

## Complaint by Ms X, made on her own behalf and on behalf of Ms Y, about *Nightmare Neighbour Next Door* (including the opening credits of the series)

**Type of case** Fairness and Privacy

**Outcome** Not Upheld

**Service** Channel 5

**Date & time** 12 March 2020, 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.

### Case summary

The programme, which showed disputes between neighbours, featured a dispute between the complainant's mother, Ms Y, and her neighbour, Mrs Z. The programme included CCTV footage and footage taken by Mrs Z on her mobile phone which showed Ms Y with her face unobscured during two separate altercations with Mrs Z. The programme showed footage of the exterior of Ms Y's home, and footage of her car with its number plate blurred. The programme also showed CCTV footage of the second complainant, Ms X, with her face blurred.

Both complainants complained that their privacy was unwarrantably infringed in the obtaining of and subsequent broadcast of this footage in the programme, without their consent.

Ofcom found that:

- Ms Y did not have a legitimate expectation of privacy in connection with the obtaining and subsequent broadcast of CCTV and mobile phone footage of her included in the programme. Therefore, Ofcom's decision is that there was no unwarranted infringement of Ms Y's privacy in the obtaining and broadcast of the footage of her included in the programme.

- Ms Y did not have a legitimate expectation of privacy in the obtaining and subsequent broadcast of the exterior of her house, her garden and her car. Therefore, Ofcom’s decision is that there was no unwarranted infringement of Ms Y’s privacy in the obtaining and broadcast of this footage in the programme.
- Ms X did have a legitimate expectation of privacy in connection with the obtaining of, and subsequent broadcast of, footage of her included in the programme. However, we considered, in the particular circumstances of this case, that her legitimate expectation of privacy was limited and did not, on balance, outweigh the broadcaster’s and audience’s right to freedom of expression and the public interest in the broadcast of this footage. Therefore, Ofcom’s decision is that there was no unwarranted infringement of Ms X’s privacy in either the obtaining or the broadcasting of this footage in the particular circumstances of this case.

Therefore, Ofcom’s decision is that there was no unwarranted infringement of either complainants’ privacy in the obtaining and broadcast of the material included in the programme.

### **Programme summary**

On 12 March 2020, Channel 5 broadcast an episode of *Nightmare Neighbour Next Door*, a series which featured disputes between neighbours. The relevant segment was an account by Mrs Z, who alleged that the complainant, Ms Y, had been abusive towards her and her family.

During the programme’s opening credits, a brief clip of CCTV footage was shown of an unidentified woman (Ms X), with her face blurred; she was shown stood on the pavement adjacent to Mrs Z’s property and could be heard shouting, *“Enough is enough”*. The opening credits also showed footage of Ms Y attempting to take Mrs Z’s mobile phone, and an image taken from footage obtained by Mrs Z on her mobile phone which appeared to show Ms Y, with her face unobscured, spitting towards the camera.

The narrator introduced the programme:

*“...You can’t choose your neighbours...and you never know what goes on behind closed doors...When disagreements with next door turn ugly... things can get violent...with people living in fear of the nightmare neighbour next door...”*

The programme then set out the stories which would be discussed in the programme and the narrator referred to the dispute involving the complainants: *“...And a battle over a parking space turns into all-out war”*.

Prior to the advertisement break, the narrator said, *“And when two neighbours clash over parking, things hit boiling point”*. Footage was shown of Ms X, with her face obscured, standing on the driveway of a property, followed by footage of Ms Y, with her face unobscured, holding a mug and apologising for having *“spilled”* tea on her neighbour.

Later, the narrator introduced the segment featuring the complainants:

*“This sleepy suburb of Leeds is home to grandmother [Mrs Z]’s family. Her daughter, Sarah, and son in law, Mark, live here with their two children...For [Mrs Z], family is everything, so when her daughter suggested she move in to help look after the grandchildren, she didn’t hesitate to say yes...Before [Mrs Z] arrived, the family had lived next door to their neighbour, Ms Y, for over 10 years and although they weren’t friends, there had never been any problems between them...”.*

As the narrator spoke, a still image was included of Ms Y appearing to shout toward the direction of the camera, while seemingly being restrained by the arm of an individual in a hi-vis jacket. The programme also showed footage of the front exterior and fence of Ms Y’s property (the house number was not visible).

The narrator explained that Mrs Z had her own car which meant that when she moved in to help look after her grandchildren, there were three vehicles at the property. Mrs Z then explained that they were only able to park one car on the driveway and the other two cars were parked outside on the road, with the narrator saying that Mrs Z would normally park on the road outside Ms Y’s house. The narrator then said: *“But one day, when she returned home from the school run there was something preventing her from parking”*. The programme showed footage of Mrs Z stood on the street outside the two properties, explaining to camera that Ms Y had placed a traffic cone in the space where she usually parked her car. Mrs Z said, *“There’s no place because she put this cone here. Look how much space she’s taking to reserve her place”*. The narrator explained that Mrs Z continued to park in the space outside Ms Y’s house. The programme included footage of the traffic cone positioned on the street; the front exterior and fence of Ms Y’s property was visible in the background. Further footage of a black car parked next to the cone was shown with its number plate obscured.

Mrs Z said:

*“I was parked there and we saw the scratch [on my car] door, the back door, straight [to] the front and we were sure it’s [Ms Y] because she was away for a few days and no one touched the car. As soon as she came, that happened. So, to protect ourselves and our property and our cars, we put [up] CCTV”.*

The narrator then said: *“But they weren’t prepared for what the cameras were about to capture”*. A still image of Ms Y was included in the programme which appeared to show her attempting to spit at Mrs Z.

Later, the narrator said that Mrs Z felt she was being *“targeted”* by her neighbour because of where she was parking her car. Mrs Z explained that Ms Y would park her car in such a way so as to block her car in and this prevented her from carrying out *“vital”* journeys. The narrator then said:

*“...[Mrs Z] claims if she parked on the street outside [Ms Y]’s house, next door would regularly watch the road and as soon as she went to use her car, they would immediately reclaim the space...This CCTV captures the morning school run. The moment [Mrs Z] gets the children in the white car, [Ms Y] drives her silver car off her driveway and reclaims the space*

*on the street... [Mrs Z] believes [Ms Y] did this in an attempt to intimidate her and her family”.*

As the narrator spoke, the programme showed CCTV footage of the complainant’s car, with its registration plate obscured, moving into the parking space that Mrs Z had recently exited. Two black boxes had been placed on screen so that Ms Y’s front garden was not visible.

Mrs Z also said that Ms Y lived in a council house and she thought that she had broken the rules of her tenancy. The narrator then explained that Ms Y had said publicly that she was the victim and considered Mrs Z and her family had *“nothing better to do than to try to antagonise”* her. As the narrator spoke, a still image of her which had been shown earlier in the programme was included.

