

Complaint by Mr Anthony McGrath about *24 Hours in Police Custody*

Type of case Fairness and Privacy

Outcome Not Upheld

Service Channel 4

Date & time 8 April 2019, 21:00

Category Privacy

Summary Ofcom has not upheld this complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.

Case summary

The programme, which followed the work of Bedfordshire Police as they investigated suspected insurance fraud committed by Mr Anthony McGrath (the complainant), included footage of the interior and exterior of Mr McGrath's house and the house of his late parents (including personal possessions) during the police search of these properties. Mr McGrath complained that his privacy had been unwarrantably infringed in the filming and subsequent broadcast of this footage without his consent.

Ofcom found that:

- Mr McGrath had a legitimate expectation of privacy in relation to the obtaining and subsequent broadcast of the footage of the interior of his house, including personal possessions, without his consent. However, we considered that, in the particular circumstances of this case, Mr McGrath's legitimate expectation of privacy did not, on balance, outweigh the broadcaster's right to freedom of expression and the public interest in the material broadcast.
- Mr McGrath did not have a legitimate expectation of privacy in relation to the obtaining and subsequent broadcast of the footage of the exterior of his house, or the interior or exterior of his late parents' house.

Therefore, Ofcom considered that there was no unwarranted infringement of Mr McGrath's privacy in the obtaining and broadcast of the material included in the programme.

Programme summary

On 29 July 2019, Channel 4 broadcast an episode of the programme *24 Hours in Police Custody*, which was a repeat of the original broadcast of the programme on 8 April 2019. The programme began with footage of the exterior of Mr McGrath's rented property in Luton, including a window to the rear of the property, as well as footage of the police carrying out a search inside of his home including as they descended into, searched, and photographed the cellar. This footage did not focus on any particular possessions. A recording of a 999 phone call made by Mr McGrath was played:

Operator: *"Evening, Bedfordshire Police. How can I help?"*

Mr McGrath: *Hello there, my name is Anthony McGrath. I've just come home to find that my house has been broken into. A window to the rear of the property has been smashed. Someone has been inside the house. There's a door to our cellar is open. They've gone into the cellar and known exactly where to take valuables from.*

Operator: *Right, okay.*

Mr McGrath: *I'm a surgeon in the local hospital.*

Operator: *Right, okay.*

Mr McGrath: *It's very unnerving to be the victim of the crime".*

Footage of Detective Constable Dave Brecknock ("DC Brecknock") was then shown. The narrator explained that DC Brecknock had been in Bedfordshire Police for 24 years. The narrator said:

"In April, they received a 999 call from an orthopaedic surgeon who lives in the grounds of a stately home near Luton".

DC Brecknock said:

"It's, it's an odd one. It's just a case we've got a doctor with his family renting this house out and it looks like he's lost a major amount of stuff here, because a large amount of antiques are gone. I haven't dealt with many antique burglaries, but I know an antique burglar, and these are normally things stolen to order and they are out of the country very quick".

Later, footage of DC Brecknock performing an internet search on Mr McGrath was shown. The programme showed DC Brecknock viewing internet pages displaying Mr McGrath's professional profile and photographs from Mr McGrath's social media sites were shown. Whilst carrying out the internet search, DC Brecknock said:

"Anthony McGrath, surgeon. Traumatology. Mainly all medical journals, that sort of thing. He likes his cars. Maserati. Selfie at a stately home".

The programme showed interview footage of DC Brecknock. He said:

"I just felt really sorry for him, you've had family heirlooms, you've had antiques from your deceased father's estate stolen, for him, the sentimentality of a lot of the property outweighs the commercial value. This must be absolutely devastating".

Footage of DC Brecknock speaking to a colleague was shown. He said:

"Dad [Mr McGrath's late father] was amazingly wealthy apparently, a very well-respected member of the community. Donated his Ming china collection to one of the museums".

Later, the narrator said:

"The surgeon reports the burglary to his insurance company. His claim is for £250,000. For the next month, DC Brecknock presses him for pictures of the stolen items, so he can identify if any have appeared on the antiques market. DC Kathy Layton is working alongside him on the case".

Footage was shown of DC Brecknock and DC Layton looking through various photographs of Mr McGrath's stolen possessions that had been provided by Mr McGrath to assist with the police investigation, as well as photographs showing the point of entry for the suspected burglars taken from the exterior of Mr McGrath's house (a sash window). DC Brecknock said:

"All these pictures start coming through and then we get to, we get to this one. The fireplace he's had stolen. That fireplace, he reports to me, was wrapped in Persian silk rugs...Now he's supplied the receipts to the insurance company saying that those silk rugs were £43,000. And this is wrapped around the fireplace, okay. His total claim is now over a quarter of a million pounds. By now, I'm suspecting he's committing fraud. I mean I know these sort of old fire surrounds they will come in pieces, but even so, you are not going to get that through a window. Something's not right here. If you are going to smash a window to gain access to do a burglary of antiques, why do a window at the bottom of the sash? To undo a sash lock, you smash the window closest to the sash lock, you don't go to the corner to get your hand all the way through and try and undo that lock. No, it's not right. I think the doctor's up to something. This isn't a burglary".

Further footage of DC Brecknock viewing Mr McGrath's social media page was later shown. DC Brecknock said:

"Anthony McGrath, surgeon, [reading comments on Mr McGrath's social media page] A friend of his said, 'You kind of look like those people on Most Wanted' [laughter]. He does a bit, fleeing criminal. But, that's just me being a suspicious copper, I'm afraid. To me this whole burglary

set up is a set up. Now my idea had no evidence to back it up, it was my suspicions, it was my hunch. I thought he's up to no good. Come on mate".

Footage was shown of DC Brecknock driving towards Mr McGrath's Luton property, hoping to speak alone with Mr McGrath's wife. This footage showed the police approaching the gated entrance to the estate on which Mr McGrath's house was located, signage identifying the estate (the detail of which was not legible in the footage), the grounds and internal access roads within the estate, and the driveway leading up to Mr McGrath's house. DC Brecknock identified Mr McGrath's Maserati, and left again saying: *"We don't want to speak to him at the moment. We don't want to alert him to anything"*. DC Brecknock later explained that the police had carried out a financial background check on Mr McGrath and found that *"he was absolutely skint to the point of almost bankrupt"*. DC Brecknock also said that Mr McGrath had *"requested an immediate payment from the insurance company of £50,000"* which he said implied *"he needs the cash, as opposed to he wants his belongings back..."*.

The programme showed DC Brecknock driving past another property owned by Mr McGrath. DC Brecknock said:

"This is the £1.1 million house that Dr McGrath purchased. I think he's poured everything he had into buying and restoring this place and I think that's the reason behind the insurance fraud. He's come from a very privileged background and he's got what you'd think is a very nice lifestyle, but whether it's just greed or arrogance I don't know".

