

Complaint by Mr Keiron Watkins, made on his behalf by Breydons Solicitors Ltd about *The Abused*

Type of case	Fairness and Privacy
Outcome	Not Upheld
Service	Channel 5
Date & time	20 February 2019, 21:00
Category	Privacy
Summary	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.

Introduction

The programme followed the stories of two victims of domestic abuse, one of whom was the wife of the complainant, Mr Watkins. The programme included footage of Mr Watkins being interviewed under caution by police after he had been arrested for abusing his wife. Breydons Solicitors Limited (“Breydons Solicitors”) complained that Mr Watkins’ privacy was unwarrantably infringed in both the obtaining and subsequent broadcast of this footage included in the programme.

Ofcom found that Mr Watkins had a legitimate expectation of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast. However, on balance, Ofcom considered that his legitimate expectation of privacy did not outweigh the broadcaster’s and audience’s right to freedom of expression and the public interest in the particular circumstances of this case. Mr Watkins’ privacy, therefore, was not unwarrantably infringed in either the obtaining of the footage or the broadcast of the programme.

Programme summary

On 20 February 2019, Channel 5 broadcast a documentary programme called *The Abused*. The programme followed the stories of two victims of domestic abuse: “Hazel” and “Kelly” (the complainant’s wife).

The programme opened with the captions:

"Police are called to a domestic abuse incident every thirty seconds.

In Britain two women are murdered every week by their partners.

Kelly and Hazel are attacked. In the same week in April.

This is their story".

The captions were interspersed with footage of the police attending emergency call outs to Hazel's and Kelly's homes. Footage of Kelly being interviewed by the police was shown. A police officer asked Kelly: *"What do you think he [Mr Watkins] would do to you?"* to which she responded: *"He'd kill me, he's already told me he would...you can see it in his face, he wouldn't stop".*

Later in the programme, a call from Kelly to the emergency services was played in which she told the police: *"...my husband's got a history of domestic abuse that I haven't reported, I've kind of lied to you. But, he's threatening to take my jaw off...He wants my jaw wired up...He's now taken my son".* Kelly could then be heard shouting at Mr Watkins: *"What, five months abusing me?"* and *"Stay away from me"* repeatedly, before she could be heard screaming.

Following a programme break, captions read:

"Often it takes multiple call outs before victims are ready to report domestic abuse.

This is not the first time police have been called to Kelly's house".

A recording of a phone call to emergency services was then played with a woman saying:

"...there's a brawl going on and he's beating the shit out of the girl in there and they've got a little baby as well".

A caption read:

"11 weeks earlier".

Footage of the police speaking to Kelly in her home was shown in which the police asked her where Mr Watkins was, and she told them that he had gone for a walk. Kelly was shown visibly upset and when the police asked what had happened, Kelly told them: *"Nothing happened"*. One of the police officers commented: *"You're petrified"* as they tried to get Kelly to tell them what had happened.

In an interview with the programme makers, Kelly said that one of the reasons she could not tell the police what had happened, as shown in the footage described above, was because she was concerned that her son would be taken away from her. Kelly said:

"...he [Mr Watkins] came home and beat the shit out of me, he just continued to punch me in the face. I had Reggie [her son] in my arms and I put him down and then he strangled me and all I could do was look at my little boy, and then he let go, and then he called his brother to

come pick Reggie up, so that I could go 'dig myself my grave' [Kelly made quote mark gestures with her fingers], and he was actually going to do it, and I still lied to the police, and I still took him back, and it was the worst mistake of my life taking him back".

A caption then read:

"11 weeks later. Kelly's finally ready to talk to the police".

Footage was shown of Kelly speaking to the police in her home. She told the police that Mr Watkins had been abusing her and that she had lied to them about it. She also confirmed to the police that Mr Watkins had threatened to break her jaw that day, before Kelly went to the police station to be interviewed. Some footage of Kelly's interview was included in the programme in which she told the police: *"...my husband's been abusing me both physically and emotionally"*. Kelly then gave details of the abuse she said Mr Watkins had inflicted on her. The same footage that was included in the introduction to the programme was shown again. A police officer then asked Kelly what she thought Mr Watkins would do to her, Kelly responded: *"He'd kill me, he's already told me he would...you can see it in his face, he wouldn't stop"*.