The programme continued:

Narrator: *“But one day things got heated, as [Mrs Z’s] daughter, Sarah, was confronted by [Ms Y] in the back garden.*

Mrs Z: *She come down at the bottom of the garden and start shouting, ‘f-ing, bitch’, in front of my two grandchildren and then she say: ‘You made the enemy now.’ What does she mean by that? Is she going to attack us? Is she going to beat us up? What is the meaning of that? We were so frightened.*

Narrator: *[Mrs Z] felt so intimidated by the visit, she felt she had no choice but to get help from the police. Officers went and spoke to [Ms Y] and she was issued a community resolution order, which is an informal way of dealing with less serious crimes”.*

As Mrs Z spoke, a still image was included of Ms Y appearing to shout toward the direction of the camera, while seemingly being restrained by the arm of an individual in a hi-vis jacket. Further footage of the exterior of Ms Y’s property was also shown, including a close up shot of a window with the curtains closed.

Mrs Z then explained that shortly after Ms Y had received the warning from the police, there was *“banging on the doors”* and Mrs Z said that she and her family were frightened. The narrator then said that *“up until now, [Mrs Z] had endured verbal abuse from her neighbour, but [Ms Y] was about to take things to a whole new level”*. Mrs Z described that Ms Y was spitting and wanted to hit her, and a still image was included which showed Ms Y, with her face unobscured, spitting towards the camera.

The narrator explained that Mrs Z was contacting the police on a weekly basis over the parking troubles and abusive altercations with her neighbour. Mrs Z said that her and her family started to log all of the incidents involving Ms Y. Footage was included of Ms Y holding a mug as she apologised to Mrs Z for spilling tea on her.

Later, the narrator explained the Mrs Z had called the police after *“she felt intimidated by her neighbour, Y, after she came round shouting and spitting on her doorstep”*. The narrator explained that Mrs Z thought that Ms Y would be evicted from her council house *“but unfortunately for her, she couldn’t be more wrong”*. The narrator then said, *“Armed with CCTV and her own camera phone, she*

[Mrs Z] *was intent on getting proof of [Ms Y]’s unreasonable behaviour*”. The programme then showed Mrs Z on the street outside of the two properties. Mrs Z explained:

*“I came back from work one day and I parked my car here. [Ms Y] arrived and she park[ed] her car exactly behind my car, bumper to bumper and then, she brought her [other] car out and went [in] front of me and park[ed] bumper to bumper, like that. You just couldn’t get out at all. So, I bring my camera, my phone to take a photo. Then she storm[ed] out, shouting and telling me, ‘You f-ing bitch! Stop! Don’t take photo, don’t take photo!’”*

As Mrs Z spoke, CCTV footage was shown of Ms Y exiting her car, which had been parked immediately in front of Mrs Z’s car. The car’s number plate had been blurred. Further CCTV footage was shown, and Mrs Z could be seen taking pictures of the parked cars. Ms Y could be seen walking through her front gate towards Mrs Z, and audio was included, in which Ms Y could be heard shouting: *“Get away from my friend’s car”* and *“stop taking pictures”*. The footage showed an apparent struggle between Ms Y and Mrs Z, and Ms Y could be seen trying to take Mrs Z’s mobile phone out of her hand. Mrs Z explained to camera:

*“Suddenly, she grabbed my finger and pulled this finger backward, completely backward and I got such a fright. I just shouted, ‘Ow!’ and I said, ‘I’m going to call the police’. I was so worried for my safety and petrified, so I run in to safety. I was shaking, so immediately, I called the police. I dial[led] 999”.*

The narrator explained:

*“[Ms Y] was arrested and questioned at the police station and the attack left [Mrs Z]’s finger with permanent tissue damage... Just weeks after the CCTV camera went up, [Mrs Z] thought she’d got clear proof of [Ms Y]’s behaviour in the form of an unprovoked attack. But after being questioned by the police, no further action was taken against [Ms Y]”.*

The programme showed more CCTV footage of the incident and Mrs Z could be seen pointing towards the direction of the CCTV camera on her property. The narrator said: *“[Ms Y] has said publicly that the problem between the families was not about parking. She claims she was harassed by [Mrs Z], who would film and record her, and also stand behind fences to listen in on her conversations with people in the street”*. Footage was shown of Ms Y outside Ms Z’s house and she shouted: *“Stop taking pictures”*.

The narrator said: *“[Mrs Z] claims she tried to stay away from [Ms Y] as much as possible”*. Ms Z said that her doctor had advised her to exercise and described an incident when she had decided to go for a walk and found Ms Y following her. The narrator said: *“Fearing the worst, [Mrs Z] went straight for her camera phone and started recording”*. As Mrs Z recounted the incident, the programme showed footage which had been captured by Mrs Z on her mobile phone. The footage showed Ms Y, with her face unobscured, walking down an unidentified street towards Mrs Z carrying a mug of tea. The footage showed Ms Y in close proximity to Mrs Z, and Ms Y’s face could be seen clearly. Audio of the interaction was included in the programme and Ms Y could be heard saying, *“Oh dear, I’m very, very*

*sorry. I've spilled me drink. So sorry, lovey". Mrs Z explained in an interview to camera, "[Ms Y] came and passed me; just went right behind me and put her cup on my back and poured it". The programme returned to footage taken by Mrs Z on her mobile phone and Ms Y could be heard saying: "Oh, I'm sorry, I didn't realise you were there".*

Mrs Z said:

*"So, by this time she knew [that I am] recording her and then she tried to grab the camera...Grabbed the phone from me and I said, I wouldn't let go, I wouldn't let go. So, she let go and I start going so fast and she was following me and I'm shaking by then, I'm petrified, petrified. Yeah, I thought, I'm going to die. I said, that's it. Now she's going to kill me".*

The narrator said:

*"[Ms Y] had thrown hot tea over [Mrs Z] and tried to grab her phone but things were about to get even more ugly".*

Mrs Z continued:

*"...[Ms Y] grabbed my phone again like that and pulling it and I wouldn't let her. I run [past] her, and run, run, run and my heart [was] panting, so I run to my house. Around here I think she throw her mug [at the house], bam, hit the building. So, I run, got the key out, so I run here and I'm shaking, petrified, petrified for my life. So, I'm doing that and I'm looking to see if she's coming and I just manage to open the door and I just jumped in and shut the door. I was petrified. So, then I run to the phone and I dial 999, ask for police and I was crying and screaming. I look out and I saw police and they said, [Ms Y], and she was screaming and kicking and they put her in the van, police van was parked there and it was terrifying".*

The narrator said: *"[Ms Y] and her daughter told us they feel harassed by [Mrs Z] and that [Ms Y] now doesn't leave the house anymore and is a prisoner in her own home".*

