Neutral Citation Number: [2018] EWHC 298 (Ch)

Case No: HC-2016-002012

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
BUSINESS LIST (CHANCERY DIVISION)

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 22 February 2018

Before :

MR JUSTICE ARNOLD

- -

Between :

(1) SHAKIR ALI	**Claimants**
(2) SHAHIDA ASLAM	
- and -	
CHANNEL 5 BROADCAST LIMITED	**Defendant**

- -
- -

William Bennett and **Felicity McMahon** (instructed by **Hamlins LLP**) for the **Claimants**
Antony White QC and **Tom Blackburn** (instructed by **Lee & Thompson LLP**) for the **Defendant**

Hearing dates: 5-7 February 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE ARNOLD

MR JUSTICE ARNOLD :

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Introduction

1. On 2 April 2015 the Claimants, Shakir Ali and Shahida Aslam, were evicted from the home they had been renting at 137 Fanshawe Avenue, Barking, Essex ("the Property") by High Court Enforcement Agents ("HCEAs") enforcing a Writ of Possession obtained by their landlord Rashid Ahmed. The eviction was filmed by a television production company called Brinkworth Films Ltd ("BFL"). Edited footage of the eviction was broadcast by the Defendant ("Channel 5") as part of a programme ("the Programme") in the third series of a strand called *Can't Pay? We'll Take It Away* ("CPWTIA"). The Programme has been viewed by 9.65 million people. The Claimants contend that the broadcasting of the Programme amounted to misuse of their private information and claim damages. Channel 5 denies that the Claimants had a reasonable expectation of privacy, and in the alternative contends that the balance between the Claimants' right to respect for their private life and Channel 5's right to freedom of expression comes down in favour of the latter due to the public interest in the matter. This might appear to be quite a narrow dispute, but it involves a surprisingly complicated factual and legal background. I am grateful to all four counsel, in particular for the assistance they gave me on the landlord and tenant issues.

The witnesses

The Claimants' witnesses

2. The Claimants' only witnesses were the Claimants themselves.

3. Counsel for Channel 5 submitted that Mr Ali was a highly unsatisfactory witness of little credit. I agree that he was an unsatisfactory witness: he frequently gave long, rambling answers which failed to respond to the questions he was actually being asked, and he continued to do so despite several interventions from me asking him to focus on the questions. Moreover, some of his evidence was confused, and he tried to resile from an important concession made in his witness statement. On the other hand, he volunteered some information which was potentially adverse to the Claimants' case. Overall, I consider that Mr Ali was endeavouring to give truthful evidence, but he was

not a wholly reliable witness. It follows that his evidence must be treated with caution, but I do not reject it entirely.

4. Counsel for Channel 5 submitted that Mrs Aslam was also an unsatisfactory witness. I think this criticism is slightly unfair: Mrs Aslam understandably became rather emotional when giving evidence. In any event, what matters more is that Mrs Aslam adopted her husband's evidence.

Channel 5's witnesses

5. Malcolm Brinkworth is a television producer. He is the founder and a director of BFL. He was a straightforward witness.

6. Paul Bohill was the senior of the two HCEAs who carried out the eviction. He has worked for Direct Collection Bailiffs Ltd ("DCBL") since the end of 2014. He was also a straightforward witness, but for the reasons explained below I do not accept his evidence on two points.

7. Simon Raikes was a Factual Commissioning Editor at Channel 5 from 2012 to 2015 who was responsible for commissioning CPWTIA. He was not cross-examined.

Missing witnesses

8. Understandably, neither side called either Rashid Ahmed or his son Omar Ahmed, who featured quite prominently in the Programme. I mention this only because it is necessary for me to bear in mind that I have not heard their side of the story regarding their dispute with the Claimants except in so far as it can be gathered from the evidence before the Court. The same goes for Munawar Hussain and Mohammed Hanif who appear to have acted as agents respectively for the Claimants and Rashid Ahmed at the time that the Claimants became tenants of the Property.

9. Channel 5 did not call any of the film crew who filmed the eviction, namely Chris Christodoulou (assistant producer), David Rea (cameraman) and Joel Bartholomew (sound recordist). Nor did Channel 5 call either Katy Ferguson, the edit producer at BFL, or Susan Crook, the series producer at BFL. Counsel for Channel 5 submitted that it was unnecessary to do so, since the unedited raw footage ("rushes") formed an accurate and fairly comprehensive record of what had transpired during the eviction, since it was not alleged that the filming was unlawful and since Messrs Brinkworth and Raikes had addressed the editorial processes involved in making the Programme. I accept all that, and I draw no inference adverse to Channel 5 from its failure to call the missing witnesses. It follows, however, that there is no evidence from the film crew to explain what happened on the day of the eviction. Nor is there any evidence from either Ms Ferguson or Ms Crook as to their decision-making.

The facts

10. I shall set out my findings of fact topic by topic and approximately chronologically in relation to each topic. I have found it convenient also to consider and resolve in this section of the judgment certain background legal issues.

The Claimants

11. Mr Ali, who is also known as Shakir Qureshi, was born in Pakistan in 1966. Mrs Aslam was born in Pakistan in 1969. They were married in 1997. They came to the United Kingdom in 2001. They have two children, a daughter born in January 2003 and a son born in January 2004.

12. At one time Mr Ali worked in a kebab restaurant. By the period that is relevant to this case, he was self-employed, although his evidence did not reveal in what capacity. It appears from the evidence that Mrs Aslam did not work.

13. Mr Ali has had a heart condition and high blood pressure since 2012. On 2 April 2015 he was still taking a lot of medication. In addition, sometime in March 2015, he had had accident and injured his left foot. For this reason, on 2 April 2015 his foot and lower leg were encased in a surgical boot and he was using crutches.

14. From approximately 2013 to 2015 Mr Ali was the Media Secretary of the Pakistan Muslim League (Nawaz) ("PML(N)") in the UK. The PML(N) is a centre-right political party in Pakistan. The role of Media Secretary in the UK was an unofficial, unpaid one. Mr Ali was not a politician, but he had strong political views. He and a number of other Britons of Pakistani origin had set up their own group in the UK as followers and supporters of the PML(N). Mr Ali was also the Chairman of Karwan-e-Fikr, a political think tank and discussion group.

15. In his capacity as Media Secretary of PML(N) in the UK or as Chairman of Karwan-e-Fikr, Mr Ali gave a number of interviews to, or otherwise participated in, a number of television programmes which were of interest to the Pakistani diaspora in the UK. Recordings of these are available on YouTube.

The Claimants' tenancy of the Property

16. On 1 December 2012 the Claimants became tenants of the Property. The tenancy agreement between the Claimants and Rashid Ahmed of that date provided that it was "intended to create an assured shorthold tenancy as defined in section 20 of the Housing Act 1988 and the provisions for the recovery of possession by the landlord in section 21 shall apply accordingly" (clause 2). The term of the tenancy was 6 months and the monthly rent was £1,325 payable in advance (clause 1). Interest was due on late payments of rent (clause 10), and if the rent was in arrear for at least 14 days the landlord had the right to re-enter the property and determine the tenancy (clause 5). The tenants covenanted not to sublet the Property (clause 4(i)). There was no mention of any deposit.

17. Although the tenancy agreement was signed by the parties, it appears that it was negotiated between Mr Hussain and Mr Hanif.

18. After the expiry of the six month period, the Claimants' tenancy of the Property became a periodic tenancy, meaning that it continued on a monthly basis on the terms set out in the tenancy agreement of 1 December 2012.

19. The Claimants were in receipt of housing benefit which (at least from November 2014) was paid directly to Rashid Ahmed. In an email to Ms Ferguson dated 16 June 2015

Omar Ahmed stated that the amount of housing benefit was £744.20 a month, leaving a shortfall of £580.80 per month. Mr Ali accepted the accuracy of that figure in his witness statement. I note, however, that a letter from Chloe Barnes, a Housing Options Officer at the London Borough of Barking and Dagenham ("the Council"), dated 8 June 2015 to Mrs Aslam states that the amount of housing benefit was £806.22 per month, leaving a shortfall of £518.78 per month.

20. According to Omar Ahmed's email dated 16 June 2015, the Claimants stopped paying the full amount of the rent due in January 2014. Mr Ali did not tell his wife about the situation at that time because he was ashamed about it, but he did reveal it to her at the end of 2014. They did not tell the children.

21. As discussed in more detail below, the Ahmeds alleged that the Claimants had sublet rooms in the Property, but the Claimants denied this.

The possession proceedings

22. On 13 June 2014 Rashid Ahmed served notices under section 21(4)(a) of the Housing Act 1988 on each of the Claimants requiring possession of the Property after 31 August 2014. In most cases, section 21 gives a landlord an automatic right of possession by giving notice without having to give reasons once the fixed term has expired.

23. According to Omar Ahmed's email dated 16 June 2015, the Claimants did not pay any rent at all after August 2014, although Rashid Ahmed did start to receive housing benefit payments in November 2014 covering part of the rent due from August 2014 onwards.

24. On 8 September 2014 Rashid Ahmed commenced proceedings against the Claimants in the County Court at Romford for possession of the Property under the accelerated procedure. The Claim Form relied upon the notices served on 13 June 2014 and stated that no deposit had been paid. The relief claimed was possession of the Property and costs, but no claim was made for arrears of rent.

25. On 20 September 2014 the Claimants served a Defence admitting service of the notices, but alleging that the Claimants had paid a deposit of £1,325 to their agent Mr Hussain (by implication, for him to pay to Mr Hanif or Rashid Ahmed) and had not received a receipt. They also asserted that, after service of the notice, it had been agreed between the agents that the Claimants could stay until December 2015 if they paid the rent properly. They requested that, if a possession order was made, they be allowed longer than 14 days to leave the Property because they would suffer exceptional hardship, in particular due to Mr Ali's health.

26. The legal significance of the allegation that a deposit had been paid, but no receipt provided, was that it implied that the deposit was not properly protected. If a deposit had been paid, but not properly protected, then that would invalidate the section 21 notices. It is not clear whether the Claimants were aware of that at the time of serving their Defence; but it is clear that, even if they were not, they became aware of it during the course of the proceedings.

27. On 25 September 2014 the matter came before Deputy District Judge Meale, who made an order recording that he was not satisfied that Rashid Ahmed was entitled to use the

accelerated procedure and listing the matter for hearing on 15 October 2014 with an estimate of 20 minutes. He also ordered the parties to file and serve by 9 October 2014 any evidence on which they wished to rely regarding the allegation that the Claimants had paid Rashid Ahmed a deposit.

28. On 15 October 2014 the matter was adjourned by District Judge Goodchild to 3 November 2014 with an estimate of 30 minutes, with a direction that the parties file and serve the witness statements and documents on which they intended to rely no later than seven days before the hearing, failing which neither party would be permitted to rely upon such evidence.

29. On 3 November 2014 the matter was adjourned by District Judge Dodsworth to 16 March 2015 with an estimate of two hours. He also ordered the Claimants to file and serve witness statements exhibiting translations of recordings said to contain an acknowledgement by Rashid Ahmed's agent (this appears to be a misunderstanding, since it was the Claimants' agent who was said to have made the acknowledgement) of the payment of the deposit. The Claimants were ordered to pay the landlord's costs of the hearing.

30. The matter came before District Judge Mullis on 16 March 2015. Rashid Ahmed was represented by counsel, while Mr Ali acted in person on behalf of himself and his wife. Rashid Ahmed relied upon four witness statements: one from himself, two from Mr Hanif and one from Mr Hussain. The Claimants had not served any witness statements, although they had served a translation of a transcript of the recording they relied on, which was a recording of a telephone conversation in Urdu between Mr Ali and Mr Hussain. Mr Hussain affirmed. Mr Ali expressed concern that the witness had not sworn on the Quran, but the judge explained that that was not required. Mr Hussain denied that a deposit had been paid. Mr Hanif also affirmed and denied that a deposit had been paid. Rashid Ahmed did not give evidence in person, having been called away on a personal matter by that time. Mr Ali swore on the Quran and testified that he had paid a deposit of £1,325 to Mr Hussain in cash in two instalments. Mr Ali said that he had withdrawn some of the money from his bank accounts, but did not have copies of any bank statements to support this evidence.

31. In his judgment at [15] District Judge Mullis found on the balance of probabilities that no deposit had been paid. In reaching that conclusion, he relied upon: (i) the clear evidence of Rashid Ahmed's witnesses, and in particular the two who gave oral evidence; (ii) the fact that the tenancy agreement did not mention any deposit; (iii) the absence of any evidence from the Claimants showing where the money came from as well as the absence of any receipt; and (iv) the fact that the translation of the transcript of the recording relied upon did not contain any admission by Mr Hussain that a deposit was paid. Earlier in his judgment at [11] he had described the transcript as "self-serving". It is therefore clear that the District Judge preferred the evidence of Rashid Ahmed's witnesses to Mr Ali's evidence. He made no finding, however, that Mr Ali had been deliberately untruthful.

32. After the District Judge had given judgment, counsel for Rashid Ahmed applied for his costs in the sum of £1,582. The District Judge assessed the costs in the sum of £1,060. Having heard the parties, the District Judge found that there would be no exceptional hardship if the Claimants were required to give possession in 14 days and therefore declined to extend the period under section 89 of the Housing Act 1988.

33. Accordingly, the District Judge's order (which was sealed on 19 March 2015) ordered the Claimants to give Rashid Ahmed possession of the Property on or before 30 March 2015 and to pay Rashid Ahmed's costs assessed at £1,060 on or before 13 April 2015 ("the Order for Possession"). The Order for Possession was not endorsed with a penal notice. It contained a standard notice in the following terms:

> "The court has ordered you to leave the property by the date stated in paragraph 1 above.
>
> If you do not do so, the claimant can ask the court, without a further hearing, to authorise a bailiff or High Court Enforcement Officer to evict you. (In that case, you can apply to the court to stay the eviction; a judge will decide if there are grounds for doing so.)"

34. There was no order for the payment of arrears of rent, because Rashid Ahmed had never sought one. It is not clear from the evidence what the amount outstanding was by 2 April 2015. Ms Barnes' letter dated 8 June 2015 gives three different figures: £5,847.29, £8,347.71 and £936.10, although these may relate to the position as at different dates (for example, the third figure may relate to the position as at 13 June 2014). Omar Ahmed's email dated 16 June 2015 gives the figure of £8,347.71 (and a total of £11,349.46 with court and legal fees).

The Claimants' position as people about to be made homeless

35. On 24 March 2015 the Claimants approached the Council for assistance with housing and met Ms Barnes. The Claimants' unchallenged evidence was that Ms Barnes told them that the Order for Possession was not a sufficient basis for the Council to find them alternative accommodation. They should wait until they received a visit from bailiffs, who would give them 14 days' notice of eviction. Once they had received a notice of eviction from the bailiffs, they should request assistance from the Council. If they vacated the Property before they received a notice of eviction, it was likely that they would be found to be "intentionally homeless" under the Housing Act 1996 (and thus ineligible for council accommodation). The Claimants accepted this advice, and therefore did not vacate the Property on 30 March 2015.

