

ENGLAND AND WALES / JUDGMENT

Imogen Bickford-Smith v Information Commissioner

COURT
IN THE UPPER TRIBUNAL

DECIDED
[2024] UKFTT 00522 (GRC)
Field House, London
16 May 2024
20 June 2024

SUMMARY OF DECISION
The Appellant made a request under the Environmental Information Regulations 2004 ('the EIR') for information about agricultural subsidies paid to farmers grazing their livestock on common land in the New Forest. Some of the requested information was withheld on the basis of regulation 12(3) (personal information) of the EIR. The Upper Tribunal dismissed the Appellant's appeal.

Bickford-Smith v Information Commissioner
Appeal no. UA-2024-001302-GIA
[2025] UKUT 243 (AAC)

DECISION
The decision of the Upper Tribunal is to dismiss the appeal.
Introduction

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NCN: [2025] UKUT 243 (AAC)
Appeal No. UA-2024-001302-GIA
IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between: Imogen Bickford-Smith
- v -
Information Commissioner
Appellant
Respondent
Before: Upper Tribunal Judge Wikeley

Hearing date(s): 1 July 2025

Representation:

Appellant:

Respondent:	In person Mr L. Davidson of Counsel, instructed by the Information Commissioner First-tier Tribunal (General Regulatory Chamber)
On appeal from:	
Tribunal:	Tribunal Case No: EA/2023/0455
NCN:	
Tribunal Venue:	
Hearing Date:	
Decision Date:	[2024] UKFTT 00522 (GRC) Field House, London 16 May 2024 20 June 2024 SUMMARY OF DECISION The Appellant made a request under the Environmental Information Regulations 2004 ('the EIR') for information about agricultural subsidies paid to farmers grazing their livestock on common land in the New Forest. Some of the requested information was withheld on the basis of regulation 12(3) (personal information) of the EIR. The Upper Tribunal dismissed the Appellant's appeal. Bickford-Smith v Information Commissioner Appeal no. UA-2024-001302-GIA [2025] UKUT 243 (AAC) DECISION The decision of the Upper Tribunal is to dismiss the appeal. Introduction

REASONS FOR DECISION 1. The Appellant is a farmer, with a herd of native breed beef cattle, who has lived in the New Forest for more than 30 years and has the right to graze her livestock on the common land. She requested information relating to grazing rights and associated funding arrangements concerning the Basic Payment Scheme, which provides for agricultural subsidies. The Rural Payments Agency, the relevant public authority, disclosed some of the information requested but withheld other information, citing regulation 12(3) (personal information) of the Environmental Information Regulations 2004. The Appellant's subsequent appeal to the First-tier Tribunal was refused. The Upper Tribunal's decision in summary 2. I dismiss the Appellant's further appeal to the Upper Tribunal. The decision of the First-tier Tribunal does not involve any material legal error. Abbreviations 3. The following abbreviations are used in this decision: BPS CAP CPH Basic Payment Scheme Common Agricultural Policy County Parish Holding DEFRA Department for Environment, Food and Rural Affairs EIR Environmental Information Regulations 2004 FOIA Freedom of Information Act 2000 FTT First-tier Tribunal GDPR General Data Protection Regulation RPA SPS Rural Payments Agency Single Payment Scheme The Appellant's commitment to the New Forest 4. I must stress at the outset that the fact that this

appeal to the Upper Tribunal has been unsuccessful should not in any way be taken as bringing into question the Appellant's sincerity and good faith both in these proceedings and in the expression of her wider concerns. I echo and endorse the observations of the FTT, which found as follows (FTT paragraph [37]): Bickford-Smith v Information Commissioner Appeal no. UA-2024-001302-GIA

[2025] UKUT 243 (AAC) It was clear in the hearing that the Appellant has a long-standing and deep commitment to a sustainable future for the New Forest (where she lives and farms) that has led to her to take issue with the running of the BPS system by the RPA. This has led to freedom of information requests and complaints to the Commissioner, and judicial review applications, and we understand that the present system is indeed to come to an end in 2027. We have no doubt that the interest of the Appellant behind these requests is a motivation to change the present way subsidies are paid to farmers in the New Forest, to increase accountability in relation to the expenditure of public money, and the sustainability of the New Forest. The Basic Payment Scheme (BPS) funding regime in outline 5. 6. 7. 8. The details of the BPS system are undoubtedly complex and (to a non-specialist at least) bafflingly opaque at best. For present purposes the following summary will suffice. The BPS is a funding regime derived from EU law and adopted under the Common Agricultural Policy (CAP). The BPS continues to operate in the UK under the authority of the Direct Payments to Farmers (Legislative Continuity) Act 2020. The BPS is administered by the Rural Payments Agency (RPA), an executive agency of DEFRA. A principal objective of the CAP, and by the same token of the BPS, was to enhance sustainability by basing farming subsidies on an area-based rather than production-based regime. Farming subsidies in the New Forest were initially (from 2005) channelled through the Single Payment Scheme (SPS), which was replaced in 2015 by the BPS. The Appellant has brought at least two sets of judicial review proceedings to challenge aspects of these funding regimes – see R (on the application of Bickford-Smith) v Secretary of State for Environment, Food and Rural Affairs [2013] EWHC 3371 (Admin) and R (on the application of Bickford-Smith) v Secretary of State for Environment, Food and Rural Affairs [2022] EWHC 2622 (Admin). The RPA changed the methodology of the BPS for claims made in 2021. Until then, BPS subsidies were based on a stock headage count, which meant that additional subsidy could be obtained each year with additional animals. Instead, in 2021 farmers were allocated a share of the common land by the RPA in proportion to the number of new 'proxy rights' calculated and awarded by the RPA itself. These 'proxy rights' were based on the maximum number of animals for which marking fees had been declared in any year between 2015 and 2020. As HH Judge Keyser KC explained ([2022] EWHC 2622 (Admin) at [15]):

