

## **Complaint by Mrs C (regarding her daughter, a minor) about *Dispatches: Undercover Ambulance - NHS in Chaos*, Channel 4, 9 March 2023**

**Type of case** Fairness and Privacy

**Outcome** Not Upheld

**Service** Channel 4

**Date & time** 9 March 2023, 21:00

**Category** Privacy

**Summary** We have not upheld a 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 investigated some of the challenges faced by the ambulance service during the winter of 2022. It included undercover filming by an Emergency Medical Technician (“EMT”) to show the difficulties experienced by ambulance crews in responding to emergencies and dealing with hospital handover times, and the impact these can have on patients and their families.

Mrs C complained that her daughter’s privacy was unwarrantably infringed in the obtaining and subsequent broadcast of surreptitiously filmed footage of her arriving at a hospital following an accident.

Ofcom’s decision is that the complainant’s daughter had a legitimate expectation of privacy in relation to the obtaining and subsequent broadcast of the footage of her without consent. However, we considered that, in the particular circumstances of this case, the complainant’s daughter’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 broadcast. Therefore, our view is that there was no unwarranted infringement of the complainant’s daughter’s privacy in connection with the obtaining, and subsequent broadcast of the footage of her included in the programme.

## Programme summary

On 9 March 2023, Channel 4 broadcast an edition of its investigative programme *Dispatches* entitled *Undercover Ambulance – NHS in Chaos*, about the challenges faced by the ambulance service during the winter of 2022. The programme followed an EMT, who filmed undercover while on shift. During the introduction to the programme, he said:

*“If you call 999, you’d expect a quick response, an ambulance to turn up and give you the best care possible, fast...I think people would be shocked if they saw what was really happening. Since I started with the ambulance service, things have got a lot worse”.*

The programme followed the EMT on his day-to-day shifts, attending various emergency calls, and included footage obtained by a body camera he had worn on the evening of the 28 November 2022. The EMT said:

*“Tonight was just as busy as yesterday. Because so many of us were stuck at the hospital waiting for patients, there were fewer of us to attend to emergency calls”.*

The following segment of the programme then interweaved: firstly, body camera footage recorded by the EMT when dealing with the complainant’s daughter, when the latter was being treated; and footage of the EMT sat in the front seat of a parked ambulance clearly recorded after the complainant’s daughter had been treated, in which, speaking direct to camera, the EMT recounted his experience of treating her.

Firstly, body camera footage showed the EMT walking towards a parked car with its boot open, his narration in voiceover said:

*“We had a family come in, who had driven their daughter to A&E themselves after they gave up waiting for an ambulance”.*

Then, speaking later, directly to camera, whilst sat in an ambulance and after the incident, the EMT said:

*“Her kneecap had popped out and it was right over to the left of where it should have been”.*

The body camera footage then continued and showed the EMT and his colleagues with the unidentified girl (the complainant’s daughter) after she had been taken to A&E by her parents, showing the girl lying in the back of a car. The filming had taken place at night and footage of the girl shown in the programme was heavily blurred so that all that was visible was an outline of a person covered in a foil blanket. The girl’s voice could be heard as she spoke to the EMT:

Girl: *“Brrrr, it’s cold.*

EMT: *Just take some nice deep breaths on it [inhaled pain relief], ok? And it will help take that pain away.*

Girl: *Ok.*

EMT: *How long did they say the ambulance was going to be?*

Girl: *Twenty hours”.*

Then, speaking later, directly to camera, whilst sat in an ambulance and after the incident, the EMT continued:

*“So, her mum and dad, they got a sort of a picnic, dining table and they put her on it as a makeshift stretcher”.*

The body camera footage, which remained heavily blurred, continued and the ambulance crew could be heard picking up the table with the girl on it from the back of the car and placing it on the carpark surface next to the car. As she was moved, the girl could be heard to scream out in pain before saying: *“You are not nice”.*

Speaking later, directly to camera, whilst sat in an ambulance and after the incident, the EMT continued:

*“Those experiences really set in stone where we’re at in terms of the ambulance service and the NHS. Being brought into hospital on a picnic table because there are no ambulances available for over 20 hours, that’s a horrendous experience for that young girl to have to go to through, and it’s just something you don’t expect to see in a developed country”.*

The programme moved on, and no further footage was shown of the EMT’s interaction with the complainant’s daughter.

