

Complaint by Mr M about *Police: Hour of Duty*

Type of case	Fairness and Privacy
Outcome	Not Upheld
Service	Channel 5
Date & time	1 August 2022, 21:00
Category	Privacy
Summary	We have not upheld a 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 followed the work of the Derbyshire Police, and included footage of the complainant, Mr M, being questioned, breathalysed, and arrested on suspicion of drink driving. Mr M complained that his privacy was unwarrantably infringed in both the filming and subsequent broadcast of this footage without his consent.

Ofcom considered that Mr M had a legitimate expectation of privacy in relation to the filming and subsequent broadcast of the footage of him without his consent. However, we found that, in the particular circumstances of this case, Mr M's legitimate expectation of privacy did not, on balance, outweigh the broadcaster's right to freedom of expression and the public interest in including the material in the programme. Therefore, Ofcom considered that there was no unwarranted infringement of Mr M's privacy in connection with the obtaining and subsequent broadcast of the footage of him included in the programme.

Programme summary

On 1 August 2022, Channel 5 broadcast an edition of *Police: Hour of Duty*, a documentary series which follows "incidents which occur in one of Britain's major police forces" and specifically follows police "dealing with crimes and cases active between nine and ten pm".

During the programme, a police call handler received a call from a member of the public complaining about a “*drunk, dangerous driver*” who had driven on the wrong side of the road and was, he claimed, driving at 80mph in a 30mph zone.

The police then received a second call concerning the same vehicle, with the caller stating that a car had:

“...just hit my car and he’s driving off. He’s pissed up or something...He won’t stop...The guy’s drunk. He’s just smashed the wing mirror of my car...He’s gone right through the traffic lights on red”.

The caller then explained that he had followed the car to a petrol station, where the driver had stopped, and said: “*he’s an Asian guy, he’s got a blue top on*”, as a police car pulled into the petrol station.

The footage that followed of the scene, the complainant, and his interaction with the police officers was all filmed on police body worn cameras.

The programme then showed a man, his face blurred, shouting at the complainant, who was stood by his parked car in the petrol station. The complainant’s face was unobscured. A police officer was then shown speaking to Mr M:

Police officer: *“We’ve had a report that you’ve collided with a vehicle.*

Mr M: *Sorry?*

Police officer: *We’ve had a report that you’ve collided with a vehicle.*

Mr M: *Sorry?*

Police officer: *We’ve had a report that you’ve collided with a vehicle.*

Mr M: *No.*

Police officer: *OK, right, come and sit in my car a moment for me, OK?”*

The police officer was then shown walking the complainant to a police car while the witness continued to shout in the background. The police officer continued:

Police officer: *“Have you had some alcohol this evening?*

Mr M: *I’ve had one beer.*

Police officer: *Yeah, I can smell it on you, OK. So, pop yourself in here for me”.*

After a programme break, the programme returned to the scene at the petrol station. A caption read:

“Police are talking to a witness in relation to a suspected drink driving incident”.

The witness said:

"He was literally, like, you know the white line? He was three quarters over the road mate...and if I didn't move, he would have smashed straight into my car. He probably would have killed me".

The programme then showed footage taken from inside the police car as one of the police officers prepared the breathalyser test. The following exchange took place (the complainant remained out of view):

Police officer: *"Is it your vehicle?"*

Mr M: *Yes.*

Police officer: *Are you known to the police?"*

Mr M: *Pardon Ma'am?*

Police officer: *Have you been in trouble with the police before?"*

Mr M: *No. Never. Never.*

Police officer: *OK".*

The witness was then shown talking to another police officer:

"I was literally halfway up the hill. We were both halfway. As I'm coming up, I noticed this car swerving like, coming into my car, literally on my side of the road, half of their car did. I'd moved out of the way, and he's smashed my wing mirror off".

The witness then had an argument with a man who claimed to be a passenger in Mr M's car, and the programme then showed the police officer in the front of the police car holding a breathalyser and speaking to Mr M, who sat in the back out of view:

Police officer: *"So, do you understand why I'm requesting a breath test from you?"*

Mr M: *Yes.*

Police officer: *And you said you had one drink about an hour or two ago?"*

Mr M: *Yes. I can't drink too much. When I drink I like one beer or two beers.*

Police officer: *OK. Well, the limit is 35 on here, so anything over 35 would be over the drink drive limit. How old are you?"*

Mr M: *27.*

Police officer: *27? OK, so it's one long continuous breath into that machine until it clicks, OK."*

The police officer passed the breathalyser to Mr M who could be heard breathing into it. The police officer took back the breathalyser test. The screen of the breathalyser read *"FAIL 104"*, as the police officer said:

“OK, so the drink drive limit is 35, you’ve blown 104, so at this moment you’re under arrest on suspicion of driving whilst over the prescribed limit of alcohol, OK? You do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence, OK? The arrest is necessary for the prompt and effective investigation, and to prevent further harm to other people, that being other road users, OK?”

