

Review of a determination by the IPSA relating to an overspend on the MP's staffing costs budget for the financial year 2019/20.

**Review conducted at request of James Cleverly
Member of Parliament for Braintree.**

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June 2022

Introduction

1. This review has been conducted following a request by James Cleverly, the MP for Braintree to consider a determination made by the IPSA relating to an overspend on his staffing budget during the financial year 2019/20. The overspend totals £3460.76. and it is IPSA's position that the MP should repay the money.
2. IPSA publishes and operates The Scheme of MPs' Staffing and Business Costs (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 Seven – Staffing Costs and Annex B and C within the Eleventh Edition of the Scheme 2019/20 as this is the guidance that was in place at the relevant time.
4. *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
 - (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 to confirm or alter it.

¹ The Scheme of MPs' Staffing and Business Costs. (Eleventh edition).

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.

5. In addition, 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”.

6. As IPSA has conducted an internal review on this matter, there is no impediment to the Compliance Officer accepting the request for a review from Mr Cleverly.

The Review.

7. In conducting the review, the Compliance Officer has utilised the eleventh edition of the Scheme which came into force in March 2019.

8. In addition, the Compliance Officer has conducted the following enquiries:

- Reviewed the information provided by Mr Cleverly.
- Reviewed the notes held on the IPSA case records management system.
- Reviewed the information provided by the Director of Operations at IPSA.
- Reviewed information provided by the payroll department at IPSA.
- Researched the Scheme for MPs Business Costs and Expenses.
- Held a meeting with the MP on 10th June 2022.

The basis for the review request by Mr Cleverly.

9. During the financial year 2019/2020, Mr Cleverly incurred an overspend on his staffing budget for the sum of £3460.76. The total staffing budget allocated to MPs whose constituencies are outside of London was £155,930. Mr Cleverly has acknowledged and accepts this was a miscalculation on his part and a genuine mistake.

10. He was advised by IPSA that the money would have to be reimbursed unless he could argue the expenditure was caused due to exceptional circumstances, in which case he could apply for additional funding through the contingency panel process. The MP, at the time, did not feel he could argue a case of exceptional circumstance, and requested that the budget be shown as an overspend without a requirement to repay the money. This was on the basis, that his overall budget was underspent.

11. The MP made several requests over the intervening months to discuss the matter with someone senior within IPSA as he felt he had some important points to make. It was not until 19th April 2022 that he had the opportunity to do so and attended a meeting with the Director of Operations. IPSA have acknowledged and apologised for the unacceptable delay in this process.
12. In his meeting with the Director of Operations, Mr Cleverly argued that he should not be required to repay the money because: it was a genuine mistake made during an exceptionally busy period for him; that he did not personally gain from the mistake (and therefore he should not be personally penalised in order to rectify it), that he normally managed his budgets wisely, treating taxpayers' money as if it were your own. In addition, he did not use the additional £10k COVID Office Costs uplift, which was made available to all MPs during this time and that he consistently was underspent on his budgets since being elected to office in 2015.
13. Mr Cleverly argued that as he was underspent overall, he should not be required to repay the money. He understands that a budget overspend in one area cannot be offset against an underspend in another area, but he cannot understand why IPSA systems will not allow an overspend in one area to be permitted without a requirement to repay if this was as a result of a genuine mistake. He feels IPSA could have used discretion in this case taking all the factors into account.
14. The MP provided additional information to the Compliance Officer which will be covered in that section of this report. (See paragraph 19 onwards).

Position of IPSA

15. The argument as set out above was considered by the Director of Operations at a meeting held on 19th April 2022.
16. The Director of Operations explained that the only option open to the MP with regards to the overspend on his staffing budget, was to apply to the contingency panel as that was the only option where IPSA could consider awarding additional funding. To do this the MP would have to set out an argument that the overspend was incurred as a result of exceptional circumstances.

17. It was also pointed out, that if IPSA were to allow the overspend, it would be inconsistent and unfair to other MPs who had been required to repay monies as a result of similar overspends and an exception could not be made in this case. Mr Cleverly was advised he could make a request to the Compliance Officer to conduct a review, which he subsequently did. His request for a review was received on 31st May 2022.
18. The Director of operations acknowledged that the MP had made some very important points during their meeting, and these would be considered at a strategic level going forwards.

Considerations of the Compliance Officer

19. The Compliance Officer, on receipt of a request for a review, shall consider whether it is within his or her jurisdiction (IE does it relate to a refusal in part or whole of a claim under the Scheme) and whether the MP has given IPSA a reasonable opportunity to reconsider the determination.
20. The Compliance Officer will, considering 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 considering that, whether to confirm or alter it.

Information provided by Mr Cleverly

21. Prior to the meeting with Mr Cleverly, he provided written representations as set out below:

"I have requested that IPSA use the discretion afforded to them in their guidelines to not seek this be paid.

Personal Expenditure.

While I understand how expenditure on iPads, Air Pods, laptops etc could, in some circumstances, be seen as personal expenditure I cannot see how staff pay can, in any credible way, be defined as personal expenditure.

