



**BOARD PAPER**

**IPSA/191010/4**

**TO:** IPSA Board **DATE:** 25 March 2011

**CC:**

**FROM:** Martyn Taylor

**TEL:** 020 7811 6408

**SUBJECT:** **Publication of receipts**

**ANNEXES:** **A – Legal advice**  
**B – Risk register**  
**C – Board paper on publication of 21 September**

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**Issue**

1. Whether or not IPSA should pro-actively publish redacted receipts and invoices alongside the publication of the transactional data of expenses claims; if so, whether IPSA should publish only certain receipts and invoices or whether IPSA should publish all receipts and invoices.

**Timing**

2. For discussion at the Board meeting on 19 October.

**Recommendation**

3. That the Board decides which of the options set out below it wishes to pursue, taking into account the risks associated with each approach.

**Background**

4. At the Board meeting of 21 September the Board considered a paper (attached at Annex A) setting out the operational and financial challenges of redacting the numbers of receipts supporting expenses claims that IPSA is receiving. The Board indicated at that

meeting that it was attracted to the proposition that we would publish no receipts and requested further advice on this and other options. These are set out below.

### Freedom of Information

5. Central to any decision on whether or not to publish receipts and invoices proactively is the two-fold question of a) whether the decision not to do so would either swiftly or over time be negated as a consequence of a successful freedom of information request that would force our hand, and b) whether, if our hand were forced, we would be obliged to provide that information free of charge or could successfully turn down the request on cost grounds. In considering this, it is worth remembering that an FOI request is a request for recorded information, not for images of original documentation.
6. The issue turns on what IPSA, as a public authority, may or may not do under the FOI Fee Regulation of 2004.
7. The following points are relatively clear:
  - that IPSA is under no obligation to meet a request where the relevant costs exceed the defined cost limit. (See below for the definition of ‘relevant’);
  - that the defined cost limit for IPSA is £450. This equates to 18 hours of work (£25/hour is the specified cost of labour).
8. For a request which costs more than £450, IPSA may choose:
  - to decline to provide the information;
  - to provide the information free; or
  - to provide the information at a cost to the requester.
9. Public authorities, such as IPSA, are under a legal obligation to provide advice and assistance to requesters and so simply opting not to answer a request on grounds of cost is unsatisfactory: IPSA should provide the requestor with, for example, help in formulating a request within the cost limit.
10. In determining whether a request or requests exceed the limit, two points are central. First, which activities are chargeable and, second, whether one or more requests may be aggregated. The second issue is simpler to consider. The regulations allow for aggregation if *each* of the following conditions is met:

*5.—(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority—*

*(a) by one person, or*

*(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*

*the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.*

*(2) This regulation applies in circumstances in which—*

*(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and  
(b) those requests are received by the public authority within any period of sixty consecutive working days.<sup>1</sup>*

11. IPSA might therefore feel this provides some protection against intensive, rapid requests by individuals or campaigns yet it should not draw much comfort from the aggregation provisions.
12. The key question here, then, is which activities, called Allowable Tasks, are chargeable to the £450 limit. The regulations state the following:

*In estimating whether complying with a request would exceed the appropriate limit, Regulation 4 (3) states that an authority can only take into account the costs it reasonably expects to incur in:*

- *determining whether it holds the information;*
- *locating the information, or a document containing it;*
- *retrieving the information, or a document containing it; and*
- *extracting the information from a document containing it.*

*The four activities are sequential, covering the retrieval process of the information from the public authority's information store.*

*An authority can take into account the costs attributable to the time that persons (both the authority's staff and external contractors) are expected to spend on these activities. Such costs are calculated at £25 per hour per person for all authorities regardless of the actual cost or rate of pay, which means that the limit will be exceeded if these activities exceed... 18 hours for all other authorities.<sup>2</sup>*

13. Taking into account the time spent on determining, locating and retrieving the information is in most cases likely to be fairly straightforward.
14. For us, then, the critical question rests on what, when acceding to an FOI request, counts as extracting information as a chargeable activity, and whether redacting (in essence, the inverse of extracting) information from a receipt or an invoice would be an Allowable Task (i.e. an activity the costs of which we can take into account).
15. We have sought legal advice on these points. This is attached at [Annex A](#).
16. In brief, the view from our lawyers is that the process of extracting information (on a receipt or in a document) requested under FOI from other information that has not been requested is an Allowable Task. This is illustrated in Example 1, below.

