



Tribunals Service

Information Tribunal

Information Tribunal Appeals Numbers: EA/2007/0060, 0061, 0062, 0063, 0122, 0123, 0131

ON APPEAL FROM

Information Commissioner's Refs: FS50070469, FS50051451, FS50079619, FS50124671

Heard at Bedford Square, London, WC1
On 7-8 February 2008

Decision Promulgated
26 February 2008

BEFORE

CHAIRMAN

ANDREW BARTLETT QC

and

LAY MEMBERS

**DAVID WILKINSON
PIETER DE WAAL**

Between

CORPORATE OFFICER OF THE HOUSE OF COMMONS

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

**(1) BEN LEAPMAN
(2) HEATHER BROOKE
(3) MICHAEL THOMAS**

Additional Parties

Representation:

For the Appellant, Eleanor Grey
For the Respondent, Timothy Pitt-Payne
For Ms Brooke, Hugh Tomlinson QC
For Mr Thomas, Philip Coppel
Mr Leapman appeared in person

Decision

The Tribunal dismisses the appeal by the House of Commons. The Tribunal allows the cross-appeals and substitutes the following decision notices (which for ease of reference we have combined into one) in place of the four decision notices listed in the heading to these appeals.

SUBSTITUTED DECISION NOTICE

Dated 26 February 2008

Public authority: House of Commons

Address of Public authority: House of Commons, London SW1A 0AA

Names of Complainants: Ben Leapman, Heather Brooke, Michael Thomas

The Substituted Decision

For the reasons set out in the Tribunal's determination, the substituted decision is that all the information held by the House which falls within each complainant's request or requests must be disclosed to that complainant, subject to the following exceptions which shall be implemented by omission or redaction:

- (1) Any sensitive personal data, relating to the MPs named in the requests, within the meaning of DPA s2(a), (c) or (e)-(h).
- (2) Personal data of third parties (not the MPs). But this exception shall not extend to the name of any person to whom the MP paid rent or mortgage interest which was claimed under ACA.
- (3) The MPs' bank statements, loan statements, credit card statements, other personal financial documents, and financial account numbers and financial reference numbers. This exclusion shall not extend to the names of mortgagees, chargees or landlords in respect of homes for which ACA was claimed, or to the amounts of interest or rent which were paid, claimed and reimbursed under ACA or (subject to the requisite redactions of sensitive or irrelevant data) to the information submitted in support of such claims contained on statements of account with mortgagees, chargees or landlords: these items of information must be disclosed.
- (4) The itemised parts of telephone bills listing calls to individual numbers.
- (5) The names and addresses of suppliers or contractors who had regular access to the MPs' homes.
- (6) All details relating to the security measures at the MPs' 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.

The reference above to Ms Brooke's request is to her request as recast (see paragraph 5 of the Reasons for Decision).

Action Required

The information defined above, relating to each complainant's request, shall be disclosed to that complainant within 28 days from the date of this decision.

Dated this 26th day of February 2008

Signed

Andrew Bartlett QC

Deputy Chairman, Information Tribunal

Reasons for Decision

Introduction

1. The duties of Members of Parliament are chiefly carried out at Westminster and in their constituencies. They often work long hours, and late into the evening. As a result, MPs for constituencies outside Inner London generally need to reside in two different places. Since 1971 they have been entitled to claim expenses up to a set limit to defray the additional costs of hotel bills or a second home. The allowance which they can claim for this purpose is called the Additional Costs Allowance, or ACA.
2. This appeal is concerned with the extent to which the House of Commons administration must disclose the details of MPs' ACA claims under the Freedom of Information Act ("FOIA"). The House claims an exemption which depends upon the application of certain provisions of the Data Protection Act ("DPA").
3. MPs are entitled to claim a number of other allowances, including for staffing, travel, communication with constituents, and incidental expenses. Travel expenses were considered by the Tribunal in *Corporate Officer of the House of Commons v Information Commissioner and Norman Baker* [2007] UKIT EA 2006 0015 ("the Baker case") and in *Corporate Officer of the House of Commons v Information Commissioner* [2007] UKIT EA 2006 0074 ("the Moffat case"). Our present decision relates only to ACA and not to any of the other allowances.

The requests for information

4. The total sum paid annually to each MP in respect of ACA is published in the House's publication scheme. Three members of the public sought more details.
5. Four requests were made to the House of Commons:
 - (1) On 4 January 2005 Mr Thomas, a journalist who writes under the by-line 'Jon Ungoed-Thomas', made a request for details on the ACA claimed by Tony Blair in 2001/2, 2002/3 and 2003/4, "specifically, a list of the items totalling £43,029" under the ACA.
 - (2) On the same day Mr Thomas also made a request with regard to the ACA 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".
 - (3) On 5 January 2005 Mr Leapman, who is also a journalist, requested copies of the original submissions, with copies of receipts, rental agreements or mortgage interest statements, from named MPs in support of their claims for ACA in each of the same three financial years as Mr Thomas's request. The named MPs were Tony Blair, Barbara Follett, Alan Keen, Ann Keen, Peter Mandelson and John Wilkinson.

(4) Some 14 months later, on 20 March 2006, Ms Brooke, who is a freedom of information campaigner and freelance journalist, requested a detailed breakdown of MPs' ACA. At a later stage, after reference to the cost limit set under FOIA section 12, her request was recast as being for a detailed breakdown of ACA claims for 2005/6 and all information held by the House, in relation to the claims made by Tony Blair, David Cameron, Menzies Campbell, Gordon Brown, George Osborne, John Prescott, George Galloway, Margaret Beckett, William Hague and Mark Oaten.

6. The requests were made to the House of Commons administration, not to the individual MPs. That was because the House of Commons is a public authority subject to FOIA, while individual MPs are not. All the requests were refused by the House, both initially and after internal review.
7. There was no disclosure which could be given in regard to Mr Galloway, since as an Inner London MP (constituency: Bethnal Green and Bow) he was in receipt of London Supplement and was not entitled to and made no claim for ACA. We are therefore concerned with requests relating to the other 14 individual MPs.

The complaints to the Information Commissioner

8. Following the refusals the three applicants complained to the Information Commissioner in April 2005 (Thomas and Leapman) and in July 2006 (Brooke).
9. The Commissioner, in the course of his investigation of the Thomas and Leapman requests, asked on 9 September 2005 that the House provide him with access to the disputed information which it held. Ultimately on 6 June 2006 the Commissioner issued an information notice requiring the House to make it available. This was complied with in July 2006. The Commissioner's decision notices in relation to all four requests were issued nearly a year later, on 13 June 2007.
10. The Commissioner decided that the House should provide the applicants with a breakdown of the total annual amounts claimed by each relevant MP for ACA in the specified years. The breakdown was to be given by reference to 12 categories of expense set out in the 2005 and 2006 'Green Book'. (The Green Book is a House of Commons publication, which gives details about Parliamentary salaries, allowances and pensions.) It is not necessary for us to lengthen this decision by summarising the Commissioner's reasoning here: his decision notices are available on his website.

