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# England and Wales High Court (Administrative Court) Decisions

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**Neutral Citation Number: [2008] EWHC 1084 (Admin)**

Case No: CO2888/2008

**IN THE HIGH COURT OF JUSTICE
SUPREME COURT OF JUDICATURE
DIVISIONAL COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL
16/05/2008

B e f o r e :

**THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
LORD JUSTICE LATHAM
and
MR JUSTICE BLAKE**

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**Between:**

| | |
|---|---|
| **Corporate Officer of the House of Commons** | **Appellant** |
| **- and -** | |
| **The Information Commissioner<br>Heather Brooke<br>Ben Leapman<br>Jonathan Michael Ungoed-Thomas** | **Respondents** |

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**Nigel Giffin QC and Karen Steyn (instructed by the Treasury Solicitors) for the Appellant
James Goudie QC and Akhlaq Choudhury (Mr Mark Thorogood) for the 1st Respondent
Hugh Tomlinson QC (instructed by Simons Muirhead & Burton) for the 2nd Respondent
Simon McKay, Solicitor Advocate (of McKay Law, Solicitors and Advocates) for the 3rd Respondent
Philip Coppel (instructed by Bates Wells & Braithwaite) for the 4th Respondent
Hearing dates : 7th May 2008**

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**HTML VERSION OF JUDGMENT**

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**President of the Queen's Bench Division :**

**This is the judgment of the Court**

1. This appeal is concerned with the right of access under the Freedom of Information Act 2000 (FOIA) to information relating to the Additional Costs Allowance (ACA), an allowance payable to Members of Parliament (MPs) who represent constituencies outside London or outer London constituencies who are eligible to receive ACA rather than the London supplement payable to MPs representing inner London constituencies.

**Parliamentary Privilege**

2. It is a fundamental principle of our constitutional structures that Parliament should not normally be subject to judicial scrutiny or supervision. The House of Commons is answerable to its collective conscience, and in the ultimate analysis, to the electorate. Legal proceedings like these are therefore rare, and it is as well to emphasise at the outset that we are not being asked to address, nor are we addressing, the basis of and justification for the system by which claims for ACA may be made. That is exclusively for the House of Commons itself. The current litigation does not directly or indirectly impeach or question proceedings in Parliament and article 9 of the Bill of Rights 1689 is not engaged. Rather we are interpreting and applying the legislation enacted by Parliament. This expressly included the House of Commons among the public authorities to which FOIA applies (Schedule 1 part 1). Specific provision is made for information held by the House to be exempted from the provisions of the Act if any of its privileges may be infringed (s.34(1)). For this purpose the certificate of the Speaker of the House of Commons would provide conclusive evidence (s.34(3)). None has been signed. There is therefore no reason why the right to and extent of access to information relating to the administration of ACA should not be litigated under FOIA.

**Narrative of the present proceedings**

3. The ACA was introduced in 1971. It is one of several allowances available to MPs and reimburses them "for expenses wholly, exclusively and necessarily incurred when staying overnight away from their main UK residence…for the purposes of performing Parliamentary duties. This excludes expenses that have been incurred for purely personal or political purposes".

4. The House of Commons published information about the total sums paid annually in respect of this allowance to each of the fourteen MPs expressly identified in these proceedings. However further details including the claim forms and supporting documents were then requested. The particular applications were:

   a) On 4th January 2005 Mr Ungoed-Thomas, the fourth respondent, made a request for details on the allowances claimed by Tony Blair in 2001/2, 2002/3 and 2003/4, "specifically, a list of the items totalling £43,029". At the same time he made a request in regard to the allowances claimed by Margaret Beckett over the same period, asking

   > "exactly what items the allowances were spent on and the amounts spent on each of the items over each of the three years" and "if refurbishments or works were paid for out of the public purse… what these refurbishments or works were".

   b) On the following day Mr Ben Leapman, the third respondent, requested copies of the original submissions, together with copies of receipts, rental agreements or mortgage interest statements from a number of named MPs in support of their claims in respect of each of the same three financial years. These MPs were named as Tony Blair, Barbara Follett, Alan Keen, Ann Keen, Peter Mandelson and John Wilkinson.