36. The Claimants' evidence is corroborated by the evidence of Mr Bohill that, in his experience, when tenants go to councils to say that they are about to be evicted, they are often told that they will not be considered for council housing until they have actually been evicted.

37. It does not matter for the purposes of the Claimants' claim whether the advice which the Claimants received from the Council was legally accurate. I shall nevertheless consider it, both because this question is related to an issue which is in dispute between the parties and which does matter and because it has some background relevance to the public interest dimension to the case.

38. Sections 175 and 191 of the 1996 Act provide:

> "**175. Homelessness and threatened homelessness**

(1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he—

(a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,

(b) has an express or implied licence to occupy, or

(c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.

(2) A person is also homeless if he has accommodation but—

(a) he cannot secure entry to it, or

(b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.

(3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

(4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days.

191. Becoming homeless intentionally

(1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

(3) A person shall be treated as becoming homeless intentionally if—

(a) he enters into an arrangement under which he is required to cease to occupy accommodation which it would have been reasonable for him to continue to occupy, and

(b) the purpose of the arrangement is to enable him to become entitled to assistance under this Part,

and there is no other good reason why he is homeless."

39. Counsel for the Claimants submitted that, until the writ of possession was executed, the Claimants were covered by section 175(1)(c) and therefore were not "homeless". I accept that, for reasons I will explain below; but in my judgment the Claimants were "threatened with homelessness" within section 175(4) at least once the Order for Possession was made. Counsel for the Claimants further submitted that, until the Claimants became homeless, they could not be "intentionally homeless" within section 191. Again, I accept that; but a person may become intentionally homeless as a result of acts or omissions committed when he or she has accommodation.

40. Finally, counsel for the Claimants submitted that it was open to the Council to conclude that it was reasonable within the meaning of section 191(1) for the Claimants to remain at the Property at least until they had received notice of eviction. As counsel for Channel 5 pointed out, however, in 2006 the Secretary of State for Communities and Local Government issued a *Homelessness Code of Guidance* ("the Code") under section 182 of the 1996 Act. Under subsection (1), housing authorities are required to have regard to the Code in carrying out their functions under Part VII of the 1996 Act and under the Homelessness Act 2002.

41. Paragraph 8.14 of the Code, headed "Tenant given notice" cross-refers to paragraphs 8.30-32. At paragraph 8.30, the Code deals with the situation where a tenant is given notice of intention to recover possession. Paragraph 8.30 states that in those circumstances the housing authority should canvass with the landlord the possibility of the tenant being permitted to remain for a reasonable period; but if that is not possible, "the authority will need to consider whether it would be reasonable for the applicant to continue to occupy the accommodation once the valid notice has expired."

42. Paragraph 8.31 provides that, in deciding whether it would be reasonable for the applicant to continue to occupy the accommodation once the notice has expired, the authority:

> "… will need to consider all the factors relevant to the case and decide the weight that individual factors should attract. As well as the factors set out elsewhere in this chapter, other factors which may be relevant include the general cost to the housing authority, the position of the tenant, the position of the landlord, the likelihood that the landlord will actually proceed with possession proceedings, and the burden on the courts of unnecessary proceedings where there is no defence to a possession claim …"

43. Paragraph 8.32 states (emphasis in the original):

> "Each case must be decided on its facts, **so housing authorities should not adopt a general policy of accepting – or refusing to accept – applicants as homeless or threatened with homelessness when they are threatened with eviction but a court has not yet made an order for possession or issued a warrant of execution**. In any case where a housing authority decides that it would be reasonable for an applicant to continue to occupy their accommodation after a valid notice has expired – and therefore decides that he or she is not yet homeless or

> threatened with homelessness – that decision will need to be based on sound reasons which should be made clear to the applicant in writing (see Chapter 6 for guidance on housing authorities' duties to inform applicants of their decisions). The Secretary of State considers that where a person applies for accommodation or assistance in obtaining accommodation, and:
>
> (a) the person is an assured shorthold tenant who has received proper notice in accordance with s.21 of the Housing Act 1988;
>
> (b) the housing authority is satisfied that the landlord intends to seek possession;
>
> and
>
> (c) there would be no defence to an application for a possession order;
>
> then it is unlikely to be reasonable for the applicant to continue to occupy the accommodation beyond the date given in the s.21 notice, unless the housing authority is taking steps to persuade the landlord to withdraw the notice or allow the tenant to continue to occupy the accommodation for a reasonable period to provide an opportunity for alternative accommodation to be found."

As counsel for Channel 5 submitted, the position must be *a fortiori* when an order for possession has been made by a court.

The telephone conversation on 30 March 2015

44. Mr Ali gave evidence that Omar Ahmed telephoned him on 30 March 2015 to ask if the Claimants were going to vacate the Property that day. Mr Ali said that they would not. They were ready to leave the Property, but they would wait for the bailiffs because that was what they had been advised to do by the Council. Omar Ahmed said that he would apply to the court for an order for the bailiffs to evict them.

The difference between enforcement by a County Court bailiff and by an HCEO

45. A landlord in the position of Rashid Ahmed on 30 March 2015 can attempt to enforce the order either by applying to the County Court for a warrant for possession of the property and waiting for a County Court bailiff to enforce the warrant or by applying to have the case transferred to the High Court pursuant to section 42(2) of the County Courts Act 1984 and then applying for a writ of possession pursuant to CPR rule 83.13 and instructing an HCEO to enforce the writ. The County Court procedure was helpfully explained by District Judge Salmon in *Birmingham City Council v Mondhlani* [2015] EW Misc (CC) at [61]:

> "The procedure is governed by CPR83.26. In summary it requires an application to be made to the County Court hearing

> centre. It may be made without notice. The application must certify that the premises have not been vacated. Applications are made using prescribed form N325. The issue of the warrant of possession in the County Court is an administrative act by Court staff. They issue a warrant of possession to the Court bailiff N49. They issue Notice of Appointment to the Claimant in form EX96 and a Notice of Eviction to the Defendant using a prescribed form N54. The N54 form contains a date and time when the eviction is to take place. It also contains information as to what happens at the eviction and what a tenant can do including a detailed explanation as to how in some circumstances a Court can decide to suspend the warrant and postpone the date for eviction and the procedure for so doing including a reference to the Court fee and fee exemption or remission. It also explains what to do if you can pay off any arrears."

The use of form N54 is not required by rule 83.26 or Practice Direction 83. Indeed, it is striking that rule 83.26 contains no counterpart to rule 83.13(8)(a) quoted below. Nevertheless, it appears that the use of form N54 is required by rule 4(1) and Practice Direction 4.

46. In the High Court, rule 83.13(4) provides that an application for a writ of possession may be made without notice to any other party, but rule 83.13(8)(a) provides that permission to issue a writ "will not be granted unless it is shown … that every person in actual occupation of the whole or any of part of the land ('the occupant') has received such notice of the proceedings as appears to the court sufficient to enable the occupant to apply to the court for any relief to which the occupant may be entitled". In *Gupta v Partidge* [2017] EWHC 2110 (QB), [2018] 1 WLR 1 (which was decided well after 2 April 2015) Foskett J rejected at [53] a submission that those who were about to be evicted should be given notice of the time and date when they were to be evicted and went on to hold:

> "64. The 'notice of the proceedings' referred to does not necessarily require either the service of the formal notice of application for permission or even a more informal intimation by letter or other communication that the application will be heard on a particular day or at a particular time. Either would be sufficient, but neither is required by the rule provided that the notice is sufficient to enable the occupant(s) to apply for relief.
>
> 65. Where there is a sole occupant who is the subject of the possession order and he/she has full knowledge of the possession proceedings, a reminder of the terms of the court order and a request that possession is given up under the order is, generally speaking, sufficient notice within the rule. …"

The Writ of Possession

47. On 1 April 2015 a writ of possession ("the Writ of Possession") was issued by the High Court Queen's Bench Division on the application of Rashid Ahmed commanding Claire Sandbrook, a High Court Enforcement Officer ("HCEO"), (1) to enter the Property and

cause Rashid Ahmed to have possession of it and (2) to seize in execution the goods, chattels and other property of the Claimants to raise the sums set out in Schedule 2, namely the judgment for costs of £1,060 and costs of execution of £111.75 plus interest and the HCEO's fees. (Counsel for the Claimants pointed out that the sum of £1,060 was not yet due at that date, but this is not of any materiality for present purposes.) The Writ of Possession does not bear the name of any judge who gave permission for it to be issued. My understanding is that permission would have been given by the Queen's Bench Practice Master on duty that day.

48. Neither Rashid Ahmed's application for transfer of the case to the High Court nor his application for permission to issue the Writ of Possession is in evidence. It is common ground, however, that the applications would have been made on paper and disposed of without a hearing. It is also common ground that the Claimants were not given any notice of the applications, of the issue of the Writ of Possession or of the intention to execute the Writ of Possession on 2 April 2015. (By contrast, Foskett J records in his judgment in *Gupta* at [15] that in the case the tenant was given advance notice of the applications by the HCEO.) Finally, it is common ground that, as a consequence of the Order for Possession and the Writ of Possession, the Claimants were lawfully evicted.

DCBL

49. DCBL specialises in, among other things, enforcing High Court writs of possession and writs of control. Ms Sandbrook was and remains an authorised HCEO employed by DCBL. Rashid Ahmed instructed Ms Sandbrook to enforce the Writ of Possession. She delegated the task to Mr Bohill and another HCEA, Phil Short.

50. Mr Bohill started his career in the West Midlands police, but has worked in the High Court enforcement sector for 33 years. Mr Short was new to the job in April 2015 and was in training.

Professional standards for HCEOs and HCEAs

51. HCEOs are appointed by the Lord Chancellor under paragraph 2(1) of Schedule 7 to the Courts Act 2003 and the High Court Enforcement Officers Regulations 2004 (SI/2004/400). Paragraph 4(4) of Schedule 7 of the 2003 Act confers the same powers on persons acting under the authority of the relevant officer (i.e. HCEAs, who must be certified under the Certification of Enforcement Agents 2014 (SI/2014/421)). Regulation 5(3)(b)(iv) of the 2004 regulations provides that an applicant to become an HCEO must give evidence in support of the application of "any current membership held by the applicant of a professional body which is listed in Schedule 2 to these Regulations as a professional body recognised by the Lord Chancellor". Schedule 2 lists only one professional body recognised by the Lord Chancellor, namely the High Court Enforcement Officers Association ("HCEOA"). Ms Sandbrook was a member of HCEOA on 2 April 2015.

52. Members of the HCEOA agree to adhere to its Code of Practice. The Code of Practice as at 2 April 2015 recorded that HCEOs "abide by National Standards for Enforcement Agents issued by the Lord Chancellor's Department in April 2012". It went on:

> "The purpose of these standards is to ensure High Court Enforcement Officers share, build on and improve existing good

> practice and thereby raise the level of professionalism across the High Court enforcement industry. The standards also apply across the wider enforcement industry and are intended for use by all Enforcement Agents, public and private, the enforcement agencies that employ them and the major creditors who use their services. In order to improve the public's perception of the profession, High Court Enforcement Officers take a pride in adhering to these standards as exemplars of how enforcement services should be carried out in a responsible and balanced approach between the competing interests of creditor and debtor, or between claimant and defendant. ”

53. The section of the Code of Practice headed “Information and Confidentiality” included the following statements:

> “All information obtained during the administration and enforcement of Writs must be treated as Confidential.
>
> …
>
> High Court Enforcement Officers will, so far as is practical, avoid disclosing the purpose of their visit to anyone other than the debtor.”

54. *National Standards for Enforcement Agents* was issued by the Ministry of Justice (not the Lord Chancellor’s Department, which had ceased to exist by then) in April 2012. By 2 April 2015 it had been superseded by *Taking Control of Goods: National Standards*, which was issued by the Ministry of Justice in April 2014. The introduction states that the standards are intended for use by all enforcement agents, but as the title of the document indicates it is concerned with enforcement of debts by taking control of goods. Counsel for the Claimants submitted, and I agree, that it was nevertheless indicative of the standards to be expected of HCEOs and HCEAs enforcing writs of possession. It includes the following statements:

> “27. Enforcement agents must not act in a way likely to be publicly embarrassing to the debtor, either deliberately or negligently (that is to say through lack of care).
>
> 50. All information obtained during the administration and enforcement of warrants must be treated as confidential between the enforcement agent, debtor, the creditor and any third parties nominated by the debtor.
>
> 52 Enforcement agents should, so far as it is practical, avoid disclosing the purpose of their visit to anyone other than the debtor or a third party nominated by the debtor, for example an advice agency representative.”

CPWTIA

55. Mr Brinkworth joined the BBC as a trainee in 1980 and worked his way up to producer/director of factual programmes, working on a number of well-known programmes. After leaving the BBC in 1987, he set up Touch Productions Ltd, which he ran for 27 years. The company became established as one of the most successful UK production companies making observational documentaries, and made programmes for a wide variety of broadcasters. In 2014 Mr Brinkworth set up BFL with the same aim. (Technically, Channel 5's agreement for CPWTIA Series 3 was with Touch CPWP Ltd as producer and BFL as guarantor, but that detail can be disregarded for present purposes.)

56. In 2013 Mr Brinkworth decided to make a television series that explored the growing problem of debt in the community. He conceived of an observational documentary series that depicted the work of HCEAs. The series would present the points of view of debtors, creditors and the HCEAs themselves, highlight the problem and consequences of debt, and inform the public of the process by which court orders were enforced. During research for the programme, it became clear that the public had very little idea of the powers of HCEAs or the consequences of their involvement. Accordingly, he considered that the series would address an issue of significant public interest.

57. Mr Brinkworth considered it important that the series should adopt a dispassionate and even-handed approach. It was also important to present each story against a background of key facts and figures which would put the enforcement operation into the context of the wider social problem.

58. Mr Brinkworth wanted to show how the process which courts provided for the enforcement of debts and the reclaiming of property from debtors and tenants actually operated within ordinary peoples' lives. He particularly wanted to show how landlords and creditors could expedite enforcement by moving the process from the County Court to the High Court, and the effect of this. It was clear to his team from an early stage that many debtors and tenants simply were not aware of how the process actually operated, and how limited their rights were once matters had got to that stage.

59. Mr Brinkworth also wanted to show the situations faced by HCEAs in their daily work, interacting with creditors and debtors, and thereby illustrate the consequences of growing levels of indebtedness.

60. Mr Brinkworth pitched the idea to Mr Raikes, who agreed to commission the series. Mr Raikes intended that the series would reveal as never before the process of enforcement, and the consequences of debt for all concerned. He was particularly keen that BFL should try and get interviews with both creditors and debtors. He agreed with Mr Brinkworth's intention to give context to each segment by including relevant statistics. Thus each story would serve as a real life example of a much wider problem, giving it immediacy in the minds of viewers. Mr Raikes hoped that the programme would attract a large audience and trigger a nationwide discussion of the issue. He therefore believed that broadcasting the series would be of significant public interest.