The narrator explained that Mr McGrath's insurance company had also launched an investigation into the claim and an audio recording of Mr McGrath speaking with a representative from the insurance company was played. Mr McGrath said that he did not want anyone to look in the cellar of his home as there was something down there that he preferred no one see.

The narrator explained that DC Brecknock's investigation had led him to an antiques dealer who had dealt with Mr McGrath, as he wanted to see whether he had sold the items he claimed were stolen. As footage was shown of DC Brecknock's meeting with the antiques dealer, the narrator then explained:

"It's four months since the alleged burglary. With the insurance company not paying out, the surgeon sends new photographs to DC Brecknock to help verify his claim".

DC Brecknock was shown opening a photograph of a fireplace sent by Mr McGrath. DC Brecknock said:

"So that's a picture of the fireplace. This is a picture of the actual item. So, he must know where it is. So, when was that photograph taken? It was taken on the 5th of July 2015. So that's three months after the burglary. The photograph was taken on the 5th of July, but in April he had told me that the fireplace was stolen from his cellar. That's enough for a warrant I think, once I've located where it is. That's with an Apple iPhone 5s, which I know he has, and his GPS has been switched on, which gives us the latitude and longitude [obscured on screen]".

The programme showed footage of the gated entrance to the driveway and exterior of Mr McGrath's late parents' house. The narrator explained:

"The GPS from the surgeon's phone shows that the photo of the fireplace was taken at the family home in County Meath in Ireland".

DC Brecknock said: *"That was when I knew that I'd got him"*.

The programme showed DC Brecknock briefing a team of police officers ahead of plans to arrest Mr McGrath and to simultaneously search both his residence in Luton and property in Ireland.

Later, the programme showed police arriving at Mr McGrath's Luton property in darkness, such that the roads surrounding the property and the house itself were not clearly visible. Body camera footage was shown of Mr McGrath and an unidentified woman (whose face was obscured) in the entryway of the property. Various decorative items were visible such as a chandelier, ornamental frames and artworks (which were obscured). The police officers were shown carrying out the arrest of Mr McGrath.

The programme then showed footage of Mr McGrath arriving at the police station. CCTV footage of Mr McGrath detained in a police cell was also shown.

Later, the narrator explained:

"With the surgeon in custody, the police need to find the evidence to build their case for insurance fraud. Before the search of the Luton property begins, the contents have to be meticulously documented in case the surgeon tries to sue the police for damage".

Footage of the police searching the interior of Mr McGrath's residence in Luton was shown, including a sitting room in which the police had set up recording equipment and where a wooden bookcase, artwork and numerous photograph frames could be seen (the contents of the photograph frames were blurred). The footage also showed a number of other rooms in the house revealing further decorative items, various tables covered in documents (which were obscured) and a notebook with the phrase: *"Seek and ye shall find!"* written on the cover. The footage focused on an ornamental clock and a sculpture.

The narrator continued:

"The police have 24 hours to search both houses, in Ireland and Luton. And with the surgeon in custody, there is no chance of the antiques being moved or hidden".

Later in the programme, footage of Mr McGrath in a police interview was shown during which the police questioned him about who had called the police about the burglary. At the end of the interview, Mr McGrath said:

"I'm not going to comment any further than the comments I have made on the numerous occasions to other police. If you could please refer to those things".

Footage of police officers at Mr McGrath's late parents' property in Ireland was shown. Body camera footage showed the police approaching the house from within the private grounds of the property. Police were then shown approaching the main front door to the property and then entering via a separate side entrance down a narrow tunnel after being let in by the housekeeper, whose identity was obscured. Body camera footage also showed the police entering the house and walking through a sitting room, which revealed an ornate fireplace, a grand piano, and numerous decorative items. Following this, further footage of Mr McGrath in a police interview was shown:

DC Layton: *"This is information that you forwarded onto DC Brecknock, correct? These pictures. You forwarded them on.*

Mr McGrath: *I think so.*

DC Layton: *What do you mean I think so?*

Mr McGrath: *Because, I've sent so many to different insurance companies.*

DC Layton: *Well, do you recognise that picture?*

Mr McGrath: *That is one of the pair of candelabra that has been in my house since I was a little boy and it has profound sentimental value to me and you are showing me a photograph probably knowing that it is of sentimental value, so with respect if I may have a moment.*

DC Layton: *Anthony, I have no idea where that came from?*

Mr McGrath: *When my sister was killed, and my two parents died. My father left all his antiques to me, including that. Some bastard has the other one.*

DC Layton: *Anthony.*

Mr McGrath: *And you are showing me that to provoke me into this kind of behaviour.*

DC Layton: *Well, I'll [cut off].*

Mr McGrath: *This does not make me innocent [immediately corrects himself] or does not make me guilty.*

DC Layton: *Right, Anthony.*

Mr McGrath: *You know.*

DC Layton: *On record, I have not shown you that in any way to pro [cut off].*

Mr McGrath: *Yes.*

DC Layton: *Are you calling me a liar?*

Mr McGrath: *No.*

DC Layton: *Are you calling me a liar?*

Mr McGrath: *I don't know. I don't know you, but you're asking.*

DC Layton: *Listen to me, I'm alright. I have no idea what that value is to you emotionally or anything else. So, I am [cut off].*

Mr McGrath: *I'm sorry. I'm sorry.*

DC Layton: *I'm upset that you're saying that, and I apologise if it has upset you. If you feel you need a moment now, then have that moment.*

Mr McGrath: *But I remembered as a young person and it is of sentimental value.*

Mr McGrath: *Quite honestly, I would really like to go home.*

DC Layton: *You can't go home...".*

Further body camera footage of police searching Mr McGrath's late parents' property in Ireland was shown, revealing: a gilded bedframe; Persian rug; wooden desk with various decorative items; and what appeared to be a storage room with numerous open boxes on the floor and stacked dining chairs. The programme then showed the police officers entering a room within the house and identifying the allegedly stolen fireplace. Further footage showed this room in full, revealing a wooden dining table and decorative items such as: candlesticks; ornaments; artwork; and mirrors. DC Brecknock was shown phoning DC Layton to inform her that the fireplace had been identified at the property in Ireland.

Later, further footage of Mr McGrath in a police interview was shown. DC Layton questioned Mr McGrath about the fireplace and showed him photographs of it. Mr McGrath refused to comment.