The appeal to the Tribunal

11. Neither the House nor the applicants were content with the Commissioner's decisions. The House appealed to the Tribunal, contending that no disclosure should have been ordered or, alternatively, that the categories of breakdown should be varied. The applicants sought to resist the appeal and also cross-appealed, contending that the relevant information held by the House should be disclosed in full.
12. We are conscious that three years have now elapsed since the first requests. This is plainly very unsatisfactory. However, the reasons for the long delays were not the

subject of evidence or submissions before us and we make no further comment on them.

The questions for the Tribunal

13. The right of access to recorded information held by public authorities is set out in FOIA s1. It is subject to a variety of exemptions. In resisting disclosure, the House has relied throughout on FOIA s40. The part of that section relevant to the present appeals reads as follows:

(2) Any information to which a request for information relates is ... exempt information if-

(a) it constitutes personal data ..., and

(b) ... the first ... condition below is satisfied.

(3) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of 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 ...

(7) In this section-

"the data protection principles" means 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

"personal data" has the same meaning as in section 1(1) of that Act.

14. It is agreed by all parties that in the present case this raises the preliminary question whether all or part of the information requested is "personal data".

15. It is also agreed that, if the information is personal data, the only data protection principle at risk of being contravened is the first principle set out in DPA Schedule 1, namely

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.

16. In the course of the hearing of the appeals the applicants made clear that they were not seeking disclosure of "sensitive personal data" as defined in DPA s2 (which covers a variety of particularly personal matters such as physical and mental

health), and that any such data should be excluded from the disclosure by redaction.

17. The Schedule 2 condition which is principally relied on by the applicants as permitting disclosure without breach of the first data protection principle is the condition in DPA Schedule 2 paragraph 6(1):

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.

18. In this context the type of “processing” we are concerned with is disclosure to the public. The ‘data subject’ means the MP (or any other person) whose details may be disclosed. Fair treatment is an element in the “legitimate interests” of the data subject. In the circumstances of the case it is accepted by the House that disclosure would be fair and lawful if condition 6(1) were satisfied.

19. Mr Coppel on behalf of Mr Thomas also relied on conditions 5(aa) and 5(d). These are that the processing is necessary (aa) for the exercise of any functions of either House of Parliament or (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

20. FOIA does not require the public authority to carry out research or create information, but only to disclose recorded information that is held. The alternative limb of the appeal by the House arises because the House says it does not hold the recorded information in categories corresponding with those in the Commissioner’s decision notice.

21. The questions for us are therefore the following:

(a) whether or to what extent the information held by the House relating to the ACA claims of the 14 MPs is personal data;

(b) whether disclosure of some or all of the details requested would be in conformity with condition 6(1) of DPA Schedule 2;

(c) whether such disclosure would be in conformity with condition 5(aa) or 5(d) of DPA Schedule 2;

(d) whether the House can and should be compelled to disclose information categorised in the manner required by the Commissioner’s decision notice.

22. It was accepted by all parties that the Tribunal has full power to review the Commissioner’s findings of fact for the purpose of deciding whether the decision notices were in accordance with the law (see FOIA s58).

Evidence and findings of fact

23. We received in evidence a large quantity of documentation.

24. Mr Andrew Walker, the House of Commons Director General of Resources, gave sworn evidence before us. He confirmed his witness statements and told us about the system of allowances, the House's publication scheme, the ACA, the information held, the extent of external scrutiny, and how the requests were dealt with. He was cross-examined at length by the other parties. In closed session he produced a representative sample of the information held by the House falling within the requests, and was cross-examined on behalf of the Commissioner. The sample consisted of the information held relating to six of the MPs, subject to some redactions. We did not find it necessary to request sight of any further or unredacted files. We found him to be a candid and reliable witness on matters of fact.
25. Where matters of judgment were involved, at times his answers were rather obviously framed to maintain and justify, or at least not to contradict, the line adopted by the House in response to the requests, rather than to give a direct answer to the question. He emphasised that MPs were ultimately accountable through the ballot box. When pressed on how electors could make informed decisions without information on the make up of allowance claims, he responded by referring to the publication scheme with its annual totals and stating that whether electors needed more specific information was "what the Tribunal was looking at". When asked if he thought the present system of allowances commanded public confidence, he said he could not answer yes or no, while acknowledging that some concerns had been expressed. Reference was made in cross-examination to the Prime Minister's letter of 5 February 2008, which responded to a letter from the Speaker referring to a proposed "root and branch examination of the current system" by the Members' Estimate Committee. When Mr Walker was pressed with the proposition that his statement was an attempt to defend an indefensible status quo, he answered that the House authorities would like the requests judged against the law on their merits, and were also persuaded of the need to carry out a review without prejudice to the outcome.
26. We received a witness statement from Mr Thomas. This dealt with the making of his requests, some of the history of the ACA and the amounts claimed, the extent of external scrutiny, the importance of the information to the public, and comparison with the position of MSPs in Scotland. The facts in his statement were not challenged (as opposed to matters of opinion, speculation or argument, which the House made clear were not accepted). He stated that not providing full information on ACA claims had led and continued to lead to damaging speculation which lowered the public opinion of MPs. Mr Walker, when asked about this specific matter, preferred not to express a view on it.
27. Mr Thomas also relied on a statement by his solicitor, Mr Rupert Earle, which addressed the January 2008 Report of the Review Body on Senior Salaries entitled "Review of parliamentary pay, pensions and allowances 2007", recent news concerning claims by Mr Derek Conway MP for salaries paid to family members, and calls for greater openness. We have reminded ourselves that our task is to decide whether the information requests concerning ACA claimed by the 14 MPs were dealt with in accordance with FOIA after they were received. We found Mr Earle's material useful in so far as it shed light on the situation and proper approach to disclosure at the time when the requests were dealt with by the House. The

subsequent controversy over Mr Conway's salary claims is not relevant to our considerations.

28. Ms Brooke relied on a statement by David Banisar, Deputy Director of Privacy International, and Visiting Research Fellow at the School of Law at the University of Leeds. This provided an international perspective relating to privacy and freedom of information, especially in the case of elected officials. We found this of some value, but of course our duty is to apply the law in force in England and Wales irrespective of how similar matters may be handled in other countries.

