[GB] Sky News broadcasts about a convicted criminal did not constitute an unwarranted infringement of his privacy

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Ofcom has held that Sky News had not undertaken an unwarranted infringement of privacy in relation to two broadcasts concerning the release of a notorious convicted conman, Mr Mark Acklom, by showing a pixelated photograph of himself with his family and another picture taken on an aircraft. Applying Ofcom rules, and having considered Article 8 of the European Convention on Human Rights, the regulator's determination balanced Mr Acklom's right to privacy against Sky's freedom of expression to report matters in the public interest, and on balance, in the particular circumstances, considered the infringement of privacy warranted.

Mr Acklom had served a five year prison sentence in the UK for fraud and was classed as '*Britain's most notorious conman'.* On 12 August 2021, Sky News broadcast two reports explaining that Mr Acklom was about to be freed from prison but would be subject to various restrictions as a consequence of a rare Serious Crime Prevention Order. The reporting indicated that the Spanish authorities wanted to have Mr Acklom extradited to serve the rest of an outstanding prison sentence in Spain.

The Sky reports speculated whether Mr Acklom would be jailed in Spain or, as his family lived there, be allowed to live under strict supervision. The report suggested that Spanish prisons were overcrowded and any prison sentence would be relatively short.

The reporting included a photograph of Mr Acklom with his two children (their faces having been pixelated), showing that when not in jail he lived a normal life. Another photograph showed Mr Acklom with an unidentified adult whose face had been blurred. A third photograph showed Mr Acklom by the side of a swimming pool with a child whose face had been blurred. The photographs had been given to Sky News by an undisclosed source and the broadcaster refused Ofcom's request to explain how they had acquired the photographs. Sky also refused to provide a non-pixelated version of the pictures.

An additional photograph showed Mr Acklom in an aircraft during his extradition back to the UK in 2019. According to Mr Acklom the airline had objected to the photograph and the aircraft's captain had ordered the photographs be deleted.

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Sky maintained that the reporter who had taken the photograph had politely declined the request by cabin crew to delete images, believing there was a legitimate public interest in obtaining the pictures, however Sky denied that the reporter had been 'ordered' to delete the photographs. No further action had been taken by the airline.

Mr Acklom considered that the various images constituted an invasion of his privacy and, where relevant, that of his family.

Sky contented that their reporting was in the public interest, depicting the original extradition to the UK prior to Mr Acklom's conviction, plus reasonable speculation on their part about a further extradition to complete his outstanding sentence in Spain and on other potential restrictions to Mr Akrom's freedoms.

Ofcom considered the various representations and gave consideration to its Codes of Practice:

Practice 8.4 states "Broadcasters should ensure that words, images, or actions filmed or recoded 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."

Whilst Practice 8.6 states: "If the broadcaster of a programme would infringe the privacy of a person or organisation, consent should be obtained before relevant material is broadcast, unless infringement of privacy is warranted."

Ofcom acknowledged that Sky had not acquired Mr Acklom's consent for the use of the photographs. The issue was whether he had a legitimate expectation of privacy based on the particular facts.

The regulator considered the photographs revealed little information about his family. Sky had taken steps to obscure their identity and as such, no interaction between him and family members had been shown. Ofcom recognised that the photographs used were not from when Mr Acklom had been '*on the run*.'

Ofcom balanced Mr Acklom's legitimate expectation of privacy against Sky's right to freedom of expression. On balance, Ofcom considered that his privacy had not been unwarrantably infringed. The photographs were used in the context of explaining how he had been convicted in the UK, sentenced in Spain and expected to complete that remaining sentence. Prison crowding was such in Spain that his sentence might be reduced and any imprisonment might be close to where his family lives.

Complaint by Mr Mark Acklom about Sky News – Ofcom Broadcast and On Demand Bulletin issue 457, 30th August 2022.

https://www.ofcom.org.uk/__data/assets/pdf_file/0015/243411/Complaint-by-Mr-

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