61. In order to make the series, BFL needed to follow the activities of a company employing HCEAs. Originally BFL worked with High Court Solutions, but from the second series BFL worked with DCBL. BFL operated two or three film crews for four-day blocks of

filming in various locations. Each crew followed a pair of DCBL HCEAs attempting to enforce around three to five writs a day. The crews were embedded with the HCEAs, and would usually only be notified by DCBL the day before each enforcement of the relevant locations. BFL usually received a copy of the writ, but no other information, in advance.

62. Mr Brinkworth did not attend any of the filming. Ms Crook only attended occasionally, but had overall control on a day-to-day basis.

63. Each programme consisted of four stories i.e. four enforcement actions. When making series 4, BFL attended the execution of 720 writs of possession or control, of which only 120 were broadcast. Series 3 consisted of fewer programmes, but the ratio was about the same.

64. Once filming ended each day, the cameraman (Mr Rea in the case of the Programme) would provide the rushes to Ms Crook and prepare a story synopsis for each enforcement. After that, each story would be reviewed, including by Ms Crook, to see if it should be included in the series. A rough-cut of the programme would be assembled by the editing team, and sent to BFL's in-house lawyer Jan Tomalin for review. Mr Brinkworth would view the rough-cut and consider Ms Tomalin's advice. After any changes requested by Mr Brinkworth had been made, a second rough-cut would be sent to Mr Raikes and Channel 5's Director of Content Legal Advice, Stephen Collins, for their comments. After any changes requested by them had been made, a fine-cut would be prepared and then reviewed by Mr Brinkworth, Ms Tomalin and Mr Raikes.

65. Mr Brinkworth's and Mr Raikes' aim was to produce programmes that were balanced and fair, and complied with legal and regulatory requirements, and both believed that they had done so in the case of the Programme.

66. Series 1 consisted of five programmes first broadcast between 24 February 2014 and 6 April 2014. Series 2 consisted of ten programmes first broadcast between 17 September 2014 and 19 November 2014. The Programme was first broadcast on 4 August 2015 as part of Channel 5's *Britain on Benefits* season, and then re-broadcast as episode 12 of series 3. Including a Final Demand Special broadcast on 14 April 2015, Series 3 consisted of 14 programmes the remainder of which were first broadcast between 30 September 2015 and 23 December 2015. There have been a number of subsequent series. It has been one of Channel 5's most successful strands.

The Main Contributor Release Form

67. DCBL executed a Main Contributor Release Form issued by BFL covering Series 3 of CPWTIA. Although this document has not been disclosed in these proceedings, Mr Brinkworth accepted that it provided that:

    i) body cameras (GoPros) would be provided by BFL to the HCEAs which were of higher quality than those they normally wore during the course of their work;

    ii) BFL owned the copyright in all the film and sound recordings recorded by the body cameras provided by BFL; and

iii) BFL would give DCBL reasonable access to body camera material upon request, but the material would remain the property of BFL.

The production bible

68. BFL compiled a production bible setting out the practices and procedures to be followed in the making of CPWTIA. This document has not been disclosed in these proceedings, but Channel 5 did disclose a four-and-half page extract dealing with filming on location. This includes the following passages:

> "CONTRIBUTORS/CONSENT
>
> • Always try and get a full on camera release. Clearly tell the contributor that 'we are filming for C5s CPWTIA – are you happy to appear on the programme?' Get them to say their full name. Some cases don't need consent according to Channel 5. Try and get contact details (email is best) where possible/appropriate. Video consents on a smart phone are another good option. Only get a paper release form if you think it is appropriate – e.g. for a location.
>
> • Always ensure that the contributors have had an explanation about the programme from the director or AP and the filming as per the legal notes script.
>
> • Always try and speak to the contributors after filming or during filming. They are often very angry and or upset so let them know what we are doing and that their objections (if they are objecting to filming) will be logged and passed onto Channel 5. Make it very clear that you cannot give any guarantees – Channel 5 make decisions about broadcast.
>
> • Any conversations you have with contributors about the case should be noted and dated – including after the filming.
>
> • Keep as detailed notes as possible about any concerns the contributor's have.
>
> • Never promise a contributor that we can blur or not use the story. Editorial control is a matter for Channel 5.
>
> • If the Go-pros that the agents wear are questioned, we have a protocol to follow. The agents or you must make it clear that: 'The agents' cameras are for their own protection, but Channel 5 do have access to the material'. Should the defendant wish to complain, they have the chance to do so immediately after the shoot. More detail on Go-pros later in the document.

…

ON LOCATION

Your job is not to make decisions about who will and won't be shown. Channel 5 do that. Your job is to make sure that people who come into contact with the HCEAs understand what you are filming; that decisions about broadcast are made by Channel 5 and that you – on location – cannot make any guarantees about what will and won't be used in the programme.

WHAT TO SAY ABOUT THE SERIES:

'We are filming Can't Pay? We'll Take It Away' – a documentary for Channel 5. We are following the work of the High Court Enforcement Agents'.

WHAT TO SAY TO GET ON-CAMERA CONSENT:

'We are filming with the High Court Enforcement Agents for a Channel 5 documentary series about their work. Are you happy to be included in the programme?'

WHAT TO SAY IF PEOPLE DON'T CONSENT:

'I can't make any guarantees about that. Decisions about broadcast are made by Channel 5 and I'll make a note of everything you've said to me and it will be passed onto the channel'.

WHO TO ASK FOR CONSENT:

We need to be asking EVERYONE who interacts with you or the agents for consent EXCEPT people named on a High Court Writ of Possession. …

…

WRITS OF POSSESSION WHAT TO SAY TO THE PERSON NAMED ON THE WRIT: Explain what you are doing, as above, you don't need to ask for their consent to appear, nor do you need to ask for their consent for you to be there. The agents, acting on behalf of the landlord, have given you access to the property.

Channel 5's view is that you don't need consent to be there or consent to show the face of the person named on the writ. The writ is a legal document that means that the tenant is now trespassing - not you. AND their details are in the public domain so they can be identified. You do need to explain what you are doing however. You also need to explain that you can't guarantee they won't be shown (if they don't want to be) that decision lies with Channel 5.

> If you want to interview them, you can point out to them that if they don't contribute, we'll only hear the HCEAs side of things. You can ask them for an interview by saying:
>
> 'You're not obliged to speak but we'd like to INTERVIEW you about your experiences and how they have made you feel. If we can't talk to you, the viewers will only see the High Court Enforcement Agents doing their job and they won't hear from you.'"

69. It can be seen from this that the film crew were instructed if possible to obtain explicit consent from all those involved except those named on the writ (and peripheral characters, as is explained in a part I have not quoted). It can also be seen that the instructions to the film crew as to what to say about the body cameras worn by the HCEAs did not accurately reflect the agreement between BFL and DCBL.

The eviction

70. The events on 2 April 2015 involving the Claimants lasted for approximately one and a half hours from 8:23 to 9:47. I must outline the sequence of events, some of which are not apparent from the Programme, in a little detail. This account is based on the rushes from the main camera and boom microphone, from a windscreen-mounted camera in the DCBL van and from the body cameras worn by Mr Bohill and Mr Short, of which there are agreed transcripts. My account focusses on events as seen and heard from the perspective of the film crew, since it was mainly this footage that was used in the Programme, although some footage from Mr Bohill's body camera was also used. It will be appreciated that any events which occurred off-camera for whatever reason are not recorded in the rushes. Despite the number of recording devices, some of the dialogue is inaudible (particularly in exterior scenes, due to traffic noise). Furthermore, some of the dialogue was in Urdu, which has not been translated (except for excerpts used in the Programme).

71. The film crew was driven to the Property by Mr Bohill and Mr Short in a DCBL van. On the way, Mr Bohill described the HCEAs' first job, saying:

> "The first job this morning, Phil, is a repossession, straightforward. Don't know why, I only know who and where. We do know that the landlord is gonna be there and it's potentially gonna be contentious, because the landlord is there. And he wants to stay, he wants to video it, he wants to see the tenants suffer, that's my conclusion from the fact that he's insisting on being there. So, for that, we should be on our guard that we might actually have some sparks."

72. On arrival at the Property at 8:20, the film crew got out of the van first and greeted Omar Ahmed, who was waiting outside. Omar Ahmed does not appear to be surprised when the crew immediately begins to film him. Rashid Ahmed does not appear to have been present at this stage. There is no dispute that the Ahmeds consented to being filmed. Since there is no on-camera consent by either of them, I infer that their consent was obtained in some other way. (Mr Bohill told me that, in the case of the eviction

following the one in question, the landlord refused to consent and so the film crew was stood down.)

73. Mr Bohill and Mr Short then got out of the van, and Mr Bohill introduced himself to Omar Ahmed. Omar Ahmed introduced himself as "the landlord, Mr Ahmed" (and a little later as "Rashid Ahmed"). Omar Ahmed said to Mr Bohill:

> "The situation with this guy is he's not paid me rent nearly for a year now, he owes me nearly, probably over twelve grand. Ahm. He's taken me to court over various things, I've only got possession a couple of weeks ago, he's basically a conman. He's been subletting it, he's been claiming housing benefit and that's why I called you guys, I just want him out, I need him out today regardless…"

74. Mr Bohill then crossed the road to the Property and knocked on the front door a couple of times. There was no response. After a minute, Omar Ahmed opened the door with a key. Mr Bohill entered the Property at 8:23 followed by the film crew. Mr Bohill called out "Hello. Hello. Is there anybody here? Hello is there anybody in? I'll take that as no". Mr Bohill opened the door to a ground floor room, which the Claimants were using as their bedroom because of the injury to Mr Ali's foot, which made it difficult for him to climb the stairs (I shall refer to this as "the downstairs bedroom"). Mr Ali had just been woken by the shouting, having been in a deep sleep due to the medication he was taking. Mr Ali came to the door of the room dressed in his bedclothes (the upper half of which consisted of a T-shirt or vest). It can be seen that he appears to be drowsy and confused. Mr Bohill told Mr Ali "We're High Court Enforcement Officers. We have an order to repossess this property". Mr Bohill said nothing about the presence of the film crew just behind him. Mr Ali asked Mr Bohill a couple of times to give him a second and then said "Let me put my shirt on". Mr Bohill agreed and told him to take his time. Mr Ali then shut the door.

75. While Mr Ali was dressing, Mr Bohill had a conversation with Omar Ahmed, who had just entered the Property, in the hall. During the conversation, Omar Ahmed said that he had used DCBL before and told Mr Bohill about Mr Ali's defence to the section 21 proceedings. Mr Bohill then asked Mr Short to go upstairs to see if anyone was there, saying "Don't start World War III". Mr Short went upstairs and found no-one there, while Mr Bohill addressed the film crew in the living room.

76. Mr Ali then came out of his room and entered the living room, where Mr Bohill was waiting. As he did so, he looked at the film crew (who had to get out of his way) with an expression on his face which I interpret as puzzlement. The following exchange occurred at 8:29:

> "Mr Ali: Tell me. Why are you recording?
>
> Mr Bohill: Because we are.
>
> Mr Rea: We're doing a programme for …
>
> Mr Bohill: It's okay. So, this is a writ of possession, we've now repossessed the house and the procedure is this. We'll

> give you an hour to get your personal belongings together, medication, clothes for tonight for you and your wife or whoever and after that hour we will lock the property, change the locks and you will need to speak to the landlord to clear out whatever other property you've got here. …"

As he said the words "It's okay", Mr Bohill held up his hand to Mr Rea. It is clear that the message he was conveying to Mr Rea was to stop speaking.

77. Mr Ali expressed surprise at only being given one hour, and said that he had been told there would be a few weeks after expiry of the order. Mr Bohill explained that the landlord had gone to the High Court and the system was different. Mr Ali then said that his wife was taking their children to school and he wanted to ring her. Mr Ali went back to the downstairs bedroom, and closed the door. He then telephoned his wife, told her what was happening and asked her to return home. He also telephoned three friends to ask them to come and help him, but only one was available to come. While Mr Ali was doing this, Mr Bohill had the following exchange with Omar Ahmed in the hall at 8:32:

"Mr Bohill: I can see the police being called on this one. But if you'd like to say anything to him, you're welcome.

Omar Ahmed: Oh okay. He's had enough time, he doesn't need to speak to me anyway.

Mr Bohill: No, no, I mean don't feel restrained by us that's all.

Omar Ahmed: Oh well that's fine, no, no.

Mr Bohill: Cos this is now your house."

78. Mr Bohill then asked Omar Ahmed to change the lock. While Omar Ahmed was getting his tools, Mr Short taped a DCBL possession notice to the inside of a frosted pane of glass in the front door facing outward. While Omar Ahmed was changing the lock, he spoke first to Mr Rea and Mr Bohill and then just to Mr Rea after Mr Bohill had moved away. During this conversation, Omar Ahmed: accused Mr Ali of subletting the property; said that he had had Mr Ali's housing benefit transferred to him; that the housing benefit was £170 a fortnight or £370 a month; gave an account of the County Court proceedings in which he accused Mr Ali of stalling and lying on oath; said that he had lost nearly £12-13,000; complained about the state of the Property; and informed Mr Rea that Mr Ali was the main UK spokesman of a party in Pakistan called the Muslim League (N). (Mr Ali gave evidence that the Ahmeds were supporters of an opposing political party in Pakistan, which may explain some of Omar Ahmed's subsequent behaviour.) When Omar Ahmed finished removing the old lock at 8:40, Mr Bohill said that the eviction was now complete and that they were now into "concession time" for tenants.

79. At 8:43 Mr Short knocked on the downstairs bedroom door and informed him that he was half an hour through the one hour he had been given. Mr Ali opened the door and said that his wife was coming back. Mr Short suggested that he start getting their things ready. Mr Ali asked him to wait in the next room, and Mr Short agreed to do so. At

8:44 Mr Ali said, while holding up his hand, "Please my wife says don't record. My wife says no record thank you, alright." He then closed the door.

80. At 8:45 Mr Short knocked on the downstairs bedroom door and, when Mr Ali opened the door, said that at 9:15 the door would be locked and Mr Ali would have to be on the other side of it. If not, the police would have to be called and he would be escorted off the property. Mr Ali then answered a phone call and emerged into the hall. Omar Ahmed, who standing behind the crew, addressed Mr Ali, saying he had to leave, enough was enough and "How much more money do you want me to lose?". By this time Rashid Ahmed had arrived outside the Property. There was then a short conversation between Mr Christodoulou, Mr Rea and the Ahmeds in which Omar Ahmed introduced Rashid Ahmed as his father and said that Rashid Ahmed was "the one who owns the asset".

81. At 8:48 Mr Ali returned to the downstairs bedroom, still on the phone, leaving the door open. The crew filmed Mr Bohill in the living room saying:

> "I'm not inclined to be patient on this one, there's a history to this, the landlord's been run ragged financially. And I'm not saying my sympathies lie with the landlord, but this is a case where you can clearly see the tenant is taking … I was gonna say the piss, but that's politically incorrect."