A caption read:

"Despite a large scale search police are unable to locate Keiron Watkins".

A police officer explained that Kelly had been offered refuge, but she had refused. He said that:

"The most dangerous time for the victim is when they make that decision to leave. Until we get him locked up, she is unfortunately at very high risk".

Footage of Kelly back at home demonstrating the various security systems that had been put in place by the police was shown. Kelly explained that she did not want to give up her house.

Later in the programme, Kelly was shown explaining that her son's room was the only place that she felt safe as it was the only room that her husband had not attacked her in. Kelly further described the abuse she had suffered from her husband.

A caption read:

"Three days after Kelly reports her abuse Keiron Watkins is arrested".

Footage of Mr Watkins being interviewed by the police was then shown:

Police officer: *"Have you ever assaulted her?"*

Mr Watkins: *No, I haven't.*

Police officer: *Have you ever punched her, kicked her?"*

Mr Watkins: *No, I haven't. No.*

Police officer: *Are you an angry bloke?"*

*Issue 419 of Ofcom's Broadcast and On Demand Bulletin
25 January 2021*

Mr Watkins: *No. You know.*

Police officer: *No? Are you controlling in a relationship?*

Mr Watkins: *No. Not being funny, I'm not that way. You know.*

Police officer: *She says that you'll often stand behind her and tell her what you're going to do to her to the point at which she's physically sick.*

Mr Watkins: *No, not at all.*

Police officer: *Things like, you're going to smash her face in, you call her a whore, a shit mother, and that you're going to make her face unrecognisable.*

Mr Watkins: *No, not at all. At the end of the day, I wouldn't do any of that, and as for the mother comments, she's not, you know, she's a good mum. Not being funny, if all these things have happened, why was she still living with me, why was I still there, why was she still having sex with me, why were we still together, still doing things as a family? You know, if I was purely this abusive, why was I still there?"*

Interview footage of Kelly speaking to the programme makers was also shown of her explaining how she had met Mr Watkins and what she described as his controlling behaviour. A police officer then talked about the kind of behaviour that constituted domestic abuse.

Captions read:

"Keiron Watkins denies all charges.

He is released under investigation with conditions not to contact Kelly".

Footage was then shown of Kelly looking at her phone and saying that she had received 230 calls in the space of six hours from Mr Watkins. She said that Mr Watkins had also set up fake social media profiles and had sent messages to her. Kelly read out one of the messages:

"Wow Kel, not even one message, clearly this little act is running deeper than I thought. You started this legal shit storm, so believe me, I can bury you just as deep".

A recording of Kelly calling the emergency services was then played, in which Kelly told the police that Mr Watkins had been outside her house. The police were shown at Kelly's house as she told the programme makers that a restraining order was not going to stop Mr Watkins.

Later in the programme, Kelly was heard telling the programme makers: *"It started off as calls, texts, and it escalated to stalking and threats".* Kelly was shown walking down the street saying that she was scared all the time.

A caption read:

"It's three days since Kelly saw Keiron Watkins outside her house".

Kelly said that Mr Watkins had followed her on her way to her mother's house. Kelly was shown calling the police and was heard telling Mr Watkins to stay away. She told the programme makers that she had thought that Mr Watkins was going to take his motorbike helmet off and hit her with it. Kelly was heard telling the police that Mr Watkins had threatened to burn her house down.

A caption said:

"As Keiron has broken his bail conditions there's another warrant out for his arrest".

A police officer told the programme makers:

"Keiron, we've been dealing with for quite a few years. He's jealous, possessive, controlling, all the hallmarks there, there's been instances of assault. He doesn't like police, he won't stop for us, whether he's driving or whether he's running, he will always go away from us".

A caption read:

"30 miles away a van has been spotted without insurance and it's refusing to stop".

The police were then shown chasing Mr Watkins in the van. Mr Watkins was shown driving erratically, driving across a field where the vehicle eventually tipped over. Mr Watkins was shown getting out and running away from the police before being apprehended. A police officer explained that Mr Watkins was wanted for 12 offences. Brief footage was then shown of Mr Watkins confirming his name to police in interview.

