to the filming, we considered, for completeness, whether any infringement of Mr F's privacy rights in relation to the filming of him was warranted in the circumstances.

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.

We took into account that Mr F had been filmed in a sensitive situation in which he was potentially vulnerable, and that the filming captured highly sensitive and personal information about Mr F's mental health conditions, which he made clear he did not wish to be broadcast on television. We also took into account Mrs E's submissions that Mr F was extremely vulnerable as a result of his mental health conditions when he was filmed.

Ofcom also took account of Channel 4's submissions that the filming was justified in the public interest. Channel 4 argued that filming the work of the police arresting Mr F was justified in the interests of "exposing or detecting crime", "protecting public health or safety", and "exposing dangerous or exploitative behaviour that could harm others". We also took account of Channel 4's submission that there was a particular public interest in examining how the police respond to people who commit crimes but may also be suffering with behavioural or developmental disorders or mental health conditions which may have contributed to their offending, and whether criminalisation was an appropriate response to such incidents. We acknowledge that there is a genuine public interest in programmes of this nature which follow police officers as they carry out their duties. We also acknowledged the public interest in conveying to viewers an understanding of the nature of police work and the kind of challenging situations police officers face, including where they have to deal with knife crime. We also considered there is a public interest in examining the way in which the police deal with suspects who may be potentially vulnerable on account of their developmental or behavioural conditions or mental health disorders, and how such conditions might influence an offender's conduct. In the particular circumstances of this case, we considered that there was a public interest justification in the filming of Mr F's arrest and detention in custody as it served as an illustration of the type of public order incidents involving knives which the police have to deal with, as well as an illustration of how the police deal with

potentially vulnerable people who may be affected by behavioural and/or mental health conditions.

Ofcom carefully balanced Mr F's rights to privacy with regards to the obtaining of the footage with the broadcaster's and audience's right to freedom of expression and the public interest in obtaining the footage of Mr F.

In weighing up the competing rights of the parties, we took into account Channel 4's submissions that the filming of Mr F and his home occurred only after the police had viewed CCTV of Mr F committing a crime and were satisfied that they had sufficient evidence to arrest him. We also took into account that Channel 4 said it was necessary and legitimate to film inside Mr F's house in order to give a proper account of the police investigation. We acknowledged that the filming was limited to showing actions of the police which were relevant to Mr F's alleged crime, for example by showing the work of the police in locating several knives in the property. Having reviewed the broadcast and unedited footage, we were of the view that the filming focused specifically on the police's interactions with Mr F as they went about their duties in arresting and processing him for a public order offence involving a knife, and it therefore appeared to Ofcom that the material had been obtained proportionately in all the circumstances and was relevant to the specific subject matter of the programme.

Having taken all the above factors into account, Ofcom considered that, on balance, the broadcaster's and audience's right to freedom of expression and the significant public interest in obtaining the footage of Mr F outweighed Mr F's legitimate expectation of privacy in relation to the filming of him in the circumstances of this case.

Therefore, Ofcom considered that there was no unwarranted infringement of Mr F's privacy in connection with the obtaining of material included in the programme.

- b) Ofcom next considered Mrs E's complaint that Mr F's privacy was unwarrantably infringed in the programme as broadcast because footage of Mr F and his home were included in the programme without consent.

We have 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 is warranted. We have also taken into account Practice 8.21 as described at head a) above.

#### *Legitimate expectation of privacy*

We first considered the extent to which Mr F had a legitimate expectation of privacy in relation to the broadcast of the footage of him included in the programme. We have applied the same objective test as set out in head a) above. As set out in the "Programme summary" above, the programme followed Mr F while being arrested in his home, while police searched his home and while in police custody. As explained in more detail in head a) above, the footage broadcast showed Mr F in a sensitive situation in which he might be feeling vulnerable and under pressure –

namely being arrested, his home being searched by the police and being detained in police custody.