The narrator explained that apart from the fireplace, none of the other items allegedly stolen could be found in Ireland. Footage of police officers searching Mr McGrath's Luton property in the UK was shown. The interior of Mr McGrath's home was shown, including possessions such as an ornamental mirror and a Persian rug, and footage of the police inspecting: a couch; boxes; documentation (the details of which were not legible); and the inside of a cloakroom containing various coats and shoes. During this search, the police were seen entering the cellar and other rooms of the house, identifying a number of items that were alleged to have been stolen, such as: silverware; an ornamental clock; a hanging candelabra; and a tantalus (i.e. liquor set in a wooden box). Photographs in frames which appeared in this footage were blurred.

Later, further footage of Mr McGrath in a police interview was shown. DC Layton questioned Mr McGrath about his financial situation and asked whether he was bankrupt. Mr McGrath responded: *"It's not the case"*, but then did not answer the further questions asked.

Following the police interview, DC Layton was shown speaking to a colleague. She said:

"This is the interview, I'm asking you about, it's a simple thing, were these items in your house prior to this burglary. [Quoting Mr McGrath] 'I'm not telling you this, I've told all DC Brecknock. I want DC Brecknock

in this here now, does he know what you've done to me? Does he know you're doing this to me?' And I felt like saying he instigated it, but I can't say that".

DC Brecknock was then shown speaking on the phone to DC Layton, where they discussed the police interview with Mr McGrath. Following the phone call, DC Brecknock said to his colleague:

"He thinks I'm behind all this and I've got a grudge against him...He thinks he is being set up".

No further footage of the interior of the Luton property was shown in the remainder of the programme, except for images of the allegedly stolen items which the interviewing officer showed Mr McGrath during his police interview.

Later in the programme, footage of Mr McGrath in a police interview was shown:

DC Layton: *"...So we've done a search as you know. At that property we've found a number of items, thousand pounds, liquor set in a wooden box, yep.*

Mr McGrath: *I've got three of these, and that's I believe that's the only remaining one I have.*

DC Layton: *This one was on top of your wardrobe.*

Mr McGrath: *It's not been hidden.*

DC Layton: *So, when you say you had three of them. Explain to me, what are the other two like? So, you had three of these?*

Mr McGrath: *Yes.*

DC Layton: *Are they identical?*

Mr McGrath: *No.*

DC Layton: *They're not. We'll move on now to this, the rococo fireplace.*

Mr McGrath: *I'm not answering any more questions.*

DC Layton: *That's fine. This picture of the rococo fireplace that you sent to DC Brecknock, can you tell me, is that a picture that you've taken?*

Mr McGrath: *I'm not answering that [unclear].*

DC Layton: *Or has that, where has that picture been taken? You've given your telephone over haven't you.*

Mr McGrath: *Yes.*

DC Layton: *And what we've done we've extracted what we call XF data. And that tells you when these pictures were taken. Okay. And that tells us where*

these pictures were taken. Okay. And that tells us where they were taken. Within a hundred metres. Or just less.

DC Layton: *Did you take these pictures?*

Mr McGrath: *No comment.*

DC Layton: *Why did you take these pictures?*

Mr McGrath: *No comment.*

DC Layton: *A number of officers have been to your property today, and they are astonished that you managed to get that fireplace in the cellar. Did you put that in the cellar?*

Mr McGrath: *Yes.*

DC Layton: *Who helped you put it in the cellar?*

Mr McGrath: *Me.*

DC Layton: *By yourself?*

Mr McGrath: *Yes...The French people invented flat pack. This comes in lots of pieces. [Indicating with a pen on a picture of the mantelpiece on the table in front of him] There's one piece. There's another piece. There's another piece. If the question is, would I insult police intelligence by saying that I have got a four-metre thing down a two-metre hole, then of course I am not going to do that. I'm only saying it because it is true.*

DC Layton: *See, what I'm asking is, was it in the cellar?*

Mr McGrath: *No, it's not, you and I both know, that's not the same fireplace.*

DC Layton: *So, did you have a rococo fireplace in your cellar?*

Mr McGrath: *Yes.*

DC Layton: *Is this a rococo fireplace?*

Mr McGrath: *It is. Not the rococo fireplace.*

DC Layton: *So, you're telling me, one's at Somerville House, and you had one in your cellar at your house?*

Mr McGrath: *At one point I had two, including that.*

DC Layton: *Okay. I've got no further questions Anthony, have you got any further questions before I conclude the interview?*

Mr McGrath: *I just wanted to know why you possibly thought it was me?"*

The narrator said:

"With no confession, there is insufficient evidence to charge the surgeon. He is bailed, so the police can continue the investigation".

Footage of DC Brecknock speaking to a colleague was shown. He said:

"[Mr McGrath] wants to sue the police; he thinks the warrant you used for your execution of the 'Rambo' style attack on his house were obtained illegally. He's demanding apologies be written to him, the General Medical Council. He'll be suing the officers attending the house, because apparently damage was caused to antiques".

The narrator said:

"A year after the alleged burglary, the Crown Prosecution Service finally reaches its decision".

Footage of Mr McGrath entering the police station was shown. Mr McGrath said to DC Brecknock:

"I've been informed that you have betrayed me and you're accusing me today".

Soon after Mr McGrath was shown saying to a police officer in the police station:

"Because that man [Mr McGrath pointed to DC Brecknock] is trying to place a charge on me, which is entirely unfair. He has not spoken to me about this incident since I reported it to the police and I wish to know why".

Soon after DC Brecknock was shown saying to Mr McGrath:

"You are charged with fraud by false representation under the Fraud Act 2006, in that you dishonestly made a false representation, namely you falsified a burglary at your family home, intended to make a gain, namely to receive an insurance payment of £250,000 for yourself".

Before the programme ended, two photographs of Mr McGrath were shown alongside captions that read:

"In 2019, four years after reporting the alleged burglary and following two trials, Anthony McGrath was found guilty of Fraud and Perverting the Course of Justice. He was sentenced to 8 years in prison".

The programme ended.

Summary of the complaint and broadcaster's response

Complaint

- a) Mr McGrath complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because "extensive" footage of the interior and exterior of his house and his late parents' house was filmed without his consent. Mr McGrath said this infringed his "right to family life".
- b) Mr McGrath also complained that his privacy was unwarrantably infringed in the programme as broadcast because "extensive" footage of his home and his late parents' house, personal possessions and photographs was broadcast. Mr McGrath said: "This irresponsible behaviour has put me at risk. My family's wealth as displayed on TV placed me as a target for extortion and assault". Mr McGrath said that the broadcast of the programme had resulted in him being burgled.

Broadcaster's response

Background

Channel 4 said that the programme makers had a distinguished track record of making responsible observational documentaries such as *24 Hours in Police Custody*. It said that the programme was one of Channel 4's most important documentary programmes and is an important contribution to the fulfilment of its public service remit. It said that there was a clear public interest in the programme, as it followed the work of the Bedfordshire Police and gave viewers an insight into the workings of the criminal justice system. It said that certain episodes of the programme had demonstrably contributed to the public's understanding of crime and how it was tackled by police, citing a number of episodes from the previous series concerning the knife crime epidemic which were shown at the Houses of Parliament by the All-Party Group on Violence and Knife Crime.