   c) In March 2006 Ms Heather Brooke, the second respondent, requested a detailed breakdown of the accommodation allowances claimed by MPs. However she recast her request which sought a detailed breakdown of such claims for 2005/6 and all information held by the House authorities, in relation to the accommodation claims made by Tony Blair, David Cameron, Menzies Campbell, Gordon Brown, George Osborne, John

Prescott, George Galloway, Margaret Beckett, William Hague and Mark Oaten. Mr Galloway was an Inner London MP who was not entitled to and made no claim for the allowances. In his case, therefore, no question arose for decision.

For convenience we shall describe the second, third and fourth respondents to the appeal as the applicants.

5. The applications were refused. Complaint was made under section 50 of FOIA to the Information Commissioner (the Commissioner). After a fairly protracted process he decided that the applicants should be provided with a breakdown of the total annual amounts claimed by each MP for accommodation allowances in the specified years. The breakdown was to be given by reference to twelve categories of expense set out in the "Green Book", a House of Commons publication giving details, among other information, about allowances and pensions. Acting through the Corporate Officer of the House of Commons, the House appealed to the Information Tribunal (the Tribunal) under s 57 of FOIA, suggesting that the order for disclosure should not have been made, or alternatively, that the categories of the breakdown of the total annual amounts should be varied. The applicants resisted this appeal and cross-appealed on the basis that the relevant information in respect of each of the four applications should be disclosed in full in accordance with the original or, in the case of Ms Brooke, the amended request.

6. The Tribunal disagreed with the Commissioner. The appeal by the House of Commons was dismissed and the cross appeals were effectively allowed by decision dated 26th February 2008. The Corporate Officer appeals against the Tribunal's decision under section 59 of FOIA. This provides for an appeal from the decision of the Tribunal "on a point of law". Unlike an appeal from the decision of the Commissioner to the Tribunal, this appeal is not a re-hearing nor what is sometimes described as an appeal on the merits. This court has no jurisdiction to interfere with the decision of this specialist Tribunal unless it is *legally* flawed.

**The legislative structure**

7. Section 1 of the Freedom of Information Act 2000 creates a general right of access on request to information held by public authorities in recorded form. Dealing with it generally, the person making the request is "entitled" to be informed by the public authority whether it holds information of the description specified in the request and if so, "to have that information communicated to him". Section 40 provides the House with the only exemption which arises for consideration in the present case. It concerns personal information. So far as material it provides:

> "40 - (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
>
> (2) Any information to which a request for information relates is also exempt information if
>
> > (a) it constitutes personal data which do not fall within sub-section (1) and
> >
> > (b) either the first or the second condition below is satisfied
>
> (3) The first condition is
>
> > (a) in a case where the information falls within any of paragraphs (a)-(d) to the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene:
> >
> > > (i) Any of the data protection principles…
> >
> > (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the

exemptions in section 33A(1) of The Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded".

8. The effect of exemption to the general right of access to information under section 1(1) of FOIA is that unless the exemption is "absolute", "all the circumstances" must be analysed to see whether the public interest in maintaining the exemption "outweighs the public interest" in disclosure. That is the position here.

9. The data protection principles referred to in section 40 of FOIA are defined in section 40(7) as "the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27 (1) of that Act." "Personal data" has the same meaning as in section 1(1) of that Act". We shall refer to the Data Protection Act 1998 as the DPA.

10. Part I of Schedule 1 of the DPA identifies a number of data protection principles. It is common ground that the first is the only relevant principle. It reads:

> "1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
>
> (a) at least one of the conditions in Schedule 2 is met; and
>
> (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

11. Part II of Schedule 1 deals with the interpretation of the principles in Part I, and in the context of the first principle deals with the fair processing of personal data. It was not suggested to the Tribunal that disclosure was being sought of "sensitive personal data" which, as defined in section 2 of the DPA covers truly personal matters, such as physical and mental health.