82. At 8:49 the crew went to the open door of the downstairs bedroom. The Ahmeds had entered the room, and Omar Ahmed was addressing Mr Ali (who had his back turned to Omar Ahmed), while filming him on his mobile phone, saying:

> "Liars! This is Shakir Qureshi, main spokesman in the UK for Muslim League (N) getting evicted today by the High Court. All the lies on the Quran. He lies on the holy Quran that he paid a deposit and the next day he falls down and breaks his leg. No shame on this man, no shame. I had to pay so much money to get him out via High Court and now he can't even face the camera, he's that much ashamed."

83. Having stopped filming Mr Ali, Omar Ahmed addressed the film crew, saying:

> "These people make me so angry you know what I mean. We lose thousands of pounds, they don't pay rent, they sublet the property, look at the state of this. I never gave it like this. Look at the state of this property. Look at all the beds, you've got beds here, beds in the back, beds upstairs. And then its all the landlord's fault and people like him are the one that cause the problem. You know. I just want him out, I've had enough now, he's gotta go."

84. At 8:50 Mrs Aslam arrived at the Property and made her way to the downstairs bedroom. Omar Ahmed asked her for the house key back. Mr Ali and Mrs Aslam both asked him to stay outside. Omar Ahmed refused, saying he had just got possession and it was his house. This led to an argument between Mrs Aslam and Omar Ahmed (partly in Urdu) in which she asked him to speak quietly; he told her not to tell him to be quiet

in his house, that they had half an hour left after which he was changing the lock, that he had lost £12,000 because of them, that "you put your hand on the Quran Majeed and lied" (a statement made to Mrs Aslam, but clearly referring to Mr Ali); she replied that he had lied; and he said "Get out of my house". After Mr Rea had commented about how angry the situation was getting, Omar Ahmed complained that Mrs Aslam had just sworn at him, that she "claims disability" although she was clearly not disabled, that he had had enough of the Claimants and that people like the Claimants should not get re-housed.

85. At 8:53 Mr Bohill had to squeeze past the film crew in the hall to get to the downstairs bedroom. As he did so, he said to Mr Bartholomew, "can I just get through, cos I can pour some petrol on the situation". At 8:54 Mr Bohill entered the room, followed by the crew, and the Ahmeds left it. Mr Bohill asked Mrs Aslam if she understood the situation. She complained that Omar Ahmed had sworn at her in Urdu. Mr Bohill said that they had an hour to go.

86. At 8:55 Mr Bohill left the room and said to Omar Ahmed:

> "Just say whatever you like. You're okay. You're okay. I won't be stopping you."

The film crew followed Mr Bohill to the front door. By this time the Ahmeds were standing outside the Property. Rashid Ahmed was on his mobile phone, and he can be heard saying the words "Channel 5". Mr Bohill continued to Omar Ahmed:

> "No, no, say whatever you like, just give it some wellie, you know it makes good television."

87. Mr Bohill then asked about Mr Ali being some sort of politician, and Omar Ahmed said that he was the main spokesman in the UK for the Muslim League (N). Rashid Ahmed then joined in the conversation, complaining about "these politicians" claiming housing benefit. Mr Bohill asked Omar Ahmed if Rashid Ahmed was family, and Omar Ahmed replied that Rashid Ahmed was his father and had started the business 30 years ago. Mr Bohill said to Rashid Ahmed, "if he was my son I'd be proud of him".

88. While Mr Bohill, Mr Short and the Ahmeds continued their conversation, which included a discussion of the number of beds in the Property, the film crew re-entered the house. At 8:58 they went into the downstairs bedroom, where the Claimants were packing. The following exchanges took place:

"Mr Rea: Why have you let it get to this stage anyway?

Mr Ali: Yeah, we have report that the bailiff will give us two more weeks.

Mrs Aslam: He is sick.

Mr Ali: So two more weeks we can pack the stuff and go to the house with other people. I have never been advised like this that it will be like this. I told them that I'm ready to go and that they are just behaving badly and whatever

> the abuse you have just seen. I even did not reply them, the abuse, he's just trying to misuse the law.
>
> Mr Rea: The television people though, the audience are going to wonder why you've not paid the rent for so many months.
>
> Mr Ali: It was only because of my circumstances, my income has gone to like zero. I was not earning any money. … And they gave me 6 months … But suddenly they bring court notice, eviction order and now it is again very sudden. I never believed it can happen like this like one hour. But any way, whatever the law is asking, I'm trying to do.
>
> …
>
> Mr Rea: And where will you … where what about this this evening? Where will you stay this evening?
>
> Mr Ali: I have to figure it out, I have to figure it out. And kindly, kindly, this is my and my wife's bedroom [unclear]. Let us pack the stuff so that we can move out on time."

As he said "this is my and my wife's bedroom", Mr Ali motioned the crew to leave the room with his hand. As they left, he started to shut the door.

89. Before Mr Ali had finished shutting the door, however, Omar Ahmed, who was standing in the hall, addressed him in the third person, saying at 9:00:

> "He's already got another house to go to, so he doesn't need it, he's already renting another house … they keep shutting the door because they're up to something in there, that they want to put their possessions away or their thousands of money that they've probably collected from all the sub-tenants … And he's supposed to be a main UK spokesman on Muslim League N. Isn't that right Mr Shakir Qureshi?"

90. Mr Ali replied, "Whatever you are doing, you are doing it your way". This led to a short argument between Mr Ali and Omar Ahmed which concluded with Mr Ali closing the door.

91. At 9:01 Mr Bohill and Omar Ahmed went into the kitchen. Mr Bohill asked Omar Ahmed about Mr Ali's political activities, saying "So he's the UK representative of that political party. So he should actually be setting an example which in these circumstances doesn't appear to be the case". Omar Ahmed agreed.

92. At 9:02 Mr Rea asked Omar Ahmed to show the film crew upstairs. At about the same time two police officers, PC Stowers and PC Smith, arrived at the Property, following a telephone call from Mr Ali. The police officers were met by the film crew, who asked the police officers to consent to being filmed. PC Smith said he didn't want to be filmed, and Mr Christodoulou offered to blur him.

93. At 9:03 PC Stowers entered the downstairs bedroom and shut the door behind him. PC Smith remained outside the Property talking to Rashid Ahmed. Mr Bohill came out and explained to PC Smith that he was an HCEA enforcing a High Court warrant and had given the tenants an hour to get their personal belongings together which was their standard procedure. At 9:05 PC Smith joined PC Stowers in the downstairs bedroom. At Mrs Aslam's request, he shut the door behind him.

94. At 9:06 PC Stowers came out, and went to speak to Mr Short in the living room. PC Stowers asked Mr Short how much time the HCEAs could give the tenants to get their stuff out. Mr Short replied that they had already given the tenants nearly an hour. PC Stowers said that the tenants were asking for another couple of hours. Mr Short replied that they could not agree to that, because the HCEAs had to go elsewhere. PC Stowers asked if they could have half an hour, and Mr Short said he would ask Mr Bohill. There was then the following exchange:

"PC Smith: Are you filming a programme are you?

Mr Short: Yeah yeah. Channel 5, Can't Pay We'll Take It Away. Channel 5.

PC Smith: Oh alright, when is that on then?

Mr Short: Err July. This will be on there, because, a bit of conflict between these two. So it's actually gonna be interesting."

95. At 9:08 PC Stowers went outside and asked Mr Bohill if he could give Mr Ali half an hour. Mr Bohill said no, he had to go at quarter past nine, the HCEAs had been there for "over an hour" and had another family to evict at 11 o'clock on the other side of London. There was then the following exchange:

"PC Stowers: … I am too sympathetic sometimes.

Mr Bohill: And I am, and I am because you've seen the television programme. On this occasion, no concessions. He's run this landlord ragged and I haven't very often got time, you know, I'm not sympathetic to the landlord. The circumstances of this are that he's just taking the mickey."

96. At 9:09 Mr Bohill went outside the Property, where he was greeted by two passers-by and the following exchange took place:

"Mr Bohill: … Yeah just an eviction.

Passer-by 1: Yeah I can see that. We were just passing by (inaudible) I know him.

Mr Bohill: Yeah we're up to our usual, same old, same old, really. Yeah. Poor landlord's being, you know, misused by tenants.

Passer-by 1: Yeah.

Mr Bohill: This is a genuine case, he owes over a year's rent, lied to the courts, lied to the court, had everything put off, for months and months and months. Now he's saying, 'But why have I got to go in an hour?' Well, you've had nine months, and an hour. That's right, yeah, yeah.

Passer-by 1: Yeah we watch it all the time on telly.

Passer-by 2: Are they cooperating now?

Mr Bohill: They've called the police but that helps us because then it just reinforces the view.

…

Passer-by 1: Where is your partner in crime?

Mr Bohill: He is in court this morning …

Passer-by 1: How is your sweet tooth getting on?

Mr Bohill: It's alright. …

Passer-by 2: He's a regular watcher he is, he knows all about you.

Mr Bohill: The new series, the new series starts in July … if you send me an email, I'll send you the box set."

The exchange ended with Mr Bohill agreeing to the first passer-by taking a selfie with Mr Bohill.

97. At 9:10 the film crew, having been upstairs with Omar Ahmed, went downstairs and stood outside the now open door to the downstairs bedroom and filmed the police officers telling the Claimants that they had to go in five minutes. The police officers left the room, and the film crew filmed the Claimants packing through the open door, including a close up of Mrs Aslam packing a large box of medication.

98. At 9:11 the film crew went back upstairs with Omar Ahmed and filmed him counting the number of beds, concluding "we've got eight beds with four people. And you know I let this property out to two people with two children". Omar Ahmed then said that that was why he had served a section 21 notice.

99. At 9:14 Mrs Aslam came upstairs and was filmed by the crew collecting some belongings from the bedrooms. She asked them not to film her, saying "excuse me no", but they carried on.

100. At 9:16 the film crew went back downstairs to the downstairs bedroom where he was packing. There was then the following exchange as Mrs Aslam returned to the room:

"Mr Rea: Where are your children? Where are your children?

Mr Ali: They have gone to school.

Mrs Aslam: They have gone to school.

Mr Ali: Please don't record anymore and blur over face okay? Don't don't don't record on face.

Mr Rea: Unfortunately we won't be -"

At this point Mr Rea was cut off by Mrs Aslam shutting the door.

101. At 9:18 the police officers consented to being filmed. Mr Rea then asked Rashid Ahmed how he felt, and Rashid Ahmed said he felt very happy now that he'd got the house back. Mr Rea said that he thought that his son was the landlord, to which Rashid Ahmed replied that he had started the business and was handing over to his son, so "he's the next landlord".

102. At 9:19 PC Stowers went to the downstairs bedroom and informed Mr Ali that the landlord (i.e. Omar Ahmed) would give him two hours the following day between 10:00 and 12:00 to remove the rest of their belongings. At 9:21 PC Stowers reported his conversation with Mr Ali to the Ahmeds, who were standing outside. He also got a copy of the Writ from Mr Bohill for Mr Ali as Mr Ali had requested. He asked Mr Bohill if he needed the police officers on site anymore. Mr Bohill replied that the HCEAs hadn't called them, but appreciated them coming. PC Stowers then took the copy Writ and gave it to Mr Ali.

103. At 9:23 Mr Bohill said to Omar Ahmed, with Rashid Ahmed standing next to them:

> "This will be really good though. The reason why this is so good, and they really appreciate you participating, is that it's showing a … it can make good television. But it's telling a story. It's telling the other side of the story."

104. At 9:28 Mr Christodoulou came out of the house to where the other members of the crew were standing and talking to Mr Bohill and the Ahmeds, saying "Mr Shakir is coming out now and he does want to speak to the camera". The exchange between Mr Christodoulou and Mr Ali before this was not recorded.

105. At 9:29 the film crew returned to the hall and filmed PC Smith and PC Stowers helping Mr Ali and Mrs Aslam by taking two suitcases, a cardboard box and other belongings from the downstairs bedroom to the street. During this, there was the following exchange:

"PC Stowers: I think they're going to come in and film you now as well. So you can put your side of the story to them.

Mr Ali: Yeah.

PC Stowers: There is always two sides to every story isn't there.

Mr Ali: Yes.

PC Stowers: It's nice to get your side across, isn't it?

Mr Ali: Yeah."

106. At 9:31 PC Stowers emerged from the downstairs bedroom and said to the film crew, "Gents I think he's ready for you to have a chat with him and get his side of the story now". The film crew entered the downstairs bedroom, and once he was ready, Mr Ali said, "Before, before I go outside, I, I'm, I can answer, if you want to want to ask me something. Okay." There was then an interview between Mr Rea and Mr Ali in which Mr Ali: denied subletting the Property; accused Omar Ahmed of lying; said that he got into rent arrears of £4-5000 because he was on a low income and his circumstances had got worse due to him being a heart patient; that, after the court order, he had been told he would be given two to four weeks for the bailiffs and it was shocking to be given only one hour to leave; that he had no other properties; and that he had sworn on the Quran that he had paid a deposit, but the landlord and the agents had not sworn on the Quran. Towards the end of this, Omar Ahmed can be heard interjecting.

107. At 9:36 the following exchange took place:

"Mr Rea: The, the other question that the audience, the audience is going to ask, 'Why is it your wife -'

Mr Ali: We want we want to go now.

Mr Rea: if your wife is working, why did your wife not pay the rent?

Mr Ali: Who told you that my wife is working?

Mr Rea: No. I'm asking you.

Mr Ali: No, she is not working, that's what I'm telling you, it is not like this, and tell them, tell him, don't, don't take pictures, actually he is not allowed to take pictures, ah? You, you are filming this is enough. Okay? Tell him, don't take pictures."

The "him" referred to here is Omar Ahmed, who was filming on his mobile phone at this point. Mr Ali then shut the door.

108. At 9:37 the film crew entered the downstairs bedroom. Mr Christodoulou asked Mr Ali where they would go now, and Mr Ali said the housing department. Mr Christodoulou asked if he had been in this situation before, and Mr Ali said no.

109. At 9:40 Omar Ahmed started to speak to Mr Ali, initially in Urdu, leading to a short further argument. Mr Bohill intervened, asking them to have the conversation outside. Omar Ahmed left the Property. By this time, an unidentified friend of Mr Ali's had arrived in the Property. After watching the proceedings for a short period, he assisted Mr Ali by carrying two carrier bags outside.

110. At 9:42 Mr Ali came out of the Property. At 9:43 Mr Bohill gave Mr Ali his card, and the following exchange took place with Omar Ahmed filming on his mobile phone:

> "Mr Ali: Okay, and now, what you can help me? Everything is done here. I, I have not given any time, and I was not really accepting this.
>
> Mr Bohill: No, no, I do understand that. That's a normal procedure.
>
> Mr Ali: May I contact you, I can contact you if they have been abusing me, they have abused my wife, they have abused my family, and they have abused my, my political life, as well. And everything, they are telling lies, only due to circumstances that happened to me, and it never happen in my life. Okay now, I told them that I'm leaving this house, but still, they have, they have done this, only to, just to damage my reputation. I told them six months before, six months before.
>
> Rashid Ahmed: You damaged your own reputation.
>
> Mr Ali: I told them that I'm leaving this house, because it's your house. I, I don't want to make any kind of conflicts with you.
>
> Mr Bohill: Can I ask you a question?
>
> Mr Ali: Yes, Sir.
>
> Mr Bohill: You haven't paid any rent.
>
> Mr Ali: I have, it was, it was, it was overdue, month by month, and for that overdue payment, six months before I went, when they came, I said, this is the key, you can take the key, and give me two weeks, I will move to another house, and just give me, give me six months, I will pay back. Slowly, slowly. So firstly they agree, and after that, and they they deny, everything they have done…
>
> Mr Bohill: But they're actually owed about £12,000, aren't they?
>
> Mr Ali: It is not. It is not more than £4,000, I'd say maximum £5,000.
>
> Paul: Did you want to, did you want to make an arrangement with me, to pay the arrears?
>
> Mr Ali: Er, if you can come and (inaudible). If you come (unclear) because whatever is legally my obligation, I will do."

