

Freedom of Information Act – Request reference CAS-41697

1. On 12 February 2016 Mr Steven Swinford requested a copy of a paper presented to the IPSA Board on 18 November 2015 by John Sills, the Director of Regulation. The request was in the following terms:

*“During the Ipsa board meeting on 18 November 2015 the director of regulation introduced a report as part of the Board’s comprehensive review of the scheme of MPs’ Business Costs and Expenses.*

*The minutes state: ‘ipsa’s director of regulation introduced the report which covered, as part of the board’s comprehensive review of the scheme of MP Business costs and expenses..., Another of the key themes–“Business vs personal costs”.*

2. As stated in Mr Swinford’s request the paper, which was dated 10 November 2015, was directed at one of the issues the subject of the IPSA Board’s comprehensive review of the Scheme of MPs’ Business Costs and Expenses (‘the Scheme’). It addressed the issue of *“what approach does the Board wish to take to MPs’ accommodation and other personal benefits in the future”*, and made a series of recommendations namely:

*“That the board:*

- *Notes the latest evidence on MPs’ spending on accommodation at Annex A.*
- *Agrees the draft specification for an external feasibility study on alternative approaches to MPs’ accommodation. This is attached at Annex B.*
- *Provides a steer on a number of accommodation issues which will need to be addressed in the event that we continue with broadly the same accommodation arrangements...*
- *Provides a steer on whether we should conduct further work on other areas of the Scheme which may be considered to involve personal benefits for MPs....”*

3. On 23 March 2016, as IPSA’s ‘qualified person’ under the Freedom of Information Act 2000 (‘the Act’), my opinion was sought as to whether the paper, or any part of the paper, is exempt from publication under section 36(2)(b) of the Act. I was asked specifically to consider whether it is my reasonable opinion that release of the paper:

*“(a) would, or would be likely to inhibit the free and frank provision of advice and, therefore, whether the exemption at section 36 (2)(b) should apply, or (b) would otherwise prejudice, or would be likely otherwise to prejudice the effective conduct of public affairs.”*

4. It is first necessary to set the paper in context. It was a preparatory paper forming part of the process by which the IPSA Board will formulate its policy with regard to the comprehensive review of the Scheme, a review upon which there will be public consultation in due course. The principal focus of the paper is on the funding of the cost

of accommodation for MP's. It contains a summary of how the approach to such funding has developed since IPSA came into existence, an update of the data relating to expenditure on accommodation, and proposals for an external feasibility study of alternatives to the present arrangements. Secondly the paper addressed other elements of MPs' expenditure that may be considered to involve some degree of personal benefit; and sought the guidance of the Board as to the future approach to such expenditure and whether any further work in such areas would be helpful to the Board.

5. Secondly it is necessary to consider whether, and to what degree, the information contained in the paper is already in the public domain. The paper, and the discussion that followed its introduction at the meeting of the IPSA Board on 18 November 2015 was minuted in the following terms;

#### *5. Comprehensive Review of the Scheme: Accommodation*

- 1. IPSA's Director of Regulation introduced the report which covered, as part of the Board's comprehensive review of the Scheme of MPs' Business Costs and Expenses ("the Scheme"), another of the key themes – "Business vs Personal Costs". A number of other themes – support for MPs' families (including connected parties), parliamentary vs party political costs, and MPs' staffing expenditure - had already been examined at the Board's workshop on 22 October.*
- 2. The Director emphasised that, although IPSA only funds costs which are in support of an MP's parliamentary functions, there are a number of examples of spending which are still considered by the public – and in some cases by HMRC – as constituting a personal benefit to the MP. The principal area of spending which is still viewed equivocally as involving some personal benefit is the funding of the accommodation costs of MPs from outside the London Area. This is particularly the case given that many MPs rent a property in London, retaining it throughout the year when parliament only sits for circa 230 days of the year. Accordingly, the main focus of the Board's discussion was the matter of accommodation.*
- 3. The Board noted that accommodation is a high risk and sensitive area of the Scheme. If IPSA is to consider changes, it must be on the basis of the relevant information and accurate data to ensure that there are substantive grounds to make such changes. The Board requested, in particular, to receive data on the travel patterns of MPs, to ascertain how many days they typically spend in London.*
- 4. The Board noted that there are a number of options for change, including but not limited to: retaining the current arrangements but with lower budgets, to reflect time spent at Westminster; the provision of serviced accommodation; IPSA purchasing property or leasing it from a supplier; or even an annual residential allowance, paid into MPs' salaries. However, it is essential to determine, in the first instance, whether any of the potential options for change to IPSA's policy on accommodation will result in substantial savings for the*

*taxpayer and improve value for money. Such determination should be completed before IPSA considers commissioning any type of feasibility study on the alternatives to the current arrangements for MPs' accommodation. When considering these potential options for change, the Board noted the importance of having regard to the fundamental principles of the Scheme – such as not unfairly advantaging or disadvantaging MPs' by virtue of their role, compared to the public which they serve.*