15. Special difficulties arise in applying the BPS to the New Forest, as they had done in respect of the SPS. For all other common land in England, the rights to graze were quantified and fixed in registers established under the Commons Registration Act 1965. That Act, however, did not apply to the New Forest; the commoners' grazing rights on the New Forest have never been quantified and remain in theory unlimited. Instead, commoners in the New

Forest are required to pay to the Verderers a "marking fee" for each animal to Bickford-Smith v Information Commissioner Appeal no. UA-2024-001302-GIA

[2025] UKUT 243 (AAC) be grazed—payments are receipted by the physical marking of the animal — and, although the Verderers' byelaws give them power to limit the grazing rights of the commoners, they have not done so. 9. For present purposes, however, it is sufficient to note that the Appellant's main criticism is that the BPS system (in its various different guises over the years) has provided an incentive for farmers to put increasing numbers of livestock out onto the common land in the New Forest, so jeopardising its long-term sustainability. Leaving aside issues of principle in the design of subsidy schemes, the Appellant also contends that the data relied on by the RPA is inaccurate in important respects. The information request made by the Appellant

10. The Appellant made an information request to the RPA on 11 January 2023 in the following terms: "As a result of changes to the BPS rules the allocations of shares of New Forest common land are no longer based on the number of animals an Applicant produces for a marking receipt each year. Since 2021 the RPA has allocated a reference amount to New Forest BPS applicants based on the maximum number of marking fees they declared in any year between 2015 and 2020. The RPA has confirmed "This reference amount is taken as an expression of their grazing rights and is now used annually to calculate their area allocation for BPS." [RPA 10th January 2023] Please provide the following information under the Freedom of Information Act/ Environmental Information Regulations:
 1. Full details of the reference amount "taken as an expression of grazing rights" by the RPA for 2021 BPS New Forest common land applications. i.e. figures declared on the 2021 BPS Application Form at Part E Common land grazing rights under the heading at E4 "Number of rights of this type." And the number of 'eligible hectares' of New Forest common land the RPA calculated and allocated to each Applicant for the 2021 BPS based on the "expression of grazing rights."
 2. Full details should include the address of the Applicant (and business address if different) and CPH number of the holding (but not the name of the applicant.)
 3. Full details of the number and type of animal produced by each of those Applicants for a marking receipt that was used by the RPA to allocate the reference amount taken as an expression of grazing rights and to calculate the 'eligible hectares' allocated to each applicant at Part 1. i.e. the number of
 - a) cattle and/or b) ponies/donkeys and/or c) pigs." Bickford-Smith v Information Commissioner Appeal no. UA-2024-001302-GIA

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11. The RPA's response was summarised by the FTT as follows (omitting an explanatory footnote about the meaning of 'CPH') (FTT paragraph [4]): The RPA responded on 8 March 2023. It disclosed information in response to the request but redacted full business addresses and

CPH numbers, except five, under regulation 12(3) of the Environmental Information Regulations 2004 (EIR). The Appellant requested an internal review on 10 March 2023, and raised concerns about information that was outstanding and also the RPA's application of regulation 12(3) EIR. On 12 May 2023 the RPA provided the outcome to its internal review. It disclosed the information the Appellant had identified as outstanding but upheld its previous position in relation to regulation 12(3) EIR for the full business addresses of the relevant farmers and the CPH numbers, except five, under regulation 12(3) EIR. The Appellant then complained to the Commissioner.