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

### **Complaint**

- a) Mrs C complained that her daughter’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she was filmed without consent. She said that the footage would have been seen by the programme makers before it was edited for broadcast.
- b) Mrs C complained that her daughter’s privacy was unwarrantably infringed in the programme as broadcast because the footage was included without consent. She said that while her daughter’s image had been altered, her voice had not. She said that her and her daughter are a private family, and that the programme took away her daughter’s “right to decide who knows about her story”. Mrs C also added that her daughter had been through enough, and that the programme was a reminder of the incident.

### **Broadcaster’s response**

#### ***Background and public interest justification to film surreptitiously***

Channel 4 said that people who live in the UK rely on the NHS to provide an appropriate ambulance response and prompt medical care at a hospital emergency department. It said that “on an average

day more than 37,000 people will call 999 and over 44,000 people visit a major A&E department”<sup>1</sup>. However, Channel 4 said that, as reported in the documentary, research has concluded that delays in patients obtaining treatment in emergency departments were linked to 300 to 500 excess deaths every week during the period the documentary was filmed (November 2022 – February 2023)<sup>2</sup>. The broadcaster also said that analysis suggests that 23,000 excess deaths in 2022 could be associated with long waits in emergency departments<sup>3</sup>. It said that the programme investigated the reality behind these statistics.

Channel 4 explained that the programme makers had supervised undercover filming by the EMT who recorded aspects of his working life with the aim of informing and educating viewers about issues with the ambulance service. Channel 4 said that the programme reported a matter of important public interest at a time when ambulance response and handover times were the worse in NHS history. It said that in the autumn of 2022, the programme makers reviewed research which uncovered concern within the NHS about ambulance call out and handover times. It said that figures published by the Association of Ambulance Chief Executives already showed that every single day in September nearly 400 patients and crews waited for longer than three hours outside a hospital in England. These handover times, it said, prevented ambulance crews answering new calls and delayed patient treatment, and the situation worsened as winter approached.

Channel 4 said that the programme makers were informed by numerous medical professionals in “off the record briefings” that patients were dying unnecessarily and there was a lack of transparency from the NHS about the scale of the problems. It said that individuals feared their seniors might take action if they spoke openly about the situation. The broadcaster said that the programme makers approached hospitals to gain access to film the latest techniques for treating stroke and heart patients, and while surgeons were willing to demonstrate these procedures, NHS communications teams denied access when the programme makers explained they would be investigating ambulance delays as part of the proposed programme.

The broadcaster said that based on this, and the “off the record briefings”, the programme makers believed that even if NHS Trusts had agreed access for open filming, it would have been limited and would not have shown the true reality of the situation.

Channel 4 said that given the potential impact to the public, it believed it was necessary to the credibility and authenticity of the programme to film secretly so viewers could see the seriousness of the situation, something it considered viewers were entitled to be made aware of it. The broadcaster said that secret filming would allow the programme makers to penetrate a closed environment and provide further evidence of the operational reasons for delays; the category of patients affected; the level of actual and potential harm to patients; the operational reasons for delays when patients are taken to hospital; and the consequences of such delays. It added that the evidence would be shown to viewers first hand, rather than described, so that there could be no doubting its objective truth.

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<sup>1</sup> <https://www.kingsfund.org.uk/audio-video/key-facts-figures-nhs>.

<sup>2</sup> [Excess deaths associated with crowding and corridor care.pdf \(rcem.ac.uk\)](#).