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<sup>1</sup> 'The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004' (SI 2004/3244)

<sup>2</sup> 'Freedom of Information Act: Using the Fees Regulations' (6 October 2008) [[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/fees\\_regulations\\_guidance\\_v2.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/fees_regulations_guidance_v2.pdf), accessed 28 September 2010], p. 2.

**Example 1**

We receive a request for information on the number and cost of rib-eye steaks claimed under subsistence claims by MPs on 27 July 2010. We determine we hold this information, locate the information, and retrieve the receipts that hold this information. These receipts contain a significant amount of other information that does not fall within the parameters of the request (e.g. lentil soup, two glasses of Liebfraumilch). We decide to extract only the relevant information about the rib-eye steaks from the receipts and release that information as a separate document. This process of extracting the information on the rib-eye steaks is an Allowable Task.

17. Moreover, extracting information (on a receipt or in a document) requested under FOI from information that also falls within the parameters of the request but is exempt information (for example sensitive personal data) is also an Allowable Task. This is illustrated in Example 2, below.

**Example 2**

We receive a request for all the information held on receipts for all subsistence claims by MPs in July 2010. We determine we hold this information, locate the information, and retrieve the receipts that hold this information. These receipts contain some information that falls within the parameters of the request, but is classified as exempt information (for example, credit card details). We may extract from the receipts only the information deemed releasable and this process is an an Allowable Task.

18. However, redacting information that has not been requested in order to provide the information requested is not an Allowable Task.

**Example 3**

We receive a request for information on the number and cost of rib-eye steaks claimed under subsistence claims by MPs on 27 July 2010. We determine we hold this information, locate the information, and retrieve the receipts that hold this information. These receipts contain a significant amount of other information that does not fall within the parameters of the request (e.g. lentil soup, two glasses of Liebfraumilch). We decide to redact this additional information and release redacted copies of the receipt, revealing only the information about the rib-eye steaks. This process of redacting the information unrelated to the rib-eye steaks is not an Allowable Task,.

19. In addition, redacting information that is exempt from disclosure from the requested information is also not an Allowable Task.

**Example 4**

We receive a request for all the information held on receipts for all subsistence claims by MPs in July 2010. We determine we hold this information, locate the information, and retrieve the receipts that hold this information. These receipts contain some information that falls within the parameters of the request, but is classified as exempt information (for example, credit card details). We determine that it is easier to redact the exempt information and release redacted copies of the receipt, rather than extract all the information from the receipt and release it in a different format. This process of redacting the exempt information is not an Allowable Task.

20. We will, by virtue of publishing significant amounts of transactional data, already be publishing much of the information included on receipts. The questions then are whether:
  - a. we would, on a case by case basis, consider whether further information should either be extracted or redacted from a receipt to accede to an FOI request; or
  - b. whether it would be more appropriate always to redact certain information from receipts; or
  - c. whether IPSA should make a decision always to extract releasable information from receipts rather than redact exempt information or unrequested information.
21. In considering this, questions around the scale of the task and proportionality may need to be taken into account – but these are not easily done by reference to the FOI Act and the Fee Regulation.
22. Should the Board decide (for reasons un-related to the publication programme) to move away from 100% checks of low level claims, an activity currently routinely carried out by validators would no longer be carried out, namely the electronic linking of images of receipts for lower-level claims to individual claim line. In responding to a successful FOI request, this linking work would likely fall under the Allowable Task (i.e. a chargeable activity) “retrieving the information, or a document that may contain the information”. Consequently, it is possible that the cost limit may soon be reached if a successful FOI request required a significant degree of image retrieval.
23. It is likely that certain FOI requests would need to be acceded to and we would in such cases need to provide an *ad hoc* redaction service. We have in place the technology and the expertise to carry out this work, but would need to beware the resource implications of engaging this service on an ongoing basis.
24. Once the Board has made a decision on these matters, we will (if needed) develop cost models for such a service.