111. At 9:45 Mrs Aslam came out of the Property and was confronted by Omar Ahmed. There was a short, inaudible exchange, possibly in Urdu. PC Stowers then informed Mr Ali that there was not enough room in his friend's car for him and his wife and their

bags, and offered to take Mrs Aslam to the housing office. This was followed by the following exchange between Mr Bohill and PC Smith:

"Mr Bohill: It's good though it's terrific television.

PC Smith: It is good, it's quite alright isn't it? This one will definitely [be] on there.

Mr Bohill: Absolutely spot on. But it's a genuine case though.

PC Smith: Yeah yeah.

Mr Bohill: Well you just heard him talking you heard his story, you heard the landlord's story. I mean I've seen the court paperwork, he owes the money. That's what I've just said to him I'll come and talk to you about the arrears. He's never gonna do that.

PC Smith: No.

Mr Bohill: What we need is a bit of fisticuffs really.

PC Smith: If one of them gets arrested.

Mr Bohill: Yeah, we'll do that."

112. While this was going on, there was an argument between Mr Ali and Rashid Ahmed, initially in Urdu and then in English, with Omar Ahmed filming on his mobile phone and joining in the argument towards the end. As the argument was ending, Mr Bohill moved between them, holding up his hands and saying "Can we just call a halt now?".

113. At 9:47 Mr Ali and Mrs Aslam crossed the road to where their friend's car was parked. Mr Bohill and the Ahmeds said goodbye and thank you to the police officers. Mr Ali got into the car. It is not clear whether Mrs Aslam accepted the offer of a lift in the police car. Mr Bohill can be heard saying to the film crew "You couldn't have asked for better really".

114. At 9:57 the following exchange was filmed with the HCEAs in their van:

"Mr Bohill: Well that was quite a classic, wasn't it?

Mr Short: Yeah.

Mr Bohill: I've seen the paperwork, the landlord is spot on. He is owed the money plus the four thousand pounds for the fees so the landlord is sixteen thousand quid down the swanny. But that bloke is as smooth as silk, isn't he?

Mr Short: Yeah.

Mr Bohill: He sounds like a politician, just as we were leaving there, he was just going into his like spiel. But it sort've

> knocked him back when I said well can I come and talk to you about the rent arrears. He didn't want to know about that did he?
>
> …
>
> Mr Rea: So you were saying it was a classic. Ahm but it's not … there's one thing missing isn't there? And that's the rent arrears. You didn't manage to get any money.
>
> Mr Bohill: There was no amount on the warrant, there was no rent arrears on the warrant. We had no right to, we had no right to, we had no right to actually take control of the goods. Because there was no monetary judgement …"

115. Although it is not apparent from the rushes, Mr Ali gave evidence that a member of the film crew had given him a BFL business card with Ms Crook's name written on it when he was sitting in the car waiting to be taken to the Council.

At what point did the Claimants become trespassers in the Property?

116. There is a dispute as to the point at which the Claimants became trespassers in the Property, although the dispute narrowed during the course of argument. Section 21(4A) of the Housing Act 1988 provides that, where a court makes an order for possession of a dwelling-house by virtue of section 21(4), the tenancy "shall end in accordance with section 5(1A)". Subsections 5(1) and (1A) of the 1988 Act provide, so far as relevant:

> "(1) An assured tenancy cannot be brought to an end by the landlord except by–
>
> (a) obtaining–
>
> (i) an order of the court for possession of the dwelling-house under section 7 or 21, and
>
> (ii) the execution of the order,
>
> …
>
> and, accordingly, the service by the landlord of a notice to quit is of no effect in relation to a periodic assured tenancy.
>
> (1A) Where an order of the court for possession of the dwelling-house is obtained, the tenancy ends when the order is executed."

117. Counsel for Channel 5 accepted that the effect of these provisions was that the Claimants were not trespassers until the Writ of Possession was executed on 2 April 2015. He submitted, however, that they became trespassers as soon as the Writ was executed, that is to say, from the moment that Mr Bohill entered the Property. Counsel for the Claimants disputed this. Given that Mr Bohill, as the landlord's agent, expressly gave the Claimants an hour to leave the Property at 8:29, and said that the locks would be changed at the end of that hour, it seems to me that that they did not become

trespassers until the expiry of that period at 9:29. Moreover, although they were technically trespassing for the few minutes they remained in the Property after that, their presence there was tolerated by the landlord and they were in the process of vacating the Property.

After the eviction

118. After the eviction, the Claimants went to the Council's Housing Office, where they had to wait until about 5 pm. Mrs Aslam had to collect the children from school and take them to the Housing Office. The Claimants then had to explain to the children what had happened and why. Eventually, the Council arranged bed-and-breakfast accommodation for the family.

The story synopsis

119. At an early stage in the production of the Programme, possibly even on 2 April 2015 itself, Mr Rea prepared a story synopsis for the part featuring Mr Ali and Mrs Aslam. This stated under the heading "Narrative":

> "This is the eviction of a seemingly gentle tenant from hell and his very stroppy wife. The main drama here is the confrontation between the landlord and the tenants."

This accurately reflects the tenor of the Programme, and in particular its portrayal of the Claimants.

120. The synopsis also states:

> "Friend who was helping defendant take bags into car refused to give contact details and refused consent."

No doubt for this reason, the friend does not appear in the Programme.

Postings by the Ahmeds on social media

121. On 4 April 2015 AIG Group posted two short videos of the Claimants being evicted from the Property on Facebook and other social media. It is common ground that AIG Group is connected with the Ahmeds and that the videos in question were filmed by Omar Ahmed on his mobile phone. One of the videos, which lasts 40 seconds and shows Mr Ali with his back to the camera, includes the commentary by Omar Ahmed quoted in paragraph 82 above. The other video last 44 seconds and shows Mr Ali coming out of the Property with the film crew filming him and then talking to Mr Bohill while Mr Ali's friend picks up the Claimant's suitcases. It includes the following commentary by Omar Ahmed:

> "Shakir Qureshi being evicted by the High Court bailiffs with Channel 5 reporting. This is supposed to be the main man of Muslim League (N) and finally I have got him out. What a great day for me. This man is a con man, don't listen to a word he says, he owes me nearly twelve thousand pounds in arrears and he's just a con man. Finally I've got rid of him. He swore on the Quran and said that, you know, he made me the deposit and the

> day after, look at that, his leg broke. This guy is an absolute conman. The judge saw straight through him and believed that, you know, we were telling the truth, which we were, and finally I've got rid of him. Thank you."

122. There is no reliable evidence as to how many people viewed these videos. Mr Ali estimated it at somewhere between a few dozens and a few hundreds.

Mrs Aslam's letter to the Council dated 18 May 2015

123. On 21 May 2015 Mrs Aslam wrote to Ms Barnes at the Council in reply to a letter she had written dated 18 May 2015. Mr Ali's evidence was that he had assisted his wife to write the letter. In the letter Mrs Aslam said (among other things):

> "On top of that they made video clips and at the time of sudden high Court order eviction, it was shocking for our family they recorded videos with abusive, DIRTY, disrespectful shouting commentary to defame my husband, my family his social and political status calling him different horrible names And displayed it on social media, circulated massively on Facebook, whatsup and newspapers. THIS CAUSED HUGE DEPRESSION FOR MY HUSBAND AND ALL OF US we found it very difficult to come out of this situation AND WE WILL NOT BE ABLE TO GET OUT OF THIS. My husband is a hard working honest man and we believe that with his hard work very soon we will be able to return to normal Graceful life.
>
> Due to their unethical act my Husband's social and political status disturbed internationally, His future Business plans stuck and stopped at the moment. We are very upset with this act of theirs WHEREAS you are thinking that we have been playing deliberately, NO we are not, we/my Husband has no money But earned Respect in society which due to this Situation created by some of old friends and same background people destroyed only for small amount of money and due to the part of different political parties. KINDLY DON'T CONSIDER IT DELIBERATE HOMELESSNESS. They become our enemy."

Mr Ali's telephone call to BFL on 17 June 2015

124. On 17 June 2015 Mr Ali telephoned BFL and spoke to Ms Crook. Ms Crook made a note of the conversation which Channel 5 has disclosed. There is no dispute as to its accuracy. According to the note, Mr Ali called "to complain that footage of the eviction had been uploaded to YouTube and he did not want the material to be on TV". Later in the note, Ms Crook records herself as having told Mr Ali:

> "I explained that there was no way any footage we had filmed would have found its way to YouTube. I told him I need to get the facts straight (in relation to their benefits) and that his objections to being on TV would be passed onto the Channel who make the decisions about broadcast."

125. Mr Brinkworth's evidence was that Ms Crook passed Mr Ali's concerns on to Mr Collins at Channel 5. Mr Raikes' evidence was that he did not believe that it had been relayed to him, but it was more likely that it would have been relayed to Mr Collins. Channel 5 decided to broadcast the Programme despite Mr Ali's objection.

The Programme

126. The Programme occupied a one-hour slot on Channel 5. Without advertising breaks, it runs for about 45 minutes. The Programme begins with a voice-over narration saying "Britain's favourite High Court Enforcement Agents are back" over a montage of clips from the Programme set to music. The narration goes on:

> "In this brand new special they are at the sharp end of Britain's benefits crisis. An estimated 11½ million families depend on benefits to make ends meet. And the Agents are busier than ever, repossessing homes, goods and cash from some of the most vulnerable in society. They face conflict and heartbreak, but if you can't pay, they'll take it away".

127. The soundtrack then cuts to a second narrator, whose voice has been treated to make her words sound like a radio broadcast, saying:

> "According to latest surveys the cost of renting a home in the UK is spiralling out of control. Over the last three months rent has risen five times faster than tenant income. Those living in the London area are hit hardest where the average rent is now £1500 a month."

This is followed by a caption reading "68,000 tenants are now in severe rent arrears".

128. The first story featured in the Programme is that of the Claimants' eviction, which runs from approximately 1:30 to 15:00. The first narrator introduces Mr Bohill and Mr Short, and periodically explains the action. The sequence of events in the Programme broadly follows the sequence of events during the eviction, albeit in compressed form, but a couple of clips have been edited in out of chronological order. For example, Omar Ahmed's comments when counting the number of beds while upstairs (see paragraph 98 above) appear earlier in the Programme than in actuality. In addition, this section of the Programme features a short clip from a studio interview with Mr Bohill in which he says that "probably 95% of the people we deal with so far as repossessions are concerned are on benefits …". The narrative is slightly inaccurate in its account of the passage of time. Thus it represents the HCEAs as arriving at the Property at "8 am", which feeds into statements as to how much time has elapsed later on.

129. Omar Ahmed is referred to in the Programme as "the landlord" and "Mr Ahmed". Rashid Ahmed is only visible in a couple of scenes and is not identified. Mr Ali is identified by name, while Mrs Aslam is not. Both Mr Ali's and Mrs Aslam's faces are clearly shown. Some of the dialogue is subtitled when it is not very audible, with dialogue in Urdu translated in italicised subtitles. There is no reference to Mr Ali's political activities. Nor is there any mention of Mr Ali's requests not to be filmed. The two police officers are shown, but not identified by name.

130. The story begins with Mr Bohill and Mr Short in the van, and Mr Bohill's comments about the first job (paragraph 71 above). The narrator explains that:

> "… they're in Barking, Essex to evict a family who are unemployed, on housing benefit and haven't been paying the rent. The landlord claims he's owed £12,000. He's gone to the High Court not to get the money, but to evict the tenants."

131. Mr Bohill and Mr Short are then shown meeting Omar Ahmed, knocking on the door, entering the Property and telling Mr Ali why they are there (paragraphs 72-74). The narrator then states "The tenant and his family have lived here for three years. Officially they are the only occupants". Mr Bohill then asks Mr Short to go upstairs and not start World War III (paragraph 75). The narrator says, "The landlord, Mr Ahmed, suspects they've been sub-letting the property and keeping the rent". At this point, Omar Ahmed's comments about the number of beds are shown.

132. The narrator says, "The tenant, Mr Ali, is on crutches because of a recent accident. He's finally dressed and ready to talk to Paul." Mr Bohill is then shown explaining the procedure to Mr Ali (paragraph 76 from "this is a writ of possession") followed by some of the subsequent conversation (paragraph 77). The narrator says, "The landlord claims that he hasn't been paid the full rent for over a year. The landlord went to the County Court eight months ago to get the tenants evicted, but has now escalated the case to the High Court to get them out today". This is followed by part of the conversation between Mr Bohill and Omar Ahmed (paragraph 78). The narrator states, "The shortfall between the rent and housing benefit means the landlord is now losing about £600 a month".

133. After Mr Short has knocked on the downstairs bedroom door (paragraph 80), the narrator says, "20 minutes later and Mr Ali is still in his room. He's been on the phone constantly and nothing is being packed". Mr Short is then shown telling Mr Ali to go by 9:15 and Omar Ahmed is shown addressing Mr Ali (paragraph 80). The narrator says, "Another 15 minutes tick by". This is followed by Omar Ahmed's "beds here, beds in the back" speech (paragraph 83). At this point, part of Mr Ali's interview at 9:31 is edited in, in which he denies that anyone other than himself, his wife and children lived in the property and says that "he" (i.e. Omar Ahmed) is telling a lie (paragraph 106). The narrator says, "Mr Ali's wife arrives, back from the school run". This is followed by part of the argument between Mrs Aslam and Omar Ahmed (paragraph 84). The narrator says, "Paul's eviction is spiralling out of control" as the argument concludes with Omar Ahmed accusing Mr Ali of lying on the Quran and demanding that the Claimants leave the property.

134. After a commercial break, the narrator says, "Barking, Essex. High Court Enforcement Agents Paul Bohill and Phil Short served an eviction notice on Mr Ali and his family, but Mr Ali seemed reluctant to leave." This is followed by part of the argument between Mr Ali and Omar Ahmed (paragraph 90). The narrator says, "It's the end-game of an eight-month dispute over unpaid rent". This is followed by more of the argument between Mrs Aslam and Omar Ahmed (paragraph 84). The narrator interjects, "Now the conflict is escalating" and "Paul needs both the landlord and tenants to calm down if he is to keep the eviction on track" and "It's time for Paul to step in" before the conversation between Mr Bohill and Mrs Aslam is shown (paragraph 85).