The narrator then said:

*"[Mrs Z] had just been attacked with hot tea. With [Ms Y] under arrest, she thought the ordeal was over. But she heard shouting outside".*

Mrs Z spoke to camera:

*"Her daughter come threatening me. 'See, what have you done? Now are you going to get it? I'm going to get you".*

The programme showed CCTV footage taken from the same camera attached to Mrs Z's property, which showed Ms Y's daughter (the second complainant, Ms X) standing on the pavement next to Mrs Z's driveway with an unidentified man; their faces were blurred. Ms X was shown pointing towards Mrs Z's house and shouting:

*“You know when I get a grip of this woman in here, she’s getting it. She’s getting it”.*

After a programme break, the narrator continued:

*“In Leeds, Ms Y had just been arrested after attacking her neighbour, [Mrs Z], with a cup of tea...But [Ms Y]’s daughter wasn’t happy about her Mum’s arrest”.*

The programme showed the CCTV footage of Ms X which had been shown earlier in the programme. Again, Ms X’s face was blurred, and she was shown pointing towards Mrs Z’s house and shouting:

*“You know, when I get a grip of this woman in ‘ere, she is getting it, she is getting it. Getting my mother nicked again, the way that my mother is, nah mate, enough is enough”.*

The narrator said:

*“We spoke to [Ms Y]’s daughter, and she denies threatening [Mrs Z]. And after the incident was reported to the police, no further action was taken”.*

At the conclusion of the segment, the narrator said:

*“In court, things didn’t quite turn out as [Mrs Z] and her family had hoped. [Ms Y] was convicted of assault and she received a 12-month community order, but she wasn’t told to leave her council house”.*

The programme ended without any further reference to either complainant. Ms Y was named in the programme, however Ms X was not.

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

### **Complaint**

#### *Ms Y*

- a) Ms X complained that Ms Y’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she did not consent to being filmed by her neighbour, on her CCTV and mobile phone, nor for this footage to be provided to the broadcaster.
- b) Ms X complained that Ms Y’s privacy was unwarrantably infringed in the programme as broadcast because CCTV and mobile phone footage of her was broadcast without consent.
- c) Ms X complained that Ms Y’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she did not consent to her house, garden and car being filmed by the programme makers and also by her neighbour, on her CCTV and mobile phone, and for this footage to be provided to the broadcaster.

- d) Ms X complained that Ms Y's privacy was unwarrantably infringed in the programme as broadcast because footage of her house, garden and car, filmed by the programme makers and by her neighbour on her CCTV and mobile phone, was broadcast without consent.

#### Ms X

- e) Ms X complained that her privacy was unwarrantably infringed in connection with the obtaining of footage of her included in the programme, because she did not consent to being filmed by her neighbour, on her CCTV, nor for this footage to be provided to the broadcaster.
- f) Ms X further complained that her privacy was unwarrantably infringed in the programme as broadcast because CCTV footage of her was broadcast without consent.

Ms X explained in her complaint that the programme makers had contacted both her and her mother asking them whether they wanted to take part in the programme. She stated that they had declined and had asked the programme makers not to include the footage of them in the programme.

### Broadcaster's response

#### Background

Channel 5 said that following Ms Y's conviction in August 2018 for assaulting Mrs Z, the complainant's "extreme conduct" towards Mrs Z and her family had been the subject of reports in several national and local newspapers in 2018 and 2019; the broadcaster provided website links to this coverage. Channel 5 said that the dispute between the parties had also been the subject of reports broadcast by ITV; most notably, Ms Y had given an interview to ITV about the story.

The broadcaster said Article 8 of the European Convention on Human Rights ('ECHR') conferred a right to "respect" for privacy rather than an absolute right<sup>1</sup>, and it was neither possible nor desirable to seek to give individuals complete autonomous control over information that relates to them<sup>2</sup>. There is a need to ensure sensible limits are placed on the scope of Article 8<sup>3</sup>. Channel 5 said that accordingly, Article 8 does not protect information that is anodyne<sup>4</sup> or "of a trivial nature, of a low level of personal significance, in respect of which the claimant did not really have any expectation of privacy"<sup>5</sup>. Channel 5 added that it was well accepted that the protection of Article 8 can be lost where information is manifestly public in nature and/or firmly in the public domain<sup>6</sup>.

---

<sup>1</sup> *M v Secretary of State for Work and Pensions* [2006] 2 AC 91 (at para 83).

<sup>2</sup> *O'Halloran v UK* [2008] 46 EHRR 21.

<sup>3</sup> *R (on application of Wood) v Commissioner of Police of the Metropolis* [2010] 1 WLR 123 (at para 22).

<sup>4</sup> *Campbell v MGN Ltd* [2004] 2 AC 457 (at para 157).

<sup>5</sup> *Ambrosiadou v Coward* [2011] E.M.L.R. 21 (at para 28), cited with approval by the Court of Appeal in *Various 3<sup>rd</sup> Wave Claimants v MGN Ltd* [2019] EWHC 2122 (Ch).

<sup>6</sup> *Higinbotham (formerly BWK) v Teekhungam* [2018] EWHC 1880 (QB) Nicklin J upheld the striking out of an "unreasonable and unreal" claim for misuse of private information in respect of the fact that Mr Higinbotham had a second wife and children.

## Response to complaint

- a) Channel 5 did not accept that Ms Y's privacy rights were engaged by the obtaining of the CCTV or mobile phone footage shown in the programme.

Channel 5 said that the use of CCTV and mobile phone footage was a well-established feature of the series, and it said that victims of "nightmare neighbours" routinely compile evidence of the conduct perpetrated against them, whether for their own safety, or on the advice of the authorities for the purpose of bringing legal action. The broadcaster said that where a "nightmare neighbour" denies the allegations against them, obtaining CCTV or mobile phone footage is inevitably the only way of demonstrating the existence of the conduct complained of.

The broadcaster said that an individual does not have a right not to be captured on a mobile phone or on CCTV<sup>7</sup>, nor does an individual have a right not to be photographed or filmed without his or her consent<sup>8</sup>. Channel 5 noted a previous Ofcom Fairness and Privacy Adjudication concerning a different episode of *Nightmare Neighbour Next Door* in which Ofcom had considered that the fact that someone is filmed on CCTV without their consent does not automatically determine a privacy issue<sup>9</sup>.

Channel 5 said that in all the footage, Ms Y had been filmed while stood on the public highway, where she would have been visible to any member of the public in the vicinity. Channel 5 said that far from being engaged in private activity, Ms Y had been filmed "obviously and loudly berating or antagonising Mrs Z or members of her family". Channel 5 added that the footage shown captured a "particularly unpleasant course of conduct" towards Mrs Z, including causing physical injury to her hand and assaulting her with tea.