Mr M: *It’s my first time in jail.*

Police officer. *Well, it’s not very good is it when you’re that high over the limit. You’re lucky you’ve not killed someone.*

Mr M: *Ok, uh, not the first time...obviously it’s normal, drinking-*

Police officer: *Yeah, normal people get drunk, but you shouldn’t be driving, should you?*

Mr M: *I’m lucky. I’m lucky you catch me doing it.”*

The programme then showed the police officer getting in the back seat of the car alongside Mr M, who was sitting with his head in his hands and wiping his eyes. The police officer explained to him that she was going to handcuff him, and Mr M pulled up his face mask and held out his hands. As Mr M was handcuffed, he shook his head and covered his face with his hands.

The programme showed the police car driving to the station and the police officer said over the radio *“Hello, we’ve got one male coming in from West for being DIC...Uh, 104.”* The camera stayed on Mr M, who was sitting with his head down as he continued to wipe his eyes. This part of the programme then ended.

At the end of the programme, a short clip showing Mr M standing in the petrol station was shown, alongside a caption which read:

“The male arrested for drink driving pleaded guilty”.

A clip of Mr M sitting in the police car wiping his eyes was then shown, and a second caption read:

“He was given a £300 fine and disqualified from driving for 26 months”.

The programme ended with no further reference to Mr M.

Summary of complaint and broadcaster’s response

Complaint

- a) Mr M complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because he was filmed being arrested without his knowledge or consent.

- b) Mr M complained that his privacy was unwarrantably infringed in the programme as broadcast because footage of him being arrested was included in the programme without his consent. Mr M said that his voice was “clearly recognisable” and his face was visible in the broadcast when “everyone else in the episode had their face blurred”.

Broadcaster’s response

- a) Channel 5 said that it did not believe that Mr M’s privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme.

Channel 5 said that Mr M’s consent to be filmed was not required. It said that Mr M was pulled over by the police because he was driving in a highly dangerous manner whilst over the prescribed limit and he was apprehended at the petrol station after two separate witnesses made 999 calls. It said that Mr M’s breathalyser test result indicated that he was approximately three times beyond the prescribed drink driving limit and he was then arrested on suspicion of drink driving and formally cautioned by one of the police officers.

Channel 5 said that Mr M was filmed on body worn cameras attached to the police officers’ uniforms during a police investigation. It said that the cameras were owned by Derbyshire Police and worn operationally by officers on duty. Channel 5 said that footage was licensed to the independent production company by Derbyshire Police on the understanding that there was a clear public interest in releasing such footage and in audiences seeing the way that the investigation played out and how the police officers conducted their duties.

Channel 5 said that Mr M was subsequently convicted of being in charge of a vehicle while over the prescribed alcohol limit following a guilty plea. Channel 5 said that drink driving is an antisocial and dangerous criminal offence which Mr M committed in public and to which he pleaded guilty at in July 2022, and that his conviction and sentence were matters of public record.

Channel 5 said that Mr M did not appear to be in a particularly vulnerable state while interacting with the police, nor did he disclose any significant private information, or information that was not likely to have been disclosed in open court. Channel 5 added that Mr M had not identified or specified in his complaint any significant matters that intruded into his privacy during the filming, nor any significant private information about himself that was disclosed while he was being filmed, and which was not disclosed in open court. Channel 5 said that none of Mr M’s face, voice or criminal activity were matters which he was entitled to keep private in the circumstances and (save for the latter) were “anodyne” in nature.

Channel 5 said that, for the reasons set out above, it did not believe that Mr M had a legitimate expectation of privacy in relation to the filming of his arrest as being in charge of a motor vehicle while over the prescribed limit was not an aspect of his life that he was entitled to keep private.

Channel 5 said that if Ofcom considered that Mr M did have a legitimate expectation of privacy, then any such expectation was outweighed by Channel 5’s Article 10 rights to receive and impart information and ideas and viewers’ rights to receive such information.

Channel 5 said that, in the case of *Police: Hour of Duty*, there is undoubted public interest in seeing how and in what manner police officers carry out their duties, how the investigation of criminal

offences affects members of the public and society in general, and what difficulties and situations police officers encounter when performing their public duties. It said that there was clear public interest in members of the public seeing how the effective enforcement of legislation and regulations actually affect people who are arrested and convicted as a result of the actions of police officers. Channel 5 also said that seeing the impact of their transgressions on the actual transgressors conveys to members of the public the seriousness of such transgressions and the true consequences of breaking the law.