135. The narrator says, "Paul thinks he has the situation under control, but then the police arrive. They've been called by the tenants". Mr Bohill is then shown explaining the situation to the officers (paragraph 93). The narrator says, "The police speak to the tenants and then try to mediate". Mr Bohill is shown saying that Mr Ali has to leave by quarter past nine and has run the landlord ragged and was taking the mickey (paragraph 95). The narrator says, "Inside the landlord and the tenant continue to go head to head. But at least the police are helping Paul stick to his deadline", over a shot of one of the officers carrying a suitcase out. This is followed by part of the argument between Omar Ahmed and Mr Ali at 9:37 (paragraph 109) and then Mr Bohill giving Mr Ali his card (paragraph 110).

136. The narrator says, "The eviction is over, but Paul still has some questions". This is followed by part of the exchange quoted in paragraph 110 (from "Can I ask you a question?"). The narrator says, "Almost an hour and a half after the Agents arrive Mr Ali and his wife leave the house. It's a last chance for landlord and tenant to trade accusations". This is followed by part of the argument between Omar Ahmed and Mr Ali at 9:45 (paragraph 112). The narrator says, "Finally, the landlord has regained possession of his property". This is followed by the conversation between Mr Bohill and Mr Short in the van (paragraph 114, omitting the sentence about £16,000 down the swanny and the exchange between Mr Rea and Mr Bohill).

137. At the end of the Programme there are two captions reading:

> "Mr Ali and his family were given accommodation in a council B & B.
>
> They have been living there for three months. The family shares one room."

Viewing figures

138. From 4 August 2015 until 20 December 2016 the Programme was broadcast 36 times on four television stations owned by Channel 5 (Channel 5, My5, 5STAR and 5Spike). It was viewed 9,420,000 times via these media. From 4 August 2015 until 18 April 2017 it was also made available on demand via a website owned by Channel 5 called www.my5.tv. During this time it was viewed online 230,393 times. In total the Programme has been watched 9,650,393 times.

Mr Ali's email to the Head Teacher dated 2 October 2015

139. On 2 October 2015 Mr Ali sent an email to the Head Teacher of his daughter's school saying that she was being bullied. In the email Mr Ali explained the background, saying:

> "At the time of eviction the landlord Mr Rasheed and his Son arranged private filming of eviction which later was run on air on Channel 5 with wrong information, perception and untruthful facts given by the Landlord and his Son against us, Channel 5 never contacted us for our version and the TRUTH. Our Privacy and out Dignity were hit very badly. My carrier, business, Political and Social network was hit very badly by them ALL.

> The landlord's son recorded it on his phone camera and share on social media as well which was an horrible act me my wife and Children faced since last 6 months or so."

Has CPWTIA led to a change in practice?

140. Mr Brinkworth suggested in re-examination that the practice in relation to the requirement to give notice to tenants of an application to the High Court for a writ of possession to enforce a County Court order for possession had changed since April 2015 and that publicity given to the harshness of the then current practice by CPWTIA had contributed to public awareness of the problem. Counsel for Channel 5 attempted to substantiate this suggestion by referring to two Practice Notices issued by the Senior Master of the Queen's Bench Division dated 14 December 2015 and 21 March 2016 (reproduced in *Civil Procedure 2017*, volume 1, at 2378-9). As counsel for the Claimants pointed out, however, the Practice Notices do not show that there has been any relevant change in practice: they are mainly concerned with inappropriate use of section 41 of the County Courts Act 1984 by HCEOs. Although the second Notice also refers to the question of notice under rule 83.13(8)(a), that has to be read in the light of the subsequent decision in *Gupta*.

Did the Claimants have a reasonable expectation of privacy?

The general principle

141. It is common ground that the first question the Court must address when considering a claim for misuse of private information is whether the claimant had a reasonable expectation of privacy in respect of the information in question, so that the claimant's rights under Article 8 of the European Convention on Human Rights are engaged: see in particular *Campbell v MGN Ltd* [2004] UKHL 22, [2004] 2 AC 457 at [21] (Lord Nicholls of Birkenhead) and [99] (Lord Hope of Craighead) and *In re JR38* [2015] UKSC 42, [2016] AC 1131 at [88]-[91] (Lord Toulson). It is also common ground that the test is an objective one. As it was put by Sir Anthony Clarke MR (as he then was) delivering the judgment of the Court of Appeal in *Murray v Express Newspapers plc* [2008] EWCA Civ 446, [2009] Ch 481 at [35] adopting the words of Lord Hope in *Campbell*:

> "The question is what a reasonable person of ordinary sensibilities would feel if she was placed in the same position as the claimant and faced with the same publicity."

Assessment

142. Each side relies upon a number of factors as supporting or undermining the Claimants' contention that they had a reasonable expectation of privacy in respect of the matters broadcast in the Programme. I will consider first the factors relied upon by the Claimants and then the factors relied upon by Channel 5. I will consider the question of consent separately below.

143. In considering these matters, I accept the point stressed by counsel for Channel 5 that the Claimants' case is confined to the broadcasting of the items of private information specified in paragraphs 11.4-11.14 of the Particulars of Claim. In summary, this is the

information conveyed by the images of the Claimants and of the Property and by the details of what happened during the eviction. No complaint is made by the Claimants of the broadcasting of the fact that they were evicted. Moreover, the Claimants' evidence complained about some matters falling outside the ambit of the pleaded case.

144. *Sanctity of the home*. Article 8 states that a person "has the right to respect for his private and family life, his home and correspondence". "Home" for these purposes is an autonomous concept which does not depend on classification under domestic law. The Claimants contend that, all material times on 2 April 2015, the Property was their home. The Programme includes extensive footage of the interior of the Property, showing the state it was in when they were taken by surprise by the HCEAs and the film crew, including such details as the unmade bed in the downstairs bedroom. Mrs Aslam's evidence was that, as a traditionally-minded Muslim woman who was expected to dress and behave modestly, she was particularly upset about the footage of the bedroom.

145. Channel 5 accepts that even property unlawfully occupied by a person as a trespasser may be that person's home: see *Harrow London Borough Council v Qazi* [2003] UKHL 43, [2004] 1 AC 983 at [9]-[11] (Lord Bingham of Cornhill) and [65]-[68] (Lord Hope). Counsel for Channel 5 submitted, however, that the Property ceased to be their home when the Writ of Possession was executed. For the reasons given in paragraph 117 above, I consider that the Writ was executed at 9:39, and therefore the Property was the Claimants' home at least until that point. Furthermore, given that the Claimants' presence in the Property for the next few minutes was tolerated, I consider that it remained their home until they left it (in the case of Mrs Aslam, at 9:45). I would add that the Programme itself represents that the landlord gained possession of the Property at 9:45 (see paragraph 136 above).

146. Counsel for Channel 5 also submitted that, although Article 8 may be technically engaged by a lawful eviction, the Article 8 rights so engaged have no real content in such a situation, relying in particular upon *McDonald v McDonald* [2016] UKSC 28, [2017] AC 273 at [40]-[44], [59] (Lord Neuberger of Abbotsbury and Baroness Hale of Richmond). I accept that that authority establishes that, as between a private sector landlord and a tenant against whom the landlord is seeking an order for possession, Article 8 does not require the court to consider the proportionality of such an order. I do not consider that this is relevant to the present situation, where the Claimants rely upon Article 8 not as a shield against eviction in accordance with ordinary domestic law, but as protecting the privacy of their home from the broadcasting of events filmed within that home.

147. *Evictions*. The Claimants rely upon the matters I have set out in paragraphs 51-54 above (professional standards for HCEOs and HCEAs) as showing that they had a reasonable expectation of privacy within their home notwithstanding that they were being evicted. Furthermore, Mr Bohill accepted that it would be wrong, and a breach of confidence, for him to tell third parties about what was inside the house and what went on within the house. Channel 5's main answer to this point is to rely upon the open justice principle, which I will consider below.

148. *Dignity*. The Claimants rely upon Lord Hoffmann's statement in *Campbell* at [51] that a claim for misuse of private information "focuses upon the protection of human autonomy and dignity - the right to control the dissemination of information about one's private life and the right to self-esteem and respect of other people". The Claimants

contend that the Programme showed them at their lowest ebb, being evicted without prior notice, in a state of shock and very distressed, and being repeatedly taunted by Omar Ahmed. Thus it caused them significant loss of dignity. Counsel for Channel 5 did not dispute that, absent other factors considered below, the Programme would have caused the Claimants to suffer some loss of dignity.

149. *Personal appearance*. The Claimants rely upon the fact that the Programme included shots of Mr Ali wearing his bedclothes, and seek to draw an analogy with *Rocknroll v NGN Ltd* [2013] EWHC 24 (Ch), where the claimant was shown partially naked. In the present case, I am not persuaded that this factor adds anything to the general points about dignity and photography considered above and below. All that can be seen in the shots in question is that Mr Ali was wearing a T-shirt or vest. I accept that he was in fact wearing pyjama bottoms, but these are not visible in the Programme.

150. *Photography*. The Claimants rely upon the fact that the Programme consisted largely of film. As Lord Phillips of Worth Matravers MR stated in *Douglas v Hello! Ltd (No. 3)* [2005] EWAC Civ 595, [2006] QB 125:

> "84. This action is about photographs. Special considerations attach to photographs in the field of privacy. They are not merely a method of conveying information that is an alternative to verbal description. They enable the person viewing the photograph to act as a spectator, in some circumstances voyeur would be the more appropriate noun, of whatever it is that the photograph depicts. As a means of invading privacy, a photograph is particularly intrusive. This is quite apart from the fact that the camera, and the telephoto lens, can give access to the viewer of the photograph to scenes where those photographed could reasonably expect that their appearances or actions would not be brought to the notice of the public."
>
> 85. The intrusive nature of photography is reflected by the various media codes of practice. It is also recognised by the authorities. In *Theakston v MGN Ltd* [2002] EMLR 398 Ouseley J refused an injunction restraining publication of a verbal depiction of the claimant's activities in a brothel. He granted, however, an injunction restraining the publication of photographs taken of these activities. …"

151. I agree that this factor supports the conclusion that Article 8 is engaged. Moreover, it is relevant to some of the factors relied upon by Channel 5 as I shall discuss below.

152. *Effect on children*. The Claimants rely not only on their own Article 8 rights, but also those of their children. As Channel 5 accepts, it is now well established that the likely effect of publication upon any children is relevant to whether there is reasonable expectation of privacy, as well as to the balancing exercise between Article 8 and Article 10 ECHR: see *K v News Group Newspapers Ltd* [2011] EWCA Civ 439, [2011] 1 WLR 1827 at [14] (Ward LJ), *Weller v Associated Newspapers Ltd* [2015] EWCA Civ 1176, [2016] 1 WLR 1541 at [36]-[38] (Lord Dyson MR) and *PJS v News Group Newspapers Ltd* [2016] UKSC 26, [2016] AC 1081 at [37] (Lord Mance) and [72]-[78] (Baroness Hale).

153. The Claimants contend that it was foreseeable that broadcasting of the Programme would have an adverse effect on their children, in particular through ridicule and bullying at school, given that no attempt was made to hide the Claimants' identities. This is what in fact transpired in the case of their daughter. Moreover, the Claimants rely upon the fact that Channel 5 continued to broadcast the Programme and make it available online after it had been given notice in the Claimants' letter of claim dated 17 February 2016 and Particulars of Claim served on 13 September 2016 that their daughter had been bullied.

154. Channel 5's answer to this point is two-fold. First, Channel 5 contends that there would have been an adverse impact on the children in any event because of the postings by the Ahmeds. I shall consider that contention below.

155. Secondly, Channel 5 contends that the impact on the children was an inevitable consequence of wrongful conduct that caused the Claimants to be caught up in court proceedings, relying in particular upon *In re Trinity Mirror plc* [2008] QB 770, where Sir Igor Judge P said at [33] that "the risk that innocent children may suffer prejudice and damage when a parent is convicted of serious offence" did not justify a departure from the principle of open justice. As the discussion of *Trinity Mirror* and other cases by Lord Sumption in *Khuja v Times Newspapers Ltd* [2017] UKSC 49, [2017] 3 WLR 351 at [25]-[30] demonstrates, however, the reasoning in these cases does not depend on the claimant's wrongful conduct. For example, in *Khuja*, Mr Khuja had not even been charged, and there was no reason to believe that he ever would be. Rather, it depends on the open justice principle, which is also relied upon by Channel 5 and which I shall consider below.

156. *Scale and duration of publication*. The Claimants rely upon the scale and duration of the broadcasting of the Programme (as set out in paragraph 138 above) as supporting their reasonable expectation of privacy, and in particular as differentiating the Programme from the postings by the Ahmeds.

157. *Events in the street*. As is common ground, some of the events depicted in the Programme took place in the street outside the Property. The Claimants contend that they had nevertheless had a reasonable expectation of privacy in respect of such events. In support of this contention counsel for the Claimants relied upon the decision of the European Court of Human Rights in *Peck v United Kingdom* (2003) 36 EHRR 41 at [57] that there is "a zone of interaction of a person with others, even in a public context, which may fall within the scope of 'private life'". In that case CCTV footage of Mr Peck in a public place in the immediate aftermath of a suicide attempt was broadcast on television to many hundreds of thousands of viewers. This came about because the owner of the CCTV footage passed it to the media. Mr Peck was identifiable from the broadcast material. He did not complain about the making of the CCTV recording, but did complain about the passing of it to the media. The Court held at [62]-[63] that, because this exposure 'was viewed to an extent which far exceeded any exposure to a passer-by . . . and to a degree surpassing that which [Mr Peck] could possibly have foreseen', the disclosure constituted a serious interference with Mr Peck's respect for his private life.

158. Channel 5 contends that the Claimants had no reasonable expectation of privacy in respect of events taking place in a public street. In support of this contention counsel for Channel 5 relied upon the statement of Lord Dyson in *Weller* at [18] that being

photographed in a public street "must be taken to be one of the ordinary incidents of living in a free community". As Lord Dyson went on to say straightaway, however, "a person's privacy rights may be infringed even in relation to things done in a public street", giving the example of the photographs in *Campbell*. Accordingly, I do not accept the mere fact that some of the events took place in the street means that the Claimants had no reasonable expectation of privacy. A more fact-sensitive assessment is called for.

159. *Open justice*. A key plank of Channel 5's case on reasonable expectation of privacy is the principle of open justice. As is common ground, the Order for Possession was made at a hearing in open court. The consequences of this were explained by Lord Reed in *A v British Broadcasting Corporation* [2014] UKSC 588, [2015] AC 588:

> "25. The principle that courts should sit in public has important implications for the publishing of reports of court proceedings. In *Sloan v B* 1991 SC 412, 442, the Lord President (Hope), delivering the opinion of the court, explained that it is by an application of the same principle that it has long been recognised that proceedings in open court may be reported in the press and by other methods of broadcasting in the media.
>
> > 'The principle on which this rule is founded seems to be that, as courts of justice are open to the public, anything that takes place before a judge or judges is thereby necessarily and legitimately made public, and, being once made legitimately public property, may be republished': *Richardson v Wilson* (1879) 7 R 237, 241, per the Lord President (Inglis).
>
> 26. The connection between the principle of open justice and the reporting of court proceedings is not however merely functional. Since the rationale of the principle is that justice should be open to public scrutiny, and the media are the conduit through which most members of the public receive information about court proceedings, it follows that the principle of open justice is inextricably linked to the freedom of the media to report on court proceedings."