We considered that Mr F was identifiable in the footage as broadcast – although he was not named in the programme, his face was shown unobscured and his voice was heard. We recognised that Mr F had been involved in an alleged crime and that he was subsequently convicted of a public order offence, which was a matter of public record. However, we considered this did not necessarily deprive him of a legitimate expectation of privacy in relation to the manner of his arrest and his processing at the police station, which was not information that was otherwise in the public domain and showed him in a sensitive situation.

While we recognised that the programme did not disclose that Mr F suffered from bipolar disorder, we took into account that the footage did disclose the fact that he suffered from Asperger's syndrome and ADHD. We considered this to be highly sensitive and personal information, particularly in light of the fact that Mr F had asked for this information not to be disclosed in the programme. We considered Channel 4's argument that Mr F could not reasonably expect to have a legitimate expectation of privacy in relation to this information about his mental health conditions, given that Mr F's own defence team had disclosed information about Mr F's medical conditions in open court, and they were, in Channel 4's view, a matter of public record. We are of the view that there is a material difference between information being discussed in open court during sentencing, and broadcasting this information on national television to a significantly wider audience. In addition, this information was disclosed during filming of a specific interaction between Mr F and the police while he was detained in custody, which were not circumstances that would otherwise have become public. We did not agree that Mr F was therefore deprived of a legitimate expectation of privacy in relation to this highly personal and sensitive information, albeit his expectation may be somewhat reduced in the circumstances.

We also took into account Mrs E's submission that the programme had identified the location of Mr F's home. While the area the police were working in was named as Corby in the footage and the front of Mr F's apartment was briefly shown, we considered that it was unlikely anyone could identify the precise location of the complainant's home, except potentially by someone who already knew his address. We recognised that while the footage showed the inside of Mr F's private home while the police searched it for evidence of a knife used in the alleged offence, it did not reveal anything particularly personal about him, but rather focused on the police search and the potential weapons the police had found in his home.

Overall, we considered that the footage included in the programme included very personal and sensitive information about Mr F's private life and, as such, he had a legitimate expectation of privacy in relation to the broadcast of this footage. We considered that this expectation was significant in relation to the information about his mental conditions, albeit somewhat reduced by the fact that information about these conditions had been put into the public domain during the criminal proceedings against him.

## *Consent*

We next considered whether informed consent was obtained in relation to the broadcast, having regard to Practice 8.21 of the Code. As explained in head a) above, we considered that, in light of Mr F's mental health conditions, Mr F was likely to be potentially vulnerable in the circumstances in which he was filmed, and special care needed to be taken to assess whether or not he was able to provide informed consent himself to featuring in the programme or whether the informed consent of an appropriate adult would also be required in the circumstances. In light of this, we considered whether, on the basis of the evidence before us, it appeared that the broadcaster was able to secure informed consent in the particular circumstances of the case.

For the reasons set out in head a) above, and although we acknowledged there was a dispute of fact about Mr F's ability to provide his informed consent, we considered that it was reasonable for the broadcaster to take the view that Mr F was capable of providing his informed consent to the filming of the footage of him during his arrest and detention in custody, or to rely on the consent of his appropriate adult to the filming of him. We also considered it was reasonable for the broadcaster to consider that it had secured Mr F's informed consent to the filming of him at the point he signed the release form while he was in custody, given the information provided by his appropriate adult. We also took into account that following the initial filming of Mr F, the programme makers had subsequently met with Mr F on 4 April 2019, during which he agreed to film an interview with them and signed a second release form, and shortly afterwards this interview was filmed. Based on this, we considered that it may have been reasonable for the broadcaster to conclude that at this point in time, Mr F was comfortable with participating in the programme and had provided his informed consent to do so.

However, we also had regard to Practice 8.6 which states that if the broadcast of a programme would infringe the privacy of a person, broadcasters should also obtain consent before the material is broadcast. In this regard, we took account of the fact that Mr F suffers from mental health conditions which might have impacted on his ability to fully appreciate the implications of agreeing to feature in the programme. In this context, we acknowledged that Mr F's social worker subsequently raised concerns with the broadcaster about whether Mr F had capacity to consent at the time of the filming and whether he understood fully the consequences of being in the programme, and his social worker had provided a letter to Ofcom also expressing this view, and his GP later also informed the programme makers that Mr F was a vulnerable patient and she had concerns about the impact of the broadcast on Mr F. We also took into account the further representations made by Mrs E on this matter in response to the Preliminary View.