<sup>3</sup> [Data show 1.65 million patients in England faced 12-hour waits from time of arrival in A&Es in 2022 | RCEM](#).

Channel 4 said that following detailed consideration of the evidence by the programme makers, Channel 4's Commissioning Editor and a Senior Channel 4 Programme Lawyer, surreptitious filming was approved by Channel 4's Head of News and Current Affairs and the Controller of Legal and Compliance, and subsequently the inclusion of some of this footage in the programme.

The broadcaster said that in the interests of fairness, the East of England Ambulance Service Trust ("EEAST"), which was partly responsible for the complainant's daughter's case, was offered an opportunity to respond to the relevant cases featured in the programme prior to broadcast. The broadcaster said that EEAST was not prepared to comment specifically on the complainant's daughter's case, but the Trust issued a release prior to the programme's broadcast notifying the public, its employees and potential patients and families who may have been filmed by programme makers that they could complain directly to Ofcom if they were concerned.

### *Response to the complaint*

- a) The broadcaster said that in advance of the undercover filming, a process was agreed between the programme makers and Channel 4 to ensure that it took place in full accordance with Channel 4's secret filming guidelines. It also said that during filming, it established the principle that the EMT's priority lay with his professional responsibilities and the protection of life. It said that from the start it recognised the sensitivity of the subject matter, and the vulnerability of many individuals who would be present during covert filming.

The broadcaster said that the programme makers worked with Channel 4 to develop a strict and detailed data protection and privacy protocol. It said that in regard to Mrs C's concerns about people at Channel 4 viewing the footage, this was restricted under the data protection protocol to only those at Channel 4 whose involvement was necessary editorially and/or legally for the production of the programme. Channel 4 said that the relevant footage was not circulated further than was necessary and was always encrypted and stored securely.

The broadcaster said that Channel 4 and the programme makers had detailed discussions about the need for due regard for the privacy of those filmed and the potential intrusive nature of footage; it said that at all times during production there was consideration of the balance of privacy of the patients with the public interest in an unfolding collapse in care that was costing patient's lives. The broadcaster said that due to this, some incidents were not filmed, and some footage not included in the programme because the balance fell on the side of privacy.

The broadcaster said that the complainant's daughter arrived at the hospital in great pain, on a picnic table in the back of a car. It said her kneecap was dislocated, and she informed the ambulance paramedics treating her that they had been told that there would be a twenty hour wait for an ambulance. Channel 4 said that the girl met the criteria for a "Category 3" ambulance response, which the NHS national standard stipulates should be within 120 minutes for 90 per cent of calls<sup>4</sup>.

The broadcaster said that the programme makers established that the complainant's daughter arrived at the hospital after being taken there by her family at around 22:00; three hours after making their first 999 call at around 19:00. It said that after being told there would be a twenty

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<sup>4</sup> [Ambulance response times | Nuffield Trust.](#)

hour wait, her family took her directly to the hospital. Channel 4 said that she would have been in a lot of pain during those three hours, with no access to appropriate painkillers or treatment. It said that during production, medical professionals repeatedly told programme makers of their concern that the public was becoming desensitised to NHS failings, and that poor treatment was being normalised. In light of this, the programme makers and Channel 4 concluded that including the footage would counter this tendency and would contribute to action to improve how patients are treated.

Channel 4 said that the EMT and his colleagues were aware that they were the people who should have been able to respond to the complainant's 999 call. It said that at the time, the number of paramedics caring for patients because of handover delays represented 31 per cent – almost a third – of ambulance services' "total potential capacity" to respond to 999 calls, the worst in NHS history<sup>5</sup>. The broadcaster said that it strongly believed that the footage of the complainant's daughter, more than any other gathered for the programme, demonstrated the reality of the situation and was key to the journalistic purpose of the programme.