Third parties and publication

25. The Information Commissioner’s response to our consultation on publication made the following observation:

*“We would like to take this opportunity to re-iterate a point that we made in one of the initial consultation meetings. Namely that there will be a need for guidance to be*

*produced to assist MPs in ensuring that their staff and 3rd Parties who might be affected are adequately informed about how they may be affected by the publication of expense details.*

*“3rd Parties will include individuals such as landlords, lease-holders, mortgagees and service suppliers. It is important that such 3rd Parties are aware that their details will be published. It will be important the MPs have sufficient information to allow them to field any queries that these individuals may have and, if necessary, the ability to refer them elsewhere if they require further information.”*

26. We have sought to clarify with the Information Commissioner’s Office (ICO) what such guidance should consist of but have to date not succeeded in receiving helpful advice from them. We are continuing to pursue this. Depending on the final advice we receive from the ICO, there is a possibility that a significant piece of work may be required on IPSA’s part to assist MPs in this task. It is, however, worth noting that the Scottish Parliament’s Allowances Office does not alert third parties to the publication of their details. The Scottish regime is subject to a different law (the Freedom of Information (Scotland) Act 2002, but one which is substantially the same as ours.

### **The Scottish Experience**

27. From the inception of the Scottish Parliament, there was a requirement to publish global amounts of expenses incurred by MSPs under broad headings.
28. In 2005-06, after the Freedom of Information (Scotland) Act came into effect, the Scottish Parliament’s Allowances Office started to publish redacted receipts of all claims paid alongside data grouped under broad categories of expenditure.
29. The publication of these details was considered insufficiently transparent and consequently the Parliament moved to an online publication system akin to our own. However, at this point, the Parliament moved away from the publication of redacted receipts on the ground that in most cases all relevant information was contained in the transactional data included in the data fields of the publication programme.
30. The Scottish Parliament receives intermittent FOI requests seeking further details about a particular claim. These are treated on a case by case basis and if scrutiny of a receipt or invoice reveals further information that could be released, the Scottish Parliament does this. If receipts or invoices contain no additional releasable information – as is regularly the case – no further information is released. However, interest in receipts *per se* is apparently low.
31. The Scottish Parliament makes direct payments to third party suppliers and publishes details of these on its publication site. It does not alert third parties separately to these publications.
32. The Scottish Parliament does not publish full details of claims that are not passed on for payment, nor has it ever done; nor does it keep full details of such claims. The information it does keep and publish in relation to such claims is simply a) the financial year in which the claim was turned down; b) what was claimed; and c) the reason the claim was turned down. The reason it keeps this information is to ensure a consistency of approach and to establish and review precedents. All other information and documentation, including any information that will identify individual MSPs. is returned to MSPs.

Restricted – policy/operations

33. The critical difference between the Scottish Parliament's system and ours is that all the data are input by Allowances Office staff. Our data is inputted by MPs or their proxies. This means that whereas the Allowances Office can adopt a system of standard phrases in free text boxes, we are dependent on MPs' descriptions.

## Options

34. Three options are set out in detail below. In brief they are as follows:

- I. Option 1: Publication of transactional data only – no images of receipts
- II. Option 2: Publication of transactional data alongside certain receipts
- III. Option 3: Publish all receipts alongside transactional data

### **Option 1: Publication of transactional data only – no images of receipts**

35. Under this option, we would routinely publish online the following information:

- Claim dates
- Claim reference numbers
- Budget claimed from
- Financial year
- MP's name
- MP's constituency
- Payee
- Expense type (e.g. GAE)
- Type of purchase (e.g. stationery order)
- Detail (e.g. printer cartridge)
- Amount
- Status of claim ("paid"/"not paid")
- Journey type
- To
- From
- Hotel location (London/not London)
- Number of nights spent in a hotel

36. We would likely also publish the information written in the "free text" field of an expense claim which regularly provides justification for the expense incurred. We are currently considering the redaction implications of providing this additional information.