With regards to the CCTV footage, Channel 5 said that it appeared that the complainant had been aware of the existence of the CCTV camera attached to the Z family's property; in the footage which showed the dispute over parking, Mrs Z could be seen pointing out the existence of the CCTV camera to Ms Y. Channel 5 said that in any event, the camera had been installed high up on the property where its white colour contrasted with the black soffit<sup>10</sup> of the house, therefore it understood that the CCTV camera would have been visible to Ms Y from the public highway.

In relation to the footage taken by Mrs Z on her mobile phone, Channel 5 said that it was apparent that Mrs Z had openly filmed the complainant, indicated by the fact that Mrs Z told Ms Y, "*I'm recording*", and the complainant had attempted to "grab" Mrs Z's mobile phone from her.

Channel 5 said that while its position was that Ms Y's rights under Article 8 ECHR were not engaged by the obtaining of the footage, should Ofcom consider that Ms Y did have a legitimate

---

<sup>7</sup> *Campbell v MGN Ltd* [2004] 2 AC 457.

<sup>8</sup> *Ibid.*

<sup>9</sup> See 'Complaint by Mrs Marjorie Osborne, made on her behalf by Mr David Grant', [Issue 327](#) of Ofcom's Broadcast and On Demand Bulletin, published on 24 April 2017, p92.

<sup>10</sup> A Soffit on a house is the underneath part of the roof overhang that connects the edge of the roof and the wall.

expectation of privacy, its position was that any infringement involved in the obtaining of the information complained of was warranted by: the editorial justification for doing so, in order that viewers can properly appreciate the extent of Ms Y and her daughter's course of conduct against Mrs Z and her family; and/or the countervailing right, under Article 10 ECHR, of Mrs Z to tell her story.

Channel 5 said that it is well-established that, in general, issues such as the tone of reporting matters and editorial decisions about content are for the media and not the court to determine<sup>11</sup>. Channel 5 added that its editorial discretion also extends to its decisions about which footage is to be used in the pre-titles. The broadcaster said that the pre-titles are viewers' introduction to the programme; their purpose is to provide them with a flavour of the conduct faced by the contributors who are to feature in the series. Channel 5 said that the excerpts of the complainant's conduct shown in the pre-titles were a typical example of this conduct, and the footage of the complainant was given no particular prominence as compared with other excerpts shown in the pre-titles. Rather, they formed just one part of the representative sample provided to viewers.

Channel 5 said that the use of "primary footage", such as CCTV and mobile phone footage, that showed victims recounting their experiences, provided viewers with an authentic account of the conduct faced by the contributors, and was a well-established editorial feature of the series. It said that such footage is often the only evidence of the conduct complained of when faced with a denial from the "nightmare neighbour". Channel 5 said that seeing this evidence enables viewers to come to their own, informed conclusions about the allegations made in the programme.

Channel 5 added that in addition to its own Article 10 ECHR rights, and that of its viewers, the Article 10 rights of the contributors themselves to tell their story were important. Channel 5 said that Mrs Z's efforts to gather evidence of her neighbour's conduct, and the police's response to it, formed an important part of her story. The broadcaster said, as is common in many of the stories featured on the series, Mrs Z had described to viewers her frustration at the police's failure to take action in response to her neighbour's conduct against her, and like many contributors, she felt forced to gather evidence to protect herself and to encourage the police to take action. Accordingly, Channel 5 said, far from being inserted gratuitously, the matters recorded by Mrs Z on CCTV and her mobile phone formed an important element of her story.

- b) Channel 5 said that Ms Y did not have a legitimate expectation of privacy in relation to the footage as broadcast. It said that the complainant's conduct as captured on Mrs Z's mobile phone had been the subject of a criminal conviction following a hearing in public.

Channel 5 said that all of the stills and footage featured in the programme of the complainant, save for the still which showed her seemingly being restrained by an individual in a hi-vis jacket, had already been widely circulated in national and local media prior to broadcast, including media coverage in which the complainant herself had participated (Channel 5 referred to the media coverage footnoted above). Channel 5 said that the existence of prior media coverage had

---

<sup>11</sup> *Jersild v Denmark* (1995) 19 EHRR 1 (at para 31); *Fressoz & Roire v Fram* (1999) 31 EHRR 2 (at para 52); *MGN Ltd v United Kingdom* [2011] 53 EHRR 66 (at para 145); *Trimingham v Associated Newspapers Ltd* [2012] EWHC 1296 (QB) (at para 85).

previously been considered by Ofcom to be a factor in its decision not to uphold a separate fairness and privacy complaint about a different episode of *Nightmare Neighbour Next Door*<sup>12</sup>.

Channel 5 said that while its position was that the complainant's rights under Article 8 ECHR were not engaged by the programme as broadcast, should Ofcom consider that Ms Y did have a legitimate expectation of privacy, its position was that any infringement was warranted, for the reasons set out at a) above.

- c) Channel 5 said that the episode featured shots of the exterior of Ms Y's property and showed the house and garden. It said that the complainant's car could also be seen in footage of the road next to the property. Channel 5 said that these shots had been taken from either: the CCTV footage from Mrs Z's family's property; the mobile phone footage shot by Mrs Z; or the programme maker's own footage, shot either from the public highway or from Mrs Z's family's property. The broadcaster said that in all CCTV footage shot from the Zs' property, large black squares had been added so that the complainant's front garden was obscured in the broadcast footage. Channel 5 said that the black squares had been inserted into the footage before it was provided to the programme maker for inclusion in the programme. It added that the complainant's house number and car registration number were obscured throughout the programme and no road names had been visible. Channel 5 commented that the footage did not show the interior of the house and did not reveal anything private or sensitive, and the car was "unremarkable in colour and model".

Channel 5 said that while its position was that the Ms Y's rights under Article 8 ECHR were not engaged by the obtaining of this footage, should Ofcom consider that Ms Y did have a legitimate expectation of privacy, its position was that any infringement involved in the obtaining of the information complained of was warranted, for the reasons set out at a) above.

- d) Channel 5 said that exterior shots of the "nightmare neighbours" homes were an uncontroversial and well-established editorial features of the series *Nightmare Neighbour Next Door*, given that the programme's entire premise is based on relationships between neighbours. Additionally, Channel 5 said that, in this case, a main element of Ms Y's antisocial conduct towards Mrs Z was the use of her and her friend's cars: for instance, by boxing Mrs Z's car in and driving aggressively towards her.