12. Schedule 2 of the DPA lists the conditions referred to in paragraph (a) of the first data protection principle. The condition said to establish that disclosure otherwise than under FOIA would not constitute a breach of the first data protection principle is found in paragraph 6(1). This provides:

> "The processing is necessary for the purposes of legitimate interests pursued by …the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject".

13. It follows that the general right of access to information is not unqualified. Where a request is made for personal data (within the meaning of section 40(2) of FOIA) that does not relate to the applicant himself it may be exempt from disclosure where disclosure would contravene one of the data principles set out in the DPA. The issue in a nutshell is the potential conflict between the entitlement to information created by FOIA and the rights to privacy encapsulated in the DPA.

**The decision of the Information Tribunal**

14. The carefully structured decision of the Tribunal covers 28 pages of closely reasoned judgment. It provides a careful analysis of the relevant facts, with appropriate findings where the facts were in dispute or potentially controversial. It was an important feature of the reasoning which led to the conclusion which is now criticised by the Corporate Officer that the rules of the House for addressing accommodation allowances during the relevant periods were "redolent of a culture very different from that which exists in the commercial sphere or in most other public sector organisations today". No less important, the Tribunal found that "coupled with the very limited nature of the checks" the system as operated constituted a recipe for confusion, inconsistency and the risk of misuse. Seen in relation to the public interest that public money should be, and be seen to be properly spent, the Tribunal found that the ACA system was deeply unsatisfactory, and its shortcomings both in terms of transparency and accountability were acute. These findings are not open to challenge in this appeal.

15. We have no doubt that the public interest is at stake. We are not here dealing with idle gossip, or public curiosity about what in truth are trivialities. The expenditure of public money through the payment of MPs' salaries and allowances is a matter of direct and reasonable interest to taxpayers. They are

obliged to pay their taxes at whatever level and on whatever basis the legislature may decide, in part at least to fund the legislative process. Their interest is reinforced by the absence of a coherent system for the exercise of control over and the lack of a clear understanding of the arrangements which govern the payment of ACA. Although the relevant rules are made by the House itself, questions whether the payments have in fact been made within the rules, and even when made within them, whether the rules are appropriate in contemporary society, have a wide resonance throughout the body politic. In the end they bear on public confidence in the operation of our democratic system at its very pinnacle, the House of Commons itself. The nature of the legitimate public interest engaged by these applications is obvious.

16. The Tribunal examined the effect of the provision for exemption in the context of "personal data" within the DPA. Even if the disclosure was amply justified in the public interest, the question arose whether it was unwarranted in the context of possible prejudice to the rights or legitimate interests of any individual MPs. None of the MPs personally made any such claim on their own behalf: the assertion was advanced by the Corporate Officer of the House. Subject to minor matters of detail (two of which will need further specific attention later in the judgment) the Tribunal concluded that, notwithstanding the entitlement of MPs to their privacy, the disclosure was not unwarranted, and should therefore be given.

17. In reaching its conclusion on these issues the Tribunal reflected on the very large number of considerations advanced on behalf of the Corporate Officer. These included the existence of a scheme for publication of the system for payment of ACA expenses and the annual audit which meant that the need for public scrutiny was sufficiently fulfilled. It was suggested that it would be unfair for MPs to be exposed to criticism for claims properly made within the rules as they existed at the time. Disclosure would lead to further questioning of MPs by the media and if disclosed the figures would be liable to be misunderstood and false comparisons might be drawn. This would distract from more important parliamentary business. Many of the issues arising from the disclosure went more to the principles governing the payment of ACA, rather than the details of the expenditure themselves. These needed no further disclosure as there was ample information available to the public. It was further suggested that wider disclosure would be liable to discourage the most able citizens from seeking election to the House. It was pointed out that MPs themselves were not public authorities subject to FOIA. Moreover there would be a perverse risk that those MPs who provided most supporting information for their claims to allowances would be those most greatly exposed to public scrutiny. We have noted this wide ranging series of suggestions, relied on by the Corporate Officer and rejected by the Tribunal as sufficient to outweigh the public interest in disclosure, before recording, in the language of the decision, that it was "suggested that further disclosure would be unfair, having regard to the history of MPs, expectations".