37. We would publish no images of receipts and invoices MPs submit to us to support their expenses claims. The additional information included on receipts that would consequently not be published would include such details as:

- what an MP had bought for dinner under subsistence;
- the precise details of a stationery order;
- an MP's or MP's staff member's personal shopping where they have made a claim for a reimbursable item submitting such a receipt;

38. This is the model the Scottish Parliament and Welsh Assembly have adopted and have therefore provided a precedent.

39. We have strong arguments to support pursuing this option:

- we were established to be the independent regulator of MPs expenses. Our independence is the first and principal safeguard against the excesses of the previous regime;
- we have put in place an open and transparent expenses scheme that is accessible to the public and open to public scrutiny;



## Restricted – policy/operations

- alongside the scheme, we have put in place an expenses system that, firstly, prescribes and automatically limits what MPs can claim and, secondly, is subject to strong checks and balances that prevent MPs from making the kinds of claims that were the previous cause for public concern (e.g. personal items, property improvements);
- our systems, rules and method of regulation are subject to rigorous and independent internal and external audit, reports and statements of which are published to provide the necessary public assurance;
- members of the public have recourse to the Compliance Officer when they feel IPSA is making payments it should not be;
- we would be publishing significant amounts of information allowing members of the public to see in sufficient detail what MPs are claiming for, so meeting our public commitments on transparency;
- the reason the previous regime was forced into publishing redacted receipts was because of the lack of transparency over what MPs could and could not claim for – notably, the so-called John Lewis list; and
- at a time of a significant contraction in public spending, this is the least costly measure of providing high levels of transparency.

### Advantages

40. There are a number of additional advantages to pursuing this option, as follows:

- it is consistent with existing UK models in the Scottish Parliament and Welsh Assembly model;
- the risk of data protection breaches is significantly reduced, as is the risk of problems integrating data from one system to another – both pose significant reputational risks to IPSA;
- the implementation and operation is more straightforward;
- the number of receipts requiring redaction that is currently accumulating will not need to be addressed;
- the deficit between scanned images and redacted images in the system (i.e. where for whatever reason the receipt is not attached to the claim – primarily a problem encountered in the early weeks of operation) would not need to be addressed;
- it bears a lower operational cost, likely requiring fewer members of staff than the five currently employed in redaction and publication, and so potentially allowing for redeployment of staff to other areas of significant operational pressure;
- it is likely to result in fewer queries and complaints, both from the public and from MPs; and
- it doesn't preclude IPSA in future, if conditions change, from redacting receipts for publication.

### Disadvantages

41. However, there are two significant risks that attach themselves to this option:

- we would likely face criticism from parts of the media who may attempt to accuse IPSA both of “going soft” on MPs and of being less transparent than the House of Commons on the grounds that the latter has in recent times published receipts and from those sections of the media intent on making mischief for MPs by publishing details of their claims that may raise eyebrows. It is worth remembering that the difficult position the House of Commons found itself in stemmed originally from allegations of secrecy. The criticism the House came under was in time compounded by the publication of heavily redacted images; and
- persistent and incisive freedom of information requests seeking to force us to release the images, which would need to be redacted, may eventually be successful. At this point we would face an enormous redaction task at very great expense to the public purse and to IPSA’s budget.

### Mitigation

42. A mitigation against the risk of criticism might be that we publish, as a one-off, the receipts redacted to date and so demonstrate to the public that we are not concealing anything of any real interest that is not already published in the transactional data. We can then invoke the cost argument to explain why there is little to be gained in continuing to publish receipts. The principal risk here is that publishing any receipts at all would set a precedent and may make it harder to resist calls for further publication.

43. A half-way house might be for IPSA to adopt for the present this option, whereby we publish only transactional data, and to explore whether or not an on-demand charging regime might be feasible and appropriate. Such an approach would not commit IPSA to pursuing any particular approach in the long-term but would give us the opportunity to explore these matters in slower time.