Channel 5 referred to the Ofcom Fairness and Privacy Adjudication referred to above, in which Ofcom found that "the filming and inclusion in a programme of the exterior of an individual's property and vehicles, visible from the public street, alone, could not reasonably be regarded as attracting a legitimate expectation of privacy"<sup>13</sup>. Channel 5 added that in finding that there was no legitimate expectation of privacy, Ofcom took into consideration that "details of the exact location

---

<sup>12</sup> See 'Complaint by Mrs Sara Webb on her own behalf and on behalf of Mr Jonathan Webb', [Issue 335](#) of Ofcom's Broadcast and On Demand Bulletin, published on 29 August 2017, p53.

<sup>13</sup> See 'Complaint by Mrs Sara Webb on her own behalf and on behalf of Mr Jonathan Webb', [Issue 335](#) of Ofcom's Broadcast and On Demand Bulletin, published on 29 August 2017, p58.

of the house, for example the street name or the house number, were not included in the programme, nor were the registration number plates of the cars at the property”<sup>14</sup>.

Channel 5 said that the present case was “indistinguishable from those previous cases” and said that the exterior shots of the complainant’s property did not show anything of the interior and did not reveal anything private or sensitive about her. Nor did the shots of the complainant’s car, which Channel 5 said was “unremarkable in colour and model”.

Channel 5 said that while its position was that the complainant’s rights under Article 8 ECHR were not engaged by the programme as broadcast, should Ofcom consider that Ms Y did have a legitimate expectation of privacy over the information broadcast, its position was that any infringement was warranted, for the reasons set out at a) above.

- e) Channel 5 said that Ms X’s privacy rights were not engaged by the obtaining of the CCTV footage included in the programme. It said that the programme contained one sequence of the complainant, filmed on CCTV, “berating and threatening Mrs Z” after her mother’s arrest. Channel 5 said that the complainant had been recorded whilst on the public highway, acting in a “loud and unpleasant manner” towards Mrs Z. The broadcaster added that she had been filmed on the same CCTV camera that had recorded her mother’s conduct, which, Channel 5 said it understood had been visible from the public highway, for the reasons explained above.
- f) Channel 5 said that Ms X’s privacy rights were not engaged by the broadcast of the CCTV footage included in the programme. Channel 5 said that in relation to the broadcast of this material, the complainant’s face had been obscured throughout, therefore, “she was not visually identifiable to the wider public”.

In conclusion, Channel 5 said that it considered that the inclusion in the programme of the limited information about which the complainants had complained did not constitute an infringement of their privacy, and that in any event, the strong countervailing Article 10 ECHR rights at play in this case meant that any infringement, if found, was warranted.

### **Preliminary View**

Ofcom prepared a Preliminary View that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. Neither complainant chose to make representations. Channel 5 chose to make representations which are summarised, in so far as they are relevant to the complaint entertained and considered by Ofcom, below.

Channel 5 said that it agreed with Ofcom’s Preliminary View that the complaint should not be upheld, for all the reasons given. However, Channel 5 said that, on further reflection, it also wished to make a broader point about Ms Y’s complaints in respect of the footage obtained by Mrs Z on her mobile phone and on CCTV cameras installed on her property in response to Ms Y’s behaviour.

Channel 5 said that for the avoidance of any doubt, the recording of this footage pre-dated the programme’s production and was not obtained at the direction of Channel 5 or the programme maker. The broadcaster said that therefore, neither Channel 5 nor the programme maker had control

---

<sup>14</sup> Ibid.

over what was filmed, nor how it was filmed. Channel 5 said that as noted by Ofcom in its Preliminary View, neither Channel 5 nor the programme maker were responsible for the black squares in the footage with which it was provided.

Channel 5 said that in these circumstances, it appears difficult to envisage circumstances in which a broadcaster might justifiably be sanctioned for the obtaining of such footage, as distinct from its broadcast. Channel 5 argued that it would be concerning if broadcasters were dissuaded from making use of footage provided by third parties by the possibility of being sanctioned for the way in which the third party obtained the footage. Channel 5 said that while it is easy to contemplate steps that the broadcaster might take to mitigate the risk of sanction in respect of its subsequent use of the footage (for instance, steps to obscure the identity of individuals in the footage as broadcast), it is difficult to contemplate any meaningful steps that broadcasters could take to mitigate the risk of being sanctioned for the obtaining of the footage.

Channel 5 said that the fact that the footage was obtained entirely independently of the programme's production should be a further factor supporting Ofcom's decision in this case that there was no breach of the Ofcom Broadcasting Code in respect of heads (a), (c), and (e) of the complaint, insofar as they concern the footage obtained by Ms Z.

## 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, including Channel 5's representations on Ofcom's Preliminary View.

In Ofcom's view, the individual's right to privacy must be balanced against the competing rights of the broadcaster to freedom of expression and of the audience to receive ideas and information without undue interference. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. This is reflected in how Ofcom applies Rule 8.1 of Ofcom's Broadcasting Code ("the Code")<sup>15</sup> which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

---

<sup>15</sup> See the [version of the Code in force at the date of broadcast](#).  
*Issue 449 of Ofcom's Broadcast and On Demand Bulletin*  
25 April 2022

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 Ms X’s complaint that Ms Y’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she did not consent to being filmed by her neighbour on her CCTV and mobile phone, nor for this footage to be provided to the broadcaster for broadcast in the programme.

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

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

Practice 8.5: “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”.

We first assessed the extent to which Ms Y had a legitimate expectation of privacy in the particular circumstances in which the relevant material of her was obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be assessed in light of the circumstances in which the individual finds him or herself. The Code’s statement on the meaning of “legitimate expectation of privacy” makes clear that such an expectation:

“...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place...”.

As set out in the “Programme Summary” above, the programme makers had obtained the footage of Ms Y from her neighbour, Mrs Z, who had filmed the complainant using a CCTV camera located on her own property and using her mobile phone. The CCTV footage captured video of Ms Y leaving her own property and approaching Mrs Z on the street, where there was a brief verbal altercation concerning parking which culminated in Ms Y allegedly damaging Mrs Z’s finger. Further CCTV footage obtained by Mrs Z also captured Ms Y leaving her house and moving her car next to Mrs Z’s car on the road next to the two properties. In relation to the mobile phone footage obtained by Mrs Z and provided to the broadcaster, Ms Y was filmed following Mrs Z down a street and pouring tea from a mug over her, and then attempting to take Mrs Z’s mobile phone. The footage captured the complainant, Ms Y, with her face unobscured and her voice could be heard.

Before considering the substance of the complaint, we took into account Channel 5's representations on Ofcom's Preliminary View that an undue burden would be placed upon a broadcaster should Ofcom find a breach of the Code against a broadcaster for the obtaining of footage by a third party for a purpose other than for broadcast in a televised programme. Channel 5 said that it would be concerning if broadcasters were dissuaded from making use of footage provided by third parties by the possibility of being sanctioned for the way in which the third party obtained the footage. While we consider that the underlying circumstances of the filming may be a relevant consideration to whether or not a person's privacy was unwarrantably infringed in connection with the obtaining of that material, Ofcom's approach is to consider whether the obtaining of the footage from a third party for use in a broadcast programme creates an unwarranted infringement of privacy. Our intention is not to discourage broadcasters from obtaining footage which may have been filmed by a third party for a purpose other than for broadcast in a televised programme, however broadcasters must ensure that if they do so, they comply with the Code.