Channel 4 added that the inclusion of the footage was important to inform the national policy debate, as it demonstrated the critical role of handover delays in causing poor ambulance response times; it said that at the time this was not widely understood. The broadcaster said that shortly before the programme was broadcast, the Government provided money for more ambulances, based on the false assumption that the problem was a shortage of ambulance crews, rather than handover delays.

The broadcaster reiterated that 90 per cent of Category 3 incidents should be attended within 120 minutes, however in December 2022, the mean response time for such calls was four hours and 19 minutes, and one in ten urgent cases waited over 11 hours for an ambulance<sup>6</sup>. Channel 4 said that these delays grew sharply because ambulance crews needed to prioritise Category 1 and 2 cases, involving heart attacks and strokes. It said that complainant's daughter's situation highlighted the human cost and the dangers of failing to respond properly to Category 3 calls, and it considered it editorially important to show this.

Channel 4 said that the EMT told programme makers that he was shocked by the incident as it brought home the extent of NHS failings at many levels. It said that he had said so in his video diary which was included at the end of the segment featuring the complainant's daughter in the programme. The broadcaster said that it determined that this view was supported by evidence and that it was important to reflect these views from an experienced paramedic on the NHS front line and show the reason he had reached them.

Channel 4 said that in many hospitals, paediatric wards were under less pressure than adult wards, allowing separate emergency treatment routes for children once they reached hospital. The broadcaster said this obscured the harm and suffering poor ambulance response times were having on children and explained why press coverage of the NHS winter crisis mostly focused on

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<sup>5</sup> [PowerPoint Presentation \(aace.org.uk\)](https://www.aace.org.uk), See section 36.

<sup>6</sup> [Ambulance response times | Nuffield Trust](#).  
*Issue 480 of Ofcom's Broadcast and On Demand Bulletin*  
29 August 2023



adults. It said that this incident revealed the reality of the suffering and harm experienced by children, and the programme makers believed it vital to bring this to the attention of viewers.

Channel 4 said that inclusion of the complainant daughter's story was carefully considered, including the fact that: she was a minor; the filming took place in a relatively public place where she could be observed by others (the hospital car park); the injury was not of an "intimate nature"; and, that she was fully clothed. The broadcaster said that the programme makers were aware of the need to be sensitive when editing the footage to minimise any distress to the complainant's daughter and her family. It added that, as could be seen in the unedited footage (which Channel 4 provided to Ofcom), despite her injury, her interactions with the EMT and his colleagues were positive and jovial, which was crucial in reassuring her while she was being treated. The broadcaster said that the complainant's daughter's welfare was the main priority of the EMT at all times, and that she and her family were treated with utmost skill and care throughout the EMT's contact with them.

Channel 4 said that the complainant's daughter's right to privacy was carefully weighed against the public interest in showing the footage and giving viewers an insight into the reality of how failures in the system could lead to patients being harmed. It said that it determined that the public interest was so strong in this instance, that the limited intrusion into the girl's privacy was warranted.

- b) In response to this head of complaint, Channel 4 accepted that the family involved might recognise themselves in the broadcast. However, it said that to protect the girl's anonymity, it chose not to include in the programme personal details which were captured during the filming, including her name, and where and how the injury happened.

Channel 4 said that the programme makers took further steps while editing the programme to prevent the complainant's daughter from being recognised by anyone beyond her immediate circle of family and friends who may have been aware of the details of the incident. It said that she was pixelated and was not recognisable in the programme. In addition, the broadcaster said that contrary to what was stated in the complaint, the pitch of the girl's voice was, in fact, altered by the programme makers which had the effect of deepening her voice and making her sound older, while maintaining an apparently natural, 'human' voice. Channel 4 said that applying a greater shift in pitch can create a robotic sounding voice which draws attention to the fact that a voice has been disguised, which risks serving to increase rather than deflect curiosity and can be a diversion from the actuality of the traumatic nature of the event. The broadcaster said that it, in discussion with the programme makers, concluded that the more natural pitch-shifted voice offered more effective anonymisation.