44. In any case, we would need a robust communications plan explaining our position (see paragraphs 67 and 68 below).

### Recommendation

45. We recommend that the Board agrees to this approach and keeps it under review in the light of likely Freedom of Information requests designed to test the system; and that the Board indicates whether or not it wishes to proceed with any of the proposals that may mitigate the risks identified.

## **Option 2: Publication of transactional data alongside certain receipts**

46. Under this option, we would routinely publish online the same information as set out at paragraph 35 above.
47. In addition to this, we would publish redacted receipts, with the exception of those that fall into the following categories:
- Receipts for claims worth £30 and below;
  - Receipts for train tickets;
  - Receipts for utility bills;
  - Receipts for telephone bills.
48. Receipts that fall into the above categories account for **around 50%** of the receipts in the system. The exclusion of these receipts would therefore significantly reduce the operational impact compared to the publication of all receipts. It would, however, still cost an estimated £240,000 per year [and may well be higher if the recent increase in the number of claims submitted is sustained].

### Advantages

49. This option is closer to own original expectations than Option 1.
50. This option would give the public a greater degree of insight into the information contained in receipts and invoices that is not included in the transactional data and, perhaps, comfort in seeing the kinds of items MPs are now able to claim.
51. We would be publishing redacted receipts and invoices of items of higher expenditure that could be perceived as being a higher risk of misuse of funds. The public would have fuller visibility of the detail of expensive items (e.g. where an MP has bought an iPad).

### Disadvantages

52. There is a risk that this approach may not be considered particularly logical or inherently consistent and that the £30 level may be considered arbitrary. Consequently, this approach may make us more vulnerable to freedom of information successfully requesting sight of all other receipts.
53. This approach could be seen to conflate two messages, namely that we don't redact receipts where there is a very low risk of abuse (utilities), and that we don't redact where we consider the monetary value to be sufficiently low for us to accept a greater degree of risk.
54. There remains a possibility that the Information Commissioner's Office may advise IPSA to notify third parties (as set out in paragraph 35 above) that we would be publishing their details. This would add a significant burden to the management of the publication process. However, as noted above, the Scottish Parliament, which is covered by the same Freedom of Information regime as the rest of the United Kingdom, does not alert third parties and has not been advised that it should.
55. The costs of pursuing this option are significant and would require us to recruit an additional member of staff to the publication team. It would also to an extent require a diversion of resources from the validation team – a team already under severe pressure

### Restricted – policy/operations

– as the redaction team would not carry out the same degree of quality assurance it has applied to the early batches of receipts it has redacted. This was set out in more detail in the paper taken at the previous Board meeting. Even taking this into account, there is a chance that if the number of claims being submitted is sustained, these resources would not be sufficient.

#### Recommendation

56. We recommend that the Board rejects this option as one that, while it may provide some greater comfort on the question of transparency than Option 1, adds a financial burden which will be unsustainable if we are to become more cost-efficient.

**Option 3 – Publish all receipts alongside transactional data.**

57. Under this option, IPSA would routinely publish all redacted receipts alongside all transactional data.

Advantages

58. This arguably provides the greatest degree of transparency. Members of the public would be able to verify expenses claims by cross-referencing receipts.

59. The House of Commons currently publishes all redacted receipts, so it would be consistent with their approach in that particular respect (the House does not, unlike our proposed approach, publish detailed transactional data for each expenses).

Disadvantages

60. As set out in the Board paper taken at the 21 September meeting, we estimate that the cost of providing for the additional staff and equipment to redact all receipts is in the region of £800,000. Given the recent significant increase in the number of claims entering the system, it is likely that this figure would need to be revised upward. IPSA does not at present have the funds to do this work.