We took into account that the CCTV footage of the complainant had been obtained from a CCTV camera located on the exterior of Mrs Z's property, which had filmed Ms Y from a distance as she stood on the street next to Mrs Z's property. We took account of the broadcaster's representations that the footage showed that Mrs Z had pointed out the existence of the CCTV camera to Ms Y, and therefore the complainant would have been aware that she was being filmed. We also took into account Channel 5's representation that it was apparent that Mrs Z had openly filmed the complainant on her mobile phone, indicated by the fact that Mrs Z had told Ms Y, "I'm recording", and that the complainant had attempted to take Mrs Z's mobile phone from her. Ofcom acknowledged that in both cases, there was no suggestion that the complainant had been filmed surreptitiously, for example, through use of a hidden camera. However, to the extent that Ms Y had been aware that she was being filmed by Mrs Z on either occasion, Ofcom acknowledged that Ms Y was unlikely to have been aware of the exact purpose of the filming, or that such footage would subsequently be provided to the broadcaster for broadcast in the programme.

We took into consideration that the footage obtained had captured verbal and physical altercations which had taken place between Ms Y and her neighbour, Mrs Z, on the street outside their homes. We took into account Channel 5's submissions that Ms Y did not have a legitimate expectation of privacy over the obtaining of footage of this nature, in circumstances where she had been filmed "obviously and loudly berating or antagonising Mrs Z or members of her family", and the footage shown captured a "particularly unpleasant course of conduct" towards Mrs Z, including "causing physical injury to her hand and assaulting her with tea". Ofcom considered that the breakdown of a relationship between two people, which culminates in a verbal and/or physical altercation, may reasonably be regarded as a sensitive situation, in that these events may be upsetting or distressing to the individuals involved. Ofcom acknowledged that the events which occurred between Ms Y and her neighbour had the potential to be distressing to Ms Y in themselves, and that the broadcast of the detail of them may have compounded her distress. However, we considered that whether someone has a legitimate expectation of privacy in relation to the obtaining of footage of this nature, will depend on all the circumstances of a particular case.

In this instance, we considered that Ms Y was filmed involved in several heated exchanges with her neighbour, as set out in detail above. We considered that the footage obtained of Ms Y revealed she was engaged in a dispute with her neighbour, Mrs Z. While we acknowledged that Ms Y may have found her involvement in such altercations with Mrs Z to be distressing, Ms Y did not appear in the footage to be in a particularly vulnerable state, nor did she appear visibly distressed or upset. We further took into account that Ms Y was filmed on CCTV and on Mrs Z's mobile while she was on a public street, or in her car, in full view of any member of the public who may have been present when these events were filmed, and in circumstances where someone may have reasonably expected their activities to be observed by members of the public. Overall, we did not consider that the footage which was captured by Mrs Z and provided to the broadcaster for broadcast in the programme, showed Ms Y engaging in any private or sensitive activity or captured any images or information which could reasonably be considered private or of a sensitive nature about Ms Y.

Taking all the factors above into account, and in the particular circumstances of this case, Ofcom considered that Ms Y did not have a legitimate expectation of privacy in relation to the circumstances in which she was filmed on this occasion.

Ofcom therefore considered that Ms Y's privacy was not unwarrantably infringed in connection with the obtaining of the material included in the programme in this respect.

- b) We next considered Ms X's complaint that Ms Y's privacy was unwarrantably infringed in the programme as broadcast because CCTV and mobile phone footage of her was broadcast without consent.

In considering this aspect of the complaint, Ofcom had regard to Practice 8.4, set out a) above, in addition to the following Code Practices:

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".

Practice 8.10: "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".

Ofcom began by assessing whether Ms Y had a legitimate expectation of privacy in the programme as broadcast in relation to the footage of her included in the programme. As set out at head a) 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 concerned finds him or herself.

As set out in detail at head a) and the “Programme summary” section above, the programme included CCTV footage of Ms Y leaving her own property and approaching Mrs Z on the street, where there was a brief verbal altercation concerning parking which culminated in Ms Y apparently damaging Mrs Z’s finger. CCTV footage was also shown of Ms Y leaving her house and moving her car next to Mrs Z’s car on the road next to the two properties. The programme also showed mobile phone footage of the complainant walking towards Mrs Z on an unidentified street, pouring tea from a mug over her, and then attempting to take Mrs Z’s mobile phone. Ms Y was named in the programme and her face was shown in the footage unobscured throughout. Ms Y’s voice was also heard in the programme. In those circumstances, we considered that Ms Y was clearly identifiable from the footage.

We acknowledged Channel 5’s representations that all of the stills and footage featured in the programme of the complainant, save for the still which showed her seemingly being restrained by an individual in a hi-vis jacket, had already been widely circulated in national and local media prior to broadcast, including through media coverage in which the complainant herself participated. Ofcom acknowledged that individuals are not necessarily deprived of their right to privacy over information or images just because they have been put into the public domain in the past. For example, we acknowledged that a criminal conviction may be a matter of public record, and an individual will not usually have a legitimate expectation of privacy in connection with the mere reporting of the fact of their conviction. However we do not consider that this fact obviates all rights of privacy that a person subject to those criminal proceedings might reasonably expect, especially in relation to events occurring before a charge has been laid. Each case must be considered on its own facts.

In this instance, we had regard to Channel 5’s submission that the complainant, Ms Y, had given an interview<sup>16</sup> about her dispute with Mrs Z, where she was named and her face was shown unobscured. We took into consideration that during this interview, clips taken from the mobile phone footage obtained by Mrs Z were shown, in addition to the CCTV footage which showed the verbal and physical altercation between the neighbours over parking. We also had regard to the fact that during this interview, Ms Y had provided her own explanation for the breakdown in the relationship with her neighbour, and had also said, *“Yes I have reacted. But for the two occasions that I’ve reacted there’s a million and two occasions that I haven’t”*. In those circumstances, it was apparent to Ofcom that prior to the broadcast of the programme subject to complaint, Ms Y had been willing to identify herself in connection with the dispute with her neighbour and had commented on her involvement in the conduct shown in the broadcast footage in the programme. We also took into account that Ms Y had been convicted of assault and she had received a 12-month community order following the incident involving the cup of tea. In these circumstances, therefore, we did not consider that the programme contained information about the breakdown of Ms Y’s relationship with her neighbour which was not already in the public domain.