After a programme break, Kelly was shown reading a letter from the police, she said:

"He pled guilty to: using threatening, abusive, insulting words; behaviour to cause harassment and alarm and distress; and driving whilst disqualified. Apparently, he's got a total of seven weeks in prison, so that's good, disqualified from holding or obtaining a driving licence for nine months, and a restraining order..."

A caption read:

"While Keiron Watkins serves his initial sentence the police are building the case for control and coercion charges".

A police officer said:

"The problem with domestic abuse is that it tends to be one person's word against another, so you've got very little evidence, very little witnesses, and, it also happens over a prolonged period. Quite often it might start off with the odd comment and to becoming [sic] like a daily routine, like it did for Kelly".

The police officer was shown analysing the footage of previous interviews with Kelly and phone records for evidence. The police officer said: *"It's textbook domestic abuse"*.

Footage was then shown of Kelly at home with her son. She said: *"He'd say that if you call the police, you'd be dead before the police got there"*. She also said that she had felt cut off from her friends and family, and that she had taken a drug overdose because she had just wanted to sleep.

A caption read:

"A week later Keiron Watkins is charged with control and coercion, harassment and two assaults".

Kelly was shown speaking to a police officer. She said that if Mr Watkins was not found guilty:

"...I may as well be dead myself, I may as well just go top myself, because he's going to do it...you know he would. He's not a nice guy...I don't think it would be in anyone's best interests if he was on the streets...".

The police officer explained that they were working to have Mr Watkins appear in court before being released, she said: *"We don't want him coming out"*.

Later in the programme, a caption read:

"After three weeks in prison, Keiron Watkins is granted an early release due to good behaviour".

Police officers were shown discussing the fact that Mr Watkins would be released without any bail conditions being set on him between his release date and his court appearance. The police were shown speaking to Kelly about Mr Watkins' release and making security arrangements.

Kelly said that she thought that Mr Watkins would come straight to their house on being released.

Captions were shown which read:

"It's the day of Keiron Watkins' release from prison."

"His court appearance for domestic abuse is not for another two weeks".

Kelly said that Mr Watkins had been released and so she was going to go and stay with her mother.

Later in the programme, a caption read:

"It's been three days since Keiron Watkins was released from prison".

Kelly said that Mr Watkins would find a way to contact her.

A caption read:

"Two days later".

An audio recording of Kelly calling the emergency services was then played. She said that Mr Watkins had just driven past her on his motorbike. Kelly was then shown speaking to the police about the incident.

A caption read:

"Two and a half hours later".

Another audio recording of Kelly calling the emergency services for the second time that day was played. She said that Mr Watkins was riding his motorbike outside her house. The police were shown speaking to Kelly again at her house.

A caption read:

"At his next probation meeting Keiron Watkins is arrested for witness intimidation".

Footage of Mr Watkins being interviewed by the police was then shown:

Police officer: *"Kelly has said that on the 27th of June, that she's heard a motorbike doing burnouts around the area of where she lives, was that you?"*

Mr Watkins: *No, it wasn't.*

Police officer: *Okay.*

Mr Watkins: *I haven't got a motorcycle. And, another thing, I wasn't in Norwich, I've daily reporting at probation in Lowestoft, so, not being funny, I'm trying to do everything properly, you know, with everything that's happened between me and Kelly, you know, it was, well, inevitable that she'd try something, but I didn't think it would go to this extent, and I can only guess that it's another thing to stop me seeing my son".*

A caption read:

"Keiron Watkins is released again due to lack of evidence".

Kelly was then shown speaking to the programme makers. She said that she did not feel safe and that it was not fair that she had to rely on carrying a *"panic button"*. She said that she was speaking to a solicitor about getting custody of her son, and said that Mr Watkins did not *"deserve"* Reggie after he had assaulted her in front of him. Kelly said that Reggie's development had been delayed from what he had experienced at home.

Later in the programme, captions read:

"It's the day of Keiron Watkins' plea hearing.