Channel 5 said that, in all the circumstances, it did not consider that there was any unwarranted infringement of Mr M's privacy in the filming of his interactions with the police.

- b) Channel 5 said that it did not believe that Mr M's privacy was unwarrantably infringed in the programme as broadcast. It said that, while it was true that Mr M did not consent to the broadcast, such consent was not required.

Channel 5 said that Mr M had pleaded guilty to, and was convicted in open court of, being in charge of a vehicle while over the prescribed limit, and that the fact of his arrest and other information contained in the broadcast would have been referred to in open court and was capable of being reported in accordance with the ordinary principles of open justice. Channel 5 said that there was no reasonable expectation of privacy in relation to proceedings in open court.

Channel 5 said that, though Mr M appeared to be upset when seated in the police car, he did not identify in his complaint any private or sensitive information about him that was disclosed by the footage and his only objection in his complaint was that his face was visible, and his voice was audible.

Channel 5 said that the footage included in the programme was filmed in a public place, on a petrol station forecourt, and in full view of any members of the public who walked or drove past. It said that Mr M appeared to be calm and engaged willingly with police officers, and that he was not shown engaged in any conduct or action which could reasonably be regarded as being particularly sensitive or private to him. The broadcaster said that Mr M's conviction, the circumstances in which he was found by the police and his interactions with the police in the police car were not matters about which Mr M had any expectation of privacy given that he was convicted and sentenced in open court. The broadcaster said that it therefore followed that Mr M had no legitimate expectation of privacy in the circumstances and the broadcast of the footage did not unwarrantably infringe any aspect of his private life.

The broadcaster said that, if Ofcom considered that Mr M had some legitimate expectation of privacy, then for the reasons set out above, any expectation of privacy that Mr M might be found to have would be outweighed by Channel 5's Article 10 rights to impart information to viewers and the viewers' right to receive such information.

Channel 5 said that it is unarguable that being in charge of a vehicle while over the prescribed limit is a serious, antisocial and dangerous criminal offence and that the detection, apprehension, investigation and conviction of individuals committing such offences was a matter of genuine public interest. It said that it therefore followed that broadcasting the segment involving Mr M

was in the genuine public interest, and that the broadcast did not constitute an unwarranted infringement of any privacy rights Mr M may have had.

Channel 5 added that the fact that Mr M was the only suspect to appear “unblurred” in the programme was a matter of editorial control retained by Channel 5 and each decision to anonymise was taken on a case-by-case basis. It said that in circumstances where there was no legitimate expectation of privacy, there was no requirement to anonymise Mr M.

Ofcom’s Preliminary View

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

Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of both the programme and the unedited footage of Mr M at the petrol station forecourt and inside the police car. We also considered the complaint as entertained by Ofcom, and the broadcaster’s response, which is summarised above and below insofar as Ofcom considered it relevant to its consideration of the entertained complaint.

In Ofcom’s view, the individual’s right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression and of the audience to receive ideas and information without undue interference. 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](#), which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

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

- a) Ofcom first considered Mr M's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material that was subsequently shown in the programme. In considering this head of 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 8.8:

"When filming or recording in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required.

However, in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for broadcast from those in sensitive situations (unless not obtaining consent is warranted). If the individual will not be identifiable in the programme then separate consent for broadcast will not be required".

Practice 8.9:

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

Legitimate expectation of privacy

We first assessed the extent to which Mr M 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..."

We took into account the broadcaster's submission that the footage was obtained by the police officers' body worn cameras, which were owned by Derbyshire Police, and was subsequently licenced to the production company for use in the programme. It did not appear, therefore, that a fundamental purpose of the cameras in this case was for the programme makers to obtain and retain footage for potential broadcast, but rather to record the police officers' activities for personal safety and evidential reasons. Therefore, Ofcom considered that the material recorded by the body cameras worn by the police officers had not been obtained surreptitiously. Nevertheless, we considered the way in which the filming took place and the inclusion of the body camera footage in the programme without any indication of this possibility to the complainant was relevant to whether Mr M had a legitimate expectation of privacy in connection with the obtaining of material included in the programme.

While Ofcom recognises that it is not uncommon for broadcasters to obtain material for broadcast from third parties, we did not consider that this was something that the complainant could reasonably have foreseen or appreciated. Ofcom watched the unedited footage of the incident and Mr M's interaction with the police carefully, and took into account that it did not appear that Mr M was made aware that he was being recorded by the police officer's body worn camera.