**Reasonable expectations**

18. The principal ground of appeal asserts that the Tribunal misdirected itself by failing to recognise the existence of and therefore give appropriate weight to the reasonable expectations of MPs about precisely how information about the ACA claims would be made available to the public. In essence it was submitted by Mr Nigel Giffin QC on behalf of the Corporate Officer that this constituted an error of law which infected the entire decision, and although the Tribunal purported to conduct the necessary balancing exercise, this highly relevant consideration was not addressed or was inadequately addressed.

19. We must record the chronology and the relevant facts. On 16th July 1998 the DPA was enacted. The principles of fair processing of data encapsulated in Schedule 1 came into force on 1st March 2000. The FOIA was enacted on 30th November 2000. Different commencement dates were provided for different sections of the Act. In July 2001 a revised system for claims for allowances to ACA was adopted by the House. This was the scheme in force when the requests for information were made by the applicants.

20. On 30th November 2002 section 19 of FOIA was brought into force. This required a public authority to adopt and maintain a publication scheme approved by the Information Commissioner which specified classes of information which the public authority published or intended to publish. Section 19(3) required the public authority to have regard to the public interest in allowing public access to the information it held. The House of Commons is designated as such a public authority and in due course it adopted its publication scheme approved by the Commissioner.

21. On 16th December 2002 the Speaker wrote to members of the House of Commons in the following

terms:-

> "I am writing to all Members to tell you what the Freedom of Information Act 2000 will mean in connection with your parliamentary allowances.
>
> The Act which comes into force on the 1st January 2005 gives people a right of access to information held by public bodies. Our legal advice is that the House should publish the total sum for each allowance which each Member has used for each financial year.
>
> This approach meets our Freedom of Information obligation and provides transparency and accountability, while respecting the reasonable personal privacy of Members and their staff".

22. Further letters were written on behalf of the Speaker in June and July 2003 and August 2004 giving further information about the publication scheme, but the arguments which arise in this appeal are not advanced any further than the letter of 16th December 2002.

23. The accounting systems used for ACA were revisited in 2003 after the discovery of problems relating to the application of the scheme. The present version of the publication scheme was adopted in November 2004. In about March 2005 the form of the "Data Protection" statement was amended to read:

> "…for the purposes of the Freedom of Information Act 2000 the House of Commons Administration is a Public Authority and therefore the information it holds will fall within the scope of that Act".

24. The Corporate Officer submits that the adoption of the publication scheme, together with the letter dated 16th December 2002, gave rise to a reasonable expectation in MPs about whether, and if so when and how, details of expenses claimed under ACA would be available to the public. This provides the context in which to address the complaint in relation to reasonable expectation made on his behalf.

25. The Tribunal addressed the history of MPs' expectations in paragraph 79 (b) of the judgment as one of the factors by which it was "unimpressed". It recorded the suggestion that further disclosure would be unfair because of the history of these expectations. Its conclusion was terse and reads, "the evidence did not establish this, as we have already indicated." This observation was a direct reference back to paragraphs 44 and 45 of the judgment under the headline "MPs' expectations".

26. Paragraph 44 reads:

> "The Speaker wrote to MPs in December 2002 and again in June 2003 in connection with the publication of annual totals for each of the different allowances in the House's publication scheme. The first letter stated that this would meet the House's obligations under FOIA. But it was only in 2005 that the ACA forms began to contain a statement expressly reminding MPs that information held by the House of Commons administration fell within FOIA".

27. Paragraph 45 reads:

> "It was suggested to us that these circumstance confined MP's reasonable expectations of how their personal data, submitted to the Fees Office, would be handled, namely, that they reasonably expected that nothing would be released except the totals contained in the publication scheme. We found this submission unconvincing. FOIA was passed into law in 2000. In our view MPs, as part of the legislature, would or should have been fully aware of the provisions of FOIA which might affect them. The obligation referred to in the Speaker's December 2002 letter would naturally have been understood as the obligation to implement a publication scheme, which came into force a few days earlier (30 November 2002). Neither letter made any specific reference to how individual requests for additional information might be dealt with when FOIA came fully into force. Moreover we noted a letter in the closed bundle, dated in May 2002, in which Mr Walker's office reminded a particular MP of the importance, in view of FOIA, of providing a breakdown of expenses requested by the office. We take this as an illustration that the possibility of a freedom of information request was something which was taken into account in the