We took into account Channel 4's submission that it took careful steps to continually assess Mr F's robustness and vulnerability both in the consent process and in the editorial preparation of the programme. Channel 4 told us that following the concerns raised by the social worker, the programme makers met with Mrs E on 24 May 2019 to discuss the nature and purpose of the programme and Mr F's participation in it and that following this explanation, Mrs E had said that "she felt reassured that [the programme makers] had sensitively taken Mr F's vulnerability into consideration before obtaining his consent...". According to the brief meeting notes given to Ofcom by Channel 4, the programme makers discussed the programme and Mr F's consent, and

Mrs E agreed to speak to Mr F about his interview being included in the programme. We also understood from the log of correspondence between the programme makers and the complainant that they provided to Ofcom, that following this meeting, on 3 June 2019, Mrs E contacted the programme makers to explain that she had talked to her son several times and told them that Mr F “does not give permission to appear on the programme”. She then sent a number of further messages to the programme makers on 3 June 2019, 19 June 2019 and 20 June 2019, in which she reiterated her request not to feature Mr F on the programme and highlighted her concerns that including Mr F in the programme would be detrimental to his mental health. In addition, after being informed by the programme makers that they intended to feature him in the programme, on 21 June 2019, Mrs E asked them: “Could you at least blur out his face when it goes on air as the backlash from him on TV is going to cause him and his family immense problems”.

We took into account that following these interactions with Mrs E, the programme makers decided not to include the interview they had filmed with Mr F in the programme. We also took into account Channel 4’s comment that Mr F himself did not withdraw his consent to be identified in the programme as broadcast. However, based on the evidence before us, it appeared that Mrs E contacted the programme makers several times during June 2019 to make clear to the programme makers, on behalf of Mr F, that he had withdrawn his consent to feature in the programme, and that Mrs E had also requested that they obscure his identity if he was to be featured. It also appeared to Ofcom that Channel 4 and the programme makers accepted that Mrs E was acting on Mr F’s behalf in relation to this. For example, the broadcaster had sent a letter to Mrs E on 21 June 2019 explaining that it had decided to remove Mr F’s interview from the programme after being notified by Mrs E of his desire to withdraw his consent for the interview to be included.

In addition, we took into account that, at least twice in the unedited footage, Mr F made it very clear that he did not want his mental health conditions to be included in the programme as broadcast: once he had disclosed his medical conditions to the custody sergeant, he stated that, “this better not go on TV man, I don’t want people thinking I’m a basket case man”; and further stated “...I want my mental health conditions and my address cut up [out], cause you get discriminated”.

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 this particular case, we took into account that there had not been a significant change to the nature of the programme from that described to Mr F at the point he signed the initial release form consenting to the footage they filmed of his arrest and detention featuring in the programme. However, Mrs E made clear repeatedly to the programme makers that Mr F no longer gave his permission to feature in the programme. Additionally, Mr F was likely vulnerable and in a sensitive situation at the time of filming and might not have fully appreciated the impact the broadcast would have on him at the time he signed the initial release form. We also took into account that Mrs E told the programme makers on several occasions that appearing in the programme would be detrimental to Mr F’s mental health, and we understood that Mr F’s GP had raised similar concerns about the potential impact of the

programme on him, albeit she had told the programme makers that it was ultimately for the family to decide what to do.

Having carefully considered all the specific factors set out above, Ofcom did not consider that the broadcaster could reasonably rely on the initial release form, or the second release form signed by Mr F, as demonstrating that he continued to give his informed consent to being included in the programme. In particular, we did not consider that the broadcaster could rely on these release forms as demonstrating that he had consented to the inclusion of highly personal and sensitive information about his mental health conditions in the programme as broadcast, taking into account his explicit statements that he did not wish for these conditions to be referred to in the 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.