5. *Apart from accommodation, the Board noted that there are other items of expenditure which could be regarded as having some personal benefit, although they are also necessary for the performance of MPs' parliamentary functions. These include IT equipment (including equipment retained after an MP leaves office), use of telephones and season tickets for public transport. The Board will consider all of these other areas in January, with the additional information that had been requested, to enable to Board to make a fully informed decision based upon comprehensive and accurate data.*
6. *The Board*
  - *Noted the latest evidence on MPs' spending on accommodation, as detailed in the report.*
  - *Agreed that, prior to the consideration of an external feasibility study on alternative approaches to MPs' accommodation, further information and data was required (as detailed above), including the projected savings that each potential alternative option might yield.*

The full minutes of the Board Meeting of 18 November 2015 are available to the public on the IPSA website.

6. Much of the factual information contained in the paper is already in the public domain, in particular details of expenditure by MPs on accommodation up to the end of 2015.
7. As to the future, when the comprehensive review of the Scheme is finalized, it will be the subject of public consultation. The substance of the factual information contained in the paper will be included within the consultation document.
8. The arguments for and against the engagement of the section 36 exemption.

The first point to be made is that the presumption raised by the Freedom of Information legislation is that information should be disclosed on request.

9. Secondly the analysis of the arguments for and against the engagement of the section 36(2) exemption set out in decision proforma attached at Annexe A, is comprehensive in that it identifies all the relevant considerations. It is therefore necessary to consider where the balance is to be drawn between the competing arguments. In undertaking that

exercise I have taken full account of each of the relevant considerations, but propose to identify those that in my opinion are of particular significance.

10. The issue of MPs expenses is for historical reasons likely to provoke widespread media interest and coverage. The paper contains both frank advice to the board, presented with the objective of enabling the board to come to a well informed and reasoned decision regarding the regulation of MPs business costs and expenses, and seeks guidance as to further information and research necessary to enable the board to formulate its policy as to the issues that the paper addressed. I accept that to disclose such advice in advance of the formulation of policy by the board would be likely to inhibit the frank exchange of views in the future, which might have the unintended consequence of impairing the quality of decision-making by the Board. I also accept that it is highly unlikely that such free and frank advice would have been proffered, had it be known at the time that the advice would be disclosed prior to the formulation of policy by the Board. In my opinion it would be detrimental to the effective conduct of public affairs by IPSA if its policy and communications team were to feel inhibited in their freedom to offer free and frank advice to the Board.
11. Thirdly, and in my opinion of critical importance, the comprehensive review of the Scheme, of which the paper forms a preparatory part, has not yet been finalized by the Board. Disclosure of the paper at this stage, and the widespread reporting and commentary that it would be likely to attract, could undermine the 'safe space' within which the Board can consider a wide range of varying ideas, and upon which it requires further information and analysis.
12. Similarly disclosure of the paper during the policy-formulating process and in advance of public consultation on revisions to the Scheme, would be likely unduly to influence the consultation process, and thereby prejudice the effective conduct of public affairs. The consultation process can also be described as a 'safe space' in which interested parties can make their views known to IPSA, which is essential in the interests of the formulation of sound policy. Premature public and media involvement would be likely to hinder the free and frank exchange of views. Previous experience has shown that MPs can feel unable to contribute their opinions on issues of high media interest. That is far more likely if the consultation process is preceded by publicity which may or may not accurately

reflect proposed revisions to the Scheme, the result of considered formulation of policy by the Board.

13. As indicated above, much of the factual information contained in the paper is already within the public domain, as is the summary of the paper contained in the minute of the Board meeting of 18 November 2015. It could therefore be argued that it would be possible for the paper to be disclosed subject to redactions necessary to protect the material likely to have the adverse consequences identified above. But there are two points to be made as to that: first, and insofar as the factual material is already within the public domain, little purpose is to be served by its disclosure in this context; and secondly the minute of the meeting of 18 November informs the public in broad terms of the nature of the exercise being conducted by the Board.
14. I have therefore come to the conclusion that the disclosure of the paper at this stage would be likely to inhibit both the frank and free provision of advice to the Board, and would be likely otherwise to prejudice the effective conduct of public affairs. Different considerations are likely to apply after the publication of the consultation document.
15. The second question upon which my opinion is sought is whether the public interest outweighs that conclusion.
16. There is unquestionably a legitimate public interest in the promotion of transparency and accountability in bodies discharging a public function, and specifically in the issue of MPs' business costs and expenses. The public is entitled to know how and why IPSA have arrived at its decisions. That is to be achieved by the publication of the most detailed information as to claims for costs and expenses made by MPs, by publication of the existing Scheme, by publication of minutes of Board meetings, by consultation on the review of the Scheme followed by publication of the relevant Board policy and of the revised Scheme. In those circumstances I do not consider that the public interest outweighs the argument for the application of the section 36 exemption in this case, bearing in mind the nature of the paper (see paragraph 4 above), and the likely consequences of publication identified above.

