



Review of a determination by the IPSA Contingency Panel to refuse an application.

James Frith
Former Member of Parliament for Bury North.

Final Report.

Tracy Hawkings
Compliance Officer for IPSA
10th August 2020

Introduction

1. This review has been conducted following a request by James Frith, the former MP for Bury North, to consider a decision of the IPSA contingency panel process to refuse to pay for cleaning and making good costs for his London accommodation at the end of his tenancy.
2. IPSA publishes and operates The Scheme of MPs' Business Costs and Expenses (the Scheme) in exercise of the powers conferred on it by section 5(3)(a) of the Parliamentary Standards Act 2009. "The Scheme is intended to ensure that MPs' use of taxpayers' money is well regulated and that MPs are resourced appropriately to carry out their parliamentary functions."¹
3. The guidance which applies in this case comes under Chapter Four (Accommodation costs), Chapter Eight (Wind up costs) and Chapter ten (Contingency Payments) of "The Scheme".
4. Mr Frith applied to the Contingency Panel at IPSA on 23rd June 2020. The case he presented, was that there was a stipulation in his lease agreement to have an end of tenancy deep clean and making good costs at his London based accommodation. The lease agreement had been approved by IPSA at the beginning of the tenancy.
5. The application was considered at the contingency panel held on 25th June 2020 and rejected on the grounds that IPSA are not responsible for this category of costs associated with an MP's residential accommodation. They are considered personal costs.
6. As Mr Frith's application was not upheld, he made a request to the Compliance Officer to conduct a review on 29th June 2019.
7. *Section 6A of the Parliamentary Standards Act 2009* (the Act) provides that if:

(1)(a) the IPSA determines under section 6(3)² that a claim is to be refused or that only part of the amount claimed is to be allowed, and

¹ The Scheme of MPs' Business Costs and Expenses (Eleventh edition – Introduction).

² Section 6(3) of the Act states that on receipt of a claim, the IPSA must – (a) determine whether to allow or refuse the claim, and (b) if it is allowed, determine how much of the amount claimed is to be allowed and pay it accordingly.

(b) the member (after asking the IPSA to reconsider the determination and giving it a reasonable opportunity to do so) asks the Compliance Officer to review the determination (or any altered determination resulting from the IPSA's reconsideration).

(2) The Compliance Officer must -

(a) consider whether the determination (or the altered determination) is the determination that should have been made, and

(b) in light of that consideration, decide whether or not to confirm or alter it.

8. Paragraph 9 of the notes for Guidance on the Conduct of Reviews by the Compliance Officer for IPSA states that:

“The Compliance Officer will, taking into account all information, evidence and representations, decide whether the determination (or the altered determination) is the determination that should have been made under the Scheme and in light of that, whether or not to confirm or alter it”.

9. As IPSA had conducted an internal review through the Contingency Panel process, there is no impediment to the Compliance Officer accepting the request for a review from Mr Frith.

The Review

10. In conducting the review, the Compliance Officer has utilised the ninth edition of the Scheme as this was the edition in force when Mr Frith was elected as an MP in June 2017. However, the information quoted is contained within more recent editions of the “Scheme”.

11. In addition, the Compliance Officer has reviewed the following information:

- ◇ The contingency panel application submitted by Mr Frith.
- ◇ The minutes of the contingency panel meetings which considered the request.
- ◇ Reviewed the notes held on the case records management system.
- ◇ Reviewed information relating to MP spend on accommodation costs
- ◇ Researched guidance on lease agreements and service costs.

The Basis for the Review request by Mr Frith.

12. As previously stated the claim subject of this review relate to the costs for a deep clean and general making good costs at the property in London leased by Mr Frith. This was a stipulation in the terms and conditions in his lease agreement. At the time Mr Frith entered in to the rental agreement in 2017, he was the Labour MP representing the Bury North Constituency.
13. The Scheme allows for an accommodation budget to be made available to MPs who reside outside of London. MPs can rent private accommodation, subject to prior approval of IPSA or elect to utilise hotel accommodation. This clause has been included on the Scheme to allow MPs to be able to perform their parliamentary functions whilst at Westminster.
14. Mr Frith complied with the conditions under the Scheme and lodged a copy of the tenancy agreement with IPSA and obtained approval for IPSA to pay the rent and associated costs for the property.
15. At the end of the tenancy, Mr Frith's landlord arranged for the property to be cleaned and general maintenance costs to be carried out at a total cost of £710.40 (£395 cleaning and £320.40 maintenance. The money was deducted from the deposit money taken at the beginning of the tenancy. His application to the contingency panel also included £150 for a check out report and £85.48 for unpaid rent. The total amount claimed as part of the contingency panel application was £958.88. The initial quote for "making good" costs was £1000, Mr Frith managed to negotiate the costs down.
16. Mr Frith's application was considered at the contingency panel and rejected apart from the £150 check out fee. It was at this point he made a request to the Compliance Officer to conduct a review.