Administration of ACA

29. The source of the power to pay ACA lies in Resolutions of the House relating to expenditure charged to the Estimate for House of Commons: Members. The relevant Resolution authorises an allowance in respect of the additional expenses necessarily incurred in staying overnight away from the MP's only or main UK residence for the purpose of performing his or her parliamentary duties. Where the main residence is in Inner London, the allowance relates to duties performed in the constituency. Where the main residence is in or near the constituency, the allowance relates to duties in London. Where the main residence is neither in London nor in the constituency, the member may notify a choice and then claim either for London duties or for constituency duties.
30. More detailed provisions for ACA appear in the Green Book. We were provided with relevant parts of versions published in the years 2001, 2002, 2003, 2005 and 2006. ACA is subject to a ceiling per MP which alters from year to year in accordance with an inflation formula. The maxima for the years to which the requests related ranged from £18,009 for 2001/2 to £21,634 for 2005/6. These figures equate to about 35% of an MP's salary before tax. Unlike the salary, the allowance is not subject to income tax. The current level of ACA is equivalent to £425 per week, which on the evidence would pay only for a furnished single room flat in central London. Nevertheless the total spend on ACA of around £10 million per annum is not insignificant.
31. Members claiming for ACA or travel expenses are currently required to submit a form ACA1 in which they identify their main home address and, if applicable, the address of their second home. In order to make a claim, a Member completes an ACA2 claim form and (depending on circumstances) may provide back up documents which evidence the relevant expenditure or provide further information.
32. We find the following salient points concerning the administration of ACA to be established as a result of Mr Walker's evidence, taking into account the criticisms made of the evidence by the other parties:
- (1) The ACA1 in use before 2003 only required notification of the main residential address and a statement making clear whether the MP intended to claim ACA in London or in the constituency. The second home was not required to be identified.
 - (2) Frequently the largest single item making up an ACA claim is mortgage interest on the second home. While the ACA2 in use before 2003 provided for

certain categories of expense, it was designed without anywhere to state mortgage interest except under the heading "Other".

(3) In general, receipts were not required before 1 October 2003. In practice it was possible for an MP to claim each month for one twelfth of the annual maximum without independent documentation.

(4) The Green Book rules and the format of the ACA1 and ACA2 forms were altered during 2003, as part of a general tightening up of procedures in the aftermath of the investigation into expenses wrongly claimed by Mr Trend MP. Before that time the checks made on claims had been cursory.

(5) Following the introduction of tighter procedures, the total spend on ACA fell by nearly 20 per cent (from £11,968,000 in 2002/3 to £9,712,000 in 2003/4). Mr Walker was unable to offer any explanation for the drop in 2003/4, but conceded it was possible that the tighter procedures were "part of the explanation".

(6) Before the 2003 change in procedures ACA was administered without comprehensive standard instructions. Individual validation officers kept their own notes, which they used to assist them in determining claims.

(7) Even today, the guidance on ACA in the Green Book is incomplete. No definitive statement of the rules for ACA is available to the public, or even to MPs themselves. It is administered by validation officers with the aid of 'desk instructions', precedent records held on computer, and a confidential list indicating acceptable costs for certain classes of item based on prices derived from the John Lewis website. The list is kept secret from Members lest the maximum allowable prices become the going rate. Members are not trusted to have access to it.

(8) The recent editions of the Green Book require receipts for hotel expenditure, but otherwise no receipts for any item up to £250, or for any amount in the case of food. Some MPs choose to submit receipts notwithstanding that they are not required.

(9) In the desk instructions, but not in the Green Book, there is a limit of £400 per month on the amount claimable for food. Mr Walker considered that Members were well aware of the limit on food, but was unable to say by what means they were made aware, except that those who claimed more than £400 per month would have been advised by individual letters.

(10) In a number of respects the categories of expenditure listed in the Green Book as being allowable do not match the actual headings on the ACA2 claim form.

(11) The Green Book defines the scope of the allowance as reimbursing Members for expenses "wholly, exclusively and necessarily incurred when staying overnight away from their main UK residence ... for the purpose of performing Parliamentary duties. This excludes expenses that have been incurred for purely personal or political purposes." The phrase "wholly,

exclusively and necessarily” was introduced in 2003. This definition does not give explicit guidance on how expenditure for mixed purposes is treated (ie, whether it may be apportioned, or should simply be disallowed), nor does it match the way the allowance is actually administered. While the current ACA2 form (unlike its predecessor) requires MPs to sign under a rubric which includes the phrase “wholly, exclusively and necessarily”, the reality is that the requirements “wholly” and “exclusively” are not widely understood or enforced. Although not stated in quite these terms by Mr Walker, it was clear from his evidence that expenditure incurred for dual purposes is routinely allowed in full and that, subject to reasonableness limits, all second home expenditure is allowed in full.

(12) Members are encouraged to claim monthly or quarterly, but may claim on form ACA2 for any period up to a full year.

(13) Members’ practices in how they categorise expenditure and fill in the forms vary widely.

(14) The framework of rules governing the administration of ACA is said to be based on the principle that Members are primarily responsible for identifying, claiming and certifying their own expenditure on allowances, and for the propriety of that expenditure. Historically, this is because of their constitutional position as elected representatives.

(15) There is no check of any kind on items of expense up to £250, which (subject to the annual maximum amount) may be unlimited in number, or on food expenditure of up to £400 per month.

(16) Mr Walker’s department does not check ‘additionality’ on an on-going basis. If an MP claims the weekly shopping bill, his department assumes that, because it is claimed, it is additional expenditure necessarily incurred for Parliamentary duties. If an MP becomes a Minister and is provided with grace and favour accommodation, the department does not make any inquiry whether a second home is still needed.

(17) The MP’s costs while living away from home are treated as if they were additional even though, for example, the MP would have had to buy and consume food if staying at his or her main home. The size of the gap between theory and practice was illustrated by an example given by Mr Walker in his statement: “a Member can claim the cost of telephone calls using ACA. Those calls may have been made for personal reasons – the defining factor is that the Member is staying in London in order to attend the House, not that the calls themselves were made for Parliamentary purposes.” In other words, telephone calls made for purely personal purposes, which may have cost the Member exactly the same amount in call charges if they had been made from the main home, are reimbursed in full. The cost of such calls is neither wholly nor necessarily nor exclusively incurred as a result of the MP having to be in London for Parliamentary duties.

(18) When receipts for goods or services are submitted, there is not normally any check on what the Member has used the goods or services for.

(19) The National Audit Office is responsible for auditing the financial statements of the House of Commons: Members. The audit by its nature is directed to the formation of an opinion that the financial statements give a “true and fair view” of the state of the financial affairs of the House. Annual expenditure is between £150 and £200 million. Mr Walker had been told by the auditors that last year 47 entries in the general ledger for the Members Estimate had been audited which related to ACA, without anything untoward being found. (Given the accounting concept of materiality, we would not have expected the extent of professional audit checks on MPs’ expenses required for the purpose of signing off the financial statements to be extensive.)

(20) Suspected abuses of the system may be reported to the House’s Standards and Privileges Committee. Mr Walker was unable to think of an example of a formal investigation into an MP’s expense claims which had been initiated other than as a result of a tip-off or other unauthorised leak of information.

(21) The system of allowances is subject to scrutiny by the Review Body on Senior Salaries at approximately three year intervals.