> handling of MP's allowance claims long before the Act was brought fully into force on 1 January 2005. Indeed, Mr Walker in his evidence expressly recognised that published guidance available to MPs (such as the Green Book) was entirely neutral concerning what would happen in respect of requests under FOIA for information beyond that contained in the publication scheme, that the House ought to and does deal with such requests on their merits, and that it was always possible that further information might be released. Thus Ms Grey appeared to us to accept in her closing submissions that MPs knew or ought to have known that requests for further information might be made under FOIA."

28. Mr Giffin submitted that the Tribunal's decision gave insufficient weight to the reasonable expectations of MPs and resulted in three distinct overlapping legal errors. He suggested that the Tribunal's reasoning assumed an inconsistency between an expectation that only certain information would be disclosed and a realisation that additional information might be disclosed. This was illogical. By implication, the Tribunal wrongly rejected the proposition that an expectation that there would be no further publication could arise from the terms of the publication scheme itself, and the Tribunal's reading of the letter dated December 2002 was "untenably" narrow.

29. It was accordingly submitted that if the individual MP, as the data subject, was informed by the data controller that personal information would not be disclosed save in accordance with the publication scheme made under section 19, any additional disclosure in response to a request under section 1(1) of FOIA would be unfair, unless there were compelling reasons why it was necessary to make disclosure notwithstanding the rights or legitimate interests of the MP. In short, the expectations of the MP were important, even if not decisive, and the decision of the Tribunal produced a conclusion which was disproportionate. That said, Mr Giffin was unable to go further, and suggest that any such expectations would automatically outweigh the public interest, or that their expectations, even if reasonable, would be decisive.

30. The submission of the Commissioner, and indeed the applicants, was that these contentions were without merit. They represented an inadmissible challenge to a finding of fact and/or judgment exercised by the Tribunal. The publication scheme under section 19 of FOIA involves an expansion rather than a restriction of access rights under FOIA, and the scheme itself, both as structured and within the statutory purpose, did not give rise to any reasonable expectation that further disclosure would be limited to the approach in the scheme. The scheme could not limit the ambit of the entitlement provided by section 1 of FOIA, nor give rise to expectations which would prevent legitimate disclosure. It was further emphasised that the Tribunal's approach to the Speaker's letter was correct because the letter was referring to the obligation of the House to comply with its statutory duty under s.19 of FOIA, and could not constitute any reasonable expectation that nothing further would be disclosed under section 1. In any event the Commissioner suggested that the Corporate Officer was seeking to rely on a different "expectation" in the course of the appeal to the one relied on before the Tribunal. In summary, the Tribunal rejected the argument that there was a reasonable expectation that disclosure would be limited to the material included in the scheme. It was entitled to do so.

31. In view of our narrative of the critical facts it is impossible for us to conclude that the Tribunal simply ignored the issue of MPs' reasonable expectations. This conclusion is reinforced by the careful listing of the argument as the second of a total of ten considerations advanced on behalf of the House in support of the contention that disclosure would be inappropriate. Each was addressed in turn by the Tribunal, and albeit briefly, a clear readily understood reason given for its conclusion.

32. In our judgment the submission that the Tribunal failed to address the arguments advanced to it in the context of the reasonable expectation of MPs is unrealistic. The judgment speaks for itself. The Tribunal expressly recorded the argument, and expressly rejected it. It did so by reference to the facts, including the publication scheme itself and the relevant letters. We can find no misdirection or other error of law which would justify interfering with the decision of the Tribunal.