It emphasised that the programme was made in close collaboration between the programme makers and Channel 4, and that the programme was made to the highest ethical standards and in full compliance with all of the broadcaster's legal and regulatory obligations.

In relation to the episode featuring Mr McGrath titled "*The Detective and the Surgeon*", Channel 4 said that the episode followed the police investigation into an initial reported burglary and subsequent investigation into allegations of fraud and perverting the course of justice, for which Mr McGrath was successfully prosecuted and sentenced to eight years in prison prior to the broadcast of the programme. It also noted the wide reporting of this case in the media prior to the broadcast of the programme.

Response to the entertained complaints

Channel 4 addressed each head of Mr McGrath's complaint in turn:

- a) With regard to Mr McGrath's complaint that his privacy was unwarrantably infringed by the filming of "extensive" footage of his house and his late parents' houses, Channel 4 said that all sequences showing the interior and exterior of these houses "were fully justified in being filmed" as they were part of the police's investigation into Mr McGrath's suspected financial fraud. It said that the production team took care to film only those parts of the properties that were directly

relevant to the investigation. It highlighted that, in this case, the properties and their contents were an integral and inherent part of the offences Mr McGrath had committed, and that it was thus essential that the programme makers could follow and capture the procedures and actions of the police during their investigation of this crime.

Channel 4 said that it was necessary and legitimate to capture the detail about the properties, such as family heirlooms. With regard to the footage of Mr McGrath's house in Luton, it said that it was necessary and legitimate to obtain this footage as it was the house which Mr McGrath falsely claimed had been burgled and helped the viewer to understand various salient aspects of the police investigation. By way of example, it said that this footage showed how the police came to believe that the window that Mr McGrath said had been broken to gain entry would not be one a burglar would normally break, and that it was unlikely that some of the items he claimed had been stolen, including a large marble fireplace stored in the cellar, could have been removed from the house in a burglary. The footage from the interior of this house also showed the police finding items during their search of the property, including silverware and a tantalus, which they believed to be the same as items which Mr McGrath falsely claimed had been stolen.

Channel 4 said that the same arguments applied to the obtaining of footage which followed the police investigation to Mr McGrath's late parents' house in Ireland where the allegedly stolen items could have been located. It reiterated that the filming of this property was entirely justified given the nature of the offences and the relevance and importance of the property to the investigation. It said that the footage showing the police finding the "stolen" marble fireplace directly helped to convict Mr McGrath and allowed the audience to see the nature of the search and consider the credibility of Mr McGrath's account which he was giving simultaneously during his police interview.

The broadcaster said that the filming was necessary and legitimate to allow the programme to give a proper account to the public, showing the police's investigation, and the nature and gravity of the crimes that Mr McGrath was accused of. It highlighted that this was a major police investigation into a financial crime that continued for three years at a considerable cost to the public. It said that the investigation further involved an unusual cross border operation in Ireland, and that financial crime was difficult and expensive to investigate. It therefore said that the filming for the programme was clearly warranted in the public interest and that it was crucial that the programme makers could obtain footage that recorded police work in this area.

- b) With regard to the broadcast of the footage of Mr McGrath's house and of his late parents' house, Channel 4 reiterated the submissions made above in relation to head a) above. It noted that the programme as broadcast included footage of the interior and exterior of these houses, as well as photographs of personal possessions which Mr McGrath claimed unwarrantably infringed his privacy. The broadcaster said that Mr McGrath did not seem to accept that it was he who was responsible for putting these possessions at the centre of a police investigation which it was entirely legitimate for the programme makers to follow.

Channel 4 said that prior to broadcast, it and the programme makers carefully ensured that no material or information outside the ambit of the police investigation was included in the programme. By way of example, it said that the programme makers took considerable efforts to

ensure that family photographs and portraits were appropriately obscured, such as the family photograph next to the allegedly stolen clock. It also said that any detail on documentation was obscured, the programme did not name or identify any of Mr McGrath's children or identify their belongings, and that relatives like deceased parents were only mentioned (but not named) because they formed an integral part of the understanding of the defence given in his police interview. It also noted that the programme did not name or identify Mr McGrath's wife despite his own attempts to implicate/blame her during the two court cases, and that the programme did not touch on the large quantity of lurid material that entered the public domain through the press reporting on the criminal trials¹.

Channel 4 referred to Mr McGrath's complaint that the programme had placed him "as a target for extortion and assault", but said that he had produced no evidence supporting this assertion and that, even if it had (which is denied by the broadcaster), this was a result of his criminality and widespread media coverage rather than the programme. Similarly, Channel 4 said that Mr McGrath had produced no evidence supporting the assertion that the programme had resulted in him being burgled. It said that the Bedfordshire Police had confirmed to the programme makers that there had been no break-ins at the house owned by Mr McGrath in Bedfordshire or at his late parents' house as far as they were aware.

Channel 4 strongly argued that nothing in the programme could infringe Mr McGrath's privacy given that the relevant information in the programme was already in the public domain as a result of the wide media reporting of his criminal trials (and guilty conviction). It said that a substantial amount of the personal information disclosed in court was not included in the programme. Channel 4 referred Ofcom to a collection of links reflecting the extensive media coverage of Mr McGrath's trials to provide an indication of what was in the public domain². It said that this media coverage included numerous photographs of the possessions claimed to have been stolen, photographs of the exterior and interior of the properties that were included in the programme, and far more precise details as to the location of the properties than were included in the programme.

The broadcaster said that in light of the above, it was plain that there was no case of any unwarranted infringement of privacy to answer by either the programme makers or Channel 4, in either the filming of the material or the broadcast of the programme.

Channel 4 said that an individual's right to privacy must be "considered and balanced against the competing rights of the broadcaster, programme maker and audience to freedom of expression in the light of all relevant circumstances". It said that neither right has precedence over the other and where there is a conflict, Ofcom must undertake an intense focus on the comparative importance of the specific rights. The broadcaster said that any justification for interfering with or

¹ After a hung jury in Mr McGrath's first trial, he was found guilty in 2019 on four counts of insurance fraud, perverting the course of justice, and three counts of mortgage fraud.

² For example, see BBC News (24 January 2019), [*Anthony McGrath: Hertfordshire surgeon jailed over fake break-in*](#); Daily Mail (24 January 2019), [*Debt-ridden surgeon who staged burglary at home to claim thousands in for 'stolen' antiques and jewellery in insurance scam is jailed for eight years*](#); The Sun (24 January 2019), [*ART-FUL BODGER Surgeon who staged burglary to claim £180k in 'stolen art and jewels' is found guilty – but wife cleared after saying she had no clue of family cash*](#).

restricting either right must be taken into account and any interference or restriction must be proportionate.