Ofcom also considered the overall situation in which Mr M had been filmed. We considered that Mr M's initial interaction with the police officer on the petrol station forecourt was likely to have been visible to any member of the public who may have been nearby. However, we acknowledged that there may be circumstances where someone can have a legitimate expectation of privacy, even in a public place, and where the person is aware that he or she is being filmed. Further, in relation to the footage of Mr M being questioned, breathalysed, and subsequently arrested, we took into account that, while Mr M's initial interaction with the police officer would have been visible to members of the public passing by, the interaction between Mr M and the police officer, including his arrest and his reaction to it, was filmed inside a police car and therefore would not have been accessible to anyone outside the car.

We took into account that the footage obtained showed Mr M being approached by the police and questioned about his alcohol consumption. In our view, the situation in which Mr M was filmed could reasonably be regarded as being potentially sensitive in the circumstances. Similarly, Ofcom considered that being questioned, breathalysed, and subsequently arrested could also reasonably be regarded as being sensitive, and circumstances where a person may expect some degree of privacy. We also acknowledge that the inside of a police car could reasonably be regarded as being similar to the inside of a police station and thus, for the purposes of Practice 8.8, would be considered a potentially sensitive environment. We recognise that a person's involvement in police investigations is usually not a matter of public record until a person has been charged with a criminal offence, and that the arrest of a person may be an event of some sensitivity. The fact that a person may later be charged with a criminal offence does not, in itself, mean that they are deprived of any rights to privacy in connection with their arrest.

In this particular case, we took into account that the footage also showed that Mr M was distressed at the fact of his arrest, and he could be seen covering his face and wiping his eyes. We also understood that Mr M was under the influence of alcohol at the time of his arrest. While Ofcom acknowledged Channel 5's submissions that the programme contained information relating

to Mr M's arrest that was likely to have been later disclosed in open court, Ofcom considered that Mr M appeared to have been in emotional state at the time the footage of him had been obtained, and therefore, in our view, the footage showed a situation where a person may expect a degree of privacy, particularly as Mr M appeared to be unaware that he was being filmed.

Taking these factors into account, and in the particular circumstances of this case, Ofcom considered that Mr M had a legitimate expectation of privacy in relation to the situation in which he was filmed.

Consent

It was not disputed by Channel 5 that Mr M's consent was not obtained in connection with the filming of him. We therefore went on to consider whether the infringement of Mr M's legitimate expectation of privacy was warranted.

Warranted

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 the comparative weight of Mr M's right to privacy with regard to the obtaining of the footage of him with the broadcaster's and audience's right to freedom of expression in the particular circumstances of the programme.

We took into account Channel 5's submissions that there was a public interest justification in obtaining footage which showed how police officers carry out their investigations, and the difficulties they may encounter when performing their public duties. In Ofcom's view, there was a genuine and significant public interest in obtaining footage which showed the work of the police acting in the interests of the public, and in this case, in programme makers being able to obtain footage of situations that demonstrate to the viewing public the potential dangers and consequences of drink driving. In this particular case, we considered that the obtaining of the footage which showed Mr M being questioned, breathalysed, and arrested without his consent, served this public interest as it provided a real-life case study of the police responding to two 999 calls about Mr M driving under the influence of alcohol, and the work of the police to prevent Mr M from potentially endangering himself and other members of the public. In Ofcom's view, the programme makers obtained footage that was directly relevant to the police's work in investigating and gathering evidence relating to Mr M's conduct, and that it was proportionate and directly relevant to the subject matter of the programme.

Taking all of the above factors into account, Ofcom considered that, in these particular circumstances, the broadcaster's right to freedom of expression and the public interest served by enabling the obtaining of footage illustrating the impact of drink driving offences, and the

experience of the police of dealing with such situations, was proportionate and warranted, and outweighed Mr M's legitimate expectation of privacy in relation to the filming of him without his consent.

Ofcom's decision, therefore, is that Mr M's privacy was not unwarrantably infringed in connection with the obtaining of footage included in the programme.

- b) We then considered Mr M's complaint that his privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme without his consent.