12. The Appellant's appeal to the Upper Tribunal is, of course, an appeal against the decision of the FTT, and not the original appeal against the Information Commissioner's Decision Notice. However, given the different routes taken by the Information Commissioner and the FTT respectively, it is instructive to consider first the approach taken by the Commissioner in his Decision Notice. The Information Commissioner's Decision Notice
13. As part of his investigation, the Information Commissioner satisfied himself that the requested information was environmental information within the meaning of regulation 2(1) of the EIR. There is, understandably, no dispute about that. The Information Commissioner also reminded himself that regulation 12(3) of the EIR exempts personal data from disclosure where one of the conditions in regulation 13 is satisfied. The condition in point is regulation 13(2A)(a), which applies where disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data as set out in Article 5 of the GDPR. The most relevant principle (principle (a)) is that "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject". Lawful bases are listed in Article 6(1) of the UK GDPR, the most applicable being Article 6(1)(f), namely where: "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data."
14. The proper application of that provision requires consideration of a three-part test (see *Goldsmith International Business School v Information Commissioner and Home Office* [2014] UKUT 563 (AAC) at paragraph 35 and *Rodriguez-Noza v Information Commissioner and Nursing & Midwifery Council* [2015] UKUT 449 (AAC) at paragraph 19). The first part is the legitimate interest test (whether a legitimate interest is being pursued in the request for information). The second is the necessity test (whether disclosure of the information is necessary to meet the *Bickford-Smith v Information Commissioner Appeal* no. UA-2024-001302-GIA
- [2025] UKUT 243 (AAC) legitimate interest in question). The third is the balancing test (whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject).

15. As to the first leg of the three-part test, the Information Commissioner concluded that the Appellant's concerns about changes to the ways that BPS monies are calculated in relation to New Forest common land constituted a valid legitimate interest. Again, there is no dispute about that.
16. As to the necessity test, the Information Commissioner found this condition was also satisfied: Is disclosure necessary?
31. The Commissioner will now go onto consider whether disclosure is necessary to fulfil this legitimate interest. The information that has been disclosed to the complainant shows: the number of animals (cattle, donkeys, ponies, sheep and pigs) each applicant has, as well as the allocated area of land and in which area of the New Forest the applicant is based.
32. However, if the complainant is concerned that the methodology for distributing monies is flawed, the Commissioner accepts the complainant might wish to scrutinise each individual application further and to do so will require disclosure of the withheld information. Therefore, since this information isn't in the public domain, disclosure is necessary to meet this legitimate interest.
17. Lastly, however, the Information Commissioner decided that the identified interest in disclosure did not outweigh the interests or fundamental rights and freedoms of the data subjects. He reasoned as follows:
35. In performing this balancing test, the Commissioner has considered the following
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
36. In the Commissioner's view, the balancing test should take into account whether the data subjects' concerned have a reasonable expectation that their information would not be disclosed. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual. Bickford-Smith v Information Commissioner Appeal no. UA-2024-001302-GIA

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37. In its refusal notice, the RPA advised that 'RPA contacted a selection of the data subjects to advise that a request (dealt with under the EIR) for information had been received that concerned their business to gauge their views on disclosure of the requested information into the public domain. None of these data subjects consented to the disclosure of this information.'

38. It also advised the complainant that ‘The requested information was collected for the purposes of RPA's public tasks under Basic Payment Scheme processing...The data subjects would not reasonably expect their personal data to be processed for purposes other than those for which it was initially collected, therefore, it is RPA's view that disclosure would not be fair.’
39. To reiterate, the addresses and CPH numbers that have been withheld relate to business addresses but also residential address, the disclosure of which is likely to cause the data subject distress were it disclosed to the world at large.
40. The information the RPA has disclosed goes some way into meeting this legitimate interest, in that it addresses how many animals each applicant has (which is relevant to the change in methodology). However, the Commissioner isn't convinced that the legitimate interest in the personal data requested outweighs the rights and freedoms of the data subjects concerned. Therefore, he's determined the personal data should continue to be withheld under regulation 13(1), by way of regulation 13(2A)(a).
18. The Appellant then lodged an appeal with the FTT against the Information Commissioner's Decision Notice. The First-tier Tribunal's decision
19. The FTT arrived at the same outcome as the Information Commissioner but by a rather different route.
20. First, the FTT agreed that the Appellant was pursuing a legitimate interest in her request for information (FTT paragraph [41]).
21. Secondly, however, the FTT disagreed with the Information Commissioner's stance on the necessity test. The FTT's reasons on this second limb of the test were as follows: Necessity test: whether disclosure of the information is necessary to meet the legitimate interest in question.
42. In relation to whether disclosure is necessary for that legitimate interest, as recorded above, the Commissioner said that information had been disclosed to the Appellant showing the number of animals each applicant has, as well as the allocated area of land and in which area of the New Forest the applicant is based. The names of the applicants for BPS and the amounts Bickford-Smith v Information Commissioner Appeal no. UA-2024-001302-GIA
- [2025] UKUT 243 (AAC) received have also been disclosed. However, the Commissioner concluded that:-
32. ...if the complainant is concerned that the methodology for distributing monies is flawed, the Commissioner accepts the complainant might wish to scrutinise each individual application further and to do so will require disclosure of the withheld information. Therefore, since this information isn't in the public domain, disclosure is necessary to meet this legitimate interest.