Channel 4 concluded by saying that it did not accept that there was any infringement of Mr McGrath's privacy in the filming or broadcast of the programme, but that if there was any infringement, that it was warranted in the public interest. It said that it maintains that the programme fully complied with Ofcom's Broadcasting Code³ (the "Code") and the relevant practices, and invited Ofcom to find that nothing in the filming or the broadcast of the programme amounted to an unwarranted infringement of Mr McGrath's privacy.

Preliminary View

Ofcom prepared a Preliminary View that the complaint should be not upheld. Both parties were given the opportunity to make representations on the Preliminary View. We did not receive any representations from Mr McGrath within the deadline provided and Channel 4 chose not to make any representations. In line with our published procedures, Ofcom prepared a final Adjudication on the complaint, which was published in Issue 432 of Ofcom's Broadcast and On Demand Bulletin ("the Bulletin"). We subsequently became aware that Mr McGrath had, in fact, sent representations on the Preliminary View, which had not been received by Ofcom before publication. We decided on an exceptional basis and in the interests of fairness to withdraw the Adjudication to enable Ofcom to take into account these representations and provide Channel 4 with the opportunity to make further representations, which they chose not to provide. Ofcom therefore proceeded to make the final adjudication of Mr McGrath's complaint.

Complainant's representations

Mr McGrath's representations are summarised below insofar as they are relevant to the complaint entertained by Ofcom. Mr McGrath did not accept that the broadcaster's right to freedom of expression under Article 10 of the ECHR outweighed his right to a private and family life, under Article 8 of the ECHR. Mr McGrath said that the broadcast of the programme was not in the public interest and added that "false news does not qualify for the protection under Article 10" and that Channel 4's "right to freedom of expression is disqualified" as, in his view, "they sought to knowingly mislead the public".

Mr McGrath reiterated his position that the search warrant obtained by the police did not extend authority to the programme makers to film the searches of the Luton house and property in Ireland, and therefore the programme makers had been trespassing when the footage was obtained. He suggested that the footage was used by the programme makers to "substantiate fantastical claims" about the nature of the crimes that he was convicted of.

Mr McGrath reiterated his position that his privacy had been infringed as a result of the obtaining and subsequent broadcast of footage of his late-parents' house in Ireland. Mr McGrath said that the property has "enormous emotional importance to me and my family" and he provided reasons for this. Mr McGrath also explained that his parents bought the house and its estate in 1993, and he and his siblings maintain four apartments there; Mr McGrath said that "this shared occupancy is enshrined

³ See the [Ofcom Broadcasting Code in force at the date of broadcast](#).
Issue 440 of Ofcom's Broadcast and On Demand Bulletin
6 December 2021

in our late parents' will for 15 years". Mr McGrath said that the house was "my primary residence until 2002".

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and 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, both parties' written submissions, and supporting documentation. We also carefully considered Mr McGrath's representations in response to the Preliminary View. However, we considered that the points raised 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 under Article 8 of the European Convention on Human Rights ("the Convention") has to be balanced against the competing right of the broadcaster and of the audience to freedom of expression under Article 10 of the Convention. 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 in the individual case. 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 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) We considered Mr McGrath's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because "extensive" footage of the interior and exterior of his house and of his late parents' house was filmed without his consent. Mr McGrath said this infringed his "right to family life".

In considering this complaint, Ofcom had regard to the following Code Practices:
Practice 8.5:

“any infringement of privacy in the making of a programme should be with the person’s and/or organisation’s consent or be otherwise warranted”.

Practice 8.9:

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

We first assessed the extent to which Mr McGrath had a legitimate expectation of privacy in the particular circumstances in which the footage included in the programme was obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be assessed in light of the circumstances in which the individual finds him or herself.

The Code’s statement on the meaning of “legitimate expectation of privacy” makes clear that such an expectation:

“...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place... People under investigation or in the public eye, and their immediate family and friends, retain the right to a private life, although private behaviour can raise issues of legitimate public interest”.

We first assessed the nature of the material obtained and included in the programme, as detailed above in the “Programme summary”⁴. Mr McGrath’s home in Luton (which was rented and occupied by Mr McGrath, his wife and four children at the time of filming) was filmed from the exterior as the police arrived at the property. This footage captured the house itself, the open gated entrance to the estate on which the house is located, and the internal access roads and driveway leading to the house. The interior of Mr McGrath’s house was also filmed as the police arrested Mr McGrath and conducted a search of the property in connection with their fraud investigation, which showed the police inspecting the window through which the alleged burglar entered and the cellar in which the items allegedly stolen were said to have been stored. The footage further captured personal possessions belonging to the McGrath family, including: a bed; artworks; decorative items; and documentation. It also focused on items that were alleged to have been stolen such as: silverware; an ornamental clock; a hanging candelabra; and a tantalus (i.e. liquor set in a wooden box).

⁴ Ofcom did not consider it necessary to be provided with the unedited footage in order to reach a Preliminary View on this complaint. We have therefore reached our Preliminary View with reference only to the broadcast footage included in the programme of the exterior and interior of the homes in Luton, UK and Ireland.
Issue 440 of Ofcom’s Broadcast and On Demand Bulletin
6 December 2021

Mr McGrath's late parents' home in Ireland was also filmed. The footage from the exterior captured the gated entrance to the property and images of the exterior of the house from within the gated grounds. The interior of the house was also filmed as the police conducted a search of the property, which revealed various items within his late parents' antique collection such as decorative objects, Persian rugs and a gilded bedframe.

Exterior of Mr McGrath's house and his late parents' house

We first considered whether Mr McGrath had a legitimate expectation of privacy in relation to the footage obtained of the exterior of his house in Luton and of his late parents' house in Ireland. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

Also as set out above, the programme makers had obtained footage of the exterior of Mr McGrath's house and of his late parents' house while police officers arrived at both properties to conduct searches in connection with their investigation of suspected insurance fraud by Mr McGrath.

We took into account Mr McGrath's argument that the filming of the exterior of his house and his late parents' house constituted an infringement of his "right to family life". We also took into account Channel 4's argument that it was important to capture footage of these houses, because they were integral to the police investigation and the offences committed by Mr McGrath.

We took into account that, in the case of Mr McGrath's house in Luton, the outside of the house was filmed from an access road within the grounds of the estate on which it is located. While the footage showed that entry to the grounds is gated, the gate was open and it did not appear that access or the roads within the property are closed to the public. Accordingly, the footage captured no more than would otherwise be visible to the public from these internal roads, and the footage obtained did not capture any additional distinctive features about the property such as the house name or number.