The broadcaster added that the complainant's daughter did not have a particularly distinctive voice, and that, as could be heard in the unedited footage, she had commented to one of the paramedics treating her that her voice had been deepened naturally by the gas and air she was receiving as pain relief.

#### *Balancing Exercise: Freedom of Expression and Privacy Rights*

Channel 4 accepted that the complainant's daughter was filmed surreptitiously and without her consent. The broadcaster reiterated that the incident involving the girl revealed the failure by the

ambulance service to meet the standards the NHS committed to, including in relation to Category 3 response times, and the programme makers considered it was journalistically vital to report it.

Channel 4 said that the programme makers were aware the complainant's daughter's experience was representative of what many others were enduring, which added to the general public interest in reporting on her experience. The broadcaster said that the case raised important questions about care at the A&E department attended by the complainant, and that usually hospital medical staff would have responded when she arrived, due to the principle that the responsibility of patient assessment and treatment lies with the hospital from the point of arrival. The broadcaster said that while this appeared to be a sensible response, this should not disguise the fact that the NHS would not consider it best practice.

Channel 4 said that there was a public interest in highlighting the extreme challenges in the healthcare system and the incident involving the complainant's daughter made viewers aware that these were issues affecting patients of all ages, including minors. It said that the evidence collated ahead of filming showed that there were reasonable grounds that undercover filming would demonstrate the state of emergency care and the real risks patients faced due to delays. It said that it would not have been possible for such filming to be carried out openly; reiterating that it had attempted to do this but was denied access. It had determined at this stage that open filming would likely have been restrictive as to what it could capture and could have led to a sanitised view of the service. The broadcaster said that the undercover filming of the complainant's daughter and others allowed the public to see the true situation, and the real impact on patients in this crisis. It said that this would highlight to viewers how easily situations like this could happen and was necessary so that the service could be held to account. Channel 4 said that the programme's findings were widely reported in the press after broadcast, and it submitted that the surreptitious filming of the complainant's daughter without her consent was clearly warranted in the public interest in the circumstances.

In conclusion, Channel 4 said that it considered that any infringement of privacy in obtaining the footage of the complainant's daughter, and the inclusion of the footage in the broadcast of the programme, was warranted in the public interest. It said that the complainant's daughter was fully anonymised and that only a portion of the footage filmed of her was included in the programme, so that the nature of her case could be properly reported to viewers. The broadcaster said that care was taken to ensure any identifiable factors were not included in the programme as broadcast, and that it believed that only those who would be able to identify the complainant's daughter were those present at the time, or who already had detailed knowledge of the incident.

### **Ofcom's Preliminary View**

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

### **Decision**

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



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

In reaching this Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme, the unedited footage, and both parties' written submissions.

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 the audience's right 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 focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. This is reflected in how Ofcom applies Rule 8.1 of the 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) In considering the complaint that the privacy of the complainant's daughter was unwarrantably infringed in connection with the obtaining of the material included in the programme, we 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 the organisation's consent or be otherwise warranted".

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".

Practice 8.13: "Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if: there is *prima facie* evidence of a story in the public interest; and there are reasonable grounds to suspect that further material evidence could be obtained; and it is necessary to the credibility and authenticity of the programme".

Given the complainant's daughter was under the age of 16 at the time of filming and broadcast, we also had regard to Practice 8.20:

"Broadcasters should pay particular attention to the privacy of people under sixteen. They do not lose their rights to privacy

because, for example, of the fame or notoriety of their parents or because of events in their schools”.