My parliamentary team are employed exclusively to support my constituents. I derive no personal benefit from their work and cannot offset any personal expenditure because of their actions.

IPSA disagree with this point and state that their scheme says that an overspend is defined as personal expenditure. I disagree with this definition but, as there is no alternative provider of financial support to the activities of MPs, we are compelled to agree to clauses in the scheme.

I am reminded that many MPs defended their actions during the expenses scandal by stating that they were acting within the letter of the rules. They were heavily criticised for this and IPSA was created as a direct response to this.

As ██████ states in her letter, I have always strived to act within the spirit of the scheme. I have never sought to maximise my expenditure, even when it would have been in my electoral advantage to do so. I have not sought the newest IT equipment, nor find accommodation at the top end of the reimbursement scale, nor claimed for a number of out of pocket expenses, nor claimed for the additional staff support payments.

I have always tried to be a good value for money MP.

It seems that IPSA have abandoned the “spirit of the rules” principle and are sticking strictly to the “letter of the rules”.

I am not asking IPSA to take any action other than to record this as an overspend against a budget, just as any other public or private sector organisation would. I know of no other organisation which would require a budget holder to repay a budget overspend from their own income.

IPSA have stated that they are unwilling to use discretion in this case as they have previously successfully sought repayments from other MPs in similar circumstances. I do not feel this is a legitimate reason. “We have been unreasonable to other MPs in the past, so we have to be unreasonable to you now” is not a compelling argument”.

22. The Compliance Officer held a meeting with Mr Cleverly on 10th June 2022. The above points were discussed. The Compliance Officer discussed in general terms the staffing requirements of Mr Cleverly during that year and the reasons for the overspend. The Compliance Officer explored whether there were any exceptional circumstances which could be considered. Mr Cleverly stated in July 2019, he was appointed as a Minister and became the co-chairman of the Conservative Party. He also became the Parliamentary Under-Secretary for the Department for Exiting the European Union. These additional responsibilities meant he was frequently required to undertake foreign travel and spent most of his time in Westminster. He needed to find a permanent chief of staff to oversee the running of his constituency and case work during the times he was engaged on other matters⁴.
23. Between 2015 and early 2019, Mr Cleverly had commissioned the services of a consultant to coordinate the work in the office to ensure that it is fairly distributed and delivered. This was on an ad-hoc basis. When Mr Cleverly took on the additional responsibilities and it became clear he would be required to spend significantly less time in the office and needed more experience in his private office, he asked the

³ This refers to a letter written by the Director of Operations to Mr Cleverly following their meeting.

⁴ These dates have been confirmed through the House of Commons Website

consultant to become a member of his team and be employed on an IPSA contract. The consultant agreed to the request and a contract was put in place in September 2019. This was the direct cause of the overspend. Previously, when the individual in question was commissioned as a consultant, the payments for his services came from the office costs budget and not the staffing budget. This was a genuine oversight and mistake on behalf of the MP. He did point out, however, that, ultimately this was a more cost-effective way to secure the services of the staff member in question and he remains a member of staff for Mr Cleverly.

24. The Compliance Officer in conducting the review has considered the relevant sections within then Scheme which are set out below:

Rules under The Scheme for MPs Business and Staffing Costs

25. The guidance within the Scheme is set out in Chapters Three, Seven and Ten.
26. **Chapter Three**
The Scheme makes provision for the exercise in certain circumstances of discretion by MPs and by IPSA. Such discretion is not absolute. At all times it must be exercised reasonably, taking account of the fundamental principles of the Scheme (in Part A).
27. **Chapter Seven**
Staffing costs may be claimed to meet the cost of staff who support MPs in performing their parliamentary functions. (Para 7.1)
28. IPSA will not accept any claims or requests for payments (including payment of overtime, increases in salary, addition of new staff members to payroll, or other changes to the staff complement) where these will take an MP over the staffing costs budget limit for the year. (Para 7.16)
29. **Chapter Ten – Contingency Payments**
MPs may apply to IPSA for a contingency payment, under the following circumstances:
- a. where they have incurred a cost, or liability for a cost, which is not covered by the Scheme, but which they consider to be in support of their parliamentary functions;
 - b. where their spending under a particular budget has exceeded or may exceed the budget limit for the year and they consider this to be the result of exceptional circumstances. (Para 10.8)

IPSA may decide to accept or reject an application under paragraph 10.8 at its discretion. In considering its decision IPSA shall take into 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. (Para 10.10)

30. **Other Financial Assistance**

In addition to any other payments or assistance provided by this Scheme, IPSA may, at its discretion and on an individual basis, provide any additional financial assistance to MPs it deems necessary to assist them in carrying out their parliamentary functions. (10.19).

Conclusion

31. The first thing to say, is that the position IPSA has adopted based **on the information provided to them** is correct and they were right to require Mr Cleverly to repay the money for the overspend. The point of any review is to consider the information in existence and consider additional information which comes to light as part of the review.
32. The Compliance Officer believes there is additional information, and this case needs to be considered from two aspects:
 - a. Is this a case where IPSA could have reasonably exercised discretion under paragraph 10.19 and provided additional finance to Mr Cleverly to offset the overspend on his staffing budget?
 - b. Are there grounds to consider exceptional circumstances based on the additional information provided by Mr Cleverly as part of the Compliance Review.