160. The Writ of Possession was not made after any hearing, let alone in public, but counsel for Channel 5 submitted that, in principle, it was nevertheless a public document since it was a form of court order and no order for a hearing in private had been made under CPR rule 39.2(3). In support of this, he relied upon *Hodgson v Imperial Tobacco Ltd* [1998] 1 WLR 1056, upon the statement of Tugendhat J in *Church v MGN Ltd* [2012] EWHC 693 (QB), [2013] 1 WLR 284 at [47] that the fact that a court deals with an application without a hearing does not preclude the giving of a public judgment and upon the general rule stated by Warby J in *PJS v News Group Newspapers Ltd* [2016] EWHC 2770 (QB) at [2] that judgments and orders are public. I accept this submission.

161. Counsel for Channel 5 also submitted that it followed that the Writ of Possession fell within CPR rule 5.4C(1)(b), which enables a non-party to obtain from court records "a

copy of a judgment or order given or made in public (whether made at a hearing or without a hearing)". Again, I accept this submission.

162. The Claimants do not dispute that it follows that Channel 5 were entitled to report the facts that the County Court had made an order for possession and the High Court had issued a writ of possession against the Claimants. Moreover, as noted above, the Claimants do not complain of the broadcasting of the fact that they had been evicted. The Claimants contend, however, that this does not justify the broadcasting of the information in issue in these proceedings, which went well beyond those bare facts and included filming of them in their home, in distress and being taunted by Omar Ahmed as discussed above. I agree with this. Furthermore, the impact of the Programme on the children cannot be justified by reference to the open justice principle.

163. *The consequences of one's own unlawful conduct*. Counsel for Channel 5 relied upon the statement by the European Court of Human Rights in *Axel Springer AG v Germany* (2012) 32 BHRC 493 at [82] that Article 8 "cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequences of one's own actions such as, for example, the commission of a criminal offence." In this regard, counsel for Channel 5 placed particular reliance upon the fact that the Claimants failed to leave the Property voluntarily within the time limited by the Order for Possession, which he submitted was a contempt of court, and upon the consequent need for Rashid Ahmed to enforce the order by means of a warrant or writ. The Claimants accept that they cannot complain of the loss of reputation inherent in their eviction, or of the broadcasting of the fact of the eviction, but they contend that the broadcasting of the information in issue in these proceedings was not a foreseeable consequence of their failure to comply with the Order for Possession or of their eviction. I agree with this.

164. *Political figures*. Channel 5 contends that Mr Ali's political position means that he is a public figure with weakened Article 8 rights and no right under Article 8 to be protected against disclosure of information of this kind. In support of this contention, counsel for Channel 5 relied in particular on *Trimingham v Associated Newspapers Ltd* [2012] EWHC 1296 (QB), [2012] 4 All ER 717 at [93]-[95], [249]-[250] and [289] (Tugendhat J) and *Yeo v Times Newspapers Ltd* [2015] EWHC 3375 (QB), [2017] EMLR 1 at [147] (Warby J). In my judgment the present case is different to those cases. Mr Ali's political activity was essentially, as he put it, "a hobby". He had no official position. Furthermore, there was no reference at all to Mr Ali's political activities in the Programme. The Claimants were portrayed as ordinary private people, and the focus of the Programme was the drama of the conflict between landlord and tenants. It might perhaps have been different if the Programme had been about Mr Ali's fitness for a public position as a consequence of DJ Mullis having preferred the evidence of Rashid Ahmed's witnesses to Mr Ali's evidence about the deposit, but it was not. Indeed, there was no mention of DJ Mullis' judgment either.

165. In any event, Mrs Aslam features prominently in the Programme, but there is no suggestion that she had engaged in political activity or was a public figure.

166. A separate point made by counsel for Channel 5 is that, if and insofar the damage of which the Claimants complain is damage to Mr Ali's political reputation, then Article 8 does not protect Mr Ali's political, as opposed to private, life. I accept this.

167. *Tone*. Counsel for Channel 5 submitted that a significant part of the Claimants' complaint relates to the tone of the Programme rather than the information it conveyed. It seems to me that this is a point which more naturally falls to be considered in the context of editorial discretion below.

168. *Previous publications*. Section 12(4)(a)(i) of the Human Rights Act 1998 requires the Court to have regard to the extent that the information is already available to the public. Channel 5 relies upon the videos which were posted by the Ahmeds (paragraph 121 above), and upon Mrs Aslam's description of their effect in her letter dated 18 May 2015 (paragraph 123 above). In that letter, she said that the postings "circulated massively" causing Mr Ali "huge depression" and his "respect in society" had been "destroyed". When this was put to Mr Ali, he said, in effect, that there was no comparison between the impact of a few hundred people watching postings on social media and 9.65 million watching a television programme. I have no difficulty in accepting this.

169. *Overall assessment*. In my judgment the principal factors relied upon by the Claimants do lead to the conclusion that they had a reasonable expectation of privacy in respect of the information in question. The Programme was largely filmed in their home; it showed them being evicted without prior warning; it showed them in a state of shock and distress; it showed them being taunted by Omar Ahmed; and it was foreseeable that the broadcasting of the Programme would have an adverse effect on their children. I do not accept that the open justice principle means that the Claimants' Article 8 rights were not engaged. Open justice means that Channel 5 was entitled to report the facts that the courts had made the Order for Possession and issued the Writ of Possession and in consequence the Claimants had been lawfully evicted; but what happened in their home on 2 April 2015 was not part of the proceedings. Nor do I consider that the broadcasting of the information was an inevitable consequence of the Claimants' failure to comply with the Order for Possession. Nor do I accept that Mr Ali's Article 8 rights were significantly weakened by his political activity. Mrs Aslam had not engaged in political activity at all. I accept that the Claimants, and their children, had already suffered damage to their privacy as a result of the Ahmeds' postings on social media, but I do not accept that this meant that the broadcasting of Programme either could not or did not inflict further damage given the substantial scale and duration of the broadcasting.

170. As for the part of the Programme which was filmed in the street, I do not think this can meaningfully be divorced from the part which was filmed in the Property. The Programme presents the eviction as a single sequence of events, which it was. I do not think the Claimants ceased to have a reasonable expectation of privacy in respect of the small part of the sequence which took place on the street.

Did the Claimants consent?

171. Channel 5 contends that Mr Ali consented to the broadcasting of the Programme, or at least of most of the key information in the Programme, by agreeing to be interviewed on camera at 9:31 (paragraphs 106-107 above) and that Mrs Aslam did not dissociate herself from this. (Counsel for Channel 5 suggested that Mr Ali had also agreed to being interviewed on camera a second time after leaving the Property at 9:42. In my view the rushes do not support this suggestion, but this does not matter because Mr Ali clearly did agree to being interviewed at 9:31.) Accordingly, Channel 5 contends that the Claimants waived their right to privacy. Although both counsel treated this as an aspect

of the issue of reasonable expectation of privacy, I find it more convenient to deal with it separately.

172. In considering this question, it seems to me that the starting point is what did not happen. When Mr Bohill entered the Property and explained to Mr Ali who he and Mr Short were and why they were there, he did not explain who the film crew were or why they were there. At no stage during the eviction did anyone inform the Claimants that the film crew was filming a programme for Channel 5 (by contrast, it is clear that the Ahmeds and the police officers were informed: see paragraphs 86, 92, 94. 101 and 111 above). The film crew did not follow the instructions given in the production bible as to what to say to the people named in the writ of possession (paragraph 68 above). To be fair to Mr Rea, he made an attempt to do so at 8:29, but was stopped by Mr Bohill (paragraph 76). Mr Bohill gave evidence that the HCEAs had instructions that, if people asked about the presence of the film crew, the HCEAs should refer them to the assistant producer for an explanation; but that did not occur in this case. Nor did anyone tell the Claimants that the HCEAs were effectively filming for the programme with their body cameras.

173. The next point is that, when Mr Bohill and the film crew entered the Property, they woke Mr Ali up. When he came to the door of his bedroom, he was clearly drowsy and confused. In my view he was not in a fit state to give informed consent then. He was in a fit state to do so by 9:31, but I do not consider that, by giving an interview then, he can be taken retrospectively to have given his consent to the broadcasting of material filmed when he was not in a position to consent.

174. The next point is that Mr Ali first asked for an explanation for the presence of the film crew at 8:29 (paragraph 76) and then objected to being filmed at 8:43 (paragraph 79) and at 9:16 (paragraph 100). Between those objections, Mr Ali asked the crew to leave the bedroom at 9:00 (paragraph 88). Furthermore, Mr Ali shut the bedroom door several times, obviously in an attempt to exclude the film crew. Reliance was placed by counsel for Channel 5 upon the fact that at 9:36 Mr Ali objected to Omar Ahmed filming and said "you are filming this is enough" (paragraph 107). Given that Mr Ali had already objected to being filmed twice without avail, however, I consider that the sense he was conveying was that the filming by the crew was bad enough without Omar Ahmed filming as well.

175. As for Mrs Aslam, she independently objected to being filmed at 9:14 (paragraph 99).

176. Turning to the interview which Mr Ali gave at 9:31, counsel for the Claimants pointed out that, in his witness statement, Mr Ali unequivocally accepted that "I was aware by this stage that there was a chance that, whether I liked it or not, the eviction was going to be on television" and that "I did think … that whoever was filming us would presumably use this footage on television somewhere". In cross-examination Mr Ali attempted to resile from those admissions. Counsel for Channel 5 submitted, and I agree, that it is clear from the rushes that what Mr Ali said in his witness statement was correct, and not what he said in cross-examination.

177. Counsel for Channel 5 also submitted that that, due to his previous media experience, Mr Ali's agreement to be interviewed represented informed consent to the broadcasting of the Programme. I do not accept this. As counsel for the Claimants pointed out, Mr Ali's previous media experience had involved entirely voluntarily participation by him

in discussion of political topics which he wished to make a contribution to under conditions he was comfortable with. As I have said, Mr Ali agreed to be interviewed at 9:31 only after he had twice objected to filming without avail. It is clear that, by 9:31, Mr Ali appreciated that he faced a choice as to which was the lesser of two evils: not to agree to be interviewed, and take the risk that whatever programme was being filmed would be broadcast without his side of the story being included; or to agree to be interviewed, and hope that his side of the story would be included. (Indeed, it was Mr Ali's evidence that this was what he was advised by PC Stowers, evidence which is supported by the exchange at 9:29 (paragraph 105).) Moreover, he was faced with that choice knowing that Omar Ahmed had made serious allegations against him. Rationally, he chose the second option. In my judgment that did not amount to true consent. In effect, it amounted to an agreement to participate under protest. Moreover, it was not fully informed agreement given that he was not told anything about the programme that was being filmed or who would broadcast it or about the body cameras.

178. In any event, Mr Ali made it clear in his telephone call to Ms Crook on 17 June 2015 that he objected to being on television (paragraph 124 above). Accordingly, to the limited extent that he did give consent on 2 April 2015, he unequivocally withdrew that consent prior to the first broadcast of the Programme.

179. For completeness, I note that the only part of the interview that was used in the Programme is the part where Mr Ali denied that anyone other than himself, his wife and children lived in the property and said that Omar Ahmed was telling a lie (see paragraphs 106 and 133 above).

Balancing the Claimants' Article 8 rights and Channel 5's Article 10 rights

The law

180. Given that I have concluded that the Claimants' Article 8 rights are engaged, it is common ground that the correct approach to balancing those rights and Channel 5's right to freedom of expression under Article 10 ECHR is that stated by Lord Steyn in *Re S (A Child)* [2004] UKHL 47, [2005] 1 AC 539 at [17]:

> "First, neither article (8 or 10) has *as such* precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test."

181. It is also common ground that, as the European Court of Human Rights has frequently stressed, "freedom of expression constitutes one of the essential foundations of a democratic society". Accordingly, the need for any restrictions on freedom of expression must be convincingly established. An important question in this context is the extent to which the Programme made a "contribution to a debate of general importance to society": see in particular *Axel Springer* at [78]-[80] and [90]-[91], where the Court stated at [91]:

> "A fundamental distinction needs to be made between reporting facts capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions for example, and reporting the details of the private life of an individual who does not exercise such functions."

182. In considering this question, the Court also stated in *Axel Springer* at [81] that:

> "… it is not for the court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques should be adopted in a particular case."

As Lord Hoffmann said in *Campbell* at [59], "judges are not newspaper editors", and as Lord Hope added in *In British Broadcasting Corporation* [2009] UKHL 34, [2010] 1 AC 145 at [25], "They are not broadcasting editors either". As it was put by Baroness Hale and Lord Toulson in *O v Rhodes* [2015] UKSC 32, [2016] AC 219 at [78]:

> "A right to convey information to the public carries with it a right to choose the language in which it is expressed in order to convey the information most effectively … "

183. A related point is that, when contributing to a debate of general importance to society, it may be justified for the media to identify the individuals involved in a story. As Lord Rodger of Earlsferry famously observed delivering the judgment of the Supreme Court in *In re Guardian News and Media* [2010] UKSC 1, [2010] 2 AC 697 at [63]:

> "What's in a name? 'A lot', the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed … This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive."

Assessment

184. *Public interest*. There was no challenge to the evidence of Mr Brinkworth and Mr Raikes that they believed that the Programme was in the public interest. Counsel for the

Claimants accepted that that was their genuine belief, but submitted that they were wrong. This led to a dispute between counsel as to the extent to which the question was to be objectively assessed, and the weight (if any) to be given to the opinions of the programme maker and broadcaster. In my judgment it is clear from the authorities that the matter must be objectively assessed by the court, but that some weight should be given to the genuinely held views of the programme maker and broadcaster.

185. Counsel for Channel 5 submitted that the Programme addressed a number of matters of real public interest and concern: increasing levels of personal debt, and in particular rent arrears of tenants in privately-rented accommodation; the dependence of tenants on benefits, and in particular housing benefit; the effect of enforcement of writs of possession by HCEAs; and the consequences for both landlords and tenants. He further submitted that it was justified for Channel 5 to illustrate these matters by showing what happened to real people in real situations, because that was the best way to engage the public and stimulate debate.

186. Counsel for the Claimants accepted that there was a public interest in broadcasting information concerning the work of HCEAs and the process of eviction, but submitted that this only applied so long as the Article 8 rights of those being evicted were respected. He further submitted that, in the present case, there was no nexus between the information contained in the Programme of which the Claimants complained and the public interest allegedly served by the Programme. In this regard, he particularly relied upon the fact that the principal focus of the Programme was on the drama of the conflict between Omar Ahmed and the Claimants.