4pm".

Kelly explained that Mr Watkins had not appeared at court. She said that he had posted a photograph of Reggie on social media and said that:

*Issue 419 of Ofcom's Broadcast and On Demand Bulletin
25 January 2021*

"...Mark my words, I'll be seeing my boy whether anybody likes it or not".

Kelly spoke further about the abuse Mr Watkins had inflicted on her. She said:

"Here's where he beat my face to a pulp. He's also strangled me quite a lot in this room".

A caption read:

"After a month on the run, Keiron Watkins is arrested and put on remand until his plea hearing".

The programme makers asked Kelly:

"How would you describe domestic abuse?"

Kelly responded:

"It's not always physical, it can be sexual, but it's also emotional. It could be calling you a name, it could be just saying things to put you down. It's controlling money, it's controlling friends, it's controlling who you can speak to, who you feel you can speak to as well. You feel like you have no one and it's horrible".

Kelly was then asked what her advice would be to other women in a similar situation. She said: *"Just, get out. They need a little bit of encouragement, they need someone to show that they can do it, and if I could do it, anyone could do it".*

The programme ended with the following captions:

"Keiron Watkins pleads guilty to control and coercion which includes harassment and two assaults.

He is sentenced to 18 months with an ongoing restraining order not to contact Kelly.

Last year an estimated two million adults were subjected to domestic abuse in Britain.

The real figure is likely to be much higher".

No further footage of, or reference to, Mr Watkins was included in the programme. Mr Watkins' was named in the programme and he was shown unobscured in the footage.

Summary of the complaint and broadcaster's response

Complaint

- a) Breydons Solicitors complained that Mr Watkins' privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because police recordings of interviews with Mr Watkins were provided to the programme makers without consent.

- b) Breydons Solicitors also complained that Mr Watkins' privacy was unwarrantably infringed in the programme as broadcast because police recordings of interviews with Mr Watkins were included in the programme without consent.

Broadcaster's response

Background

Channel 5 said that it is not the law in the United Kingdom that people have a right not to be on television, nor is it the law that footage or photographs of persons cannot be taken and then broadcast without their consent. It said that what matters in every case is whether or not rights are being infringed, and, if they are, whether there are good reasons for those rights to be infringed. Channel 5 said that this requires the balancing of the rights of privacy against the right to freely broadcast matters of public interest.

In support of its position, Channel 5 referred to various judgments from the European Court of Human Rights¹. It said that these established the factors that must be considered when conducting the balancing exercise between the competing Article 8 and Article 10 rights under the European Convention on Human Rights (i.e. the right to respect for private and family life and the right to freedom of expression). Channel 5 said that the decisive question is whether the information is capable of contributing to a debate of general interest.

It said that the broadcast of the sections of the programme concerning Mr Watkins were clearly capable of contributing to a debate of public interest, namely: the prevalence of domestic abuse in the UK; the nature of domestic abuse and (at the time of the broadcast of the programme) the relatively new offence of control and coercion; the effect it has on survivors; the difficulties faced by police and other agencies in investigating the crime; gathering the evidence for a crime that is usually one person's word against the other's; protecting the survivors while evidence is gathered; the bravery of the survivors to see the case through and to face their abusers in court and the existence; and use of Clare's Law². It said that where, as in this case, the subject matter of a broadcast contains information which is of public interest, and the broadcast of the material is capable of contributing to a debate of general interest, this should be accorded significant weight when conducting the balancing exercise. It added that that form of the expression was also protected under Article 10.

Channel 5 said that as such, the balancing equation must be between the "heavily-weighted" public interest in broadcasting the programme, including the margin of appreciation to obtain and include footage of Mr Watkins, and such Article 8 rights, if any, as might arise in relation to the footage.

Channel 5 further argued that Article 8 conferred a right to "respect" for privacy rather than an absolute right³ and it was neither possible nor desirable to seek to give individuals complete

¹ Grand Chamber cases of *Von Hannover v Germany (No2)* [2012] ECHR 228; *Axel Springer v Germany* [2012] EMLR; and, *Couderc v France* [2015] ECHR 992.

