

CONFIDENTIAL

Ofcom Standards Team  
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13 October 2022

Ofcom ref: 01500320

Dear Mr Drury

***Torn Apart: Family Court Uncovered – Dispatches, Channel 4, 20 July 2021, 22:00***

Please see below a response to your e-mail of 23 August 2022, which raised a follow up question requesting clarification on our response, dated 1 August 2022 and subsequent email of 23 August, to your Freedom of Information request regarding the above programme (“the **Programme**”).

Your email of 23 August asks whether ‘[Ofcom] *could advise why it has decided not to pursue the complaints and why it took a year to come to that decision*’. Ofcom’s response of 1<sup>st</sup> and 23<sup>rd</sup> of August already explains Ofcom’s aim in responding to complaints and sets out why the process was extended in relation to this Programme.

Our email of 23 August made clear that your query is being treated as a general enquiry in respect to Ofcom’s decision not to pursue these complaints. As such, it was passed on to Ofcom’s Broadcast Standards Team for response. In line with our [published complaints procedure](#), Ofcom does not as a matter of course write to correspondents with the outcome of our considerations. However, on this occasion, in order to assist, we set out below a summary of our reasoning for not pursuing the standards complaints in respect of this Programme.

The Standards Decision

Further to their review of the complaints the Broadcast Standards Team assessed whether the content in this Programme raised issues warranting investigation under the following rules of the Ofcom [Broadcasting Code](#) (“the Code”):

- Rule 2.2: “Factual programmes or items or portrayals of factual matters must not materially mislead the audience.”
- Rule 5.5: “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service. This may be achieved within a programme or over a series of programmes taken as a whole.”

**Section Five**

In relation to Rule 5.5, when interpreting due impartiality, Ofcom gives careful consideration to the rights of the broadcaster and viewers to freedom of expression under Article 10 of the European

Convention on Human Rights, which include their rights to hold opinions and, respectively, to impart and receive information and ideas without interference.

However, the broadcaster's right to freedom of expression is not absolute and broadcasters must always comply with the Code. Ofcom therefore recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression where that is required by law and necessary in pursuit of a legitimate aim. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured.

Ofcom's [Guidance](#) defines matters of political or industrial controversy and matters relating to current public policy as follows:

“Matters of political or industrial controversy are political or industrial issues on which politicians, industry and/or the media are in debate. Matters relating to current public policy need not be subject of debate but relate to a policy under discussion or already decided by a local, regional or national government or by bodies mandated by those public bodies to make policy on their behalf...”

In Ofcom's view, the subject matter of the Programme was not a matter amounting to political or industrial controversy and/or a matter relating to current public policy to which the special impartiality requirements under Rule 5.5 apply. For example, we noted that the matters discussed in the Programme, particularly around parental alienation, were not the subject of legislative debate at the time the Programme was broadcast. Furthermore, the references to parental alienation within the Programme were made in the context of its examination of decisions made by the courts about child custody arrangements in private family law cases where one parent has said that the other has engaged in parental alienation. We therefore found no issues warranting an investigation under Section 5 of the Code.

## Section Two

Ofcom's [Guidance on Section Two](#) explains the following in relation to Rule 2.2:

“Ofcom is required to guard against harmful or offensive material, and it is possible that actual or potential harm and/or offence may be the result of misleading material in relation to the representation of factual issues.”

The Guidance also explains that Rule 2.2 is “designed to deal with content that **materially misleads the audience so as to cause harm or offence**” (emphasis in original) and not with “issues of inaccuracy in non-news programmes”.

Ofcom Guidance explains that whether or not a programme is “materially” misleading, “depends on a number of factors such as context, the editorial approach taken in the programme, the nature of the misleading material and, above all, either what the potential effect could be or what actual harm or offence has occurred”.

We considered the Programme included a variety of voices to provide alternative views and further information on the issues covered in the programme. For example, we noted the Programme included comments from, Anita Guha (Barrister), who provided a view on court procedures and the impact of parental alienation, explaining that the court's objective was for 'children to have a meaningful relationship with both parents' and Sir Lawrence Munby QC (retired judge who was a former President of the Family Division of the High Court of England and Wales), who commented on the actions which would normally be taken before a removal order was made. We therefore did not consider the concerns raised by complainants provided grounds for considering that the content was materially misleading.

Finally, regarding your question about the time taken to come to our decision, as explained in our FOI response of 1 August and email of 23 August, the process had been extended due to the complexity of some of the issues raised by complainants and due to the consideration of the issues in the 'standards' and 'fairness and privacy' complaints in tandem.

We hope this information is helpful.

Yours sincerely,

Ofcom Standards Team.