In assessing the complaint, we first considered whether the use of surreptitious filming was warranted in the circumstances, in accordance with Practice 8.13. We took into account Channel 4’s submission that the focus of the programme was to investigate the “reality” behind the statistics that showed delays in patients obtaining treatment were linked to 300 to 500 excess deaths a week during the period the documentary was filmed, and that 23,000 excess deaths in 2022 could be associated with long waits in emergency departments. We also acknowledged that Channel 4 said in its submission that programme makers were informed by sources that patients were dying unnecessarily and there was a lack of transparency from the NHS about the scale of the problems. The broadcaster also said that some of these individuals feared the repercussions if they spoke about the situation. We further took into account that Channel 4 had said that it had approached a number of hospitals to gain access to film, but that this access was denied when programme makers explained that they would be investigating ambulance delays as part of the proposed programme. We also took into account the broadcaster’s submission that there was a public interest in investigating the seriousness of the situation, and that given the potential impact to the public, it believed it was necessary to film secretly so that viewers could see the true situation.

Taking all these factors into account, we considered that Channel 4 had demonstrated that there was *prima facie* evidence of a story in the public interest relating to the situation faced by the ambulance service and hospitals, particularly the high levels of delay and the impact this had on patients and their families. In particular, we had regard to Channel 4’s submissions that even if the programme makers had acquired access to film openly, this would have been limited and may not have been able to capture footage which showed the true reality of the situation. As such, we considered that, in this instance, it was necessary to the credibility and authenticity of the programme for viewers to see the situation first-hand which, could only be obtained through surreptitious means. We therefore considered that the surreptitious filming was justified in the particular circumstances of this case.

Given that the surreptitious filming had the potential to uncover evidence of what was occurring in hospitals and with ambulance hand-over times, Ofcom was satisfied that the programme makers’ actions in filming the complainant’s daughter, who had been the subject of a significant delay in receiving care as a result of ambulance delays, surreptitiously was proportionate to the public interest, and therefore in accordance with Practice 8.9.

We next assessed the extent to which the complainant’s daughter had a legitimate expectation of privacy in the particular circumstances in which the relevant material 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 judged in light of the circumstances in which the individual concerned finds him or herself.

Ofcom reviewed the unedited footage of the complainant. The footage lasted approximately seven minutes. In the footage, the EMT arrived in the car park to assist another colleague, who briefed him on the injury. It could be heard in the footage that the EMT provided gas and air to the

girl, whilst she was lying in the back of a car, and engaged with her parents, who explained what had occurred. The footage went on to show the EMT and another colleague lifting the girl out of the car, onto the carpark surface next to the car, and then into a wheelchair. The end of the footage showed the EMT's journey towards the hospital; the girl could not be seen, however she could be heard talking about the effect of the gas and air on her voice. The EMT also asked the girl's mother where they had come from, and she explained where they had been and how the injury had occurred. In addition to the material included in the broadcast programme, the girl's face could be seen in some of the footage, her first name was given, she said that she had been told the ambulance would arrive in 20 hours. The footage also showed more of her taking the gas and air as pain relief, and she disclosed to the ambulance crew that she was at secondary school and that the injury had occurred at a dance competition.

Ofcom recognises that children do not have a legitimate expectation of privacy merely because they are children. However, there are relevant considerations that may result in a child having a legitimate expectation of privacy where an adult might not. For instance, the age of the child, the nature of what was broadcast and where the filming took place, the purpose of the broadcast, whether there was consent and the effect on the child are all relevant factors. These must be taken into account along with all the other circumstances of the case, in determining whether or not a child has a legitimate expectation of privacy.

We took into account that the complainant's daughter was 14 years old at the time of filming. We also acknowledged that the footage showed that she had been filmed upon arrival at the hospital, outside in the hospital car park. We noted Channel 4's submission that this was a relatively public place where she could have been observed by others, that the injury was not of an "intimate nature", and that she was fully clothed. We also recognised that where the body camera was positioned on the EMT's upper body and because of the location of the complainant's daughter's knee injury, any footage of her unobscured face was incidental and not the focus of the footage. Nevertheless, we had regard for the situation in which the complainant's daughter had been filmed, i.e. receiving medical attention from the ambulance crew for her dislocated kneecap, and that she appeared to be in a significant amount of pain. While the injury she had suffered was not necessarily of an "intimate nature", we considered that information relating to her injury, including how it had occurred, its treatment, and how she was responding to it, was something personal and sensitive to her and which attracted an expectation of privacy. Further, the footage had been obtained through surreptitious means and as such, the complainant's daughter (and her parents) would have been unaware that she was being filmed and so would have been unguarded in their interactions with the ambulance crew. We also took the view that despite the incident taking place in public space (i.e. the hospital car park), the complainant's daughter was in receipt of medical treatment, something which carries a high degree of sensitivity.