Position of IPSA

17. This matter was considered by the IPSA Contingency panel held on 25th June 2020. The panel partly rejected the application made by Mr Frith on the basis that, "cleaning of domestic properties and making good costs are a not allowed under the Scheme and is considered a personal cost. "The Panel agreed that the check-out fee was allowable but that the other costs

relating to cleaning and making good are not. This is consistent with the line IPSA has taken previously, such costs are personal and not claimable. IPSA registers leases but does not approve/sanction the terms of MPs' leases".

Considerations by Compliance Officer.

18. In conducting this review, the Compliance Officer has to decide whether or not there are any grounds to overturn the decision or part of the decision of the contingency panel. To do this, the Compliance Officer relies on the guidance contained within the relevant version(s) of the "Scheme" and other information gathered during the review.

19. The guidance on the contingency panel process is set out in Section 10.10 (ninth edition) of "the Scheme" which states:

IPSA may decide to accept or reject an application at its discretion. In considering its decision IPSA shall take in to account the following factors:

a. whether there are exceptional circumstances warranting additional support;

b. whether the MP could reasonably have been expected to take any action to avoid the circumstances which gave rise to the expenditure or liability; and

c. whether the MP's performance of parliamentary functions will be significantly impaired by a refusal of the claim.

21. In relation to guidance on end of lease rental agreements, the "Scheme" at Paragraph 8.7 states, MPs may continue to claim for accommodation rental payments and/or associated costs for a maximum of two months after leaving Parliament. These costs will be met from the contingency fund.

22. Associated costs can include: a. utility bills (gas, electricity, other fuel and water); b. council tax; c. ground rent and service charges; d. in the case of MPs claiming under 4.3c, buildings insurance; e. purchase, installation and maintenance of routine security measures; f. installation of a landline telephone line, line rental and usage charges; and g. installation of a broadband connection and usage charges. (Para 4.4 Ninth Edition of the Scheme).

23. Associated costs do not include and no claims will be paid for: a. cleaning; b. gardening; c. the purchase or maintenance of furniture. (Paragraph 4.5).
24. The Compliance Officer has interpreted this to mean that cleaning, gardening and furniture costs will not be paid for whilst the property is occupied by a serving MP and believes there is a distinction to be drawn between general cleaning costs and an end of tenancy deep clean which is now a common feature in the terms and conditions of most tenancy agreements.
25. The Contingency panel minutes state that “IPSA registers leases but does not approve/sanction the terms of MPs’ leases”. This point contradicts guidance contained within Section 4.21 of the “Scheme” which states “IPSA will pay for rent and associated costs only after it has approved the MP’s rental contract”. The “Scheme” goes on to say at paragraph 4.23 that “MPs are responsible for checking the terms of their contracts including any service charges, penalty clauses or other clauses which may lead to unexpected costs”.
26. The Compliance Officer has conducted research on the subject of whether or not a deep clean of a property and ‘making good costs comes under the definition of a ‘service charge’. The guidance is not clear, but it looks as though service charges can apply to the cleaning of communal areas only. However, service charges can include general maintenance costs which in turn can include cleaning costs as long as the costs are reasonable.³ In addition, general maintenance can include maintenance and repair costs.
27. The Compliance Officer is of the opinion that as IPSA approved the tenancy agreement submitted by Mr Frith and the tenancy agreement contained a clause that there had to be an end of tenancy deep clean and ‘making good’ costs both of which, can be considered as a service charge, then IPSA should be liable for the costs in this case.
28. In relation to the unpaid rent for 29th February. The Compliance Officer queried this point with Mr Frith because IPSA paid the rent directly to the Landlord on a monthly basis irrespective of how many days were in each month. Mr Frith was unsure why this has been added to the invoice from the Landlord but was willing to forego this as part of his application. The Compliance Officer will leave this for Mr Frith to query with his landlord.