² 'Clare's law' refers to the Domestic Violence Disclosure Scheme (introduced across England and Wales in March 2014). It allows a person (or concerned family or friends) to request information from the police as to whether their partner has a previous history of domestic violence or violent acts.

³ *M v Secretary of State for Work and Pensions* [2006] 2 AC 91 at (at para 83).

autonomous control over information that relates to them⁴. It further stated that in accordance with Article 10(2) of the ECHR, the right to freedom of expression should not be interfered with by a public authority unless such interference is lawful and necessary in a democratic society in the interest of, inter-alia, the economic well-being of the country, the prevention of disorder, and for the protection of the rights and freedoms of others. Channel 5 said that if the claimant had no reasonable expectation of privacy, Article 8 is not engaged, and the claim fails at the outset⁵.

Response to complaint

Channel 5 said that, in this case, the sequences in the programme about which Mr Watkins complained concerned brief extracts from his interviews under caution with the police after his arrest. The extracts disclosed no significant information, other than that he denied the allegations that had been made against him. It said that there can be no doubt that the prevalence of domestic abuse and control and coercion and their impact on survivors are matters of public interest, along with the nature of the police response to such incidents, the kinds of difficulties faced in executing their duties and the impact of the activities of the police performing their duties on the lives of those affected by them, including both survivors and perpetrators.

Channel 5 said that as part of the police interviews, Mr Watkins would have been cautioned that anything he said in the interviews could be used in evidence against him. It said that these were not the first occasions that Mr Watkins had been interviewed by the police and he would have been fully aware that the interviews were being recorded in sound and vision. It said that he would therefore have understood at the time that the recordings could be used in any future legal proceedings and that the content of the interviews could be made public in court and released either by the court, the police or Crown Prosecution Service (“CPS”) to the media. It added that at no stage could Mr Watkins have understood that the police interviews were to be private or off-the-record conversations.

Channel 5 said that the default position is that the media should have access to documents placed before the court⁶ and that documents include CCTV footage⁷.

Channel 5 pointed out that the CPS is required to ensure that media has access to all relevant prosecution material wherever possible. It said that the *Publicity and the Criminal Justice System: Protocol for working together: Chief Police Officers, Chief Crown Prosecutors and the Media* (“the Protocol”) makes clear that, with the aim of ensuring greater openness in the reporting of criminal proceedings, the overriding objective is to provide an open and accountable prosecution process by ensuring the media have access to all relevant material wherever possible, and at the earliest appropriate opportunity. Channel 5 cited the extracts below from the Protocol:

⁴ *O’Halloran v UK* [2008] 46 EHRR 21.

⁵ *Murray v Express Newspapers plc* [2009] Ch 481 (at para 27); *Associated Newspapers Ltd v HRH the Prince of Wales* [2008] Ch 57; *McKennitt v Ash* [2008] QB 73 (at para 11).

⁶ *Re Guardian News & Media Ltd* [2016] EWCA Crim 58.

⁷ Criminal Practice Directions 2015, paragraph 5B.3).
Issue 419 of Ofcom’s Broadcast and On Demand Bulletin
25 January 2021

“Prosecution material which has been relied upon by the Crown in court and which should normally be released to the media, includes:

- Sections of transcripts of interviews/statements as read out (and therefore reportable, subject to any orders) in court; and

Prosecution material which may be released after consideration by the Crown Prosecution Service in consultation with the police and relevant victims, witnesses and family members includes:

- Video and audio tape of police interviews with defendants, victims and witnesses”.

It said that, in the circumstances, Mr Watkins could have no legitimate expectation that his police interviews under caution would remain private. It added that they would more than likely be played in open court and/or released to the media either by the court, police or CPS.

Channel 5 said that the footage was lawfully obtained from the police and the police considered very carefully whether the footage should be provided for use in the programme. Channel 5 said that it understood that, amongst other matters, the police had considered the requirements of: the Data Protection Act 2018; General Data Protection Regulation; the Rehabilitation of Offenders Act 1974; and the European Convention on Human Rights.