43. We note that the Commissioner does not explain why the Appellant would need to see each individual application to pursue her concern that 'the methodology for distributing monies is flawed'. The Appellant was able to tell us that the amounts recorded as being paid to her under the scheme were wrong, but it is not explained whether she would be able to make the same deductions if the withheld information was disclosed. In any event, she already knows the name of each recipient and how much money was received, all she does not know is the address of each applicant and their CPH number. As noted above, from the information now disclosed by RPA, the Appellant also knows how many animals each applicant has. It does seem to us that if the Appellant wanted to know if other recipients were being paid the wrong amounts, it would be relatively easy to contact them (as she already has their names).
44. It may be of course that other recipients would not want the Appellant to 'scrutinise' whether the right amounts have been paid and would be content to pursue the issue themselves with the RPA if they think there has been an error.
45. Before us the Appellant declared a more general interest in finding out as much as possible about the operation of the system and this included information about the exact locations of farms from which animals originated. But as noted above, the information now withheld would not necessarily assist greatly in that endeavour as only about a third of farmers receive subsidies, and so if the information were disclosed then she would only be receiving part of the information she says she needs.
46. The question then arises as to whether there are other ways to meet the Appellant's legitimate interests other than requiring the disclosure of personal data. It is clear that the Appellant has a deep felt and sincere concern about the sustainable future of the New Forest, and does not believe that the correct systems have been in place to protect it. The Appellant has had some success in challenging the payments system in place by way of judicial review. However, as explored with the Appellant there are other bodies who have responsibility for the New Forest which include DEFRA and the Verderers. It seems to us that those bodies are better placed to provide the Bickford-Smith v Information Commissioner Appeal no. UA-2024-001302-GIA
- [2025] UKUT 243 (AAC) protection the New Forest needs and (at least in the case of DEFRA) will have access to a broad range of information to fulfil their roles.
47. Having taken those matters into account, it did not seem to the Tribunal that disclosure of the information sought was 'necessary' to meet the legitimate interests identified by the Appellant for the following reasons:-
- (a) There was no certainty or even likelihood that disclosure of addresses and/or CPH numbers would allow the Appellant 'to scrutinise each individual application further' (as the Commissioner thought) as such scrutiny would require the co-operation of the farmers whose addresses were disclosed.

- (b) Details of the addresses to where the RPA made payments would not provide the Appellant with the overall information she wanted to identify the numbers of animals put out by farmers, because most farmers who put out animals do not, in fact, receive a payment from the RPA (or the payment is a low one made on an anonymous basis, as explained above).
 - (c) In any event the current system of payments is about to come to an end and a new system will shortly be in place.
 - (d) Although the Appellant is clearly passionate about the New Forest and its sustainability, there are bodies such as the Verderers and DEFRA who have overall responsibility for these issues, rather than the role of individuals such as the Appellant who are unlikely to have the same overview of all the issues. Therefore, the legitimate interests of the Appellant can be met by other means than the disclosure of personal data.
22. Finally, as regards the balancing test, the FTT found as follows: Balancing test: whether the above interests override the fundamental rights and freedoms of the data subject.
48. The Tribunal having reached the conclusion on the necessity of disclosure, it is not required to go on to consider the third part of the test, but as the Commissioner reached this stage in the decision notice, we will review what the Commissioner and the Appellant have said on the issue.
49. The Commissioner noted that the RPA had contacted a number of the data subjects about disclosing the information sought to the Appellant and none of them consented to the disclosure of their addresses and CPH numbers. The Commissioner also noted that the RPA said that 'The requested information was collected for the purposes of RPA's public tasks under Basic Payment Scheme processing' and that, in the view of the RPA the data subjects would not reasonably expect their personal data to be processed for purposes other than those for which it was initially collected. *Bickford-Smith v Information Commissioner* Appeal no. UA-2024-001302-GIA

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50. The Appellant wanted to emphasise the overall importance of creating a sustainable future for the New Forest and was of the view that the data subjects would support that aim and understand the need for disclosure of their addresses and CPH numbers for that purpose.
51. However, although the Tribunal can see that disclosure of the information might assist the Appellant in pursuing her aims, it is our view that there is a strong expectation that the disclosure of residential addresses (which is not provided for in the RPA Personal Information Charter) would not occur without the consent of the data subjects. We do not agree that this case is analogous to that of *DH v Information Commissioner* set out above. There is no indication of any wrong-doing by the applicants for BPS and in any event their names are in the public domain already. There is nothing in the recitals of Regulation No 1306/2013 provided to us by the Appellant which suggests that more personal information than that provided for in the Charter should be disclosed.