(22) The Review Body on Senior Salaries recommended in their January 2008 report that the House of Commons should request the National Audit Office to audit the expenses of a representative sample of some 5-10% of MPs each year in order to increase public confidence in the system of reimbursement. Mr Walker expressed surprise at this recommendation. He explained his surprise by suggesting that the Review Body must have been unaware of the nature of the current checks. In our view the recommendation was a logical one for the Review Body to make if they were well aware of the nature of the current checks.

(23) While the Review Body report indicated that some MPs interpret the term ‘allowance’ as meaning an amount that is allocated regardless of actual expenditure (paragraph 1.13), Mr Walker emphasised that ACA is supposed to be solely a reimbursement of actual expenditure necessarily incurred by the MP.

33. It is not our function to say what system ought to be operated by the House. But we cannot avoid making some assessment of the existing system, since we cannot decide the issues which are before us without arriving at a view on the effectiveness of the existing controls. The laxity of and lack of clarity in the rules for ACA is redolent of a culture very different from that which exists in the commercial sphere or in most other public sector organisations today. While we can appreciate that the emphasis on self-certification is historically derived from Members’ constitutional position as elected representatives, even if self-certification were considered to be in principle an acceptable system in modern conditions, the inadequacy of that approach is manifest as soon as it is appreciated that the Members upon whom the responsibility of certification is placed do not have access to a clear, coherent and comprehensive statement of their entitlements such as might enable them to fulfil that responsibility. Moreover the information which is published in the Green Book does not match the system as actually administered, and hence as actually experienced by MPs. In our judgment these features, coupled with the very limited

nature of the checks, constitute 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 ACA system is deeply unsatisfactory, and the shortfall both in transparency and in accountability is acute.

34. Given the evidence which we heard in relation to ACA, we were not surprised to see the acknowledgment, in the Prime Minister's letter to the Speaker dated 5 February 2008, of the necessity for "root-and-branch overhaul" of the current system of MPs' allowances.

The nature of the information held

35. The information held by the House which falls within the scope of the requests consists essentially of (a) the information recorded on the ACA1 and ACA2 forms and (b) the information recorded on supporting documentation supplied by MPs.
36. The old-style ACA1 forms show the address of the MP's main residence. The new-style forms contain in addition the address of the second home.
37. The old-style ACA2 forms contain four main headings: "Hotel Accommodation", "Residential Accommodation", "Food", and "Other Expenses (please specify)". The category "Residential Accommodation" is broken down into "(i) Rent/Rates, (ii) Heat and Light, (iii) Telephone, (iv) Cleaning, (v) Repairs and Maintenance, (vi) Other (please specify)". The examples of completed forms which we have seen vary widely. Some bear figures under a number of headings, others only a single figure. Some contain additional manuscript comments of an explanatory nature.
38. The new-style ACA2 forms use the following layout:

Total cost of hotel stays <i>attach all receipts</i>	£	
Mortgage payments (<i>interest only</i>) or rent	£	
Food	£	
Utilities	£	
Council Tax/Rates	£	
Telephone and telecommunications	£	
Cleaning	£	
Service/maintenance	£	
Repairs/insurance/security	£	
Other	£	<i>(please specify)</i>
Other	£	<i>(please specify)</i>
Other	£	<i>(please specify)</i>

39. Again, there was considerable variation in the completed examples shown to us. Some forms contained a single figure; others were filled in with nine separate figures. Some contained additional information by way of manuscript comments or explanations.
40. The supporting documentation which we were shown in closed session consisted of items such as documents from mortgage lenders, bank statements, council tax bills, utility bills (including itemised telephone bills), invoices from decorators, other

tradesmen and other service providers (including security firms and cleaners), and correspondence between the MP and Mr Walker's department.

Destruction of data

41. With one exception, the House still holds all the information within the ambit of the four requests. The exception is that, in relation to the information requested by Mr Leapman for the year 2001/2 the House now holds only limited information in regard to Mr Blair, Mr Keen and Mrs Keen, and no information in regard to the other three members covered by the request. Mr Walker's explanation was that the files were marked for routine destruction after the House had concluded its consideration of the request and had informed Mr Leapman of the outcome of the internal review (March 2005). It was not until June 2005 that the House received notice of Mr Leapman's complaint to the Commissioner, and by that time some of the information had been destroyed.
42. According to Mr Walker's evidence the House had no system for ensuring the retention of requested information during the period after a refusal during which an applicant could take the matter further by complaining to the Commissioner. FOIA s50 does not lay down a precise time limit for such a complaint, referring only to "undue delay". The Commissioner's usual practice is to allow a period of 2 months. It is a criminal offence for a public authority to destroy information to which an applicant is entitled, with the intention of preventing disclosure: FOIA s77.
43. Here, the destruction occurred because of incompetence rather than intent. Mr Walker proffered an apology. Certainly it was regrettable. Given the role of the House of Commons in passing FOIA into law, the House might reasonably have been expected, even more than other public bodies, to give assiduous attention to all its provisions.

MPs' expectations

44. 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 obligation 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.
45. It was suggested to us that these circumstances confined MPs' 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 MPs' 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.

Public concerns

46. It was accepted by the House that there is a legitimate public interest in how public money is spent, and in being reassured that it is being spent properly.
47. This legitimate interest is not the same thing as curiosity about MPs' expenditure. The level of public curiosity is of no relevance to the issues which we must decide. It seemed to us that the evidence of Mr Thomas and Mr Earle did not sufficiently recognise this distinction. The number of news articles on a particular topic may be an indication of public curiosity but is not a measure of the legitimate public interest. We nevertheless found parts of their evidence of considerable assistance on the question of legitimate public interest. Some MPs have themselves expressed concerns about the adequacy and appropriateness of the system.
48. Mr Thomas and Mr Leapman used as an illustration the claims made by Mr Blair and Mrs Beckett during the periods when they lived in accommodation provided free of charge by the Government. Given their living arrangements, what were their ACA claims actually for? The published figures do not reveal the answer to this question. It is a proper question, which does not depend upon any suggestion of wrongdoing. There is a legitimate public interest in knowing what money is spent on within the rules.
49. On the basis of the evidence which we received, we find as a fact that there is a long-standing lack of public confidence in the system of MPs' allowances, dating from before the time of the particular requests with which we are concerned. In the particular context of ACA, the extent of information published is not sufficient to enable the public to know how the money is spent. Nor is the system sufficient to create public confidence that it is being spent properly.

Legal submissions and analysis

(1) Personal data?

50. Ms Grey for the House and Mr Pitt-Payne for the Commissioner submitted that the information falling within the requests was personal data. Mr Coppel for Mr Thomas argued that the figures on the forms were not themselves personal data, albeit some information on supporting receipts might be. Mr Tomlinson for Ms Brooke

accepted that personal data was to some extent involved, but submitted that in general it was very much at the outer edge of private life.