Channel 5 said that the police initially approached Mr Watkins to see if he was prepared to consent to the use of his image and voice from the interview tapes in the programme, but he declined to provide his consent. Channel 5 said that it understood that the police were satisfied that the legal framework entitled them to disclose the interview footage to the programme maker without Mr Watkins’ consent in the pursuance of a legitimate aim. Channel 5 also said that it understood that in providing the footage to the programme maker, the police advised that they were satisfied that they had a public interest position that supported the disclosure of the police interview footage of Mr Watkins to the programme maker and Channel 5 for use in the documentary. It said that the provision of the footage was subject to certain conditions, one of which was that footage not used in the programme should be returned to the police and not retained by the programme maker, and that this is why Channel 5 was unable to provide it to Ofcom.

The broadcaster said that the police interview footage was lawfully provided by the police to the programme maker for use in the programme broadcast on Channel 5 and that there was no infringement of privacy by either the programme maker or Channel 5, let alone any unwarranted infringement of privacy, in connection with the obtaining of the material. It said that, as a result, Mr Watkins’ complaint under head a) should not be upheld.

Channel 5 said that there can be no doubt that the programme was in the public interest. It said that the date of the first broadcast was no coincidence as the Government had published its draft Bill on Domestic Abuse in January 2019, prompting a public debate to which the programme contributed. It quoted the Minister for Safeguarding, Ms Victoria Atkins MP, who said of the programme:

“The stories shown are deeply harrowing and demonstrate the devastating impact that domestic abuse has on victims and their families. I commend the overwhelming bravery shown by those affected to reach out for help and the professionalism of the police. The programme displays the complex nature of domestic abuse and how we can all play a role to tackle this destructive crime. Through the landmark draft Domestic Abuse Bill, published last month, the Government has set out a range of measures aimed at supporting victims and their families and pursuing offenders...”.

Channel 5 said that at the start of the programme it set out the national picture of domestic abuse, with over two million people affected by domestic abuse in the UK, over 100,000 men and women on the high-risk register for domestic abuse and two women killed every week by their partners. It said that the programme highlighted the cases of two women who telephoned the emergency services to report domestic abuse in the same week and from the same area with the aim that their stories would mirror the national picture. It said that the programme was powerful and important, taking a disturbing look at the day to day abuse that many women are subjected to by their partners. Channel 5 said that the programme revealed the fear that often prevents such women seeking help and the long-term struggle they go through to seek justice and was of the highest public interest.

It said that the programme was filmed over many months with unique access to the specialist units at Norfolk Police and with the trust and bravery of the two survivors. It said that the programme tracked the lives of the two women as events unfolded from the moment they contacted the police for help, and followed their stories through to the outcome of the court cases in an effort to give viewers a clear narrative.

Channel 5 said that one of the women featured in the documentary, Kelly, was the partner of Mr Watkins. It said that after the initial 999 call and during the course of the making of the programme, Mr Watkins pleaded guilty, amongst other matters, to using threatening, abusive or insulting words or behaviour to cause harassment, alarm and distress to Kelly and he was sentenced to seven weeks in prison. Channel 5 said that despite Mr Watkins’ denials in his police interview, at the end of the programme it was revealed that Mr Watkins also subsequently pleaded guilty to control and coercion which included harassment and assaulting Kelly and he was sentenced to 18 months in prison with an ongoing restraining order not to contact Kelly.

Channel 5 said that, editorially, an important element of the narrative was to document, as they happened, the allegations, the arrests, the police interviews with Mr Watkins, his denials, his release on bail and eventual charges and conviction. It said that the brief extracts from the police interview footage were the way in which the programme maker chose to convey an important part of the narrative. It said that in addition, particularly in relation to the second police interview about which the complaint is made, the police interview footage helped to ensure that Mr Watkins’ side of the story was accurately reflected.

Channel 5 said that Article 10 protects not only publication of the substance of the ideas and information that engage the public interest, it also allows the broadcaster an editorial margin of

latitude to choose the content which it considers will engage and interest viewers and so help get the message across, and the form in which the matter is expressed⁸.