Point A -Discretion

33. The Scheme at paragraph 10.19 does allow IPSA the discretion to provide additional funding on an individual basis to an MP in support of their parliamentary functions. The Compliance Officer believes this should be considered for the following reasons:

Compliance Officer for
IPSA

- Mr Cleverly assumed significant additional responsibilities during this financial year in question which necessitated the need to employ a permanent chief of staff to oversee his staff and daily running of the office in his absence.
- The staff member in question had previously assisted Mr Cleverly as a bought in service since 2015 at a far greater cost to the taxpayer.
- IPSA has acknowledged and apologised for the fact this matter has taken over two years to resolve and this is far from satisfactory. The Compliance Officer would urge IPSA to consider whether it is reasonable or fair to expect Mr Cleverly to repay the money at this juncture.
- The Scheme at para 7.16 states IPSA should not accept claims or requests for payments for new staff which would take them over their budgets. It could be argued that mistakes and miscalculations were made by both the MP and IPSA themselves. The Compliance Officer has checked the CRM system within IPSA and can see no information relating to this matter recorded.
- The Director of Operations has stated the Scheme does not allow for discretion to be used on an individual basis and it would be unfair to other MPs who have been required to repay money in previous years. The Compliance Officer believes, the Scheme does allow for cases to be considered on an individual basis and this is one such case.
- There does not appear to be anything in the Scheme to prevent IPSA from considering the question of discretion retrospectively.

Point B Exceptional Circumstances

34. Within the Scheme, the term exceptional circumstance is not defined or explained further. The Compliance Officer in other cases has used the dictionary definition for exceptional which is described in various ways but includes “out of the ordinary”, “deviating from the norm”, “requiring special attention or presenting a special problem” The fact that Mr Cleverly was appointed as a Minister and co-chairman of the Conservative Party and assumed greater responsibilities, it is understandable he wanted to appoint a Chief of Staff to run his affairs in his absence. The fact this individual was placed on contract as opposed to being paid as a consultant, ironically was a cheaper option overall to the taxpayer.
35. The Compliance Officer is of the view, that at the very least this could be considered as an exceptional circumstance which would justify an application being made to the contingency panel, taking all the other factors as outlined above into account.

36. The Compliance Officer, in considering all the facts, has reached the determination that IPSA should consider para 10.16 and exercise discretion. This would be in preference to utilising the contingency panel process.
37. Prior to reaching a final determination, the Compliance Officer consulted with the CEO of IPSA because she felt it was appropriate in the circumstances. This was on the basis that IPSA had made the correct determination and the Compliance Officer had acknowledged this but still made a determination in favour of the MP as she felt the question of discretion could have been considered.
38. The CEO response is set out below:

“Your determination is, of course, entirely independent and not subject to my influence but I can confirm that I would not seek to challenge a decision along the lines indicated.

You rightly highlight that Mr Cleverly is in breach of the Scheme. His arguments in this respect are akin to saying that one should not be convicted of speeding when one does not agree with the speed limit or if one has always driven below the speed limit prior to getting caught above it. The Scheme has been in place for over a decade and the concept of personal liability there throughout. Every iteration of the Scheme is consulted upon and I do not believe that Mr Cleverly has ever raised this point, until now when he has fallen foul of it. In my view this opinion needs to be given short shrift.

I now understand that the appointment of the staff member involved transferring an individual from a bought in service to the payroll, which is overall cheaper for the taxpayer. It was done at a time when Mr Cleverly saw a significant change in responsibilities which required more support for him to be able to effectively service his constituents. However, I would also note that had he retained the staff member through the bought in service route he would still have gone over budget, albeit by even more, and this would have fallen to be repaid – he has only mitigated the size of the overspend in this regard. Many other MPs take on Ministerial or other responsibilities and do not overspend as a result.

Whilst Mr Cleverly could and should have managed his budgets more effectively, in all of the circumstances I would not challenge a decision to allow discretion despite a clear breach of the Scheme. I would consider this to be specific to the facts and not setting precedent and Mr Cleverly should be on notice that this is a one off and that further budget overspends will be considered with this prior breach in mind – far from being a licence to overspend, we are less likely to apply discretion in similar circumstances now that the breach and consequent liabilities have been made clear”.

39. The Compliance Officer is grateful the CEO for his pragmatism and the reasonable position he has taken on this case and agrees entirely this case should not set a precedent. The determination was reached, on the basis, of the individual facts of this case. The Compliance Officer also acknowledged the point the CEO makes in relation to the fact that had Mr Cleverly retained the services of the employee from his office costs budget, he would have incurred an overspend on that budget albeit by not quite as much. The only thing to say on this point is that this period coincided with the covid pandemic, and all MPs were given an uplift of £10,000 on their staffing costs. Mr Cleverly did not use this money.
40. Based on all of the facts, the Compliance Officer has made the determination the MP is not required to repay IPSA for the overspend on his 2019/20 staffing costs budget.
40. 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>.
41. 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.

Tracy Hawkings
Compliance Officer.