51. We were referred to the definitions of personal data in DPA s1(1) and in the European Directive 95/46/EC, and to the guidance given by the Court of Appeal in *Durant v Financial Services Authority* [2003] EWCA 1746 at paragraphs 21-31, which we regard as binding upon us. We would also comment that the relative narrowness of the Court's view of what constituted personal data is consistent with the nature of the rights given to the data subject in DPA ss 10-12 and 14. Having considered the representative information in the closed bundle, in our judgment the generality of the information held on the ACA forms and in the supporting documentation is sufficiently related to individual MPs, and sufficiently affects their privacy, to amount to personal data. Looking at the question from the other end, the information requested is by its nature personal data, since it relates to the personal expenditures of 14 particular MPs on their day to day living arrangements. We have not been persuaded that there is a significant amount of information included within the requests which is so trivial or anodyne as not to qualify for any protection as personal data (cf *McKennitt v Ash* [2006] EMLR 10, per Eady J at paragraph 135-136, [2006] EWCA Civ 1714, paragraph 22).

(2) General approach to consideration of FOIA s40 and DPA Schedule 2 conditions

52. Ms Grey relied on the conclusion of the Tribunal in the *Baker* case, at paragraph 50, that once FOIA s40(2) is engaged, Parliament intended that the request be considered under the DPA, without further consideration of FOIA.

53. Mr Tomlinson submitted, however, that there was more to be said. The DPA was intended to give effect to Council Directive 95/46/EC, and we are required to interpret it, so far as possible, in the light of, and to give effect to, the Directive's provisions: see *Durant* at paragraph 3. Recital 72 of the Directive, which was not cited to the Tribunal in the *Baker* case, provides: "Whereas this Directive allows the principle of public access to official documents to be taken into account when implementing the principles set out in the Directive ...". It followed that we must take into account the principle of public access to official information as enshrined in FOIA when forming the judgment required in this case by DPA Schedule 2 condition 6.

54. Ms Grey submitted in response that the House had never disputed that the public good in access to documents was a factor to take into account, and that this was implicit in the DPA itself. What she resisted was any suggestion that the wider framework of FOIA somehow gave additional weight to the case for disclosure.

55. In our view recital 72 is relevant, and we are indeed required to take into account the principle of public access to official information. However, with Ms Grey, we do not consider that this makes a practical difference to the judgment which we must make. DPA Schedule 2 condition 6 refers to legitimate interests pursued by the applicant for disclosure. The public interest in disclosure of official information is an interest which is relevant for the purposes of condition 6.

56. The wording of condition 6 requires a judgment to be made, which was referred to in the *Baker* case at paragraph 90, reflecting the submissions of counsel, as a balancing exercise:

“... the application of Paragraph 6 of the DPA involves a balance between competing interests broadly comparable, but not identical, to the balance that applies under the public interest test for qualified exemptions under FOIA. Paragraph 6 requires a consideration of the balance between: (i) the legitimate interests of those to whom the data would be disclosed which in this context are members of the public (section 40(3)(a)); and (ii) prejudice to the rights, freedoms and legitimate interests of data subjects which in this case are MPs. However because the processing must be ‘necessary’ for the legitimate interests of members of the public to apply we find that only where (i) outweighs or is greater than (ii) should the personal data be disclosed.”

57. In the present case we have received fuller submissions as to the precise nature of the exercise of judgment required by condition 6. Since, as the Tribunal pointed out in *Baker*, the exercise is not identical to the application of the public interest test for qualified exemptions under FOIA, we do not consider it helpful to pursue that analogy further.

58. While it is proper to recognise the public interest in the disclosure of official information as being relevant under condition 6, we think it is important not to lose sight of the principal object of the DPA, which is to protect personal data and allow it to be processed only in defined circumstances. The first part of condition 6 can only be satisfied where the disclosure is ‘necessary’ for the purposes identified. The second part of condition 6 is an exception: even where the disclosure is necessary, we must still go on to consider whether the processing is unwarranted in the particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subjects.

59. Ms Grey and Mr Tomlinson both submitted, and we accept, that the word ‘necessary’ as used in the Schedules to the DPA carries with it connotations from the European Convention on Human Rights, including the proposition that a pressing social need is involved and that the measure employed is proportionate to the legitimate aim being pursued: see *Stone v South East Coast Strategic Health Authority* [2006] EWHC 1668 (Admin), at paragraph 60. This is because Article 8 (right to private life) is an important source of inspiration for the Data Protection Directive. When applying the Directive the Court of Justice has interpreted it in the light of Article 8. Interference with private life can only be justified where it is in accordance with the law, is necessary in a democratic society for the pursuit of legitimate aims, and is not disproportionate to the objective pursued: Joined Cases C-465/00, C-138/01 and C-139/01 *Österreichischer Rundfunk and Others* [2003] ECR I-4989 at paragraphs 64-72. Thus in that case (which concerned legislation requiring disclosure of the names and salaries of public officials) the Court identified the essential questions as whether there was an interference with private life, whether the interference was justified by a legitimate aim, and whether the interference was necessary to achieve the legitimate aim pursued, ie, whether a pressing social need was involved and the measure employed was proportionate to the aim (paragraphs 73-94).

60. In this connection we were much assisted by Dyson LJ's exposition in *Samaroo v Secretary of State for the Home Department* [2001] EWCA Civ 1139, to which Ms Grey drew our attention, at paragraphs 13-28. Adapting that exposition to the very different circumstances of the present case, we consider that for the purposes of condition 6 two questions may usefully be addressed:

(A) whether the legitimate aims pursued by the applicants can be achieved by means that interfere less with the privacy of the MPs (and, so far as affected, their families or other individuals),

(B) if we are satisfied that the aims cannot be achieved by means that involve less interference, whether the disclosure would have an excessive or disproportionate adverse effect on the legitimate interests of the MPs (or anyone else).

61. Question (A) assists us with the issue of 'necessity' under the first part of condition 6. Question (B) assists us with the exception: whether the processing is unwarranted in the particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subjects.

62. Ms Grey submitted that a contention that interference is necessary ought to be established convincingly and not by mere assertion: cf *Kelly v BBC* [2001] 1 All ER 323 at 337. Mr Coppel emphasised that, once necessity was shown, the burden was on the House to establish that the interference was unwarranted within the terms of the exception to condition 6.

(3) Whether disclosure of some or all of the details requested would be in conformity with condition 6(1) of DPA Schedule 2

63. The contents of the publication scheme, which include the totals paid to MPs for various allowances, constitute a recognition that in a democracy some personal data relating to MPs must be published. Mr Walker in his evidence characterised the debate as being over the degree of release of information which would provide an acceptable level of accountability. The issues between the parties are over the appropriate degree of disclosure that is needed, and the seriousness of the interference with the privacy of MPs.

64. In argument four possible levels of disclosure were identified: (1) the disclosure already given – ie, the totals in the publication scheme, which the House contends is where disclosure should end, (2) figures broken down under the headings ordered by the Commissioner, or alternative headings as contended for by the House, (3) full details of the actual claims as made, and (4) all information including that on the receipts and other supporting documents. Progressing from (1) to (4) the usefulness of the disclosure, from the applicants' point of view, increases, but the degree of interference with the legitimate privacy interests of MPs also increases.