Channel 5 said that, in this case, the content of the documentary was of substantial public interest and including the brief extracts from Mr Watkins' police interviews to help convey the message was within the editorial discretion afforded to broadcasters. It said that, as a result, there is scarcely any room to restrict Channel 5's right to freedom of expression and that it would be a disproportionate interference with Channel 5's Article 10 rights to conclude that the inclusion of the brief extracts from the police interviews amounted to an unwarranted infringement of privacy.

Preliminary View

Ofcom prepared a Preliminary View that Mr Watkins' complaint should be not upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

Decision

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom 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 this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme, and both parties' written submissions.

In Ofcom's view, the individual's right to privacy has to 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 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")⁹, which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

⁸ *In Re Guardian News and Media Ltd* [2010] UKSC 1; [2010] 2 AC 697.

⁹ [Ofcom Broadcasting Code](#).

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 the complaint that Mr Watkins’ privacy was unwarrantably infringed in connection with the obtaining of the material in the programme as broadcast because police recordings of interviews with Mr Watkins were provided to the programme makers without his consent.

In considering this complaint, 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 8.8 which states that in potentially sensitive places, such as police stations, separate consent should normally be obtained from individuals before filming or recording and for broadcast from those in sensitive situations (unless not obtaining consent is warranted).
- 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.

Ofcom considered the extent to which Mr Watkins 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.

As set out in the ‘Programme summary’ section above, the programme¹⁰ included footage of the two separate police interviews with Mr Watkins carried out under caution while he was in police custody, regarding allegations of domestic abuse and witness intimidation made against him by his wife Kelly. In the broadcast footage of the first interview, the police officer asked Mr Watkins about his relationship with Kelly, whether he had behaved in a violent or controlling manner towards her and described some of the accusations Kelly had made against him, including threats of violence. Mr Watkins provided highly personal information about his relationship with his wife in his response. The second interview showed Mr Watkins being asked by a police officer whether he had been riding a motorbike around the area where Kelly lived so as to intimidate her.

In Ofcom’s view, the fact a person may be involved in criminal conduct does not necessarily deprive them of a legitimate expectation of privacy in relation to his or her interaction with the police. Ofcom will consider whether a legitimate expectation of privacy arises in connection with

¹⁰ Ofcom was not provided with the unedited footage of Mr Watkins’ police interviews. Channel 5 explained that all unused footage from the police interviews was returned to the police and any copies deleted from the programme maker’s drives and servers. We were, however, provided with the transcript from the first interview that Mr Watkins had with the police. Ofcom did not consider it necessary to be provided with the unedited footage in order to reach a decision on this complaint.

the obtaining of material included in a programme, in light of all the relevant circumstances in which the individual is filmed.

In this particular case, we took into account that Mr Watkins was filmed in a potentially sensitive position while he was in police custody being questioned about serious allegations of domestic abuse and other criminal behaviour made against him by his wife.

We took account of Channel 5's submission that Mr Watkins would have been cautioned that anything he said in the interviews could be used in evidence against him and would have been "fully aware" that the interviews were being recorded in "sound and vision". However, we considered that this did not necessarily deprive him of a legitimate expectation of privacy in relation to the obtaining of this footage of him. In particular, we considered that Mr Watkins may not have fully comprehended during the police interviews that this footage could be obtained by the programme makers for inclusion in a television programme.

We also acknowledge that 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. Therefore, in Ofcom's view, the arrest and subsequent interviews with police, including details of criminal behaviour they may be involved in, may be events carrying some sensitivity to them. We also took into account that the interviews took place in a closed environment (i.e. a police interview room) and not in a public area of the police station, and that the contents of such police interviews often only become a matter of public record if they are submitted and relied upon as evidence and following a conviction.

Taking all these factors into account, we considered Mr Watkins had a legitimate expectation of privacy in relation to the obtaining of the interview footage of him.

We noted from the parties' representations that the police approached Mr Watkins to ask whether he consented to the interview footage being included in the programme and he refused. We therefore went on to consider whether the infringement of Mr Watkins' legitimate expectation of privacy in the obtaining of the footage was warranted under the Code.

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.

Ofcom carefully balanced Mr Watkins' right 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 Watkins.