With regard to Mr McGrath's late parents' house in Ireland, the footage captured the gated entrance to the property as visible from the public road, but the angle from which the house itself was filmed appeared to be from the private grounds of the property to which the public may not generally have access. Whilst Ofcom recognises that the footage revealed more than was visible to the public, we also took into account that the house, as captured by the footage, is not so distinctive as to be readily identifiable by anyone who was not familiar with the house, and that Mr McGrath had not lived at the house since 2002.

Taking these factors into account, Ofcom did not consider that the footage of the exterior of either house captured any information of a particularly private or sensitive nature, or that the filming was particularly intrusive. Accordingly, we considered that Mr McGrath did not have a legitimate expectation of privacy in relation to the filming of the exterior of his house or of his late parents' house.

Given this, it was unnecessary for Ofcom to consider whether any infringement of Mr McGrath's privacy relating to the obtaining of this footage was warranted.

Interior of Mr McGrath's late parents' house

We next considered whether Mr McGrath had a legitimate expectation of privacy in relation to the filming of the interior of his late parents' house.

The footage obtained captured various family heirlooms and antiques comprising the antique collection of Mr McGrath's parents. Despite Mr McGrath telling the police that his father "*left all his antiques to me*" (as featured in the programme as broadcast), we understood from Mr McGrath's complaint to Ofcom that these antiques were to be distributed between Mr McGrath and his siblings following the death of their parents. The programme makers also filmed various rooms within the house, such as: sitting rooms; dining rooms; and a bedroom with a gilded bedframe.

Ofcom had regard to the fact that an individual's involvement in a police investigation is often not a matter of public record until a person has been charged with the criminal offence. We took into account that at the time of filming, Mr McGrath had not yet been charged with any offence. The fact that he was later charged does not, of itself, mean that he is deprived of any right to privacy in connection with the police search of the two houses which ultimately resulted in him being charged with and convicted of fraud and perverting the course of justice. Specifically, we considered that, even when the fact of a person being charged with a criminal offence becomes public knowledge, this public knowledge does not generally extend to the precise circumstances in which the police entered and searched a person's home to obtain the evidence necessary to charge and prosecute an individual.

We also took into account Channel 4's submission that the programme makers only filmed the interior of the properties and possessions within them to the extent that they were directly related to the police investigation into Mr McGrath's suspected insurance fraud. Ofcom agreed that, in these particular circumstances, the otherwise private and personal parts of the houses captured by the footage were important context to the fraud offence of which Mr McGrath was ultimately convicted. Yet, in Ofcom's view, the filming of the interior of a person's home, or that of a person's parents, could still reasonably be regarded as attracting a legitimate expectation of privacy, particularly where the filming may incidentally capture footage of private spaces and possessions beyond the scope of the police investigation. However, in the particular circumstances of this case, we were satisfied that the filming of the interior of Mr McGrath's late parents' house and possessions within it was incidental to the footage of the police search, which was central to their investigation.

In the case of Mr McGrath's late parents' house, Ofcom appreciates that a level of sentimental value would attach to the objects filmed to the extent that these were family heirlooms stored at his deceased parents' home. We took into account Mr McGrath's representations on Ofcom's Preliminary View that the property has "enormous emotional importance to me and my family". However, we took account of Mr McGrath's representations that he had not lived in the house since 2002, and based on his complaint to Ofcom, the possessions within it were owned by his parents' estate rather than Mr McGrath himself. We also took into consideration that neither Mr McGrath nor his family were residing at the property at the time the police search and when the footage was obtained. Therefore, we did not consider that the footage of the interior of the house

or the possessions within it, revealed anything particularly personal or private to Mr McGrath himself.

On balance, therefore, and taking these factors into account, we considered that Mr McGrath did not have a legitimate expectation of privacy in relation to the filming of the interior of his late parents' house. It was therefore not necessary for Ofcom to consider whether any infringement of Mr McGrath's privacy relating to the obtaining of this footage was warranted.

Interior of Mr McGrath's house

We then considered whether Mr McGrath had a legitimate expectation of privacy in relation to the filming of the inside of his home in Luton. We took into account Mr McGrath's assertion that the filming of this property for inclusion in the programme intruded on his "right to family life".

We also took into account the factors considered above in relation to the filming of the interior of Mr McGrath's late parents' house. Specifically, we took into account Channel 4's representation that the filming of the interior of this property, and the personal belongings within it, was directly relevant to the police investigation, which was initially in relation to an alleged burglary, and then became an investigation into Mr McGrath's suspected insurance fraud. However, as noted above, Ofcom had regard to the fact that an individual's involvement in a police investigation is often not a matter of public record until a person has been charged with the criminal offence. We took into account that at the time of filming, Mr McGrath had not yet been charged with any offence.

We also considered that Mr McGrath's house in Luton was his and his family's place of residence at the time of filming. In our view, despite the context of a related criminal investigation, the filming of the interior of a person's private place of residence, which is a naturally private and personal environment, could reasonably be regarded as attracting a legitimate expectation of privacy. We also took into account that, based on the footage of the interior of the house broadcast in the programme, it appeared the filming may have captured certain personal items beyond the scope of the investigation, such as family photographs or documentation. However, we acknowledged that this footage was merely incidental to the footage that followed the police search of Mr McGrath's house.

Taking all of these factors into account, Ofcom considered that Mr McGrath had a legitimate expectation of privacy in relation to the filming of the interior of Mr McGrath's house.

Since it was not disputed by the parties that the footage of the interior of Mr McGrath's house was filmed without his consent, we went on to consider whether the infringement of Mr McGrath's legitimate expectation of privacy in relation to the filming of footage of the interior of his house was warranted on the particular facts of this case.

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

Ofcom carefully balanced Mr McGrath's right to privacy with regard to the obtaining of the footage with the broadcaster's and audience's right to freedom of expression in the particular circumstances of the programme.

We took into account Channel 4's argument that there was a public interest in the filming of the footage. It said that the filming showed the work of the Bedfordshire Police in investigating both the reported burglary and suspected insurance fraud committed by Mr McGrath. We also took account of Channel 4's submission that the investigation and prosecution of Mr McGrath was a public matter that came at considerable cost to the public purse, and that there was therefore a clear public interest in showing the audience the police investigation and the nature and gravity of the crimes of which Mr McGrath was found guilty. We acknowledged Mr McGrath's representations on Ofcom's Preliminary View that there was no public interest in the making or broadcast of the programme on the basis that, in his view, it did not accurately represent the nature of the crimes depicted in the programme. In determining Mr McGrath's privacy complaint, it is not Ofcom's role to determine whether or not the way Mr McGrath's crimes were depicted in the programme was entirely accurate, but rather to determine whether or not Mr McGrath's right to privacy had been unwarrantably infringed in the making of the programme. We noted, however, that Mr McGrath was ultimately convicted of the crimes of which he was under investigation as shown in the programme.