³ Guidance contained within the leasehold advisory service

Conclusion

29. The Compliance Officer has adjudicated in favour of Mr Frith in this instance for the following reasons in respect of the cleaning and making good costs and stipulates that IPSA should pay £715.20.
- ◇ IPSA **approved** the terms of Mr Frith's lease in 2017.
 - ◇ The lease contained a clause which stipulated a deep clean and making good costs were required at the end of tenancy.
 - ◇ Cleaning costs and making good costs can be considered as part of a general maintenance service charge if the costs are reasonable.
 - ◇ The costs are reasonable in this case.
 - ◇ Associated costs can include service charges.
30. Prior to concluding this review, the Compliance Officer sent a copy of the provisional findings to both Mr Frith and IPSA offering them the opportunity to make representations. The Compliance received representations from IPSA which are detailed in appendix one of this report.
32. Section 6A (6) of the Act provides that an MP requesting a review may appeal the decision of the Compliance Officer to a 'First-tier Tribunal' if they are not satisfied with the outcome. The appeal must be submitted within 28 days of receiving the decision. Further information on how to appeal a decision by the Compliance Officer can be found at the following address: <https://www.gov.uk/guidance/mp-expenses-appeal-a-compliance-officers-decision>.
33. In accordance with the Guidance on the Conduct of Reviews by the Compliance Officer for IPSA, details of the review will be published in a manner decided by the Compliance Officer.

Review Comment

34. The Compliance Officer does not want to set precedence on this point. If IPSA remain of the view that end of tenancy cleaning costs/making good costs is a personal cost and not eligible to be paid, then I would suggest this point is made clearer in the Scheme. I have compared the wording contained within section 4 and section 6 of the "Scheme" which relate to Constituency office leases and accommodation leases. The point IPSA need to consider is the wording of the Scheme and add clarity around the word "approved". The wording is different

on the section for constituency office leases which states at paragraph 6.15 “Each constituency office must be registered with IPSA before a rental claim can be made”. This will form the basis of a recommendation.

Review Recommendation.

In the next edition of “The Scheme”, IPSA should consider including further clarity on the point regarding approval of leases as set out in paragraph 4.21. They should also set out what claims can be made in respect of service charges (if any). (There is a contradiction between paragraph 4.4 which sets out that associated costs can include service charges and paragraph 4.23 which states MPs are responsible for checking the terms of their contracts for service charges or penalty clauses which may lead to unexpected costs).

Tracy Hawkings

Compliance Officer for IPSA.

Appendix One

On 7th August, the Compliance officer received a letter from the CEO of IPSA who accepted the findings and agreed to reimburse Mr Frith the sum of £715.20.

However, the below representations were made:

“We nonetheless remain of the view, as I set out on 17 July following your review of [REDACTED], that IPSA does not ‘approve’ MPs’ leases when they are submitted to us; we simply check that there is a legal lease in place that has been signed by both parties, and that an appropriate valuation has taken place for those properties rented from a political party, as stipulated in the Scheme. Other terms and conditions in the lease are a matter for the MP, with the MP required, in paragraph 4.23 of the Scheme, to check for ‘clauses which may lead to unexpected costs’.

A further point relates specifically to Mr Frith. We are concerned that, in this case, you have also recommended that IPSA cover the cost of ‘making good’ in addition to the cleaning. The risk here is that IPSA could in future be asked to fund repairs to any damage to properties caused during an MP’s tenancy. A professional cleaning service is a standard cost of perhaps £200-£500; ‘making good’ could encompass work costing many multiples of this to bring a property back to its original condition, including where damage was caused by negligence. We would be grateful if you could consider this point in your future reviews.

Response from Compliance Officer

The Compliance Officer accepts and acknowledges the point made by IPSA and has no desire to set precedence in this area. The reason why the Compliance officer adjudicated in Mr Frith’s favour in this case is because the wording in the “Scheme” around “approval” of leases and payment of service charges is ambiguous. IPSA have agreed to consider providing further clarity on this point in the next version of “The Scheme”.

This matter is now closed.

Tracy Hawkings