In weighing up the competing rights of the parties, we took into account Channel 5's submissions that the content of the programme was of substantial public interest and including the footage of Mr Watkins being interviewed by the police helped convey the programme's message.

Ofcom acknowledged the public interest in programmes of this nature which examine the work of the police and the experiences of victims of crimes including domestic abuse victims. In this particular case, we took account of the statistics cited by Channel 5 about the prevalence of domestic abuse and its consequences and recognised the public interest served by a programme dealing with how these issues are tackled. Specifically, these related to: the police response to incidents of domestic abuse; the manner in which the law is utilised in such cases; the kind of difficulties the police face in executing their duties; and the impact of the police's activities, while performing their duties, on the lives of those who are affected including both the survivors and perpetrators. We also took account of Channel 5's submission that the interview with Mr Watkins was of particular relevance because it formed part of one of two stories of domestic abuse in the UK which the programme followed.

Ofcom acknowledged the public interest in the making of this programme in that its purpose was to raise awareness and develop understanding of the prevalence of domestic abuse, its impact on the victims and their experiences, and the work carried on by the police to protect those subject to domestic abuse and obtain justice for them. In our view, obtaining the police recordings of Mr Watkins as he was being questioned about allegations of domestic abuse and witness intimidation, and his subsequent denial of the allegations, for use in the broadcast programme was important because they enabled the broadcaster to demonstrate how a domestic abuse investigation progresses, and the hurdles that the police can face and overcome in their investigation.

We considered whether the material for the programme was obtained proportionately in line with Practice 8.9 of the Code. We considered that the provision of police recordings of Mr Watkins to the programme makers was limited to obtaining footage that was relevant for the purposes of the programme, namely portraying the events of a domestic abuse case as it unfolded and the actions of the police dealing with the issue. For example, the footage used in the programme showed how the police presented the allegations made against Mr Watkins and his response to their questioning including his, at that stage, denial of the allegations. We therefore considered the footage of Mr Watkins was obtained only to the extent necessary to demonstrate the issues Channel 5 wished to highlight to its audience in this programme about domestic abuse.

Ofcom therefore considered that the material obtained was relevant to the specific public interest subject matter of the programme and proportionate in all the circumstances.

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 Watkins, outweighed his legitimate expectation of privacy in relation to the footage of him in the circumstances of the case.

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

- b) Ofcom next considered the complaint that Mr Watkins' privacy was unwarrantably infringed in the programme as broadcast because police recordings of interviews with Mr Watkins were included in the programme without his consent.

We had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement is warranted. We also considered Practice 8.10 which states that broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster's own material.

We first considered the extent to which Mr Watkins had a legitimate expectation of privacy in relation to the broadcast of the footage of him included in the programme. We applied the same objective test set out in head a) above.

As set out in the "Programme summary" above, the programme included footage from two police interviews with Mr Watkins, first in relation to allegations of domestic abuse made by his wife Kelly, then second, following his arrest for "witness intimidation". The footage that was broadcast showed Mr Watkins being interviewed under caution by police where he was asked about his relationship with his wife and he responded to, and denied, serious criminal allegations made against him. The interview footage broadcast contained personal information about Mr Watkins' relationship with his wife and was filmed while he was in a sensitive situation. We therefore considered that Mr Watkins had a legitimate expectation of privacy in relation to the broadcast of this footage.

It was not disputed by the parties that footage of Mr Watkins was broadcast without his consent. We therefore considered whether the broadcast of the interview footage was warranted. For the reasons set out in head a) above, we considered that the broadcast programme was in the public interest because it provided information about domestic abuse and the work of the police as they investigated two cases. We also considered that there was a specific public interest in the inclusion of the footage of Mr Watkins' police interviews as it served as an illustration of the investigation process in cases of domestic abuse and how police respond to allegations, and the potential difficulties in obtaining evidence to charge and convict the perpetrator. In our view, the interview footage which was broadcast was limited to what was necessary for this narrative.

Taking all the 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 outweighed Mr Watkins' legitimate expectation of privacy in relation to its broadcast. Therefore, we considered that Mr Watkins' privacy was not unwarrantably infringed in the programme as broadcast.

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