[GB] Ofcom determines when it is warranted to infringe a person's privacy in a news report

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On 5 January 2015, Ofcom published its decision holding that ITV's Meridian News (covering south and south east England) had not caused an unwarranted infringement of Mrs Diane Ash-Smith's privacy during a live news broadcast that disclosed her full address and showed footage of her car registration number, in relation to a murder enquiry of which her son, Colin Ash-Smith, was a suspect. Ofcom did not consider the Meridian News had breached Practice rules 8.2, 8.3, 8.4 or 8.6 of Ofcom's Broadcasting Code of Conduct.

Colin Ash-Smith had in 1993 been a suspect in a murder inquiry concerning the death of 15-year-old schoolgirl Claire Tiltman. The original police inquiry included searches of his parents' home and as a consequence had attracted significant media coverage. About 20 years later, Kent Police undertook further inquiries including another search of Colin Ash-Smith's mother's home. On 12 September 2013, Meridian News undertook a live report from outside Mrs Diane Ash-Smith's home, although the crew were on public land. The report was supplemented by a pre-recorded report showing a close-up shot of the house number; there was a picture of Mrs Ash-Smith's car and its registration number. The footage showed police officers entering and exiting the house by the front door and searching the inside of Mrs Ash-Smith's car parked on the driveway. The reporter concluded that it was "not clear what brought police here today, they're giving no interviews ... it's the third search of the property since Claire was murdered four days before her 16th birthday."

Mrs Ash-Smith complained to Ofcom that the 12 September 2013 report was an unwarranted infringement of her privacy. Ofcom's statutory duties include providing adequate protection to members of the public from unjust and unfair treatment and unwarranted infringement of their privacy. However, Ofcom must balance this against an appropriate level of freedom of expression. Ofcom must exercise this balancing act in a transparent, accountable and proportionate way. Where there is a conflict between a person's privacy and the broadcaster and its audience's freedom of expression, Ofcom must consider the comparative importance of the respective rights.

Section 8 of the Ofcom Broadcasting Code contains a number of rules on infringements of privacy, including that information which discloses the location of

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a person's home should not be revealed without permission, unless it is warranted (8.2), when people are caught up in events which are covered by the news they still had a right to privacy in both the making and the broadcast of the programme, unless it is warranted to infringe it (8.3), broadcasters should ensure 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, unless broadcasting without their consent is warranted (8.4), and 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 (8.6).

Applying those principles to Mrs Ash-Smith's complaint, Ofcom considered a number of factors, including the fact that both the 1993 and 2013 police investigations had extensive media coverage; that the fact that Mrs Ash- Smith's home was the subject of the enquiry was common knowledge in the locality and the information was in the public domain; the filming on 12 September 2013 was from the public highway; Meridian had not been asked to stop filming by the Ash-Smiths or the police; Mrs Ash-Smith's husband, Aubrey, had co-operated with questions from reporters; the filming of the car and house was incidental to the report; and the reportage did not linger on the car or the house front door.

Further, Mrs Ash-Smith contended that the report had inaccurately stated that her home was her son's home, while Meridian stated it had third-party evidence to support their assertion. Ofcom considered that this conflict on facts did not take away from the fact that the house was the subject of a murder investigation. Finally, Colin Ash-Smith had already been convicted of attempted rape and attempted murder of another woman, so details about him and the premises were in the public domain. In light of these considerations, Ofcom concluded that there was no unwarranted breach of the Mrs Ash-Smith's privacy.

The publication of Ofcom's adjudication was postponed until the outcome of a court trial, whereby on 12 December 2014 Colin Ash-Smith was convicted of Claire Tiltman's murder.

Ofcom Broadcast Bulletin, 'Complaint by Mrs Diane Ash-Smith', Issue 270, 5 January 2015, 40-47

http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2691/obb270.pdf

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