61. Many, probably the majority, of receipts do not provide any additional information that would enable a member of the public to form a view about the validity of a claim. The information that would be omitted by not publishing the receipt would typically include:

- the name of the merchant/utility provider from whom the product or service has been bought;
- the detail of a purchase (e.g. the specific type of printer toner, the number of boxes of staples, the brand of washing-up liquid, whether the MP had plaice or steak for dinner on a late-sitting night);
- additional, private purchases for which MPs or their staff are not claiming reimbursement;

62. Publication of some of this detail could be considered overly intrusive.

63. There remains a possibility that the Information Commissioner's Office could direct IPSA to notify third parties (as set out in para 35 above) that we would be publishing their details. This would add a significant burden to the management of the publication process. However, as noted above, the Scottish Parliament does not alert third parties and has not been advised that it should.

64. The Telegraph revelations showed that the publication of redacted receipts under the old system would still have obscured many of the abuses identified, and so arguably do not add very much value. We have put in place rigid systems and processes that mitigate significantly the risks of such abuses taking place.

Recommendation

65. We recommend that the Board discounts this as a viable option.

### **Communications/media implications**

66. The communications and media implications are clearly different depending on the option the Board selects.

#### Option 1. Publication of transactional data only – no images of receipts

67. This option presents the greater communications challenge and we would need a clear narrative setting out why we would not be publishing receipts. Although it would be welcomed by MPs, we may stand accused of going soft on them and operating a less transparent system than the House of Commons.

68. The latter point can clearly be refuted, but risks being lost in the noise around the former point. However, the refutation goes along the following lines:

- We are publishing detailed narrative information about claims submitted and reimbursed. The House of Commons did not do this.
- When the House of Commons published redacted receipts, it was clear that the perceived abuses of the previous system would not have been revealed by scrutiny of the receipts in redacted form. Rather, the Telegraph's complete access to all the information enabled the abuses to be revealed in full.
- Our rules and processes are open and transparent; we have in place rigorous validation and review processes; we are independent scrutineers; we are subject to independent audit.
- Moreover, following the public concern that culminated in the creation of IPSA, we put in place rules specifically to address the principal concerns: MPs can no longer "flip" properties, they can no longer claim for home furnishings, they are no longer reimbursed without the submission of evidence supporting their claims; and MPs are required to confirm on each occasion that their claim is wholly necessary for the fulfilment of their parliamentary duties – thus shifting the responsibility squarely back into their court.
- Finally, redaction would come at a very high cost to the public purse in the current economic climate.

#### Option 2. Publication of transactional data alongside certain receipts

69. This option, as highlighted in paragraphs 52 and 53 above, risks appearing illogical and inconsistent. As such it is likely to attract criticism from MPs, media and the public alike. Any narrative would need to address this by emphasising our aim to provide as much transparency as possible in a cost-effective manner.

70. This option carries a significant risk of personal, including sensitive personal data being published accidentally on occasion. If this were to happen we would be heavily criticised by all parties.

#### Option 3. Publish all receipts alongside transactional data

71. This is the most transparent of the options and likely to be recognised as such by the media and public. We would, however, expect significant criticism from MPs, media and

the public with respect to the £800,000 cost of redaction in straightened times. Any narrative would focus on our commitment to openness and transparency and would need to rebut unfavourable cost-comparisons made by MPs with the Fees Office.

72. This option carries a high risk of personal, including sensitive personal data being published accidentally on occasion. If this were to happen we would be heavily criticised by all parties.

### **Financial/resource implications**

73. This depends on the Board's preferred option. Taking the options in order, the implications are as follows:

#### Option 1. Publication of transactional data only – no images of receipts

74. This option would have the lowest impact on resources. The number of people working on publication could be reduced to as few as one member of staff, providing some scope to reassign other members of staff currently working on redaction to be reassigned to assist other areas of significant pressure in IPSA, such as the validation team and the support services. We would need to retain the ability to recall staff to carry out redaction work at short notice in order to handle successful Freedom of Information requests.

#### Option 2. Publication of transactional data alongside certain receipts

75. This option is estimated to cost around £240,000 per year and would require the recruitment of an additional redactor. Although this cost was not budgeted for in IPSA's approved budget, the resources have been found. Given IPSA's extremely limited scope for budgetary flexibility (the current prediction is that we are running an under-spend of just 2%), any increase in the cost of redaction would prove extremely difficult to accommodate.