### *Was the broadcast warranted?*

Ofcom has carefully balanced Mr F's right to privacy with regards to the inclusion of the relevant footage of him in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference.

We took into account that the programme showed Mr F in a sensitive situation, namely; being arrested; his home being searched; being detained in police custody; and disclosing highly personal and sensitive information about his mental health conditions specifically that he has ADHD and Asperger's syndrome. Additionally, he was identifiable. For the reasons set out above, we considered this was information in relation to which Mr F had a significant legitimate expectation of privacy, albeit somewhat reduced in the circumstances given details of these conditions had been disclosed in open court during the criminal proceedings.

We considered Channel 4's argument that it was warranted to include this specific information in the programme as it served to provide an accurate representation of the incident for which Mr F was arrested and ultimately convicted. We also took into account Channel 4's argument that it would have been entitled to publish this information if reporting on the court proceedings in accordance with the principle of open justice, and it would be contrary to its right to freedom of expression if it was unable to subsequently include this information in the programme. While we recognise the importance of open justice and Channel 4's right to freedom of expression in relation to the reporting of information about criminal proceedings, we consider that there is a material difference between information being discussed in open court during a trial or sentencing and broadcasting this information on national television to a significantly wider audience. In addition, this information was disclosed during filming of a specific interaction between Mr F and the police while he was detained in custody, which were not circumstances that would otherwise have become public.

We also took into account that Mrs E had expressed concerns that the broadcast would be detrimental to Mr F's mental health. Mrs E has also complained, and reiterated in her response to the Preliminary View, that since being included in the programme, "any time [Mr F] has gone out...he is verbally attacked, ridiculed and has been assaulted...", and has said that Mr F "is now suffering from bad anxiety and depression as a direct impact of the broadcasting". It is not



possible for Ofcom to ascertain the extent to which any negative reaction to him from others or any deterioration in Mr F's mental health has been triggered by the broadcast itself. In particular, information about his offence would have already been in the public domain, and Mr F and his alleged victim were already known to each other through social media before the alleged incident happened. In addition, we understand that Mr F might have been experiencing a worsening of his mental health as a result of the stress of the court case. However, we recognised that the broadcast of the footage of him might have exacerbated any potential negative reaction from others, or contributed to a potential worsening of his health conditions.

In weighing up the competing rights of the parties, we also considered carefully Channel 4's arguments as to why the inclusion of the footage of Mr F in the programme was justified in the public interest. We took into account Channel 4's submission that it only took the decision to broadcast after Mr F had been convicted in open court of a public order offence, relating to threats of knife violence, and the details of his crime became a matter of public record. We also took into account Channel 4's submission that Mr F's conviction and the nature and seriousness of his offence justified the inclusion of the footage of him in the programme, and the relevance of Mr F's disorders to his behaviour and convictions justified reference to these in the programme. As explained at head a) above, we acknowledge that there is a genuine public interest in programmes of this nature which follow police officers as they carry out their duties and convey to viewers an understanding of the nature of police work and the kind of challenging situations police officers face, including where they have to deal with knife crime. We also considered there is a public interest in examining the way in which the police deal with suspects who may be potentially vulnerable on account of their developmental or behavioural conditions or mental health disorders, and how such conditions might influence an offender's conduct. In the particular circumstances of this case, we considered that there was a significant public interest justification in inclusion of footage of Mr F's arrest and detention in custody, as it served as an illustration of the type of public order incidents involving knives which the police have to deal with, as well as an illustration of how the police deal with potentially vulnerable people who may be suffering from mental health conditions.

Taking all the relevant factors set out above into account and having carefully weighed the competing rights of the parties, Ofcom considered that, on balance, the broadcaster's and audience's right to freedom of expression and the public interest in broadcasting the footage of Mr F in the circumstances of this particular case outweighed Mr F's legitimate expectation of privacy in relation to its broadcast. Therefore, we considered that Mr F's privacy was not unwarrantably infringed in the programme as broadcast.

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