Robert Owen

Sir Robert Owen

31 March 2016



FOI Request Information	
Request reference	CAS-41697
Date request received	12 February 2016
Qualified Person	Sir Robert Owen
Date opinion sought	23 March 2016

### Full request:

During the Ipsa board meeting on 18 November, 2015 the director of regulation introduced a report as part of the Board's comprehensive review of the scheme of MPs' Business Costs and Expenses.

The minutes state: "IPSA's Director of Regulation introduced the report which covered, as part of the Board's comprehensive review of the Scheme of MPs' Business Costs and Expenses ("the Scheme") , another of the key themes – "Business vs Personal Costs"."

I would like to request a copy of this report.

### Summary/description of information for decision:

- Business vs Personal Costs paper – submitted to the Board as part of the comprehensive review of the MPs' Scheme of Business Costs and Expenses

### Subsection of s.36 to be considered:

s.36(2)(b) Disclosure would, or would be likely to, inhibit:

(i) free and frank provision of advice

s.36(2)(c) Disclosure would otherwise prejudice, or would be likely otherwise to prejudice the effective conduct of public affairs.

### Arguments in favour of engaging the exemption at s.36:

- The paper contains frank advice to the Board, in the interests of allowing the Board to come to a well-informed and reasoned decision regarding the regulation of MPs' business costs and expenses. Disclosing that advice could be likely to inhibit the frank exchange of views in the future, which may unintentionally impair the quality of decision making by the Board in the future.
- Elements of the Board paper, such as that relating to communications handling, are sensitive in nature. It is exceedingly unlikely that such free and frank advice would have been included (and would be included in future Board papers) were it known at the time that the advice would be disclosed. Were IPSA's policy and communications team to feel inhibited in their freedom to offer free and frank advice to IPSA's Board, this would be detrimental to the effective conduct of public affairs.

- The issue to which the Board paper relates is still ‘live’, in that the comprehensive review of the Scheme has not yet been finalised. Disclosure of the Board paper at this time would undermine that ‘safe space’ that exists for IPSA’s Board to consider a wide range of varying ideas.
- The topic of consideration and the discussion contained within the papers do not yet constitute official ‘policy’; the paper forms part of the policy-formulating process which is not yet complete (and won’t be until the consultation has ended). Disclosure of the policy formulation papers in advance of the consultation would be likely to unduly influence the consultation process and prejudice the effective conduct of public affairs. A strong argument could be made for the paper’s disclosure once the consultation has taken place, but not beforehand.
- Similarly, the consultation process itself, which has not yet been formally launched, can be described as a ‘safe space’ for interested parties to make their views known to IPSA, in the interests of formulating good policy. Premature public and media involvement would be likely to hinder the free and frank exchange of views (or provision of advice); we know from previous cases that MPs feel unable to contribute their opinions to us on matters of high media interest due to any backlash they may receive.
- Disclosure of the Board paper and subsequent media coverage (outside of the existing and agreed communication strategy regarding the Scheme consultation) would be likely to undermine our handling of the consultation process, which could prejudice the effective conduct of public affairs.

### **Arguments against engagement of the exemption at s.36:**

- The presumption of FOI legislation is that information should be released on request.
- Many other public bodies actively publish Board papers on a regular basis.
- In 2013, a request was received for copies of Board paper and CEO reports. The decision at the time was to disclose the reports in part, with reference to discussion of specific topics withheld. No ‘chilling effect’ was effected subsequent to the disclosure.
- A large amount of the information contained within is due to be included within the Scheme consultation which will be made public in due course. Much of the content relates to information which is already in the public domain (eg. historical context, expenses figures already published). Sensitive information (disclosure of which may prejudice the effective conduct of public affairs) could be highlighted and withheld from the reports. This may include Annex B of the report, relating to the confidential invitation to tender, and information pertaining to discussions with HMRC.
- In contrast to the argument that disclosing frank advice would be likely to cause a ‘chilling effect’ in the future, it has also be argued that the ‘threat’ of future disclosure of such Board papers could lead to better quality advice being contained within.
- There should be a high degree of transparency and accountability relating to the way IPSA, and especially its Board, conducts its business. The public should be able to understand why IPSA’s Board has come to the decision that it has – and be free to challenge decisions that they think have been made in error.
- Other exemptions, most notably s40 (personal information) would apply to parts of the correspondence ensuring anonymity.



## Public interest arguments

- There is always a general public interest in promoting transparency, accountability, public understanding and involvement in the democratic process;
- There is a legitimate public interest in the issue of MPs' business costs and expenses, demonstrated by the continued widespread media coverage. As such, there is a public interest in furthering debate on the issue.
- However, there is also an argument that the public interest lies in sensible, well-considered policies being made, which can only come about when a safe space is provided in which to formulate and develop such policy. By disclosing the advice and undermining such a 'safe space' for policies to be considered, the quality of future determinations may be impacted, which would not be in the public interest.