#### Option 3. Publish all receipts alongside transactional data

76. Significant resource implications. IPSA would need to employ at least an additional 16.5 additional redactors, as well as equipment and office floor space at a cost of over £800,000. IPSA does not at present have the resources for this.

### **Strategic risk implications**

77. The strategic risk implications depend on the option the Board selects. Please find attached at Annex C the risk register considered by the Audit and Risk Committee on 4 October to provide the context for this section.

#### Option 1. Publication of transactional data only – no images of receipts

78. Risk 2: IPSA becomes discredited. A story is painted successfully suggesting that IPSA is less transparent than the previous regime. **Risk level: medium** (would not change risk status, currently red).

## Restricted – policy/operations

79. Risk 10: The risk that resources who will undertake the redaction of claims within IPSA post-October publication may not be identified within required timescales. **Risk level: low** (may marginally reduce risk status, currently black).

### Option 2. Publication of transactional data alongside certain receipts

80. Risk 1: IPSA may fail to achieve a state of business as usual. The resource implications are sufficiently disruptive – and pressures in other areas remain high – that IPSA fails to meet this level of publication, whilst failing to deliver fully its other services. **Risk level: medium** (would not change risk status, currently red).
81. Risk 6: Risk of security breaches. IPSA accidentally publishes sensitive and/or personal data it should not have. **Risk level: medium** (would not change risk status, currently black).
82. Risk 10: The risk that resources who will undertake the redaction of claims within IPSA post-October publication may not be identified within required timescales. **Risk level: medium** (would not change risk status, currently black).

### Option 3. Publication of all receipts alongside transactional data

83. Risk 1: IPSA may fail to achieve a state of business as usual. **Risk level: high**. The cost impact of pursuing this route will have a large impact on most other areas of the organisation (would likely increase risk status, currently red).
84. Risk 6: Risk of security breaches. IPSA accidentally publishes sensitive and/or personal data it should not have. **Risk level: high**. The very large number of receipts IPSA will be publishing greatly increases the risk of error (would likely increase risk status, currently black).
85. Risk 10: The risk that resources who will undertake the redaction of claims within IPSA post-October publication may not be identified within required timescales. **Risk level: high**. A large team is required to carry out this work. It would take time to recruit and train staff (would likely increase risk status, currently black).

### **Next steps**

86. Once the Board has made a decision, we will schedule a time for the Board to view examples of what the released information will look like.
87. Once we start publishing information on MPs' expenses claims, we also intend to make public to interested parties the aggregated data.

**MARTYN TAYLOR**

Copies: SLT, Tony Lord, Rick Lindeman



## Annex A

### Legal advice

1. IPSA is not required to comply with a request for information if it estimates that the cost of compliance would exceed the appropriate limit set by the Freedom of Information and Data Protection (Appropriate Limit and Fees Regulations 2004 (the "Fees Regulation"). The Fees Regulations limit the tasks that can be taken into account when estimating the costs of complying with the request.
2. A public authority can only take into account the time it reasonably expects to incur in the tasks set out in regulation 4(3)(a)-(d) (the "Allowable Tasks").
3. Regulation 4(3) provides that

*In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in—*

- (a) determining whether it holds the information,*
- (b) locating the information, or a document which may contain the information,*
- (c) retrieving the information, or a document which may contain the information, and*
- (d) extracting the information from a document containing it.*

The relevant provision being 4(3)(d).

### **Can IPSA, under the FOI Fee Regulation of 2004, consider the redaction of information exempt from disclosure a chargeable activity?**

4. The Information Tribunal considered this point in *Chief Constable of South Yorkshire Police v The Information Commissioner*, EA/2009/0029 (14 December 2009). The Information Commissioner's guidance on redacting and extracting information was updated to reflect the *South Yorkshire Police* case. However, it appears that the Ministry of Justice guidance has not been updated.