187. Before expressing my conclusions in relation to these contentions, it is convenient to deal with four points which were raised by counsel for the Claimants in the context of fairness and accuracy, but in my view more appropriately fall to be considered here. These all concern the behaviour of Mr Bohill during the eviction.

188. First, it was Mr Bohill's evidence was that (consistently with the impression conveyed by the Programme) his policy when carrying out evictions was "to try and avoid any conflict and confrontation at all costs". Counsel for the Claimants submitted that the rushes showed that, in fact, Mr Bohill had positively encouraged Omar Ahmed to taunt the Claimants because, as Mr Bohill said to Omar Ahmed at 8:55 and repeated at 9:23, it made "good television" (paragraphs 86 and 103 above). In this regard, counsel for the Claimants relied upon a number of statements made by Mr Bohill to Omar Ahmed, but in particular the statement "say whatever you like, just give it some wellie" at 8:55. When this was put to Mr Bohill in cross-examination, he denied that he was encouraging Omar Ahmed to let rip against the Claimants, and said it was "just an aside". I do not accept that evidence. If it was just an aside, Mr Bohill would not have made a number of other statements encouraging Omar Ahmed to say whatever he liked to the Claimants (in particular at 8:32 (paragraph 77 above), 8:55 (paragraph 86) and 9:23 (paragraph 102)). Nor would Mr Bohill have said to PC Smith, "it's terrific television" at 9:45 (paragraph 111), or to the film crew, "you couldn't have asked for better really" at 9:47 (paragraph 113).

189. I am prepared to accept that, as counsel for Channel 5 submitted, some of the statements made by Mr Bohill during the course of the eviction were sardonic comments which were belied by Mr Bohill's actions. A good example of this is Mr Bohill's statement at

8:53 that he could "pour some petrol on this" (paragraph 85). In fact, Mr Bohill did no such thing at that juncture.

190. Viewed as a whole, however, the rushes leave me in no doubt that, at various points, Mr Bohill did encourage Omar Ahmed to taunt the Claimants because it would make "good television". Moreover, I consider that this should have apparent to the film crew, and certainly to the editorial team at BFL when viewing and editing the rushes.

191. Secondly, it was Mr Bohill's evidence that he had simply carried out the court's order respectfully, politely and professionally. Counsel for the Claimants submitted that the rushes showed that, in fact, in some of his dealings with Mr Ali, Mr Bohill had been grandstanding for the cameras. In this regard, counsel for the Claimants particularly relied upon Mr Bohill's exchanges with Mr Ali about the rent arrears at 9:43 (paragraph 110 above). Moreover, Mr Bohill said both to PC Smith at 9:50 (paragraph 111) and to Mr Short at 9:57 (paragraph 114) that he'd "seen the court paperwork" showing that Mr Ali owed the landlord the money, whereas in fact, as he admitted to Mr Rea at 9:57, there were no rent arrears on the Writ.

192. Again, Mr Bohill denied this. Again, viewed as a whole, the rushes leave me in no doubt that, from time to time, Mr Bohill took the opportunity to say things which he considered would make "good television". I consider that the exchange at 9:43 was indeed an example of this. Again, I consider that this should have apparent to the film crew, and certainly to the editorial team at BFL when viewing and editing the rushes.

193. Thirdly, counsel for the Claimants submitted that Mr Bohill had been wrong to tell passers-by about the eviction (paragraph 96 above). In my view this has no bearing on the question of public interest, but it is illustrative of Mr Bohill's attitude and approach.

194. Fourthly, counsel for the Claimants submitted that Mr Bohill had been wrong to stop Mr Rea explaining to Mr Ali what programme was being filmed. In my view this is relevant to the issue of consent, but not to the question of public interest.

195. Overall, I accept that the Programme did contribute to a debate of general interest, but I consider that the inclusion of the Claimants' private information in the Programme went beyond what was justified for that purpose. As discussed above, the Programme made no reference to Mr Ali's political activities. It was concerned with the Claimants' position as private individuals. The focus of the Programme was not upon the matters of public interest, but upon the drama of the conflict between Omar Ahmed and the Claimants. Moreover, that conflict had been encouraged by Mr Bohill to make "good television" and other aspects of Mr Bohill's contribution were also intended by him to make "good television".

196. As noted in paragraphs 58 and 140 above, a particular feature of Mr Brinkworth's public interest justification was the desire to show how landlords could expedite enforcement by moving the process from the County Court to the High Court, and the effect of this. I agree that this is a matter of public interest. However, the Programme contained no information about the legal processes involved beyond the statements that the landlord had gone to the County Court eight months before and had now escalated the case to the High Court to get the tenants evicted (paragraph 132 above). The circumstances of the Claimants' eviction reveal what in my view is a matter of considerable public interest and concern, namely the fact that the Claimants were given

no notice of the eviction and were taken wholly by surprise. (Moreover, for the reasons explained above, they were then faced with having to go to the Council to seek emergency accommodation for themselves and their children.) Yet this important aspect of the story is not mentioned in the Programme, although a very attentive viewer might deduce it.

197. Before leaving this question, I should make it clear that one matter which is not relied upon the Claimants is the fact that the Programme was the 16th programme in the strand. While it might be argued that Channel 5 had had ample opportunity to explore the issues raised by the work of HCEAs during the preceding 15 programmes, no such argument was advanced by the Claimants.

198. *Fairness and accuracy*. It was common ground between counsel that it is relevant to consider the extent to which the Programme was a fair and accurate portrayal of the eviction in accordance with the standards of responsible journalism. The Claimants contend that it was not fair or accurate. Channel 5 disputes this.

199. Somewhat surprisingly, counsel for the Claimants did not put the allegation that the Programme was unfair and inaccurate to Mr Brinkworth in cross-examination. Counsel for Channel 5 submitted that it followed that it was not open to the Claimants to pursue this allegation. This submission requires analysis of the matters relied upon by the Claimants in support of the allegation.

200. The first four matters relied on are the points concerning Mr Bohill's behaviour on 2 April 2015 considered in paragraphs 188-194 above. In so far as these points concern Mr Bohill's behaviour in itself, they were put to Mr Bohill. Thus in my judgment they were put to the correct witness. Although Mr Brinkworth said in his witness statement that it was an "essential part" of CPWTIA that "there was no element of 'staging' or role-playing", it was neither necessary nor desirable for counsel for the Claimants to question Mr Brinkworth about how Mr Bohill had behaved, since Mr Brinkworth was not present on 2 April 2015 and had no personal knowledge of what had happened.

201. Nor was it necessary or desirable for counsel for the Claimants to ask Mr Brinkworth about BFL's knowledge of how Mr Bohill had behaved. Mr Brinkworth could not give evidence about what the film crew had seen and heard on 2 April 2015 for the reason I have just given. Nor could he give evidence about what Ms Ferguson and Ms Crook had learnt from watching the rushes, since on his own account he did not view the rushes, but only the first rough-cut and the fine-cut.

202. That leaves the question of whether it should have been put to Mr Brinkworth, as the person with overall editorial responsibility for the Programme and the person who was giving evidence as to the editorial processes adopted by BFL, that, by omitting the way in which Mr Bohill had behaved, the Programme failed to give a fair and accurate account of what had happened. In my judgment, this is a matter which should have been put to Mr Brinkworth. Accordingly, I do not consider that it is open to the Claimants to pursue the allegation that the Programme was unfair and inaccurate because it omitted these matters. I should emphasise that in my judgment this does not prevent the Claimants from relying on the first two points in relation to the question of public interest.

203. I turn next to consider three separate matters which are relied by the Claimants as rendering the Programme unfair and inaccurate. First, counsel for the Claimants submitted that the Programme had wrongly portrayed Mrs Aslam as being angry with Omar Ahmed from the beginning, whereas in fact she was reacting to his "beds here, beds in the back" speech (paragraph 83 above). It is not clear from the rushes, however, that she would have heard that speech, and Mrs Aslam gave no evidence that she did. I would add that what the Programme shows at this point is Mrs Aslam reacting to a peremptory demand from Omar Ahmed in Urdu, followed by a polite request in English, to return the house key.

204. Secondly, counsel for the Claimants submitted that the Programme misrepresented the number of beds in the Property, thereby wrongly lending credence to Omar Ahmed's allegation that the Claimants had been sub-letting the property. In this regard, counsel pointed out that the Programme showed Omar Ahmed counting the number of beds and saying that there were eight beds for four people (paragraph 98 above), whereas in fact examination of the rushes showed that there were only five beds (although two of them were double beds). Counsel for the Claimants submitted that it was no answer to say that the Programme had included Mr Ali's denial of sub-letting. I am not persuaded that the Programme was materially inaccurate or unfair in this respect. It presented both sides' allegations and did not take sides as to who was right. In any event, this is another matter which should have been put to Mr Brinkworth.

205. Thirdly, counsel for the Claimants submitted that it was unfair and inaccurate for the Programme repeatedly to broadcast Omar Ahmed's allegation that Mr Ali had lied in court. I do not accept this. I think the Programme made it reasonably clear that this was an allegation by Omar Ahmed, not a fact. Again, this should have been put to Mr Brinkworth.

206. *Editorial discretion*. Channel 5 relies heavily upon its editorial discretion. I accept that it had editorial discretion as to the way in which it told the story. In particular, I agree with counsel for Channel 5 that, in so far as the Claimants' complaint is a complaint about the tone of the Programme, that is a matter lying within Channel 5's editorial discretion. I do not accept that Channel 5's editorial discretion extends to its decision to include the private information of which the Claimants complain unless the inclusion of that information was justified as contributing to a debate of general interest.

207. *The OFCOM Code and OFCOM adjudications*. Section 12(4)(b) of the Human Rights Act 1988 requires the court to have regard to any relevant privacy code. The relevant privacy code in force at the time of the first broadcast of the Programme was Section 8 of the OFCOM Broadcasting Code of July 2015. Rule 8.1 of the Code provides that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be "warranted". "Warranted" is defined as follows:

> "In this section 'warranted' has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, 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, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety,

> exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public."

208. As counsel for Channel 5 submitted, the provisions of the Code add nothing to the general law that is relevant for the purposes of the present case.

209. OFCOM has made adjudications on four complaints of unwarranted infringement of privacy arising out of the broadcasting of other episodes of CPWTIA. The first three complaints (*Islam*, 18 May 2015; *Kitoko*, 29 June 2015; *Danin*, 17 August 2015) were not upheld, but recently a complaint was upheld (*Miss F*, 30 October 2017). Although counsel for Channel 5 sought to rely upon the first three decisions and counsel for the Claimants sought to rely upon the decision in *Miss F*, the facts of the present case are different to each of those cases. Accordingly, I consider that little assistance can be gained from the adjudications.

210. *The ultimate balancing test*. For the reasons given in paragraphs 169-170 above, I consider that the Claimants did have a reasonable expectation of privacy in respect of the information included in the Programme about which they complain. The justification relied upon by Channel 5 for interfering with the Claimants' Article 8 rights is that the Programme contributed to a debate of general interest. As I have explained, I accept that the Programme did contribute to a debate of general interest, but I consider the inclusion of the Claimants' private information went beyond what was justified for that purpose. The focus of the Programme was not upon the matters of public interest, but upon the drama of the conflict between Omar Ahmed and the Claimants, a conflict which had been encouraged by Mr Bohill to make "good television". Although I have not concluded that the Programme was materially unfair or inaccurate in its presentation of what happened, that does not assist Channel 5. The justification relied upon by the Claimants for restricting Channel 5's Article 10 rights is their right to respect for their private and family life and their home. Notwithstanding the importance of freedom of expression, I consider that the restriction is justified and proportionate in the circumstances of this case. Accordingly, in my judgment the balance comes down in favour of protecting the Claimants' Article 8 rights.

Damages

The law

211. The leading authority on the assessment of damages in privacy claims is the decision of Mann J in *Gulati v MGN Ltd* [2015] EWHC 1482 (Ch), [2016] FSR 12 which was upheld by the Court of Appeal [2015] EWCA Civ 1291, [2017] QB 149. I do not propose to set out all the guidance in those judgments, but I have taken it into account.

212. As is common ground, in principle it is open to the Claimants to claim three heads of damage:

    i) compensation for the misuse of the private information;

    ii) damages for distress; and

iii) aggravated damages for distress caused by those actions of Channel 5 which is not caused directly by the wrongdoing e.g. by the way the claim has been litigated.

213. Compensation for misuse of private information may be awarded even if it does not cause distress. Nevertheless, the court must be careful to avoid double counting when awarding damages under heads (i) and (ii).

214. In *Gulati*, Mann J reviewed previous damages awards. Leaving aside damages for phone hacking, for which he awarded damages of £10,000 a year for repeated hacking, the sums he awarded for the publication of articles containing the claimants' private information ranged from £750 to £40,000. None of those cases is directly comparable to the present case, but they give an indication of the appropriate range of damages save in exceptionally serious cases.

Assessment

215. So far as the first head of damages is concerned, the Claimants do not contend that the Programme caused them any particular loss or damage other than distress. Moreover, as I have already said, it is necessary to ensure that Mr Ali is not compensated for any damage to his political reputation. Nevertheless, the Programme did involve the disclosure of their private information to 9.65 million viewers. While the information in question was not of the highest degree of sensitivity, it was fairly sensitive. Moreover, the Programme had a voyeuristic quality.

216. As for distress, the Claimants rely upon their own evidence as to the distress which the broadcasting of the Programme caused them. I accept that it caused them distress, particularly in the case of Mrs Aslam. As counsel for Channel 5 submitted, however, the Claimants were also caused distress by a series of factors which do not form part of their claim: the eviction itself; the filming of the eviction (as opposed to the subsequent broadcast of the Programme): and, above all, the postings by the Ahmeds on social media. As Mrs Aslam's letter dated 21 May 2015 shows, the postings were distressing to the Claimants because they came to the attention of their friends, relatives and acquaintances and they damaged the respect in which the Claimants were held in their community. On the other hand, the Programme shows details that were not included in the Ahmeds' postings.

217. Turning to aggravation, counsel for the Claimants relied first upon the unfairness and inaccuracy of the Programme, but I have not upheld that charge.

218. Secondly, he relied upon a number of alleged aggravating factors as a result of Channel 5's conduct of the litigation prior to trial: what was said to be a dismissive response to the letter of claim; what was said to be an obstructive and evasive Defence; the requesting of information and disclosure concerning Mr Ali's medication; a failure to reveal the scale of publication prior to the service of a Schedule annexed to an Amended Defence in October 2017; and a lack of candour regarding the position with respect to the body cameras worn by the HCEAs. I am not persuaded that any of these matters amounts to aggravation, however.

219. Thirdly, he relied upon aspects of the way in which Channel 5's case on public interest was put at trial, and in particular in cross-examination of Mr Ali: the contention that the

Claimants were trespassers and in contempt of court; and the contention that Mr Ali had lied to DJ Mullis. I agree that these are mildly aggravating factors, but I do not propose to award a separate sum of damages under this head.

220. Looking at the matter in the round, I consider that an appropriate sum of damages is £10,000 for each Claimant. I would have awarded a higher figure if it had not been for the postings by the Ahmeds.