In assessing this head of complaint, Ofcom had regard to Practice 8.8 (as set out above), and to the following Code Practices:

Practice 8.4:

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

Practice 8.6:

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

Legitimate expectation of privacy

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

We took account of the material shown in the programme, as described in the "Programme summary" above. Mr M was shown in the programme being questioned by a police officer on a petrol station forecourt and then shown to a police car. Mr M was then shown being questioned by a police officer in the police car and being breathalysed, where he was subsequently arrested on "*suspicion of driving whilst over the prescribed limit of alcohol*". Later in the programme, Mr M was shown again alongside the statements "*The male arrested for drink driving pleaded guilty*" and "*He was given a £300 fine and disqualified from driving for 26 months*". Mr M was not named in the programme. However, his face was shown unobscured (albeit for part of the time he was shown wearing a face mask) when he was filmed at the petrol station and as he was handcuffed in the back of the police car and *en route* to the police station. His voice could also be heard as he was questioned and breathalysed inside the police car. In those circumstances, we considered that Mr M was identifiable in the footage as broadcast.

We took account of Channel 5's submission that the footage included in the programme was filmed in a public place and in full view of any members of the public who might have walked or driven past. We also took into consideration Channel 5's submission that the complainant was not shown engaged in any conduct or action which could reasonably be regarded as being particularly sensitive or private to him, and that Mr M had not identified in his complaint to Ofcom any private or sensitive information about him that was disclosed by the footage.

As discussed above, the programme showed Mr M being approached and questioned by the police on the petrol station forecourt. Mr M was then shown being questioned further about his alcohol consumption, breathalysed and subsequently arrested while sitting in the back of a police car. We had regard to Channel 5's submission that Mr M was not in a particularly vulnerable state while interacting with the police, nor did he disclose any significant private information. However, as set out above, the complainant was shown in sensitive circumstances (i.e. being questioned, breathalysed and arrested) where a person may expect some degree of privacy. In addition, Mr M was shown being breathalysed and arrested for the first time, stating *"It's my first time in jail"*. We also understood that Mr M was under the influence of alcohol, and he was visibly distressed in the broadcast footage. In Ofcom's view, Mr M was therefore shown in a potentially vulnerable situation. Further, as discussed above, we considered that Mr M's interaction with the police officer in the police car would not have been audible to members of the public passing by. Ofcom considered that the situation in which Mr M was shown could reasonably be regarded as potentially sensitive in those circumstances and a situation where an individual may expect a degree of privacy.

We considered Channel 5's submission that Mr M was convicted in open court a few weeks before the programme was broadcast, and that the fact of his arrest and other information contained in the broadcast would have been referred to in open court. 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 proceedings might reasonably expect, especially in relation to events occurring before a person has been charged. Moreover, detail of Mr M's interaction with the police officers at the petrol station and in the police car was unlikely to have been in the public domain prior to and at the time of the broadcast of the footage of him in this situation in the programme.

Having taken all the factors above into account, we considered that, in the particular circumstances, Mr M did have a legitimate expectation of privacy in relation to the broadcast of the footage filmed of him both on the petrol station forecourt and in the police car. However, we considered that this expectation was limited given that, by the date of broadcast, Mr M had pleaded guilty in relation to the events related to his arrest which featured in the programme.

Consent

As set out above at head a), it was not disputed that Mr M's consent was not obtained prior to the broadcast of the programme. We therefore went on to consider whether the infringement of Mr M's legitimate expectation of privacy was warranted.

Warranted

We again carefully balanced Mr M'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 Mr M's limited legitimate expectation of privacy in broadcasting the footage.

We acknowledged Mr M's complaint that his face was visible in the broadcast when "everyone else in the episode had their face blurred". However, we took the view that it is an editorial matter for the broadcaster to decide whether to broadcast footage in which a person is identifiable or whether to obscure their identity, provided that it would not lead to an unwarranted infringement of their privacy or otherwise be unlawful.

Further, we took into account Channel 5's submissions that there was a public interest justification in broadcasting footage which showed how police officers carry out their investigations, and the difficulties they may encounter when performing their public duties. In Ofcom's view, there was a genuine and significant public interest in broadcasting footage which showed the work of the police acting in the interests of the public, and in this case, in programme makers being able to broadcast footage of situations that demonstrate to the viewing public the potential dangers and consequences of drink driving. In this particular case, we considered that broadcasting footage which showed Mr M being questioned, breathalysed, and arrested without his consent, served this public interest as it provided a real-life case study of the police responding to two 999 calls about Mr M driving under the influence of alcohol, and the work of the police to prevent Mr M from potentially endangering himself and other members of the public. In Ofcom's view, the footage shown was directly relevant to the police's work in investigating and gathering evidence relating to Mr M's conduct, and that it was proportionate and directly relevant to the subject matter of the programme.

Taking all of the above factors into account, therefore, 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 Mr M's limited legitimate expectation of privacy in relation to the inclusion of the footage of him in the programme as broadcast. We therefore considered that Mr M's privacy was not unwarrantably infringed in the programme as broadcast.

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