52. The Tribunal has already expressed its doubts about the usefulness of the information in any event for the legitimate interests of the Appellant and pointed out the other means by which those interests can be protected.
53. If the Commissioner is correct that disclosure is necessary to meet legitimate interests then the Tribunal agrees with the Commissioner's conclusions that legitimate interest in the personal data requested does not outweigh the rights and freedoms of the data subjects concerned, not to have that personal data disclosed.
54. Having reached our view above we have also considered, as we must, the presumption in favour of disclosure set out in regulation 2(2) EIR. As was stated in *Vesco v Information Commissioner* [2019] UKUT 247 (AAC), paragraph 19, the purposes served by the presumption are (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations.
55. In this appeal, in our view the interests are not evenly balanced (and are clearly in favour of non-disclosure) and therefore applying the presumption does not affect our conclusions, and considering the presumption reassures us that we have reached the correct decision.
56. On that basis, this appeal is dismissed. 23. It follows that while the Information Commissioner concluded that the request for information under the EIR only failed at the final hurdle, namely the balancing test, the FTT found that neither the necessity test nor the balancing test were made out by the requester. The grounds of appeal to the Upper Tribunal *Bickford-Smith v Information Commissioner* Appeal no. UA-2024-001302-GIA

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24. The Appellant then applied for permission to appeal to the Upper Tribunal. She is a litigant in person and for the most part her reasons for appealing, understandably enough, amounted to an attempt to re-argue the merits of the FTT appeal. However, in the course of making those submissions she argued that the FTT had made a significant mistake of fact and had failed properly to apply the balancing test – both in terms of failing to take into account relevant factors and wrongly taking into account irrelevant factors. I granted permission to appeal following an oral permission hearing on 5 December 2024. I did so principally for three reasons, which I explained as follows:
13. The first reason relates to the FTT's findings and reasoning on the necessity point. The FTT found as a fact that the Applicant "already knows the name of each recipient" and that if she wished to know if BPS recipients were being paid the wrong amounts "it would be relatively easy to contact them (as she already has their names)." The evidential basis for this finding by the FTT is unclear, not least as Miss Bickford-Smith has stated categorically that she does not know the names in question (see Reasons for appealing, para 8). I recognise that a mistake of fact does not in itself give rise to an error of law. However, it is arguable that if a FTT makes a finding for which there is no evidence then its consequential misunderstanding of a party's case may mean it has erred in law in assessing the issue of

necessity at the second stage of the three-part test.

14. The second reason relates to the FTT's evaluation of the balancing test at the third stage of the three-part test. In particular, the FTT placed reliance on the Commissioner's evidence that the RPA had contacted data subjects about disclosing the information sought and none had consented to disclosure of addresses and CPH numbers (FTT decision at para 49). In taking that approach, it is arguable that the FTT failed to address the various submissions made by the Applicant on this issue – see e.g. in her reply dated 16 January 2023 to the Commissioner's response (FTT bundle p.97 at paras 5-15) and her skeleton argument dated 2 May 2024 (FTT bundle p.440 at paras 23-39).
 15. The third reason also relates to the balancing test. It appears that the methodology adopted for BPS payments in the New Forest is unique, being based on the number of animals produced for a marking fee receipt rather than being based on common land rights as such (see skeleton argument dated 2 May 2024, FTT bundle p.440 at para 4). However, the Applicant pointed out to the FTT that in other areas of common land in England the number of rights that can be claimed for farm subsidy purposes, including the name and address of the farmer with land to which those rights attach, is held in publicly available common land registers (skeleton argument dated 2 May 2024, FTT bundle p.440 at para 43). It is at least arguable that the FTT failed to have regard to this relevant consideration, namely that anywhere else in the country – the example was given at the permission hearing of Minchinhampton Common in Gloucestershire – the equivalent information would be open to inspection. *Bickford-Smith v Information Commissioner Appeal no. UA-2024-001302-GIA*
- [2025] UKUT 243 (AAC) 25. In the course of their further submissions, the parties referred to these points as Issues 1, 2 and 3 respectively, and I follow the same practice in this decision. However, before turning to consider those three issues it is important to bear in mind the limitations of this process of appellate review. The role of appellate review in the case of a specialist jurisdiction 26. I discussed the principles governing the role of appellate review in my decision in *NC (dec'd) by JC v Secretary of State for Defence (AFCS)* [2024] UKUT 170 (AAC) at paragraphs 36-39. Those comments were made in the context of an appeal brought under the Armed Forces Compensation Scheme, but the distinction in the subject-matter of the appeal before the FTT is immaterial for present purposes:
36. The jurisprudence on the standard of appellate review exercisable in an error of law jurisdiction demonstrates that any challenge which turns on a specialist tribunal's treatment of the facts needs to be approached with a degree of circumspection. Three interlocking themes or principles are evident in this jurisprudence. The first is that appropriate recognition must be accorded to the first instance tribunal as the primary fact-finder. The second is that due note should be taken of the expertise of a specialist tribunal. The third is that the tribunal's reasons for its fact-finding need to be at least adequate, but not necessarily optimal.