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/practical\\_application/redacting\\_and\\_extracting\\_information.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/redacting_and_extracting_information.pdf)

5. The Tribunal recognised that there is a 2 stage process. Firstly, extracting the requested information from a document containing requested and unrequested information. Secondly, redacting, from the requested information, information which is exempt from disclosure under FOIA. Dealing with each in turn.
  - a. The process of extracting the requested information from other information not requested.

The Tribunal stated (at paragraph 34) that "*it is clear that what regulation 4(3)(d) is concerned with is the process of differentiating the requested information from other information which has not been requested where a document contains both*". It went on to state that "*it follows that "extracting the information" in regulation*

*4(3)(d) refers to extracting the requested information from other information not requested".*

The Tribunal found that this is an Allowable Task under regulation 4(3)(d).

The question remains as to the method by which the requested information may be extracted. There are at least two alternatives.

- IPSA could cut/extract the "requested information" from the document and paste it into a new document. This would clearly fall within the wording of regulation 4(3)(d). Such an activity would be an Allowable Task.
  - An alternative would be for IPSA to cut/extract the "unrequested information" from the document, leaving the requested information in the original document. This would result in the same information being disclosed to the individual. It would also have the benefit of the individual being able to see the information in its original context. However, this was not considered by the Tribunal and the Information Commissioner has not publicly commented on this wider interpretation of 4(3)(d). It is possible, therefore, that this method of differentiating and extracting the information would not be an Allowable Task.
- b. The process of redacting, from the requested information, the information which is exempt from disclosure

The Tribunal in the *South Yorkshire Police* case found that *"extracting the information" in regulation 4(3)(d) ... does not refer to extracting requested information that is not exempt from information which, though exempt, is still requested information"*.

As a result, the process of redacting, from the requested information, information which comes within one or more of the exemptions is not an Allowable task under the regulations.

**Could the redaction of exempt information on receipts and invoices that support expenses claims be considered a chargeable activity?**

6. The answer depends on the breadth of the request.

- a. Where an individual requests a copy of all of the information on a receipt/invoice.

IPSA cannot take into account the costs it would incur when considering whether any of the information was exempt under FOIA.

- b. Where an individual requests a copy of a part of the information on a receipt/invoice.

i. If the exempt information forms part of the requested information, IPSA cannot take into account the costs it would incur in redacting the exempt information.

- ii. If the exempt information does not form part of the requested information, but instead forms part of the unrequested information, IPSA can take into account the time it would take to extract the requested information.

**If, under 6b, the exempt information forms part of the requested information, could IPSA extract the requested information and omit the exempt information (using whichever appropriate exemption) and take into account the costs of extracting that information?**

7. IPSA could take into account the costs of extraction, but not the costs of deciding what was exempt and redacting that exempt information when performing the extraction process.

**Could IPSA, considering it will be publishing significant amounts of transactional data containing much of the information included on receipts, on a case by case basis extract the additional, non-exempt, information requested and add that to the transactional data to provide the full picture of the information on a receipt or invoice? And if so, would that activity be an Allowable Task?**

8. IPSA could publish the bulk of the transactional data and then consider requests for the remaining data on a case by case basis.
9. The extraction of the requested information could be taken into account (and would be an allowable cost). But, again, consideration of the exemptions and the redaction/deletion of exempt material would not be an Allowable cost. Would you not need to consider what was exempt when deciding what was non-exempt?

**Could IPSA introduce a charging structure into our publication scheme (acknowledging this would require ICO approval) along the lines of the Land Registry and Companies House?**

10. A charge can be levied for information provided in a publication scheme. Information provided through the publication scheme is outside the Fees Regulations. However, the ICO has emphasised that such charges must be reasonable. He considers that reasonable charges would include printing, copying, postage, charges under a statutory scheme (e.g. Land Registry) and for commercial publications. But, charges for staff time would not be considered reasonable. Therefore, whilst IPSA could consider a charging scheme it could not set charges at a level to recoup staff costs.
11. I had also understood that IPSA was intending to publish the MPs' expenses details on its website. If that was the case, then I presume that it would only charge if the requester asked for a copy of the material in a different format to the format on the site and then only for the "reasonable costs" i.e. not staff time.