33. In the light of the importance of the point we add our own conclusions. Despite Mr Giffin's endeavours, we were unable to ascertain which representations made to MPs would have enabled them reasonably to expect that the detailed information ordered to be disclosed by the Tribunal would not enter the public arena. To the extent that it may have been suggested that information beyond the publication scheme would *never* be disclosed, such a representation would conflict with the fundamental purpose of section 1(1) of FOIA which was a distinct obligation to the publication scheme obligations imposed under section 19. That indeed was conceded before the Tribunal. Moreover the letter from the Speaker did not say in terms that this represented his understanding of the effect of the scheme, or that legal advice to this effect had been received. We are not surprised. Once legislation which applies to

Parliament has been enacted, MPs cannot and could not reasonably expect to contract out of compliance with it, or exempt themselves, or be exempted from its ambit. Such actions would themselves contravene the Bill of Rights, and it is inconceivable that MPs could expect to conduct their affairs on the basis that recently enacted legislation did not apply to them, or that the House, for its own purposes, was permitted to suspend or dispense with such legislation without expressly amending or repealing it. Any such expectation would be wholly unreasonable.

34. If on the other hand the representations relied on by Mr Giffin suggested that this information would not *normally* be disclosed, this would beg the question of what normally means, and when it would be contemplated that a departure would be appropriate. It is highly significant, and fair to them to record, that none of the MPs who are themselves the subject of these applications have suggested that they conducted their affairs, or made claims for ACA, on the basis of any understanding that detailed information about their claims would not be disclosed. This, too, is unsurprising. MPs making a claim for ACA would expect to do so within the rules, and not outside them. Any form of public scrutiny and accountability should confirm that their claims were made consistently with them. Even if (which we do not accept) MPs were justified in anticipating that the details of their claims for ACA would not normally be disclosed, once it emerged, as the Tribunal has found, that the operation of the ACA system was deeply flawed, public scrutiny of the details of individual claims were inevitable. In such circumstances it would have been unreasonable for MPs to expect anything else.

**Disclosure of addresses to which ACA claims relate**

35. The broad conclusion of the Tribunal was that it would not be appropriate to introduce a general exception precluding disclosure of the addresses of MPs. As indicated earlier in the judgment the Tribunal decided that a number of exceptions should be allowed to full disclosure. Two relevant exceptions were:

> "(6) All details relating to the security measures at MP's homes ( whether goods or services) save that where an amount has been identified by the MP as relating to security, that reference and the total amount attributed to it shall not be redacted.
>
> (7) Where a particular MP has a special security reason for keeping the address of his or her main or second home confidential (for example, because of a problem with a stalker, or a terrorist or other criminal threat), that address may be redacted. "

36. The Tribunal observed that the addresses of well-known MPs like Mr Blair and Ms Beckett were available in any event, and that every prospective MP would be registered as candidates and as electors, with names and addresses in the public electoral register. The Tribunal went on to note that details of property ownership were available from HM Land Registry. Accordingly, since at least one address of an MP would be in the public domain in any event, there would not "ordinarily be a sufficient reason for keeping a further address confidential, particularly when scrutiny of the identity of second homes is part of the reason for disclosure of the information under consideration". The specific exceptions to full disclosure were self-evidently directed to the genuine case where there was a security issue.

37. Mr Giffin submitted that this conclusion is flawed. The disclosure of an individual private residential address represented an intrusion into what Mr Giffin described as a "core" issue of privacy. It was neither proportionate nor necessary for the addresses to which ACA related to be disclosed to the public. Accordingly the first data protection principle was contradicted. Merely because some addresses of MPs were publicly available, it did not follow that there should be public disclosure of addresses which were not. The reference to the availability of information on the Land Registry failed to address the difficulty involved in an investigation through the Land Registry, which was quite different from information being available on demand through an FOIA request. The security problem was not sufficiently addressed by excluding the addresses of MPs who already had a special security reason for keeping the address confidential. It was not possible to anticipate any particular time when special security reasons might arise, and if they arose after disclosure of the relevant address, the security exclusion would be too late to be of use.

38. This submission was new minted for the purposes of the appeal and was not the way the issue was addressed before the Tribunal. No evidence of any particular security issue relating to any of the 14 MPs whose ACA claims were under consideration was advanced. The submissions of law were confined to the risk of specific threats. The Tribunal's decision made allowance for such risks, if appropriate evidence were forthcoming in subsequent cases.