37. The significance of the first of this trilogy of principles is captured in the following passage from the judgment of Carr LJ (as she then was) in *Clin v Walter Lilly & Co Ltd* [2021] EWCA Civ 136, dealing with grounds of appeal that amounted to challenges to the trial judge's findings of fact and/or evaluative findings:
83. Appellate courts have been warned repeatedly, including by recent statements at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The reasons for this approach are many. They include:
- i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed; ii) The trial is not a dress rehearsal. It is the first and last night of the show; iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case; *Bickford-Smith v Information Commissioner* Appeal no. UA-2024-001302-GIA
- [2025] UKUT 243 (AAC) iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping;
- v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence); vi) Thus, even if it were possible to duplicate the role of the trial judge, it cannot in practice be done. ...
85. In essence the finding of fact must be plainly wrong if it is to be overturned. A simple distillation of the circumstances in which appellate interference may be justified, so far as material for present purposes, can be set out uncontroversially as follows:
- i) Where the trial judge fundamentally misunderstood the issue or the evidence, plainly failed to take evidence in account, or arrived at a conclusion which the evidence could not on any view support; ii) Where the finding is infected by some identifiable error, such as a material error of law; iii) Where the finding lies outside the bounds within which reasonable disagreement is possible.
86. An evaluation of the facts is often a matter of degree upon which different judges can legitimately differ. Such cases may be closely analogous to the exercise of a discretion and appellate courts should approach them in a similar way. The appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the trial judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.

87. The degree to which appellate restraint should be exercised in an individual case may be influenced by the nature of the conclusion and the extent to which it depended upon an advantage possessed by the trial judge, whether from a thorough immersion in all angles of the case, or from first-hand experience of the testing of the evidence, or because of particular relevant specialist expertise.
38. The second principled theme, picking up on that final observation, is exemplified by Lady Hale's judgment in *Secretary of State for the Home Department v AH (Sudan)* [2007] UKHL 49. Giving guidance in the context of *Bickford-Smith v Information Commissioner Appeal* no. UA-2024-001302-GIA
- [2025] UKUT 243 (AAC) specialist tribunals (that was an asylum case, but the same principle applies here too in an appeal from the WPAFCC), Lady Hale held as follows: This is an expert tribunal charged with administering a complex area of law in challenging circumstances. To paraphrase a view I have expressed about such expert tribunals in another context, the ordinary courts should approach appeals from them with an appropriate degree of caution; it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right: see *Cooke v Secretary of State for Social Security* [2001] EWCA Civ 734, [2002] 3 All ER 279, para 16. They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently.
39. The third theme concerns the standard required for the adequacy of reasons. The relevant authorities (which are uncontroversial) were reviewed recently by a three-judge panel of this Chamber, of which I was a member, in *Information Commissioner v Experian Ltd* [2024] UKUT 105 (AAC):
63. There are many appellate authorities on the adequacy of reasons in a judicial decision. In this chamber of the Upper Tribunal, the principles were summarised in, for example, *Oxford Phoenix Innovation Ltd v Information Commissioner & Medicines and Healthcare Regulatory Agency* [2018] UKUT 192 (AAC) at [50-54]. At its most succinct, the duty to give reasons was encapsulated at [22] in *Re F (Children)* [2016] EWCA Civ 546 (one of the authorities cited there), as follows: 'Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable.'
64. As is well-known, the authorities counsel judicial "restraint" when the reasons that a tribunal gives for its decision are being examined. In *R (Jones) v FTT (Social Entitlement Chamber)* [2013] UKSC 19 at [25] Lord Hope observed that the appellate court should not assume too readily that the tribunal below misdirected itself just because it had not fully set

out every step in its reasoning. Similarly, “the concern of the court ought to be substance not semantics”: per Sir James Munby P in *Re F (Children)* at [23]. Lord Hope said this of an industrial tribunal’s reasoning in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11 at [59]: *Bickford-Smith v Information Commissioner Appeal no. UA-2024-001302-GIA*