65. Our attention was drawn to a range of comparative material. We were shown the extent of the data made available to the public on the Scottish Parliament website. This includes details of every item of claim for allowances by every MSP (except for individual staff salaries), with dates, descriptions, amounts, claim forms, and supporting receipts. The data released is subject to certain redactions on privacy

grounds, which include the addresses of MSPs, addresses travelled to, names of hotels used, and details of third parties. With the sole exception of mileage, which is detailed in a claim form and reimbursed at a set rate, allowances are only reimbursed if supported by the relevant invoices or receipts.

66. The Scottish Information Commissioner in Decision 033/2005 (Hutcheon) considered a request for copies of a particular MSP's travel claims with details of supporting mileage, air travel, car hire and taxis. The Scottish Parliamentary Corporate Body provided the information with redactions. Mr Hutcheon challenged the redaction of taxi destinations. After specific consideration of DPA Schedule 1 condition 6, the Commissioner held that, although the information was personal data, the release of the information on taxi destinations would not breach any of the data protection principles. Safety concerns were raised, but the Commissioner found that they were not justified on the evidence relating to that particular MSP.
67. In Decision 086/2006 (Sheridan) the Scottish Commissioner considered requests for details of the claims made by MSPs who used the Edinburgh Accommodation Allowance to purchase private properties. The Scottish Parliamentary Corporate Body released the names of the MSPs in question, but refused to provide the dates on which the properties were bought, the amounts borrowed at the time of purchase, and whether any of the purchases were made jointly with another MSP. The Commissioner upheld the refusal. He considered that releasing this additional data, the purpose of which would be to allow calculation and attribution of profits from the rise in Edinburgh property prices, rather than to find out the amounts received by MSPs from public funds (which had been disclosed), would intrude excessively into MSPs' private lives and would not amount to fair processing.
68. Mr Banisar's statement referred to two further decisions:

(1) The Information Commissioner of Ireland, in Case 99168 (Oakley) ruled on an application by a journalist under the Irish Freedom of Information Act for access to the details of expenses paid to each member of the Houses of the Oireachtas. He decided that the public interest in ensuring accountability for the use of public funds "greatly outweighed" any right to privacy which the members might enjoy in relation to details of their expenses claims.

(2) The European Ombudsman for the purpose of draft recommendation 3643/2005/(GK)WP consulted the European Data Protection Supervisor ("EDPS") on the correct application of data protection rules to the allowances for MEPs (Members of the European Parliament). A journalist had sought disclosure of detailed data, including a breakdown for each of five MEPs of amounts received in respect of each allowance (for example the salaries actually paid to assistants) and the details of expenses reimbursed for travel undertaken in connection with the MEPs' activities. The Ombudsman regarded the withholding of the data as maladministration. He reported the opinion of the EDPS as follows:

Although the position of MEPs did not mean that MEPs should be denied protection of their privacy, the basic consideration in a transparent and democratic society had to be that the public had a right to be informed about their behaviour. The MEPs had to be aware of this public interest. In

the present case, this was even more evident because it dealt with the expenditure of public funds, entrusted to the MEPs. in Joined Cases C-465/00, C-138/01 and C-139/01 *Österreichischer Rundfunk and Others*, the Court of Justice explicitly recognised the objective of monitoring the proper use of public funds as a justification for interference with privacy.

... .. in so far as it concerned data relating to the MEPs themselves. The EDPS stated that it seemed obvious that these data had to be disclosed.

69. We found this comparative material valuable in setting the issues in a wider perspective, and in assisting our evaluation of those parts of the evidence before us which consisted of opinion and speculation. But we are conscious that the official expenses in the cases referred to were not the same as the ACA with which we are concerned, and we must apply the law in force in England to the particular circumstances relating to the four requests which are the subject of the present appeals, without being unduly influenced by how related matters may be dealt with under other laws and in different circumstances.

70. In evidence and submissions the House acknowledged the following legitimate public interests which would be advanced by further disclosure:

(a) Understanding the way in which an MP's accommodation allowance is claimed and paid.

(b) Ensuring that an MP's use of public money is properly accounted for, by providing public scrutiny of the use of public funds, on the basis that greater transparency helps to ensure the thrifty and appropriate use of public funds and to guard against their misuse.

(c) Encouraging MPs to take better value for money choices in the accommodation which they choose, or its running costs, etc.

71. To these Ms Brooke added:

(d) Greater awareness of environmental choices made by MPs.

(e) Awareness of MPs' expenditure in the light of their involvement in debates and legislation on relevant issues.

72. Mr Thomas's evidence further highlighted:

(f) An assessment of the amount, breakdown and probity of expense claims is a useful way of assessing a politician's probity generally and of measuring them against their public pronouncements.

(g) MPs' claims for expenses have a normative function as a yardstick for others making claims for public money. Expectations of financial propriety, openness and transparency are more easily required of other claimants when those expectations are met by those who make the rules for others.

(h) The importance of transparency and accountability are heightened where, as here, the system involves self-certification by the persons claiming the public money.

(i) Past instances of misuse, and mistakes requiring funds to be repaid, have demonstrated the legitimacy of public concern over the potential for abuse.

73. The Commissioner identified also:

(j) The concern is not merely the use of public money. It is also pertinent that MPs are entitled to claim that money solely by reason of the public elected office which they hold.

(k) Maintaining and enhancing public confidence in the central political institutions of Parliamentary democracy is a public interest of very considerable weight. Confidence cannot be increased by withholding disclosure. The limited publication scheme alone is of restricted utility for building confidence, since it represents what the House has chosen to publish. Disclosure of more information as to the operation of the ACA ought to increase public confidence in the way in which payment of MPs' expenses is handled.

(l) Disclosure will better inform the long continuing public debate about reforms to the system of allowances.

74. The public interest factors which we have listed, all of which we accept as genuine and relevant, are concerned with objectives of transparency, accountability, value for money, and the health of our democracy. These are legitimate interests of considerable importance. Given our findings of fact concerning the inadequacies of the system for claiming and payment of ACA during the years 2001-2006 and the long-standing lack of public confidence in the system, we conclude that the disclosure of full detailed information is necessary to meet these objectives. In our judgment these aims cannot be achieved by means that interfere less with the privacy of the MPs' personal data. In particular, they cannot be achieved by the disclosure in broad categories ordered by the Commissioner.

75. This conclusion is reinforced by Mr Walker's entirely correct insistence that, for those who remain MPs, their accountability is ultimately through the ballot box. For such accountability to be meaningful, electors need to be able to make informed choices. For that purpose information on the make up of allowance claims is essential.