As discussed at head a) above, we recognised that broadcasting footage that showed a person involved in a dispute with their neighbour can, in certain circumstances, be a sensitive situation for the person concerned. As discussed at head a) above, Ofcom considered that the breakdown of a relationship between two people, which culminates in a verbal and/or physical altercation, may

---

<sup>16</sup> See footnote 2.

reasonably be regarded as a sensitive situation, in that these events may be upsetting or distressing to the individuals involved. Ofcom acknowledged that the events which occurred between Ms Y and her neighbour had the potential to be distressing to Ms Y in themselves, and that the broadcast of the detail of them may have compounded her distress. However, we considered that whether someone has a legitimate expectation of privacy in relation to the broadcast of footage of this nature, will depend on all the circumstances of a particular case.

In this instance, we did not consider that information that disclosed the fact that Ms Y was in dispute with her neighbour, constituted private or sensitive information about her for the reasons explained above. Moreover, while we recognised that Ms Y had been filmed during physical altercations with her neighbour, the footage did not appear to show her in a particularly vulnerable state, nor did she appear visibly distressed or upset.

In Ofcom's view, Ms Y did not have a legitimate expectation of privacy with regards to the inclusion in the programme of unobscured footage of her in these circumstances. This was particularly so, given that the programme did not contain further information about the breakdown of Ms Y's relationship with her neighbour, than that which was not already in the public domain. Therefore, Ofcom considered that Ms Y's privacy was not unwarrantably infringed in connection with the broadcast of the material included in the programme in this respect.

- c) We next considered Ms X's complaint that Ms Y's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she did not consent to her house, garden and car being filmed by the programme makers and also by her neighbour, on her CCTV and mobile phone, and for this footage to be provided to the broadcaster. As set out in the "Programme summary" above, the programme had featured footage of the exterior of the complainant's property, which showed the house and garden. The complainant's car could also be seen in footage of the road next to the property; the vehicle's number plate was obscured. In considering this aspect of the complaint, we had regard to Practice 8.4 which is set out at head b) above.

Ofcom took into account Channel 5's explanation that this footage had been taken from either: the CCTV camera located on the exterior of Mrs Z's family's property; the mobile phone footage shot by Mrs Z; or the programme maker's own footage, filmed either from the public highway or from within the boundaries of Mrs Z's family's property. Having carefully reviewed the footage in detail, Ofcom was satisfied that the footage appeared to have been taken from either a location that was freely accessible to the public, or from within the boundaries of Mrs Z's own property. We took into account that no footage of the interior of Ms Y's home was obtained. Accordingly, we considered that the footage captured no more than would otherwise be ordinarily visible to the public.

Taking these factors into account, Ofcom did not consider that this footage captured any information of a particularly private or sensitive nature, or that the filming was particularly intrusive. In those circumstances, Ofcom considered that Ms Y did not have a legitimate expectation of privacy in relation to the circumstances in which footage of the outside of the complainant's house, her garden and car had been obtained by the broadcaster.

Having come to the view that Ms Y did not have a legitimate expectation of privacy in relation to the obtaining of this footage, it was unnecessary for Ofcom to consider whether any infringement of Ms Y's privacy relating to the obtaining of this footage was warranted.

- d) We next considered Ms X's complaint that Ms Y's privacy was unwarrantably infringed in the programme as broadcast because footage of her house, garden and car, filmed by the programme makers and by her neighbour on her CCTV and mobile phone, was broadcast without her consent. In considering this aspect of the complaint, Ofcom had regard to Practice 8.6, set out above at head b), and Practice 8.2, which reads as follows:

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

Ofcom began by assessing whether Ms Y 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 of Ms Y's house, car and garden, as described in the “Programme summary” above. The footage showed three cars parked on the street outside the two properties with their registration plates obscured, as well as the fence which bordered Ms Y's and Mrs Z's properties and a small section of Ms Y's front fence. The footage also showed the front exterior of Ms Y's property (the number of the house was not visible), and the complainant's front garden had been obscured by two black boxes on screen.

In the absence of any distinctive or identifiable features of the house, such as its number, or the road on which it is located, we considered that the exterior was not so distinctive as to be identifiable except to people who were already familiar with the complainant, her house, and its location. We also took into account that although the programme said that Ms Y lived in a suburb in Leeds, details of the exact location were not disclosed, and the complainant's car number plate had been obscured. We therefore considered that it was unlikely that anyone viewing the programme who did not already know Ms Y and the location of her house would have been capable of discerning the location of the property from the footage described above. As set out at head c) above, the footage showed no more than what would otherwise have been visible to the public. Ofcom was therefore satisfied that the material complained of did not reveal any personal or private information about the complainant in these circumstances.

Taking all these factors into account, we did not consider that Ms Y had a legitimate expectation of privacy in relation to the inclusion of the footage complained of in the context of the programme as broadcast. It was therefore not necessary for Ofcom to consider whether any infringement of Ms Y's privacy relating to the inclusion of this footage in the programme as broadcast was warranted.

- e) We next considered Ms X's complaint that her privacy was unwarrantably infringed in the obtaining of CCTV footage of her, without her consent. We first assessed the extent to which Ms X had a legitimate expectation of privacy in the particular circumstances in which the relevant

material of her was obtained. In considering the extent to which Ms X had a legitimate expectation of privacy, Ofcom applied the same objective test as set out above. We also had regard to Practices 8.5, 8.6, and 8.10 as set out at heads a) and b) above. We also had regard to Practice 8.9, which states:

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

As set out in the “Programme summary” above, the programme, including its opening credits, included footage of Ms X as she stood on the pavement next to Mrs Z’s property. In the footage captured of Ms X, she was shown pointing towards Mrs Z’s house and shouting:

*“You know, when I get hold of this woman in ‘ere, she is getting it, she is getting it. Getting my mother nicked again, the way that my mother is, nah man, enough is enough”.*

The footage of the complainant had been obtained from a CCTV camera located on the exterior of Mrs Z’s property, which had filmed Ms X from a distance as she stood on the street next to Mrs Z’s property. We had regard to Channel 5’s representations that the CCTV camera’s “white colour contrasted with the black soffit” of Mrs Z’s property, and therefore it would have been visible to Ms X as she stood on the street. However, Ofcom took the view that, to the extent that Ms X was aware of the presence of a CCTV camera on Mrs Z’s property, she was unlikely to have been aware of the exact purpose of the filming, or that such footage would subsequently be provided to the broadcaster for broadcast in the programme.