Therefore, for all the above reasons, and taking into account her age when filmed, we considered that in relation to the obtaining of the footage of the complainant's daughter in a medically sensitive situation, she had a legitimate expectation of privacy in this respect.

There was no dispute that the complainant's daughter was filmed without her consent. Therefore, Ofcom went on to consider whether the infringement of her legitimate expectation of privacy in the obtaining of the material was warranted.

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

Ofcom performed a careful balancing exercise between the complainant’s daughter’s right to privacy with regards to the obtaining of the footage with the broadcaster’s right to freedom of expression and the audience’s associated right to receive information.

As set out above, we considered that the complainant’s daughter had a legitimate expectation in relation to the surreptitiously filmed footage of her by the programme makers given that it captured her in a sensitive and vulnerable situation, namely receiving medical treatment for an injury in circumstances where she and her parents were unaware that she was being filmed. We also had regard to the fact that she was only 14 years old at the time of filming.

In weighing up the competing rights of the parties, we took into account Channel 4’s submissions that there was a public interest in investigating the “reality” of the situation faced by hospitals and the ambulance service, in particular the delays in response and handover times. We also acknowledged that the filming in the circumstances of the complainant was limited to obtaining footage that was relevant to the public interest in showing the challenges faced by the ambulance service and the real impact delays this had on patients of all ages, including their families. We took into account Channel 4’s submissions that there was a particular public interest in filming the complainant’s daughter because it allowed the public to see the situation by filming the incident, and the real impact on patients, including harm and suffering, poor ambulance response times were having on children. Channel 4 said it also highlighted the human cost and dangers of the ambulance failing to respond properly to calls like the complainants.

Having examined the unedited footage, we also took the view that the filming focused specifically on the treatment of the complainant’s daughter and that the footage of her was obtained only to the extent necessary to demonstrate the issues that Channel 4 wished to highlight. For example, the two ambulance crew members in attendance appeared to show them only ask questions of the complainant’s daughter and her parents which were relevant to treating her. The filming itself also focused on the ambulance crew’s interaction with the complainant’s daughter as they went about their duties in treating her.

We also acknowledged the complainant’s concern that the footage would have been seen by the programme makers before it was edited for broadcast. We took into account the broadcaster’s submissions that the viewing of the footage was restricted under its data protection protocol to only those at Channel 4 whose involvement was necessary, and that at all times the footage was encrypted and stored securely. Ofcom considered that Channel 4 had taken reasonable steps to mitigate against infringing the complainant’s daughter’s privacy, and reduced the people who viewed the unedited footage to a minimum.

Given these circumstances, and the public interest justification of obtaining the footage described above, Ofcom considered that the means of obtaining the footage featuring the complainant's daughter 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 the complainant's daughter and the audience's right to receive information outweighed her legitimate expectation of privacy in the circumstances.

Therefore, we considered that the complainant's daughter's privacy was not unwarrantably infringed in connection with the use of surreptitious filming and the obtaining of material included in the programme.

- b) In considering the complaint that Mrs C's daughter's privacy was unwarrantably infringed in the programme as broadcast, we had regard 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. (Callers to phone-in shows are deemed to have given consent to the broadcast of their contribution)".

Practice 8.14: "Material gained by surreptitious filming and recording should only be broadcast when it is warranted".