39. The Commissioner's position was that he did not resist the appeal. However Mr James Goudie QC on his behalf did not attempt to identify any error of law or fact in the Tribunal's decision on the issue. We agree with Mr Hugh Tomlinson QC that we should not endeavour to grapple with the point in the abstract. The strength of the Tribunal's reasoning depended on its overall conclusions about the many deficiencies in the ACA scheme which was exclusively concerned with accommodation arrangements. Having closely examined the privacy issue, not only as it related to the MPs claiming ACA, but also to anyone living with them, the Tribunal concluded that "the ACA system is so deeply flawed, the shortfall in accountability is so substantial, and the necessity of full disclosure so convincingly established, that only the most pressing privacy needs should in our view be permitted to prevail". It may be that the system will be revised, and subject to much more robust checking to ensure, for example, that the addresses to which ACA relates do in fact exist, and that the claims for them are within the scheme and not excessive. If so, the case for specific disclosure of such addresses may be rather less powerful. As it seems to us, all the necessary elements to the decision making process were properly recognised and carefully balanced by the Tribunal. No basis has been shown to justify interference.

40. In the light of the full written argument and oral submissions, and bearing in mind the public interest in the point, we should perhaps add these further observations.

41. No one would disagree that the address of each individual's private residence is personal data, and represents an aspect of private and family life, but a residential address is an aspect of private life which may not be very private at all. So, for example, MPs are required to disclose an address when seeking nomination for election. This address is published in the electoral process. Usually it will be the constituency address of the candidate and its publication inevitably diminishes its private nature. Other professions and occupations may require notification of and public access to a residential address. Thus, company directors are required to provide a residential address available to those who search the register of companies. Everyone eligible to vote must have his or her address recorded in the register of electors, full versions of which are available for public scrutiny in local libraries and local government offices. The reality is that an individual who is determined to discover a residential address of an adult law-abiding citizen is likely to be able to do so by one legal means or another, and where the person concerned is the holder of a public office and in the public eye, such an inquiry is likely to be easier.

42. None of this is intended to suggest that the disclosure of an individual's private address under FOIA does not require justification. In the present case, however, there was a legitimate public interest well capable of providing such justification. Thus, for example, there is evidence which suggests that one MP claimed ACA for a property which did not exist, and yet further evidence may demonstrate that on occasions MPs claiming ACA were letting out the accommodation procured from the ACA allowance.

43. In essence Mr Giffin's argument was that the justification relied on was not sufficiently weighty to make the disclosure of these addresses necessary in all circumstances. It was common ground that "necessary" within schedule 2 para 6 of the DPA should reflect the meaning attributed to it by the European Court of Human Rights when justifying an interference with a recognised right, namely that there should be a pressing social need and that the interference was both proportionate as to means and fairly balanced as to ends. We note the explanation given by the court in *The Sunday Times v United Kingdom* (1979) 2 EHRR 245 paragraph 59:

> "The court has already had the occasion …to state its understanding of the phrase "necessary in a democratic society" the nature of its functions in the examination of issues turning on that phrase and the manner in which it will perform those functions.
>
> The court has noted that, while the adjective "necessary", within the meaning of article 10 (2) is not synonymous with "indispensable", neither has it the flexibility of such expressions as "admissible", "ordinary", "useful", "reasonable" or "desirable" and that it implies the existence of a "pressing social need."

44. We recognise that if the arrangements for oversight and control of the ACA system were to change, then the issues of the privacy and security of MPs and their families might lead to a different conclusion to the one reached by the Tribunal. The Tribunal was required to act on the evidence available to it, and make its judgment accordingly. If the question were to arise again, the Commissioner, and if necessary the Tribunal, again, would have to make whatever decision was appropriate in the light of changed circumstances. Equally we cannot interfere with the Tribunal's decision on the basis of what the appropriate outcome might be if the Tribunal were not addressing the deeply flawed system which the Tribunal believed had "so convincingly established" the necessity of full disclosure which included

the addresses to which the ACA forms applied.

45. The appeals by the Corporate Officer of the House of Commons are dismissed.

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