We recognised that, as the footage was obtained while Ms X was stood in a public place, in the street outside her mother’s home, Ms X would have been visible to any member of the public who might have been present at the time the footage was obtained. However, an individual may still have a legitimate expectation of privacy even in a public place. Furthermore, as discussed at head a) above, Ofcom also acknowledges that the breakdown of a relationship between two people, which culminates in a verbal and/or physical altercation, may reasonably be regarded as a sensitive situation. In this instance, we considered that the footage captured Ms X in a potentially vulnerable state, indicated by the fact that the footage had captured her emotional reaction to the fact that her mother had been arrested, and therefore the footage showed a situation where a person may expect some degree of privacy. We also took into account that unlike her mother, Ms Y, Ms X had not faced criminal charges in respect of the conduct which had been captured in the CCTV footage.

Taking all of the above factors into account, Ofcom considered that, in the particular circumstances of this case, the programme as broadcast included footage of Ms X in a situation that could reasonably be regarded as potentially sensitive, and where an individual may reasonably expect some degree of privacy. However, we considered that such expectation of privacy was limited given that the footage captured Ms X in a public place. We therefore considered that Ms X had a limited legitimate expectation of privacy and that the obtaining of the footage without her consent amounted to an interference with her privacy.

There was no dispute between the parties that the footage subject to complaint had been obtained without Ms Y's consent. We therefore considered whether the infringement of Ms Y's legitimate expectation of privacy was warranted on the particular facts of the 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 in the programme as broadcast outweighs the right to privacy enjoyed by the complainant. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations, or disclosing incompetence that affects the public.

We carefully balanced Ms X'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.

We recognised that the filming of Ms X by Mrs Z on her CCTV camera was done by Mrs Z for her own purposes, as part of a long running dispute with Ms Y. We had regard to Channel 5's submissions that Mrs Z had sought to gather evidence in the form of CCTV and mobile phone footage in order to protect herself and to encourage the police to take action. We acknowledged that the obtaining of footage of Ms X appeared to be incidental to Mrs Z's dispute with Ms X's mother, Ms Y. We also acknowledged that Ms X had not faced criminal charges in respect of the conduct captured in the CCTV footage obtained by Mrs Z. We considered that there existed a genuine public interest in obtaining of footage for broadcast in the programme which showed viewers actual examples illustrate how a dispute between neighbours can escalate', and for conveying to viewers the wider impact of the dispute between Mrs Z and Ms Y, in a way that Mrs Z's testimony alone may not have done. We also recognised that Ms X had appeared to make threats towards Mrs Z, following her mother's arrest, and therefore we considered there to be a genuine public interest in obtaining footage which showed viewers the wider impact of Ms Y's conduct.

For these reasons, Ofcom considered that, in this case, the interference with Ms X's right to privacy was limited and did not represent a significant intrusion into her private life. Ofcom also considered whether, in accordance with Practice 8.9, the material had been obtained proportionately in all the circumstances. As outlined above, we considered that the footage obtained provided evidence which was relevant to the subject matter of the programme, as it provided contemporaneous evidence of Mrs Z's claims, and the relevant footage included in the programme focused only on the conduct complained of. Given these circumstances and the public interest justification of obtaining the footage described above, we considered that the means of obtaining the footage featuring Ms X was 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 of Ms X and the audience's right to receive information outweighed her limited legitimate expectation of privacy in the circumstances.

Ofcom considered, therefore, that Ms X's privacy was not unwarrantably infringed in connection with the obtaining of footage of her included in the programme.

- f) Next, we considered Ms X's complaint that her privacy was unwarrantably infringed in the programme as broadcast because CCTV footage of her was broadcast without consent. As set out in the "Programme summary" and at head e) above, the programme, including its opening credits, included footage of Ms X as she stood on the pavement next to Mrs Z's property. In the footage broadcast of Ms X, she was shown with her face obscured, pointing towards Mrs Z's house and shouting:

*"You know, when I get hold of this woman in 'ere, she is getting it, she is getting it. Getting my mother nicked again, the way that my mother is, nah man, enough is enough".*

We first considered the extent to which Ms X was identifiable from the information included in the programme. We recognised that Ms X was not named in the programme and her face was obscured throughout. However, Ms X's mother, Ms Y, was identified by name, and, in the footage shown of Ms X in the programme, she could be heard shouting: *"Getting my mother nicked again, the way that my mother is, nah man, enough is enough"*. Additionally, in her interview to camera, Mrs Z clearly identified Ms X as Ms Y's "daughter", as did the programme's narrator. In those circumstances, we considered that Ms X was clearly identifiable to those who would already know her, and the nature of her relationship to Ms Y.

As discussed at head a) above, the breakdown of a relationship between two people, which culminates in a verbal and/or physical altercation, may reasonably be regarded as a sensitive situation, in that the individuals involved may feel that they lack control over the situation, and that this could, depending on the particular circumstances, give rise to an expectation of privacy. As discussed at head e) above, Ms X had not faced criminal charges in respect of the conduct captured in the CCTV footage and therefore it appeared to Ofcom that the footage shown in the programme had not previously been placed in the public domain, either as a consequence of proceedings in open court, or in media reporting of Ms Y's conviction for assault. Furthermore, we considered that Ms X was shown in a potentially emotionally vulnerable state, as indicated by her reaction to her mother's arrest, as set out at head e) above, which indicated to viewers that Ms X may have felt she lacked control over the situation.

Ofcom considered that the situation in which Ms X was shown could reasonably be regarded as potentially sensitive in those circumstances and could also be a situation where an individual may expect some degree of privacy. We also recognised that unlike Ms Y, Ms X's conduct in relation to Mrs Z had not been the subject of media reporting at the time of broadcast, nor had she faced criminal charges in respect of that conduct. However, we considered that Ms X's legitimate expectation of privacy was limited given that Ms X was not named in the programme and she was shown in the programme with her face obscured. We therefore considered that Ms X had a limited legitimate expectation of privacy and that the broadcast of the footage without her consent amounted to an interference with her privacy.

There was no dispute between the parties that the footage subject to complaint had been broadcast without Ms X's consent. We therefore considered whether the infringement of Ms X's legitimate expectation of privacy was warranted on the particular facts of the case.

We again carefully balanced Ms X's right to privacy over the relevant footage in the programme with the broadcaster's right to freedom of expression. In particular, we considered whether there was a sufficient public interest which might justify the infringement of Ms X's limited legitimate expectation of privacy in broadcasting the footage.

As discussed at head e) above, In Ofcom's view there was a genuine public interest in broadcasting footage which showed the consequences of a breakdown of relations between two neighbours. We also considered there to be a genuine public interest in broadcasting footage which showed viewers the wider impact of Ms Y's conduct, which led to her conviction for assault.

Taking all of the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the viewer's right to receive information and ideas without undue interference outweighed Ms X's limited legitimate expectation of privacy in relation to the inclusion of the footage of her in the programme as broadcast. We therefore considered that Ms X's privacy was not unwarrantably infringed in the programme as broadcast.

**Ofcom has not upheld Ms Y's and Ms X's complaints of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.**