76. We would stress that this conclusion is based on the evidence which we have heard, and relates to the historic information on ACA falling within the requests. It is not part of our remit to consider whether the same conclusion would follow under some different system which might be operated in the future. Ms Grey urged on us that we should not order any disclosure because to do so would short-circuit the current debate, and the whole matter should be left to the House to decide. We are unable to accede to that submission. We must decide the present appeals now, in relation to the historic information requested, and judged as at the time when the requests were received and dealt with by the House. We cannot be influenced by the mere possibility that the House might at some future date introduce changes to

the system, particularly when the nature of the changes is at present entirely undetermined.

77. We should also add that in reaching our conclusion on necessity we have kept in mind the scale of the amounts of public money involved, which is not large when compared with many other kinds of public expenditure (see further paragraph 30 above).
78. Since we have concluded that full detailed disclosure is necessary for the legitimate interests pursued by the applicants, we must next consider whether such disclosure would have an excessive or disproportionate adverse effect on the legitimate interests of the MPs. More precisely, the question is whether that disclosure is unwarranted in the particular cases by reason of prejudice to the rights and freedoms or legitimate interests of the MPs (or indeed other persons).
79. In this regard there were a number of factors relied upon by the House which were the subject of challenge by the other parties and by which we were unimpressed:
- (a) It was submitted that the need for public scrutiny was sufficiently fulfilled by the publication scheme, by the existing system for payment of ACA expenses, and by the annual audit. Thus there was no 'pressing social need' for access to the information. We have already rejected this on the evidence.
 - (b) It was suggested that further disclosure would be unfair, having regard to the history of MPs' expectations. In our view the evidence did not establish this, as we have already indicated.
 - (c) It was said that it would be unfair to expose MPs to criticism for claims that were properly made under the rules as they were at the time, particularly before 2003. In our view this is a consideration of little weight. The House collectively is responsible for the rules, and MPs have made their claims under them.
 - (d) It was feared that further disclosure, even of categorised expenses, would lead to further questioning of MPs by the media. In our view MPs are accustomed to dealing with the media. They can choose what response to make. They may respond, if they think it appropriate, that they are not themselves subject to FOIA. We would require a great deal of persuading that there would be something wrong with allowing questions to be put to elected representatives over how they have spent public money.
 - (e) It was said that the figures may be misunderstood or false comparisons may be drawn. If so, the House or MPs will be able to say so.
 - (f) It was suggested that dealing with further questioning would be a distraction from more important Parliamentary business. So it may, for a time, but accountability for the use of public money is not an unimportant matter.
 - (g) It was submitted that, perversely, the most conscientious MPs, who provided the most supporting information for their claims, would be exposed to the most public scrutiny. We would have thought that, subject to safeguards for any

specially sensitive items of data, the most conscientious MPs would have the least to fear from disclosure.

(h) Ms Grey argued that many of the issues over ACA raised in the evidence were quarrels with the nature of the system itself, which could be adequately debated without further information. In our view the disclosure of further details would enable a much better informed debate to take place.

(i) Mr Walker asserted that increased disclosure would deter able people from putting themselves forward for election. This was mere speculation, and no evidence was adduced that any such effect has been experienced in jurisdictions where high levels of detail of elected members' expenses have been published.

(j) It was pointed out that MPs are not themselves public authorities subject to FOIA. That is true, but the issue before us is the extent of the obligation of the House to release information which it holds relating to MPs. We are not concerned with information held by MPs themselves. There are often public interests in the disclosure of information held by public bodies which casts light on the activities of people who are not themselves public authorities. For example, government departments are public authorities, and disclosure of their information may cast light on the activities of Ministers.

80. There was no evidence that any of the 14 MPs whose expenses details were sought had made any communication to Mr Walker's office requesting that the details should be withheld.

81. We have considered all the matters put to us by the parties, including those corresponding to the list at paragraph 63 of the decision in the *Moffat* case. We would identify the following considerations as of particular importance in the circumstances of the present appeals:

(a) While MPs must from the very nature of their functions be prepared to accept a greater degree of public scrutiny than the average citizen, that does not mean that MPs are entitled to no privacy. Their personal data should still be processed fairly and given a degree of protection that is appropriate, bearing in mind both their public role and the degree of sensitivity of the particular information in question.

(b) While the ACA is intended to relate to expenditure incurred by reason of the MPs' parliamentary duties, rather than expenditure which is purely personal in nature, disclosure of the details does involve a substantial element of intrusion into private life. This is because it relates in part to an MP's living arrangements. The private life of any spouse, partner, child or other person living with an MP may be entwined with the MP's own. Accommodation arrangements and expenses may be heavily influenced by private or family considerations.

(c) Some information within the categories requested could be of particular sensitivity, either because it is 'sensitive personal data' (as defined in DPA s2), or because its release could have adverse implications for MPs' personal or financial security.

82. These considerations compel us to say that full detailed disclosure, without any restriction at all, would be unwarranted, because it would have a disproportionate adverse effect on MPs' legitimate privacy interests. However, we consider that the restrictions which are justified are modest. The appropriate disposal of these appeals, in conformity with DPA Schedule 2 condition 6, involves that full detailed disclosure both of the information on the ACA forms and of the information on the supporting documentation should form the starting point, from which certain limited exceptions must be carved out in order to guard against disproportionate intrusion. We acknowledge that this will result in a significant degree of intrusion into private life, and that not every required redaction will be straightforward. But the ACA system is so deeply flawed, the shortfall in accountability 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.
83. One element of the appropriate exceptions is information that would prejudice the personal security of MPs if placed in the public domain. We were troubled by the paucity of evidence to enable us to make informed judgments on this aspect. Mr Walker in his open witness statement said no more than that personal security of MPs was a factor which needed to be taken into account. When cross-examined on this he was almost dismissive: 'all I am saying is, it is a factor to take into account ... [the information] might be useful to someone wishing them harm'. In answer to questions from the Tribunal he said that the House and MPs had access to a number of sources of security advice: the Home Office for Ministers and senior politicians in relation to major issues of national security, within the House the Serjeant at Arms, and in addition the Parliamentary security co-ordinator, who had relevant specialist experience. No advice or evidence from any of these sources was produced to us. In Mr Walker's closed written evidence there was a brief comparison of security expenditure by different MPs on domestic burglar alarms and other measures. During the closed session he also gave brief oral evidence that he had received advice against disclosing any details of MPs' expenditure on security measures.
84. In the light of the parties' submissions and the evidence, including our perusal of the closed bundle, we have decided that the appropriate exceptions to full disclosure of the information held are as follows:
- (1) Any sensitive personal data, relating to the MPs named in the requests, within the meaning of DPA s2(a), (c) or (e)-(h). The amount of this will be tiny. (The categories in DPA s2(b) and (d) do not create a difficulty in the present context, since the MPs' political views and trade union membership, if any, in all cases are or ought to be matters of public knowledge.)
 - (2) Personal data of third parties (not the MPs). But this exception shall not extend to the name of any person to whom the MP paid rent or mortgage interest which was claimed under ACA, for in such cases the disclosure is justified notwithstanding the partial invasion of privacy that is involved, given the extent of the legitimate public interest and the sums potentially involved.
 - (3) The MPs' bank statements, loan statements, credit card statements, other personal financial documents, and financial account numbers and financial reference numbers. The two purposes of this exclusion are (a) to emphasise

the confidentiality of financial information which happened to be contained on the supporting documents but was not relevant to the expense claim and (b) to guard against possible fraudulent use of personal financial information. This exclusion shall not extend to the names of mortgagees, chargees or landlords in respect of homes for which ACA was claimed, or to the amounts of interest or rent which were paid, claimed and reimbursed under ACA or (subject to the requisite redactions of sensitive or irrelevant data) to the information submitted in support of such claims contained on statements of account with mortgagees, chargees or landlords: these items of information must be disclosed.