We also had regard to Practice 8.20 (as set out at head a) above) and

Practice 8.21: "Where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from: a parent, guardian or other person of eighteen or over in loco parentis; and wherever possible, the individual concerned; unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent".

As explained in detail above, Ofcom considered that while the footage filmed of the complainant's daughter had been obtained surreptitiously without consent, the use of the surreptitious filming was warranted in all the circumstances.

We therefore went on to assess whether the complainant's daughter had a legitimate expectation of privacy regarding the broadcast of the footage of her included in the programme. We applied the same objective test set out in head a) above.

We took into account that the complainant's daughter was under 16 years old at the time the footage was obtained and broadcast. We carefully scrutinised the relevant footage shown in the programme and took into account that the complainant's daughter was not named in the programme, she was shown heavily blurred to the extent that only the "frame" of an individual covered in an aluminium blanket could be discerned by the viewer. We also took into account that the quality of the footage was poor, given that the footage had been filmed at night and that the EMT's movements meant that the body camera was unstable. We had regard to Channel 4's

submission that, contrary to the complainant's assertion in the complaint, her daughter's voice was altered to deepen her voice and make her sound older, and additionally that the gas and air had naturally deepened her voice. We also took into account the further steps Channel 4 had taken to anonymise the complainant's daughter, namely not including any personal details about her in the programme as broadcast and heavily blurring her. We also acknowledged that the broadcaster considered this would effectively anonymise the complainant's daughter from being recognised by anyone other than her immediate circle of family and friends who may have already been aware of the incident. In those circumstances, we considered that she was unlikely to have been rendered identifiable to viewers who did not already know her and the fact that she had received medical treatment following an injury to her knee.

We also took into account the factors set out in detail at head a) above; we recognised that the complainant's daughter was not aware that she was being filmed, and considered her medical treatment to be an activity over which she had an expectation of privacy. While we acknowledged that she was not readily identifiable as she had been pixelated and her voice altered, the programme included information regarding her injury and treatment, a matter which could reasonably be considered to be a private and sensitive situation. For the same factors explored at head a) above, we considered that, on balance, the complainant's daughter had a legitimate expectation of privacy in relation to the broadcast footage.

There was no dispute between the parties that the footage subject to complaint had been broadcast without consent. Therefore, we next considered whether the infringement of the complainant's daughter's legitimate expectation of privacy was warranted in the particular facts of the case.

We again carefully balanced the complainant's daughter'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 sufficient public interest which might justify the infringement of the complainant's daughter's legitimate expectation of privacy in broadcasting the footage.

We took into account the broadcaster's submissions that the incident revealed the failure by the ambulance service to meet the standards the NHS committed to. We also took into account that it considered the footage, more than any other it had gathered for the programme, demonstrated the reality of the situation faced by hospitals and the ambulance service and that it was journalistically vital to report it. In Ofcom's view, there was a genuine public interest in broadcasting footage which showed the true situation faced by hospitals and ambulance service, in particular the delays in response and handover times. We also considered that there was a public interest in broadcasting footage which showed viewers a first-hand account of the severity of delays and the effect this could have on patients and their families.

In balancing the rights of the parties in this complaint, while the broadcast footage showed the complainant's daughter in a sensitive situation, namely receiving treatment for a serious injury, and its inclusion had been an upsetting reminder of the incident, we recognised that the footage of the complainant's daughter's figure had been heavily blurred. We also acknowledged that the broadcaster had taken further steps to limit the extent of the intrusion by altering the



complainant's daughter's voice and ensuring personal details about her and the incident were not included.

Taking all 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 the complainant's daughter's legitimate expectation of privacy in relation to the inclusion of the footage of her in the programme as broadcast. We therefore considered that her privacy was not unwarrantably infringed in the programme as broadcast.

**Ofcom has not upheld Mrs C's complaint regarding her daughter, of unwarranted infringement of privacy in connection with the obtaining of the material included in the programme, and in the programme as broadcast.**