- [2025] UKUT 243 (AAC) ‘... It has also been recognised that a generous interpretation ought to be given to a tribunal’s reasoning. It is to be expected, of course, that the decision will set out the facts. That is the raw material on which any review of its decision must be based. But the quality which is to be expected of its reasoning is not that to be expected of a High Court judge. Its reasoning ought to be explained, but the circumstances in which a tribunal works should be respected. The reasoning ought not to be subjected to an unduly critical analysis.’
65. The reasons of the tribunal below must be considered as a whole. Furthermore, the appellate court should not limit itself to what is explicitly shown on the face of the decision; it should also have regard to that which is implicit in the decision. *R v Immigration Appeal Tribunal, ex parte Khan* [1983] QB 790 (per Lord Lane CJ at page 794) was cited by Floyd LJ in *UT (Sri Lanka) v SSHD* [2019] EWCA Civ 1095 at [27] as explaining that the issues which a tribunal decides and the basis on which the tribunal reaches its decision may be set out directly or by inference.
66. The following was said in *English v Emery Reimbold & Strick Ltd*
- [2002] 1 WLR 2409 (a classic authority on the adequacy of reasons), on the question of the context in which apparently inadequate reasons of a trial judge are to be read: ‘26. Where permission is granted to appeal on the grounds that the judgment does not contain adequate reasons, the appellate court should first review the judgment, in the context of the material evidence and submissions at the trial, in order to determine whether, when all of these are considered, it is apparent why the judge reached the decision that he did. If satisfied that the reason is apparent and that it is a valid basis for the judgment, the appeal will be dismissed. ... If despite this exercise the reason for the decision is not apparent, then the appeal court will have to decide whether itself to proceed to a rehearing or to direct a new trial. ...
118. ... There are two lessons to be drawn from these appeals. The first is that, while it is perfectly acceptable for reasons to be set out briefly in a judgment, it is the duty of the judge to produce a judgment that gives a clear explanation for his or her order. The second is that an unsuccessful party should not seek to upset a judgment on the ground of inadequacy of reasons unless, despite the advantage of considering the judgment with knowledge of the evidence given and submissions made at the trial, that party is unable to understand why it is that the judge has reached an adverse decision.’ *Bickford-Smith v Information Commissioner Appeal no. UA-2024-001302-GIA*

[2025] UKUT 243 (AAC) 27. I now turn to focus on the specific issues which are material to this appeal.

Analysis

Issue 1

28. The first issue relates to the FTT's findings and reasoning on the necessity point, at the second stage of the three-part test. The FTT found that the Applicant "already knows the name of each recipient" and that if she wished to know if BPS recipients were being paid the wrong amounts "it would be relatively easy to contact them (as she already has their names)." In granting permission to appeal I remarked that the evidential basis for this finding was unclear, not least as the Appellant had stated categorically that she did not know the names in question.
29. The Appellant further explained that the on-line CAP payments website (on which see <https://cap-payments.defra.gov.uk>) listed the names of some 90,000 recipients of farm subsidies across the country. However, the vast majority of these recipients were farming private land – the 265 or so BPS recipients who were paid in respect of New Forest common land rights were not separately identified. The Appellant likened the position to saying that if one had access to an electoral roll with 90,000 names on it one thereby had the names of the 265 individuals on the roll who owned a purple car. Thus, whilst one would have all the names, one would still not know which 265 people actually had purple cars.
30. Mr Davidson acknowledged that the FTT had reached the contrary conclusion on the necessity test to the Information Commissioner. However, the FTT had reached its decision on the basis of more evidence than had been before the Commissioner. Additionally, in reaching its decision the FTT had not placed any great reliance on the question of the accessibility of the names of BPS recipients. 31. It seems to me at least highly questionable that the Appellant, at least as the FTT found, "already knows the name of each recipient" in any meaningful sense. Similarly, the suggestion that if she wished to know if BPS recipients were being paid the wrong amounts "it would be relatively easy to contact them (as she already has their names)" is at best problematic. However, that is not the end of the matter. The critical question is whether the FTT's misunderstanding – if so it was – was material to the application and outcome of the necessity test. The short answer is that it was not. The FTT gave its reasons for concluding that disclosure of the information sought was not necessary to meet the Appellant's legitimate interests for four reasons. These were that (a) scrutiny of individual applications would still require co-operation of individual farmers; (b) most farmers do not receive a RPA payment in any event (or it is so low that it is paid on an anonymous basis); (c) the current funding system is in the process of being phased out; and (d) there were other bodies (e.g. DEFRA and the Verderers) with oversight of sustainability issues in the New Forest (FTT paragraph [47]). Whether the Appellant knew or did not know the actual names of recipients did not appear in this list and so carried little weight if any at all. *Bickford-Smith v Information Commissioner Appeal no. UA-2024-001302-GIA*