(4) The itemised parts of telephone bills listing calls to individual numbers.

(5) The names and addresses of suppliers or contractors who had regular access to the MPs' homes. This exception is for security reasons. It should be interpreted in a commonsense manner in the light of its purpose (for example - it is not intended to keep confidential the details of suppliers who merely delivered to the front door, but should result in redaction of details of a contractor who had access to a garage).

(6) All details relating to the security measures at the MPs' 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.

85. In relation to item (7), we should explain that we do not consider it is appropriate to introduce a general exception for the MPs' addresses. The addresses of well-known figures such as Mr Blair and Mrs Beckett are in the public domain in any event. All MPs will be registered as voters, with their names and addresses on the public electoral register. Details of property ownership are available from HM Land Registry. Since at least one address of an MP will be in the public domain in any event, we do not consider that there would 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. We emphasise that redactions under (7) are intended to cater for genuinely exceptional cases where the address is not already in the public domain and there is a specific credible threat.

86. Since the exceptions listed as (1)-(7) above were not the focus of detailed submissions by the parties during the hearing, we gave them a subsequent opportunity of making written submissions on the detailed wording of the exceptions, which we have taken into account in finalising the formulations. We recognise that in some instances the exceptions which we have delineated will involve judgments on questions of degree. We consider that is unavoidable in the circumstances.

(4) Whether disclosure would be in conformity with condition 5(aa) or 5(d) of DPA Schedule 2

87. Mr Coppel submitted that disclosure was necessary within the meaning of condition 5(aa) for the exercise of functions of a House of Parliament, or within the meaning of condition 5(d) for the exercise of other functions of a public nature exercised in the public interest by any person. For this purpose he argued that it was a function of the House of Commons to administer the ACA scheme properly and in accordance with ordinary precepts of accountability; in the absence of any other effective means, disclosure of the requested information was necessary in order to secure those ordinary precepts of accountability.

88. We understand the functions of the House of Commons, in the sense intended in condition 5, as the specific functions of the House of Commons recognised in law.

89. If the argument is that compliance with freedom of information or data protection legislation is a 'function' of the House of Commons in the relevant sense, we disagree. It is not a 'function' of the House of Commons to comply with freedom of information or data protection legislation any more than it is to comply with legislation on employment rights or workplace safety; we would regard those activities as the fulfilment of obligations imposed by general legislation rather than as specific functions. Even if we are wrong about that, the argument would go nowhere, since what is required to comply with the relevant legislation is the very question that we have to decide, and which depends on condition 6.

90. If the argument is that it is a function of the House of Commons to administer the ACA scheme, simply on the basis that such administration is something that the House of Commons in fact undertakes, then we do not consider that this falls within the meaning of the term 'function' in condition 5. Even if it does fall within the meaning of the term, the administration of the ACA scheme, as at the time of the information requests, did not necessarily involve disclosure of information to the public. The administration of the scheme was undertaken and completed, however well or badly, in the years 2001/2, 2002/3, 2003/4 and 2005/6, without the disclosure which is sought. The real issue is whether at the time of the requests such disclosure was required and justified by the interests pursued by the applicants under the test and exception defined in condition 6.

(5) Whether the House can be compelled to disclose information categorised in the manner required by the Commissioner's decision notice

91. In view of our decision on the extent of disclosure required, this question has become academic. We will record our views briefly.

92. In the course of the hearing the Commissioner was disposed to accept that, on closer examination, the differences between the information as actually held and the Green Book categories adopted in his order were such that the House would have great difficulty in complying with his order. This would take the task of compliance beyond the obligation in FOIA to disclose information which is actually held and require the creation of new information, because of the need to make investigations and judgments for the purpose of recategorisation of expenditure. The Commissioner helpfully indicated that he would be content with disclosure of

annual totals per MP in accordance with the actual categories on the ACA2 forms, subject to certain further breakdowns, in particular, so far as possible from the information held, stating separately each of mortgage interest, rent, rates and council tax, and correcting any obvious errors or omissions of categorisation by MPs.

93. If we had concluded that this represented the right level of disclosure in accordance with condition 6, we would have made an order on these lines, requiring additionally the disclosure (where apparent from the recorded information) of whether the expenditure related to a London home or a constituency home.

Further considerations

94. The Commissioner has unrivalled experience of making the kinds of judgments which are required under DPA and FOIA. Because his views properly carry considerable weight with the Tribunal, we have revisited and reconsidered our conclusion in the light of the reasoning set out in his decision notices. It seems to us that the evidence and arguments that have been placed before us go substantially beyond the material which was the subject of the Commissioner's consideration, and that this explains the divergence of our views from his. We wish to record our gratitude for the very considerable assistance that we received from his representative, Mr Pitt-Payne, during the hearing, as indeed from all counsel and from Mr Leapman, all of whom made submissions which were succinct, clear, well-argued and of high quality.

95. We have also paused, before finalising our decision, to compare the result of the present appeals and the outcomes in the *Baker* and *Moffat* cases. In *Baker* the requesters sought, in relation to the annual totals for travel expenses, a breakdown by mode of travel for each MP. In the *Moffat* case, further breakdown was requested for one MP to the extent of (1) a global figure for spouse's expenses, (2) number of trips by some modes of travel, (3) average cost of some individual trips by some modes of travel, (4) total mileage for car travel, (5) number and cost of taxi journeys, and (6) total of EU travel. To the extent that they were held, these details were ordered by the Commissioner and by the Tribunal to be disclosed. In neither case did the question arise what further information might be disclosable if a more detailed request were made. The present appeals have involved a different allowance and some very different considerations, as set out in paragraphs 32-33 above, which played no part in the two former decisions.

Conclusion and remedy

96. For the reasons which we have set out above, we differ from the Commissioner in regard to the correct application of DPA Schedule 2 condition 6 in relation to the requests which form the subject matter of these appeals. Accordingly, we conclude that the Commissioner's decision notices were to that extent not in accordance with the law. We dismiss the House's appeal, allow the cross-appeals and substitute the combined decision notice set out above.

97. The information respectively requested by the several applicants must be disclosed to them, subject to the exceptions which we have set out, within 28 days from the date of this decision.

98. Our decision is unanimous.

Signed

Andrew Bartlett QC

Deputy Chairman

Date 26 February 2008