Ofcom considered that there was a genuine public interest in the making of this programme, in that its purpose was to convey to viewers an understanding of the work involved in major police fraud investigations which are complex and costly. We considered that Mr McGrath's case provided an opportunity for the programme to illustrate the process of a police investigation of this nature and how it led to a subsequent arrest and conviction. In our view, obtaining footage of the police inside Mr McGrath's house during their search assisted in achieving this objective.

Therefore, having established the public interest in the footage obtained by the programme makers, Ofcom next focused on determining where the balance lies between the competing rights of the parties under Articles 8 and 10 of the Convention that are in issue.

Ofcom took into account that, with the exception of the arrival of the police at the Luton house to arrest Mr McGrath, Mr McGrath would not have been present during the police search following his arrest and therefore during the filming of these activities. We also took into account that the filming of the interior of Mr McGrath's house and various possessions helped to illuminate the decisions made and evidence gathered during the police search of the property, although this potentially captured footage of possessions beyond the scope of the police investigation.

Ofcom also considered whether, in accordance with Practice 8.9, the material had been obtained proportionately in all the circumstances and was relevant to the subject matter of the programme. The subject matter of the programme concerned the police investigation of Mr McGrath for suspected insurance fraud. We took into account that the footage was obtained while the programme makers accompanied the police during their search of Mr McGrath's house and focused specifically on the police carrying out their search. This involved filming footage of the interior and contents of the houses which were relevant to his suspected crime. We also took into account Mr McGrath's submission, and repeated in his representations on Ofcom's Preliminary

View, that the search warrant obtained by the police did not extend authority to the programme makers to film these searches. However, we considered that the programme makers entered and filmed the interior of Mr McGrath's house in order to capture footage demonstrating the police's work in investigating and gathering evidence relating to Mr McGrath's suspected crime and was thus proportionate and directly relevant to the subject matter of the programme.

Given these circumstances and the public interest justification in obtaining this footage described above, we considered that the means of obtaining the material had been proportionate and warranted.

Taking all of the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage outweighed Mr McGrath's legitimate expectation of privacy in relation to the filming of the interior of his house.

Ofcom found that Mr McGrath's privacy was not unwarrantably infringed in connection with the obtaining of footage included in the programme.

- b) We next considered Mr McGrath's complaint that his privacy was unwarrantably infringed in the programme as broadcast because "extensive" footage of his home and his late parents' house, and his personal possessions and photographs was broadcast. Mr McGrath said: "This irresponsible behaviour has put me at risk. My family's wealth as displayed on TV placed me as a target for extortion and assault". Mr McGrath said that the broadcast of the programme had resulted in him being burgled.

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

Practice 8.2:

"information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted".

Practice 8.6:

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

Ofcom began by assessing whether Mr McGrath had a legitimate expectation of privacy in the programme as broadcast in relation to the footage included in the programme. As set out at head a), the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

We first took account of the material shown in the programme, as described in the "Programme summary" above, including that footage of Mr McGrath's house and his late parents' house was included in the programme.

The programme as broadcast showed Mr McGrath's home in Luton, including the gated entrance to the estate on which the house is located, and footage of the house itself from the internal

access roads of the estate. Footage of the interior of the Luton house was also included, showing various rooms within the house where the police conducted their search such as the cellar and a dining room, as well as various personal possessions belonging to the McGrath family, including decorative items, with a focus on items that were alleged to have been stolen such as: silverware; an ornamental clock; a hanging candelabra; and a tantalus (i.e. liquor set in a wooden box). Photo frames in the interior of the house were also obscured.

The programme as broadcast also featured footage of Mr McGrath's late parents' house in Ireland as the police conducted a search of this property as part of their investigation. Again, the house in Ireland was shown from the exterior, revealing the gated entrance to the property and footage of the house from within the grounds. The programme as broadcast also showed the interior of the house, revealing various antiques from his parents' collection, such as decorative ornaments, Persian rugs and a gilded bedframe.

Exterior of Mr McGrath's house and his late parents' house

We then considered whether Mr McGrath had a legitimate expectation of privacy in relation to the footage of the exterior of his house and his late parents' house included in the programme as broadcast.

As summarised above, the programme featured footage of the outside of both Mr McGrath's house and his late parents' house as the police arrived to conduct a search of both properties, including footage of the façade and gated entrance of each house. In Ofcom's view, the filming and inclusion in a programme of the exterior of an individual's home, which would be visible from a public street, alone, could not reasonably be regarded as attracting a legitimate expectation of privacy. However, in considering this point, in addition to having regard to Practice 8.6 of the Code, we also took account of Practice 8.2, which states:

“Information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted”.

With regard to Mr McGrath's house in Luton, we considered that the programme referred only to the general location of the house but did not disclose the exact location of the house, for example, the road name, house number, or name of the estate on which it was located. Ofcom also observed that although Mr McGrath's home in Luton was filmed from access roads within the grounds of the gated estate on which the house is located, these roads did not appear to be closed to the public, so the programme showed no more than would otherwise have been visible to the public. We also took into account that although a sign to the property on which Mr McGrath's home is located was visible in the programme as broadcast, the name and location of the property were not clearly visible.

With regard to Mr McGrath's late parents' home, we took into account that while the programme referred to the general location of the property in *“County Meath, Ireland”*, it did not refer to the specific name of the house, road name, or number. Whilst the gated entrance was filmed from a public road, the outside of the house itself was filmed from within the private grounds of the house and thus potentially showed more than would otherwise have been visible from a public road. We took into account Mr McGrath's complaint that the programme as broadcast revealed footage of a concealed entrance lane and an underground passageway to an alternative entrance

to the house, and that this presented a security risk as a result of the broadcast. Although the programme revealed a number of internal entrance points to his late parents' house, we again considered that any expectation of privacy Mr McGrath had in respect of his late parents' house was reduced given that he has not lived in this house since 2002.

In the absence of any distinctive or identifiable features of either house, such as house names or numbers, we considered that it was unlikely that anyone viewing the programme who did not already know Mr McGrath and the location of his house and his late parents' house would have been capable of discerning the location of either property from the footage described above. For these reasons, we did not consider that the programme as broadcast disclosed the location of either Mr McGrath's or his late parents' home.

Taking all these factors into account, we did not consider that Mr McGrath had a legitimate expectation of privacy in relation to the inclusion of footage of the exterior of his and his late parents' houses in the context of the programme as broadcast. It was therefore unnecessary for Ofcom to consider whether any infringement of Mr McGrath's privacy relating to the inclusion of this footage in the programme as broadcast was warranted.