[2025] UKUT 243 (AAC) Issue 2

32. The second issue related to the FTT's evaluation of the balancing test at the third stage of the three-part test and, in particular, the question of data subjects' reasonable expectations. In its decision, the FTT had placed reliance on the Information Commissioner's evidence that the RPA had contacted data subjects about disclosing the information sought and none had consented to disclosure of addresses and CPH numbers (FTT decision at paragraph [49]). In taking that approach, the Appellant argued that the FTT had failed to address the various submissions made by her on this issue. In particular, she had highlighted that all BPS claimants had signed a standard-form data protection declaration. As such, she contended that the argument for non-disclosure was substantially weakened, as claimants were made aware that personal data may have to be released in accordance with FOIA or EIR.
33. Mr Davidson submitted that the question of data subjects' reasonable expectations was squarely a question of fact for the FTT to determine. The FTT was well accustomed to making such an evaluative assessment. Furthermore, he contended that as a matter of principle the Upper Tribunal should be hesitant about imputing any error on the part of the FTT and, in any event, there was no reason on the face of the FTT's decision to infer any such error.
34. The FTT's approach does not disclose any error of law. The FTT addressed the main thrust of the Appellant's arguments. In particular, it referred to the Appellant's argument about the declaration signed by BPS claimants. It is plain from paragraph
- [51] of the FTT's decision that the panel took into account the Appellant's arguments about the RPA Personal Information Charter and Regulation No. 1306/2013. However, as Mr Davidson argued, it is frequently the case that data subjects understand that the personal data they provide to public authorities will be potentially subject to e.g. FOIA and/or EIR. However, those data subjects may still have reasonable expectations that those details will not be disclosed to the world at large, precisely because of data protection notices such as those on the BPS application form and the factors highlighted by the FTT. The weight to be attached to those reasonable expectations was a question of fact for the FTT to determine on the basis of the evidence before it. Issue 3 35. Issue 3 also concerns the balancing test at stage 3 of the process. However, this matter can also be dealt with fairly shortly. The Appellant had made the point to the FTT in the course of her written submissions that in other parts of the country the names and addresses of farmers with common land rights were held in registers and made available for public inspection. It is not clear whether the point was explored further in the FTT's oral hearing of the Appellant's appeal. Certainly, there is no mention of it in the FTT's decision, but a tribunal's decision need not address every submission in support of its case made by a party. On further reflection, the proposed comparison (as between the New Forest and elsewhere in England) has limited value in any event. The position in other parts of the country is governed by *Bickford-Smith v Information Commissioner* Appeal no. UA-2024-001302-GIA

[2025] UKUT 243 (AAC) the statutory regime established under the Commons Registration Act 1965 (and the Commons Act 2006). However, as the Appellant herself rightly acknowledged, the New Forest, given its special historic status and governance arrangements, is exempt from the scheme of the 1965 Act. Not least given the BPS in the New Forest is premised on the attribution of proxy common land rights, with data generated exclusively by the RPA, it follows that one is not comparing like with like. The role of the FTT was to decide whether the personal information in relation to the Appellant's request should be disclosed, notably looking at the specific information provided to (and the expectations of) the particular cohort of affected individuals – and not the arrangements under a different statutory regime. Summary

36. On further scrutiny, I therefore conclude that the FTT did not materially err in law in relation to any of Issues 1, 2 or 3. These were identified as the three strongest points in the Appellant's case as they appeared at the permission to appeal stage. It follows that the other reasons put forward in support of the appeal to the Upper Tribunal do not suggest that the FTT erred in law in any material way. Indeed, on closer examination, the Appellant's appeal to the Upper Tribunal represents a spirited disagreement with the FTT's findings of fact and is really an attempt to re- run the case before the FTT on its factual merits. There may well be good arguments in favour of adopting a different system for the calculation and payment of farming subsidies in the New Forest. Those arguments may also include legitimate concerns as to the accuracy of the data used and published by the RPA. However, the validity (or otherwise) of these arguments has little if any bearing on the application of the exception in regulation 12(3) of the EIR to the present case. Postscript
37. Finally, I recognise that the Appellant had a more successful outcome in respect of a similar request as a result of an appeal to a different FTT in 2010 (*Bickford-Smith v IC (Environmental Information Regulations 2004)*) (EA/2010/0032). That FTT directed the disclosure of "the business address and CPH references with the name of applicant redacted" in respect of successful applications under the predecessor SPS arrangements. The Appellant explained that she had modelled her latest request for information on the 2010 FTT's substituted Decision Notice, thus excluding any request for recipients' names. However, the 2010 FTT, as simply another first instance decision, did not act in any way as a precedent in the determination of the current appeal. In any event, the participation of the parties was very different – the RPA had been joined as Second Respondent in the earlier case and both the RPA and the Information Commissioner had been legally represented at the oral hearing. As a result, the evidence and the submissions before the previous FTT would have been different.

Conclusion

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[2025] UKUT 243 (AAC) 38. I therefore conclude that the decision of the First-tier Tribunal does not involve any material error of law. My decision is also as set out above. Nicholas Wikeley Judge of the Upper Tribunal Authorised by the Judge for issue on 21 July 2025 19

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