[GB] Ofcom finds BBC breach of privacy was warranted in the particular circumstances

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Ofcom has decided that although the BBC had entered private premises without permission, the invasion of privacy on this occasion was warranted because of public interest considerations. The complaint was made against BBC1's "The Dog Factory", a documentary concerning the dog trade in Scotland and Northern Ireland, broadcast on 19 May 2015. The owner, Mr David Hamilton, of "The Furnish Kennels" in Northern Ireland, complained that the BBC had interfered with his privacy by filming in the middle of the night on his property without his permission, thus leading to adverse effects on him and his business.

The background was that the BBC had been investigating the Northern Ireland dog trade and laws relating to dog breeding. The programme included an interview with a former Department of Agriculture and Rural Development vet who had undertaken inspections of the Furnish Kennel and expressed concern about the dogs' welfare, and that effectively it was a puppy farm placing the animals' health at risk. The BBC said that they would not have been given consent to film the Furnish Kennels and, therefore, they would have to use covert means.

The BBC reporter, plus two other parties, went onto the property very late at night without permission, and filmed using night-vision technology. The BBC said that the Ulster Society for the Prevention of Cruelty to Animals (USPCA) believed that Furnish Kennels were operating an intensive agricultural system to the detriment of the physical wellbeing and mental health of the breeding bitches and their puppies. Subsequent to the night filming, the footage was shown to experts who commented upon the poor conditions and the effect upon the animals.

Ofcom's statutory duties include the application in relation to television and radio services of standards for adequate protection to members of the public and all other persons from unjust and unfair treatment and unwarranted infringement of privacy in or in connection with the obtaining of material included in programmes broadcast. However, this statutory duty had to be balanced against the competing right of the broadcaster to freedom of expression. In doing so, Ofcom applied Rule 8.1 of their Code of Conduct, which states that any infringement of privacy in programmes in connection with obtaining material included in the programmes must be warranted. Ofcom had regard to practice rules 8.5 and 8.9 of the Code. Rule 8.5 states that any infringement of privacy should be with the person's or

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organisation’s consent or otherwise be warranted. Rule 8.9 states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

Ofcom determined that the BBC had infringed Mr Hamilton’s privacy by filming without consent. Nevertheless, such a breach of privacy had been warranted. Ofcom stated that “warranted” meant that broadcasters wishing to justify an infringement of privacy as warranted should be able to demonstrate why in particular circumstances of the case it is warranted. If the reason is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. The BBC wished to reveal the poor conditions at the kennels and the inadequacies in the prevailing laws and/or their enforcement. Consent to film would not have been allowed by Mr Hamilton, and as such covert filming was required.

Ofcom determined that the BBC had only filmed where necessary, namely the accommodation. There was no filming of private documents, individuals or the residential area onsite. Therefore, in the circumstances, the filming was warranted and proportionate to the circumstances of the case. Reference was made to Ofcom’s Code rule 8.6, that consent to film should be acquired in advance but there are circumstances where the infringement of privacy is warranted. Ofcom considered that it was in the public interest for the conditions at the kennels to be shown. The Court found thatwhilst there had been a breach of privacy, that breach had been warranted in these circumstances.

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