Interior of Mr McGrath's late parents' house

We then considered whether Mr McGrath had a legitimate expectation of privacy in relation to the footage of the interior of his late parents' house in the programme.

We took into account Channel 4's submission that it ensured in editing that no material outside the scope of the investigation was included in the final programme as broadcast. We took into account that the identity of the housekeeper at his late parents' house in Ireland was obscured and that the footage did not reveal anything of a particularly private or personal nature nor any personal details about Mr McGrath's family (including his late parents).

We also considered Channel 4's submission that the programme did not disclose any significant private information about Mr McGrath or the properties included in the programme beyond what had already entered the public domain in the course of his trial in open court and extensive press reporting of the case. We also took into account Channel 4's suggestion that Mr McGrath could not expect any privacy in relation to the footage as broadcast as he was responsible for putting these personal possessions at the centre of a police investigation. While court proceedings may become a matter of public record through press reporting, Ofcom considers that this fact does not, of itself, obviate all rights to privacy that a person might reasonably expect in relation to their private and family homes, even in cases where these homes and their contents are connected with the individual's crime.

For the reasons set out under head a), Ofcom considered that although the footage of the interior of Mr McGrath's late parents' house featured items that were of sentimental value to Mr McGrath, it did not disclose any information that fell within the scope of his private life, particularly in circumstances where he had not lived in the house since 2002. We also did not consider that the footage of the interior of the house or the possessions within it, revealed anything particularly personal or private to Mr McGrath himself. This is particularly the case given that he was not residing in the property at the time of the police search, and given our

understanding that the possessions within the house that featured in the programme are not owned by Mr McGrath himself.

On balance, therefore, Ofcom considered that Mr McGrath did not have a legitimate expectation of privacy in relation to the inclusion of footage of the interior of his late parents' house in the programme as broadcast. It was therefore unnecessary for Ofcom to consider whether any infringement of Mr McGrath's privacy relating to the obtaining of this footage was warranted.

Interior of Mr McGrath's house

We then considered whether Mr McGrath had a legitimate expectation of privacy in relation to the footage of the interior of his house included in the programme.

We took into account Channel 4's submissions set out above in relation to the footage of the interior of Mr McGrath's house in the programme, including that the identity of Mr McGrath's wife was obscured and that the programme as broadcast did not reveal anything particularly private items or personal details about Mr McGrath's family. We also considered the fact that anything of a sensitive nature which appeared incidentally in the footage alongside items directly relating to the investigation, such as family photographs and documents, was obscured in the programme as broadcast.

We gave further consideration to Channel 4's submission that Mr McGrath's personal possessions had already entered the public domain through the conduct and reporting of his criminal trial. However, as noted above, Ofcom considers that the fact that Mr McGrath was subsequently charged and convicted of offences in relation to which the police search of Mr McGrath's house was carried out, does not, of itself, obviate all rights to privacy that a person might reasonably expect in relation to their private and family homes, even in cases where these homes and their contents are connected with the individual's crime.

Ofcom also considered that the footage of the interior of his house in the programme as broadcast revealed an environment and possessions of a private nature comprising a part of Mr McGrath's "family life" in respect of which he might reasonably expect a level of privacy pursuant to Article 8 of the Convention notwithstanding any information in the public domain as a result of Mr McGrath's trial.

Taking all these factors into account, in the circumstances of the case, we considered that Mr McGrath had a legitimate expectation of privacy in relation to the inclusion of footage of the inside of his home in the programme as broadcast.

There was no dispute between the parties that the footage of the interior of Mr McGrath's house was included in the programme as broadcast without Mr McGrath's consent. We therefore went on to consider whether the broadcast of footage of the interior of his home was warranted under the Code.

We balanced Mr McGrath's right to privacy regarding the inclusion of the relevant footage 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. In particular, we considered

whether there was a sufficient public interest or other reason to justify the infringement of Mr McGrath's privacy in broadcasting the footage.

As above in head a), we took into account Channel 4's argument that there was a public interest in broadcasting the footage in that it showed the work of the Bedfordshire Police in investigating large scale and costly fraud, and more specifically the development of the investigation that resulted in the successful prosecution of Mr McGrath for fraud. We also took into account Channel 4's submission that the footage included in the programme as broadcast did not exceed what was proportionate and legitimate to enable viewers to understand the work of the police in investigating and gathering the necessary evidence to prosecute the insurance fraud committed by Mr McGrath. We acknowledged Mr McGrath's argument that the programme was not in the public interest on the basis that, in his view, it did not accurately represent the crimes depicted in the programme. However, as noted in head a) above, in determining Mr McGrath's privacy complaint, it is not Ofcom's role to determine whether or not the way Mr McGrath's crimes were depicted in the programme was entirely accurate, but rather to determine whether or not Mr McGrath's right to privacy had been unwarrantably infringed in the programme as broadcast. We further noted that Mr McGrath was ultimately convicted of the crimes of which he was under investigation as shown in the programme.

We considered that there was a genuine public interest in the programme including the story of the police's investigation of Mr McGrath, including the development of this investigation from Mr McGrath's initial report of a burglary to his arrest and being charged for fraud offences and perverting the course of justice. We acknowledged that this programme showed how the police developed and confirmed their suspicions of Mr McGrath, and the police search of Mr McGrath's house constituted an important part of this process. It was in this context that Ofcom considered that there was a public interest in broadcasting the footage of the interior of Mr McGrath's house, including personal belongings, as the footage enabled the broadcaster to illustrate the various stages and challenges involved in this investigation.

In weighing up the competing rights of the parties, we considered that while the programme included footage of the inside of Mr McGrath's house, including various personal possessions and photographs, on balance, we did not consider that it represented a significant intrusion into his privacy. As outlined above, we considered that the programme did not focus on any personal information which was not connected to the offence of fraud with which he was later charged, nor did it reveal anything else of a particularly sensitive or personal nature.

We also had regard to the fact that Mr McGrath said that the "irresponsible" behaviour of the broadcaster in including footage of his home had caused him to become the target of assault, extortion and a further burglary at the house he owns in Bedfordshire. However, we also considered Channel 4's submission that no evidence in support of these claims had been provided by Mr McGrath or the Bedfordshire Police, and that the alleged burglary had occurred at one of Mr McGrath's properties which is not part of the complaint entertained by Ofcom and considered in this decision.

Having taken all of the above factors into account, Ofcom considered that, on balance, the interference with Mr McGrath's right to privacy in this case was not of such a nature or gravity as

to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster and audience. We therefore considered that any infringement of Mr McGrath's privacy in the broadcast of the footage of the interior of Mr McGrath's house, was warranted in the circumstances.

Ofcom found, therefore, that Mr McGrath's privacy was not unwarrantably infringed in the programme as broadcast.

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